

House Bill 1201 (AS PASSED HOUSE AND SENATE)

By: Representatives Gaines of the 120<sup>th</sup>, Smith of the 18<sup>th</sup>, Jones of the 47<sup>th</sup>, Silcox of the 53<sup>rd</sup>, Hong of the 103<sup>rd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 15, 17, 35, and 49 of the Official Code of Georgia Annotated, relating to  
2 courts, criminal procedure, law enforcement officers and agencies, and social services,  
3 respectively, so as to provide for certain services and protections for victims of trafficking;  
4 to provide for definitions; to provide for the vacating of certain sentences of victims of  
5 trafficking sentenced under Article 3 of Chapter 8 of Title 42, relating to first offenders; to  
6 provide for related matters; to provide for an effective date; to repeal conflicting laws; and  
7 for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Code  
11 Section 15-11-2, relating to definitions relative to the juvenile code, by adding a new  
12 paragraph to read as follows:

13 “(13.05) 'Commercial sexual exploitation recovery center' means a child-caring  
14 institution certified as a victim assistance program, as provided for in subsection (e) of  
15 Code Section 15-21-132, which provides full-time residential care and support services

16 to youth through 18 years of age who are victims of sexual exploitation as defined in  
17 Code Section 49-5-40."

18 **SECTION 2.**

19 Title 17 of the Official Code of Georgia Annotated, relating criminal procedure, is amended  
20 in Code Section 17-10-21, relating to vacating of sentence for trafficking victim defendants,  
21 by revising paragraphs (1), (4), and (5) of subsection (a) as follows:

22 "(1) A defendant convicted of an offense and sentenced, or a defendant who was  
23 sentenced pursuant to Code Section 42-8-60 or 16-13-2, as a direct result of the defendant  
24 being the victim of an offense of trafficking under Code Section 16-5-46 may petition the  
25 court imposing the sentence to vacate such conviction and sentence or the sentence  
26 imposed pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the  
27 jurisdiction, power, and authority to vacate such conviction and sentence."

28 "(4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such  
29 conviction or fails to respond to such petition within 30 days of service, the court  
30 imposing the conviction and sentence or the sentence imposed pursuant to Code  
31 Section 42-8-60 or 16-13-2 shall, without notice or hearing, issue an order vacating the  
32 conviction and sentence or the sentence imposed pursuant to Code Section 42-8-60  
33 or 16-13-2 and shall also issue an order restricting access to criminal history record  
34 information for such offense.

35 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the  
36 court shall hold a hearing within 90 days of the filing of the petition. The court shall  
37 hear evidence and determine, by a preponderance of the evidence, whether the  
38 defendant committed such offense as a direct result of being the victim of an offense  
39 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the  
40 evidence, that the defendant committed such offense as a direct result of being the  
41 victim of an offense of trafficking under Code Section 16-5-46, the court may issue an

42 order vacating the conviction and sentence or the sentence imposed pursuant to Code  
43 Section 42-8-60 or 16-13-2. The vacatur of a sentence under this paragraph which was  
44 imposed pursuant to Code Section 42-8-60 or 16-13-2 shall result in the discharge and  
45 dismissal of the action.

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

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

52

### SECTION 3.

53 Title 35 of the Official Code of Georgia Annotated, relating law enforcement officers and  
54 agencies, is amended in Code Section 35-3-37, relating to review of individual's criminal  
55 history record information, definitions, privacy considerations, written application requesting  
56 review, and inspection, by revising paragraph (6) of subsection (j) as follows:

57 "(6)(A) A defendant convicted of an offense and sentenced, or a defendant who was  
58 sentenced pursuant to Code Section 42-8-60 or 16-13-2, while such individual was a  
59 victim of an offense of trafficking under Code Section 16-5-46 may petition the court  
60 imposing the sentence to restrict such conviction and the sentence or sentence imposed  
61 pursuant to Code Section 42-8-60 or 16-13-2. Such court shall maintain the  
62 jurisdiction, power, and authority to restrict such conviction and sentence.

63 (B) The defendant shall serve the petition provided for under paragraph (1) of this  
64 subsection upon the prosecuting attorney, and such petition:

65 (i) Shall be submitted on a form promulgated by the Attorney General; and

66 (ii) May include documentation of a defendant's status as a victim of an offense of  
67 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,

68 that official documentation shall not be required to obtain relief under this paragraph.  
69 Such documentation shall create a rebuttable presumption that the defendant was a  
70 victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the  
71 term 'official documentation' includes, but is not limited to, the following:

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

75 (II) An affidavit, a letter, or sworn testimony from a member of the clergy, medical  
76 professional, member of a victim services organization, or certified, licensed, or  
77 registered professional from whom the defendant has sought assistance, counseling,  
78 or legal counsel related to his or her victimization; or

79 (III) Any other evidence that the court determines is of sufficient credibility or  
80 probative value.

81 (C) If the prosecuting attorney, to the court, consents in writing to the restriction of  
82 such conviction and sentence or the sentence imposed pursuant to Code  
83 Section 42-8-60 or 16-13-2 or fails to respond to such petition within 30 days of  
84 service, the court imposing the conviction and sentence or the sentence imposed  
85 pursuant to Code Section 42-8-60 or 16-13-2 shall, without notice or hearing, issue an  
86 order restricting ~~the conviction and sentence~~ access to criminal history record  
87 information for such offense.

88 (D) If the prosecuting attorney, to the court, objects in writing to the petition, the court  
89 shall determine, by a preponderance of the evidence, whether the defendant committed  
90 such offense while such individual was a victim of an offense of trafficking under Code  
91 Section 16-5-46. If the court finds, by a preponderance of the evidence, that the  
92 defendant committed such offense while such individual was a victim of an offense of  
93 trafficking under Code Section 16-5-46, the court may issue an order restricting ~~the~~  
94 ~~conviction and sentence~~ access to criminal history record information for such offense.

95 The court shall hold a hearing within 90 days of the filing of the petition to hear  
96 evidence for purposes of making a determination under this subparagraph or make a  
97 determination upon the pleadings or record.

98 (E) When the petition provided for under subparagraph (A) of this paragraph is filed,  
99 it shall be filed under seal.

100 (F) For purposes of considering such petition, testimony from the defendant or any  
101 other party may be taken by the court by remote electronic means.

102 (G) No fee shall be charged to an individual for restricting access to criminal history  
103 record information under this paragraph."

#### 104 SECTION 4.

105 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended  
106 in Code Section 49-5-3, relating to definitions relative to children and youth services, by  
107 revising paragraphs (3) and (13) and by adding new paragraph to read as follows:

108 "(3) 'Child-caring institution' means any institution, society, agency, or facility, whether  
109 incorporated or not, which either primarily or incidentally provides full-time care for  
110 children through 18 years of age outside of their own homes, subject to such exceptions  
111 as may be provided in rules and regulations of the board. Such term includes a  
112 commercial sexual exploitation recovery center."

113 “(6.1) 'Commercial sexual exploitation recovery center' means a child-caring institution  
114 certified as a victim assistance program, as provided for in subsection (e) of Code  
115 Section 15-21-132, which provides full-time residential care and support services to  
116 youth through 18 years of age who are victims of sexual exploitation as defined in Code  
117 Section 49-5-40."

118 "(13) 'Maternity home' means any place in which any person, society, agency,  
119 corporation, or facility receives, treats, or cares for, within any six-month period, more  
120 than one pregnant woman whose child is to be born out of wedlock, either before, during,

121 or within two weeks after childbirth. This definition shall not include women who  
122 receive maternity care in the home of a relative or in general or special hospitals, licensed  
123 according to law, in which maternity treatment and care is part of the medical services  
124 performed and the care of children is only brief and incidental. Such term shall not  
125 include a commercial sexual exploitation recovery center."

126 **SECTION 5.**

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

129 **SECTION 6.**

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