

Senate Bill 565

By: Senators Strickland of the 17th, Kirkpatrick of the 32nd, Jones II of the 22nd, Albers of the 56th and Rhett of the 33rd

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to provide that at any time after conviction for a misdemeanor or felony offense a
3 defendant convicted of an offense and sentenced as a direct result of being a victim of
4 trafficking for labor or sexual servitude may petition the sentencing court to grant the relief
5 of vacatur; to provide for the return of fines and fees paid by the defendant whose conviction
6 is vacated; to provide that testimony from certain individuals relative to such petitions may
7 be taken by remote electronic means; to authorize payment of such returns by the Georgia
8 Crime Victims Emergency Fund; to provide for rules, standards, protocols, and guidelines
9 for the payment of such returns; to provide for related matters; to provide for an effective
10 date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
14 amended in Article 1 of Chapter 10, relating to procedure for sentencing and imposition of
15 punishment, by revising Code Section 17-10-21, relating to vacating of sentence for
16 trafficking victim defendants, as follows:

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17 "17-10-21.

18 (a)(1) A defendant convicted of an offense and sentenced as a direct result of the
19 defendant being the victim of an offense of trafficking under Code Section 16-5-46 may
20 petition the court imposing the sentence to vacate such conviction. Such court shall
21 maintain the jurisdiction, power, and authority to vacate such conviction and sentence.

22 (2) The defendant shall serve the petition provided for under paragraph (1) of this
23 subsection upon the prosecuting attorney, and such petition:

24 (A) Shall be submitted on a form promulgated by the Attorney General;

25 (B) Shall be submitted ~~no earlier than six months~~ at any time following conviction and
26 sentencing for a misdemeanor or felony offense ~~or no earlier than one year following~~
27 ~~completion of the sentence for a felony offense;~~

28 (C) Shall be submitted with a copy of his or her criminal history background check
29 report conducted by the Georgia Crime Information Center that has been completed no
30 more than three business days prior to the filing of the petition; provided, however, that
31 the defendant shall not be charged a fee by the Georgia Crime Information Center for
32 a report produced for purposes of this Code section; and

33 (D) May include documentation of a defendant's status as a victim of an offense of
34 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,
35 that official documentation shall not be required to obtain relief under this Code
36 section. Such documentation shall create a rebuttable presumption that the defendant
37 was a victim of trafficking under Code Section 16-5-46. As used in this subparagraph,
38 the term 'official documentation' includes, but is not limited to, the following:

39 (i) A copy of an official record, certification, or eligibility letter from a federal, state,
40 tribal, or local proceeding showing that the defendant was a victim of trafficking
41 under Code Section 16-5-46;

42 (ii) An affidavit, a letter, or sworn testimony from a member of the clergy, medical
43 professional, member of a victim services organization, or certified, licensed, or

44 registered professional from whom the defendant has sought assistance, counseling,
45 or legal counsel related to his or her victimization; or

46 (iii) Any other evidence that the court determines is of sufficient credibility or
47 probative value.

48 (3) No defendant with an outstanding warrant issued by a jurisdiction in this state or any
49 other state or by the United States shall file a petition provided for under paragraph (1)
50 of this subsection.

51 (4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such
52 conviction or fails to respond to such petition within 30 days of service, the court
53 imposing the conviction and sentence shall, without notice or hearing, issue an order
54 vacating the conviction and sentence and shall also issue an order restricting access to
55 criminal history record information for such offense.

56 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the
57 court shall hold a hearing within 90 days of the filing of the petition. The court shall
58 hear evidence and determine, by a preponderance of the evidence, whether the
59 defendant committed such offense as a direct result of being the victim of an offense
60 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the
61 evidence, that the defendant committed such offense as a direct result of being the
62 victim of an offense of trafficking under Code Section 16-5-46, the court may issue an
63 order vacating the conviction and sentence.

64 (B) If such order to vacate is issued, the court shall also issue an order restricting
65 access to criminal history record information for such offense and no fee shall be
66 charged by the Georgia Crime Information Center or any other entity for restricting
67 access to criminal history record information under this paragraph.

68 (C) As used in this paragraph, the term 'restrict' shall have the same meaning as set
69 forth in Code Section 35-3-37.

70 (b) When ~~the~~ a petition provided for under subsection (a) of this Code section is filed, it
71 shall be filed under seal.

72 (c)(1) For any sentence vacated pursuant to this Code section, the court vacating such
73 sentence shall include in the order to vacate an order for the return of any fines and fees
74 paid by the defendant under such sentence shall be returned to the defendant in the
75 amount paid by the defendant.

76 (2) The Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of
77 Title 17, shall be responsible for the return to the defendant of fines and fees paid by the
78 defendant.

79 (d) For purposes of considering ~~such~~ a petition provided for under subsection (a) of this
80 Code section, testimony from the defendant, petitioner, expert witness, or any other party
81 may be taken by the court by remote electronic means."

82 **SECTION 2.**

83 Said title is further amended in Chapter 15, relating to victim compensation, by adding a new
84 code section to read as follows:

85 "17-15-17.

86 (a) Subject to available funds, for any sentence vacated pursuant to Code section 17-10-21,
87 any fines and fees paid by the defendant under such sentence shall be returned to the
88 defendant in the amount paid by the defendant.

89 (b) Payments authorized by subsection (a) of this Code section shall be made from the
90 fund.

91 (c) The board shall promulgate rules and develop standards, protocols, and guidelines
92 related to the return of fines and fees in coordination with the State Board of Pardons and
93 Paroles, the Department of Community Supervision, the Department of Corrections, and
94 the Administrative Office of the Courts.

95 (d)(1) Any payment made from the fund under this Code section shall create a debt due
96 and owing to the state by any entity that received a payment of fines and fees that were
97 returned pursuant to this Code section.

98 (2) If the entity has forwarded any portion of the fines and fees to one or more secondary
99 entities, each such secondary entity shall return the amount forwarded by the forwarding
100 entity to such secondary entity. A valid request from the forwarding entity shall include
101 a copy of the order to vacate, an accounting of the fines and fees paid by the defendant
102 to the forwarding entity, and a statement of the amount forwarded by the forwarding
103 entity to the secondary entity.

104 (e) Payments authorized or required under paragraph (1) of subsection (d) of this Code
105 section shall be paid into the fund."

106 **SECTION 3.**

107 This Act shall become effective upon its approval by the Governor or upon its becoming law
108 without such approval.

109 **SECTION 4.**

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