

Senate Bill 158

By: Senators Strickland of the 17th, Tillery of the 19th, Unterman of the 45th, Dugan of the 30th and Miller of the 49th

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Titles 9, 15, 16, 17, and 41 of the Official Code of Georgia Annotated, relating to
2 civil practice, courts, crimes and offenses, criminal procedure, and nuisances, respectively,
3 so as to provide additional safeguards and protections against human trafficking; to authorize
4 DFCS to provide care and supervision to children who are victims of human trafficking; to
5 expand prohibitions against trafficking of persons for labor or sexual servitude; to revise the
6 definition of prostitution; to increase the penalties for certain sexual offenses; to repeal the
7 crime of pandering by compulsion; to provide that the use of certain property in connection
8 with sexually related offenses or drug related offenses constitutes a nuisance and to provide
9 for what constitutes notice of such use; to provide a short title; to provide for related matters;
10 to conform certain cross-references; to provide an effective date and for applicability; to
11 repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **PART I**
14 **SECTION 1-1.**

15 This Act shall be known and may be cited as the "Anti-Human Trafficking Protective
16 Response Act."

17 **SECTION 1-2.**

18 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
19 subsection (a) of Code Section 15-11-130, relating to emergency care and supervision of
20 child without court order and immunity, as follows:

21 "(a) Notwithstanding Code Sections 15-11-133 and 15-11-135, DFCS shall be authorized
22 to provide emergency care and supervision to any child without seeking a court order for
23 a period not to exceed seven days when:

24 (1)(A) As a result of an emergency or illness, the person who has physical and legal
 25 custody of a child is unable to provide for the care and supervision of such child, and
 26 such person or a law enforcement officer, emergency personnel employed by a licensed
 27 ambulance provider, fire rescue personnel, or a hospital administrator or his or her
 28 designee requests that DFCS exercise such emergency custody; and
 29 ~~(2)(B)~~ A child is not at imminent risk of abuse or neglect, other than the risks arising
 30 from being without a caretaker; or
 31 (2) The child is a victim of trafficking for labor or sexual servitude under Code
 32 Section 16-5-46."

33 **SECTION 1-3.**

34 Said title is further amended in Part 3 of Article 3 of Chapter 11, relating to taking into care,
 35 by adding a new Code section to read as follows:

36 "15-11-130.1.
 37 A law enforcement officer or agency or DFCS shall refer any child suspected of being a
 38 victim of sexual exploitation or trafficking under Code Section 16-5-46 to an available
 39 victim assistance organization, as certified by the Criminal Justice Coordinating Council
 40 pursuant to Code Section 15-21-132, which provides comprehensive trauma-informed
 41 services designed to alleviate the adverse effects of trafficking victimization and to aid in
 42 the child's healing, including, but not limited to, assistance with case management,
 43 placement, access to educational and legal services, and mental health services."

44 **SECTION 1-4.**

45 Said title is further amended by revising subsection (a) of Code Section 15-11-133, relating
 46 to removal of child from the home and protective custody, as follows:

47 "(a) A child may be removed from his or her home, without the consent of his or her
 48 parents, guardian, or legal custodian:

49 (1) Pursuant to an order of the court under this article; or

50 (2) By a law enforcement officer or duly authorized officer of the court if:

51 (A) A a child is in imminent danger of abuse or neglect if he or she remains in the
 52 home; or

53 (B) A child is a victim of trafficking for labor or sexual servitude under Code
 54 Section 16-5-46."

55

SECTION 1-5.

56 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 57 amended by revising subsection (c) and paragraphs (1) and (2) of subsection (f) of Code
 58 Section 16-5-46, relating to trafficking of persons for labor or sexual servitude, as follows:

59 "(c) A person commits the offense of trafficking an individual for sexual servitude when
 60 that person knowingly:

- 61 (1) Subjects an individual to or maintains an individual in sexual servitude;
 62 (2) Recruits, entices, harbors, transports, provides, solicits, patronizes, or obtains by any
 63 means an individual for the purpose of sexual servitude; or
 64 (3) ~~Solicits or patronizes by any means an individual to perform sexually explicit~~
 65 ~~conduct on behalf of such person when such individual is the subject of sexual servitude~~
 66 Benefits financially or by receiving anything of value from the sexual servitude of
 67 another."

68 "(f)(1) Except as provided in paragraph (2) of this subsection, any person who commits
 69 the offense of trafficking an individual for labor servitude or sexual servitude shall be
 70 guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for
 71 not less than ten nor more than 20 years and a fine not to exceed \$100,000.00.

72 (2) Any person who commits the offense of trafficking an individual for labor servitude
 73 or sexual servitude against an individual who is under 18 years of age ~~and such individual~~
 74 ~~under the age of 18 years was coerced or deceived into being trafficked for labor~~ or if the
 75 offense is committed against an individual who has a developmental disability, the person
 76 shall be guilty of a felony, and upon conviction thereof, shall be punished by
 77 imprisonment for not less than 25 nor more than 50 years or life imprisonment and a fine
 78 not to exceed \$100,000.00."

79

SECTION 1-6.

80 Said title is further amended by revising Code Section 16-6-9, relating to prostitution, as
 81 follows:

82 "16-6-9.

83 A person, 18 years of age or older, commits the offense of prostitution when he or she
 84 performs or offers or consents to perform a sexual act, including, but not limited to, sexual
 85 intercourse or sodomy, for money or other items of value."

86

SECTION 1-7.

87 Said title is further amended by revising subsection (b) of Code Section 16-6-13, relating to
 88 penalties for violating Code Sections 16-6-9 through 16-6-12, as follows:

89 ~~"(b)(1) A person convicted of any of the offenses enumerated in Code Sections 16-6-10~~
 90 ~~through 16-6-12 when such offense involves the conduct of a person who is at least 16~~
 91 ~~but less than 18 years of age shall be guilty of a felony and shall be punished by~~
 92 ~~imprisonment for a period of not less than five nor more than 20 years, a fine of not less~~
 93 ~~than \$2,500.00 nor more than \$10,000.00, or both Reserved.~~

94 (2) A person convicted of any of the offenses enumerated in Code Sections 16-6-10
 95 through 16-6-12 when such offense involves the conduct of a person under the age of
 96 ~~16~~ 18 years shall be guilty of a felony and shall be punished by imprisonment for a
 97 period of not less than ten nor more than 30 years; and a fine of not more
 98 than \$100,000.00, ~~or both.~~

99 (3) Adjudication of guilt or imposition of a sentence for a conviction of a second or
 100 subsequent offense pursuant to this subsection, including a plea of nolo contendere, shall
 101 not be suspended, probated, deferred, or withheld."

102 **SECTION 1-8.**

103 Said title is further amended by repealing Code Section 16-6-14, relating to pandering by
 104 compulsion, in its entirety and designating said Code section as reserved.

105 **SECTION 1-9.**

106 Title 41 of the Official Code of Georgia Annotated, relating to nuisances, is amended by
 107 revising Code Section 41-3-1, relating to establishment, maintenance, or use of building,
 108 structure, or place for unlawful sexual purposes and evidence of nuisance, as follows:

109 "41-3-1.

110 (a) As used in this Code section, the term 'sexually related charges' means a violation of
 111 Code Section 16-5-46, 16-6-2, 16-6-8, 16-6-9, 16-6-10, 16-6-11, 16-6-12, 16-6-15,
 112 or 16-6-16 when:

113 (1) Returned in an indictment by a grand jury; or

114 (2) Filed as an accusation by a prosecuting attorney that results in a conviction, a plea
 115 of guilty under any first offender statute, a plea of nolo contendere, adjudication in an
 116 accountability court, or a dismissal as a result of successful completion of a pretrial
 117 diversion program.

118 (b) Whosoever shall knowingly erect, establish, continue, maintain, use, own, or lease any
 119 building, structure, or place ~~used for the purpose of lewdness, prostitution, sodomy, the~~
 120 ~~solicitation of sodomy, or masturbation for hire~~ for the purposes of sexually related charges
 121 shall be guilty of maintaining a nuisance; and the building, structure, or place, and the
 122 ground itself in or upon which such ~~lewdness, prostitution, sodomy, the solicitation of~~
 123 ~~sodomy, or masturbation for hire~~ shall be sexually related charges occurred or were

124 conducted, permitted, carried on, continued, or shall exist, and the furniture, fixtures, and
 125 other contents of such building or structure ~~are also declared~~ shall be deemed to be a
 126 nuisance and may be enjoined or otherwise abated as provided in this chapter.

127 ~~(b)(c) The conviction of the owner or operator of any building, structure, or place for any~~
 128 ~~of the offenses stated in subsection (a) of this Code section, based on conduct or an act or~~
 129 ~~occurrence in or on the premises of such building, structure, or place; occurrence of either~~
 130 ~~of the following~~ shall be prima-facie evidence of the nuisance and the existence thereof:

131 (1) A conviction, a plea of guilty under any first offender statute, a plea of nolo
 132 contendere, an adjudication in an accountability court, or a dismissal as a result of
 133 successful completion of a pretrial diversion program of the owner or operator of any
 134 building, structure, or place for any sexually related charges, based on conduct or an act
 135 or occurrence in or on the premises of such building, structure, or place; or

136 (2) When the prosecuting attorney of the county in which the property is located notifies
 137 the owner in writing of two or more unrelated incidents of sexually related charges
 138 occurring within a 24 month period preceding such notice and, after the receipt of such
 139 notice and within 24 months of the first of the incidents resulting in a sexually related
 140 charge which is the subject of such notice, another additional unrelated incident occurs
 141 which results in a sexually related charge.

142 (d) Any such sexually related charges which result directly from cooperation between the
 143 property owner or his or her agent and a law enforcement agency shall not be considered
 144 as evidence of a nuisance under this Code section.

145 (e) The provisions of this Code section are cumulative of any other remedies and shall not
 146 be construed to repeal any other existing remedies for sexually related nuisances."

147 **SECTION 1-10.**

148 Said title is further amended by revising Code Section 41-3-1.1, relating to substantial drug
 149 related activity upon real property, knowledge of owner, and remedies cumulative, as
 150 follows:

151 "41-3-1.1.

152 (a) As used in this Code section, the term:

153 (1) 'Drug related indictment charges' means ~~an indictment by a grand jury for an offense~~
 154 ~~involving a violation of Code Section 16-13-30; provided, however, that any such~~
 155 ~~indictments which result directly from cooperation between the property owner and a law~~
 156 ~~enforcement agency shall not be considered a drug related indictment for purposes of this~~
 157 ~~Code section~~ when:

158 (A) Returned in an indictment by a grand jury; or

159 (B) Filed as an accusation by a prosecuting attorney that results in a conviction, a plea
 160 of guilty under any first offender statute or conditional discharge pursuant to Code
 161 Section 16-13-2, a plea of nolo contendere, adjudication in an accountability court, or
 162 a dismissal as a result of successful completion of a pretrial diversion program.

163 (2) 'Substantial drug related activity' means activity resulting in six or more ~~separate~~
 164 unrelated incidents resulting in drug related ~~indictments~~ charges involving violations
 165 occurring within a ~~12~~ 24 month period on the same parcel of real property.

166 (b) Any owner of real property who has actual knowledge that substantial drug related
 167 activity is being conducted on such property shall be guilty of maintaining a nuisance, and
 168 such real property shall be deemed a nuisance and may be enjoined or otherwise abated as
 169 provided in this chapter.

170 (c) ~~The owner of real property shall be deemed to have actual knowledge of substantial~~
 171 ~~drug related activity occurring on a parcel of real property if the district~~ Prima-facie
 172 evidence of the nuisance and the existence thereof is established when the prosecuting
 173 attorney of the county in which the property is located notifies the owner in writing of three
 174 or more separate unrelated incidents occurring within a ~~12~~ 24 month period which result
 175 in drug related ~~indictments~~ charges and, after the receipt of such notice and within ~~12~~ 24
 176 months of the first of the incidents resulting in a drug related ~~indictment~~ charge which ~~are~~
 177 is the subject of such notice, three or more additional unrelated separate incidents occur
 178 which result in drug related ~~indictments~~ charges.

179 (d) Any such drug related charges which result directly from cooperation between the
 180 property owner or his or her agent and a law enforcement agency shall not be considered
 181 as evidence of a nuisance under this Code section.

182 ~~(d)~~(e) The provisions of this Code section are cumulative of any other remedies and shall
 183 not be construed to repeal any other existing remedies for drug related nuisances."

184

PART II

185

SECTION 2-1.

186 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 187 revising paragraph (1) of subsection (a) of Code Section 9-3-33.1, relating to actions for
 188 childhood sexual abuse, as follows:

189 "(a)(1) As used in this subsection, the term 'childhood sexual abuse' means any act
 190 committed by the defendant against the plaintiff which occurred when the plaintiff was
 191 under 18 years of age and which would be in violation of:

192 (A) Rape, as prohibited in Code Section 16-6-1;

193 (B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;

- 194 (C) Statutory rape, as prohibited in Code Section 16-6-3;
 195 (D) Child molestation or aggravated child molestation, as prohibited in Code
 196 Section 16-6-4;
 197 (E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;
 198 (F) Pandering, as prohibited in Code Section 16-6-12;
 199 (G) ~~Pandering by compulsion, as prohibited in Code Section 16-6-14~~ Reserved;
 200 (H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;
 201 (I) Incest, as prohibited in Code Section 16-6-22;
 202 (J) Sexual battery, as prohibited in Code Section 16-6-22.1; or
 203 (K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2."

204 **SECTION 2-2.**

205 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 206 subsection (a) of Code Section 15-21-208, relating to financial penalty and collection, as
 207 follows:

208 "(a) In every case in which any court in this state shall impose a fine, which shall be
 209 construed to include costs, for trafficking a person for sexual servitude in violation of Code
 210 Section 16-5-46 or any violation of Code Section 16-6-10, 16-6-11, 16-6-12, ~~16-6-14~~,
 211 16-6-15, 16-6-16, or 16-12-100, there shall be imposed an additional penalty of \$2,500.00
 212 if the defendant was 18 years of age or older at the time of the offense."

213 **SECTION 2-3.**

214 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 215 amended by revising subsection (b) of Code Section 16-6-13.2, relating to civil forfeiture of
 216 motor vehicle, as follows:

217 "(b) Any motor vehicle used by a person to facilitate a violation of Code Section 16-6-10,
 218 16-6-11 when the offense involved the pimping of a person to perform an act of
 219 prostitution, or 16-6-12, ~~or 16-6-14~~ is declared to be contraband and no person shall have
 220 a property right in it."

221 **SECTION 2-4.**

222 Said title is further amended by revising subsection (b) of Code Section 16-6-13.3, relating
 223 to civil forfeiture of proceeds and property, as follows:

224 "(b) Any property which is, directly or indirectly, used or intended for use in any manner
 225 to facilitate a violation of Code Section 16-6-10, 16-6-11, or 16-6-12, ~~or 16-6-14~~ and any
 226 proceeds are declared to be contraband and no person shall have a property right in them."

227 **SECTION 2-5.**

228 Said title is further amended by revising division (5)(A)(vii) of Code Section 16-14-3,
229 relating to definitions regarding RICO, as follows:

230 "(vii) Prostitution, keeping a place of prostitution, pimping, and pandering, ~~and~~
231 ~~pandering by compulsion~~ in violation of Code Sections 16-6-9 through 16-6-12
232 ~~and 16-6-14;~~"

233 **SECTION 2-6.**

234 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
235 amended by revising subsection (b) of Code Section 17-8-55, relating to testimony of child
236 less than seventeen years old outside physical presence of accused, as follows:

237 "(b) This Code section shall apply to all proceedings when a child is a witness to or an
238 alleged victim of a violation of Code Section 16-5-1, 16-5-20, 16-5-23, 16-5-23.1, 16-5-40,
239 16-5-70, 16-5-90, 16-5-95, 16-6-1, 16-6-2, 16-6-3, 16-6-4, 16-6-5, 16-6-5.1, 16-6-11,
240 ~~16-6-14~~, 16-6-22, 16-6-22.1, 16-6-22.2, 16-8-41, or 16-15-4."

241 **PART III**

242 **SECTION 3-1.**

243 This Act shall become effective on July 1, 2019, and shall apply to offenses which occur on
244 or after that date. Any offense occurring before July 1, 2019, shall be governed by the statute
245 in effect at the time of such offense, and any resulting conviction shall be considered a prior
246 conviction for the purpose of imposing a sentence that provides for a different penalty for a
247 subsequent conviction.

248 **SECTION 3-2.**

249 All laws and parts of laws in conflict with this Act are repealed.