

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 198
PROPOSED COMMITTEE SUBSTITUTE H198-PCS10177-SA-6

Short Title: Human Trafficking Commission Recommendations.-AB (Public)

Sponsors:

Referred to:

February 27, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT RECOMMENDATIONS MADE BY THE NORTH CAROLINA
3 HUMAN TRAFFICKING COMMISSION.
4 The General Assembly of North Carolina enacts:

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6 **PART I. REDUCE DEMAND FOR HUMAN TRAFFICKING**

7
8 **CRIMINALIZE BUYER CONDUCT IN INSTANCES OF SEXUAL SERVITUDE**

9 **SECTION 1.(a)** G.S. 14-43.13 reads as rewritten:

10 "**§ 14-43.13. Sexual servitude.**

11 (a) A person commits the offense of sexual servitude when that person knowingly or in
12 reckless disregard of the consequences of the action ~~subjects or maintains~~ subjects, maintains, or
13 obtains another in for the purposes of sexual servitude.
14"

15 **SECTION 1.(b)** This section is effective December 1, 2019, and applies to offenses
16 committed on or after that date.

17
18 **PROHIBIT THE PROMOTION OR SALE OF SEX TOURISM SERVICES**

19 **SECTION 2.(a)** Article 27 of Chapter 14 of the General Statutes is amended by
20 adding a new section to read:

21 "**§ 14-208.1. Promoting travel for unlawful sexual conduct.**

22 (a) Definition. – For purposes of this section, the term "travel services" means
23 transportation by air, sea, or ground; hotel or other lodging accommodations; package tours, or
24 the provision of vouchers or coupons to be redeemed for future travel; or accommodations for a
25 fee, commission, or other valuable consideration.

26 (b) Offense. – A person commits the offense of promoting travel for unlawful sexual
27 conduct if the person sells or offers to sell travel services that the person knows to include travel
28 for the purpose of committing any of the following offenses in this State or for the purpose of
29 engaging in conduct that would constitute any one of the following offenses if occurring within
30 this State:

- 31 (1) An offense under Article 7B of Chapter 14 of the General Statutes.
32 (2) Any of the following offenses involving the sexual exploitation of a minor:
33 a. G.S. 14-190.16.
34 b. G.S. 14-190.17.
35 c. G.S. 14-190.17A.
36 (3) Any of the following offenses involving indecent liberties with a minor:



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- 1 a. G.S. 14-202.1.
2 b. G.S. 14-202.4.
3 (4) Any of the following prostitution offenses:
4 a. G.S. 14-204.
5 b. G.S. 14-205.1.
6 c. G.S. 14-205.2.
7 d. G.S. 14-205.3.

8 (c) Punishment. – A violation of this section is a Class G felony."

9 **SECTION 2.(b)** This section is effective December 1, 2019, and applies to offenses
10 committed on or after that date.

11
12 **PART II. CIVIL AND POST-CONVICTION RELIEF FOR HUMAN TRAFFICKING**
13 **VICTIMS**

14
15 **PROVIDE A CIVIL CAUSE OF ACTION FOR HUMAN TRAFFICKING VICTIMS**

16 **SECTION 3.(a)** Article 10A of Chapter 14 of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 14-43.18 Civil cause of action; damages and attorneys' fees; limitation.**

19 (a) Cause of Action. – An individual who is a victim may bring a civil action against a
20 person who violates this Article or a person who knowingly benefits financially or by receiving
21 anything of value from participation in a venture which that person knew or should have known
22 violates this Article.

23 (b) Relief and Damages. – The victim may seek and the court may award any or all of
24 the following types of relief:

25 (1) An injunction to enjoin continued violation of this Article.

26 (2) Compensatory damages, which includes the following:

27 a. The greater of (i) the gross income or value to the defendant of the
28 victim's labor; or (ii) value of the victim's labor as guaranteed under
29 the Minimum Wage Law and overtime provisions of the Fair Labor
30 Standards Act (FLSA).

31 b. Any costs reasonably incurred by the victim for medical care,
32 psychological treatment, temporary housing, transportation, and any
33 other services designed to assist a victim in recovering from any
34 injuries or loss resulting from a violation of this Article.

35 (3) General damages for noneconomic losses.

36 (c) Attorneys' Fees. – The court may award to the plaintiff and assess against the
37 defendant the reasonable costs and expenses, including attorneys' fees, of the plaintiff in bringing
38 an action pursuant to this section. If the court determines that the plaintiff's action is frivolous, it
39 may award to the defendant and assess against the plaintiff the reasonable costs and expenses,
40 including attorneys' fees, of the defendant in defending the action brought pursuant to this
41 section.

42 (d) Stay Pending Criminal Action. – Any civil action filed under this section shall be
43 stayed during the pendency of any criminal action arising out of the same occurrence in which
44 the plaintiff is the victim. The term "criminal action" includes investigation and prosecution and
45 is pending until final adjudication in the trial court.

46 (e) Statute of Limitations. – No action may be maintained under subsection (a) of this
47 section unless it is commenced no later than either of the following:

48 (1) Ten years after the cause of action arose.

49 (2) Ten years after the victim reaches 18 years of age if the victim was a minor at
50 the time of the alleged offense.

1 (f) Jury Trial. – Parties to a civil action brought pursuant to this section shall have the
 2 right to a jury trial as provided under G.S. 1A-1, Rules of Civil Procedure."

3 **SECTION 3.(b)** This section becomes effective July 1, 2019, and applies to causes
 4 of action arising on or after that date.

5
 6 **EXPAND EXPUNCTION ELIGIBILITY FOR HUMAN TRAFFICKING VICTIMS**

7 **SECTION 4.(a)** G.S. 15A-145.6(b) reads as rewritten:

8 "(b) A person who has been convicted of a prostitution offense may file a petition in the
 9 court of the county where the person was convicted for expunction of the prostitution offense
 10 from the person's criminal record provided that all the following criteria are met:

11 (1) The person has not previously been convicted of any violent felony or violent
 12 misdemeanor under the laws of the United States or the laws of this State or
 13 any other state.

14 (2) The person satisfies any one of the following criteria:

15 a. ~~The person's participation in the prostitution offense was a result of~~
 16 ~~having been a trafficking victim under G.S. 14-43.11 (human~~
 17 ~~trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe~~
 18 ~~form of trafficking under the federal Trafficking Victims Protection~~
 19 ~~Act (22 U.S.C. § 7102(13)).~~

20 b. The person has no prior convictions for a prostitution offense and at
 21 least three years have passed since the date of conviction or the
 22 completion of any active sentence, period of probation, and
 23 post-release supervision, whichever occurs later.

24 c. ~~The person received~~ was discharged and the charge was dismissed
 25 upon completion of a conditional discharge pursuant to
 26 G.S. 14-204(b)."

27 **SECTION 4.(b)** Article 5 of Chapter 15A of the General Statutes is amended by
 28 adding a new section to read:

29 **"§ 15A-145.9. Expunctions of certain offenses committed by human trafficking victims.**

30 (a) Definition. – For purposes of this section, the following terms apply:

31 (1) Nonviolent offense. – Any misdemeanor or felony except the following:

32 a. A Class A through G felony.

33 b. An offense that includes assault as an essential element of the offense.

34 c. An offense requiring registration pursuant to Article 27A of Chapter
 35 14 of the General Statutes, whether or not the person is currently
 36 required to register.

37 d. Any of the following sex-related or stalking offenses:
 38 G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202,
 39 14-208.11A, 14-208.18, 14-277.3A, or 14-321.1.

40 e. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any
 41 offense for which punishment was determined pursuant to
 42 G.S. 14-3(c).

43 f. An offense under G.S. 14-401.16.

44 g. A traffic offense.

45 h. Any offense that is an attempt to commit an offense described in
 46 sub-subdivisions a. through g. of this subdivision.

47 (2) Trafficking victim. – A person that meets the definition for the term "victim"
 48 set forth in G.S. 14-43.10 or a victim of a severe form of trafficking under the
 49 federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

50 (b) Expunction Authorized. – A person who has been convicted of a nonviolent offense
 51 may file a petition in the court of the county where the person was convicted for expunction of

1 the nonviolent offense from the person's criminal record if the court finds that the person was
2 coerced or deceived into committing the offense as a direct result of having been a trafficking
3 victim.

4 (c) Petition Requirements. – The petition shall contain all of the following:

5 (1) An affidavit by the petitioner that the petitioner is a victim of human
6 trafficking and was coerced or deceived into committing the offense as a direct
7 result of their status as a trafficking victim.

8 (2) A statement that the petition is a motion in the cause in the case wherein the
9 petitioner was convicted.

10 (3) An application on a form approved by the Administrative Office of the Courts
11 requesting and authorizing a search by the Department of Public Safety for
12 any outstanding warrants. The application shall be filed with the clerk of
13 superior court. The clerk of superior court shall forward the application to the
14 Department of Public Safety, which shall conduct the search and report its
15 findings to the court.

16 (4) An affidavit by the petitioner that no restitution orders or civil judgments
17 representing amounts ordered for restitution entered against the petitioner are
18 outstanding.

19 (d) Service of Petition. – The petition shall be served upon the district attorney of the
20 court wherein the case was tried resulting in conviction. The district attorney shall have 30 days
21 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
22 hearing of the petition.

23 (e) Issues for Consideration. – The court in which the petition was filed may take the
24 following steps and may consider the following issues in rendering a decision upon a petition for
25 expunction of records of an offense under this section:

26 (1) Call upon a probation officer for additional investigation or verification of the
27 petitioner's conduct during the period since the date of conviction of the
28 offense in question.

29 (2) Review any other information the court deems relevant, including, but not
30 limited to, affidavits or other testimony provided by law enforcement officers,
31 district attorneys, or licensed social workers.

32 (f) Restoration of Status. – The court shall order that the person be restored, in the
33 contemplation of the law, to the status the person occupied before the arrest or indictment or
34 information if the court finds all of the following after a hearing:

35 (1) The criteria set out in subsection (b) of this section are satisfied.

36 (2) The petitioner has no outstanding warrants.

37 (3) The petitioner has no outstanding restitution orders or civil judgments
38 representing amounts ordered for restitution entered against the petitioner.

39 (g) Effect. – No person as to whom an order has been entered pursuant to subsection (f)
40 of this section shall be held thereafter under any provision of any laws to be guilty of perjury or
41 otherwise giving false statement by reason of that person's failure to recite or acknowledge the
42 arrest, indictment, information, trial, or conviction. Persons required by State law to obtain a
43 criminal history record check on a prospective employee shall not be deemed to have knowledge
44 of any convictions expunged under this section.

45 (h) Law Enforcement Certification. – Persons pursuing certification under the provisions
46 of Article 1 of Chapter 17C of 17E of the General Statutes, however, shall disclose all convictions
47 to the certifying Commission regardless of whether or not the convictions were expunged
48 pursuant to the provisions of this section.

49 (i) Records Expunged. – The court shall also order that the conviction of the offenses be
50 expunged from the records of the court and direct all law enforcement agencies bearing record

1 of the same to expunge their records of the conviction. The clerk shall notify State and local
2 agencies of the court's order as provided in G.S. 15A-150.

3 (j) Additional Records Expunged. – Any other applicable State or local government
4 agency shall expunge from its records entries made as a result of the conviction ordered expunged
5 under this section. The agency shall also reverse any administrative actions taken against a person
6 whose record is expunged under this section as a result of the charges or convictions expunged.
7 This subsection shall not apply to the Department of Justice for DNA records and samples stored
8 in the State DNA Database and the State DNA Databank."

9 **SECTION 4.(c)** G.S. 15A–151.5(a) is rewritten to read:

10 "(a) Notwithstanding any other provision of this Article, the Administrative Office of the
11 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available
12 to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under
13 any of the following:

14 ...

15 (7a) G.S. 15A-145.9 Expunction of records of certain offenses committed by
16 human trafficking victims.

17"

18 **SECTION 4.(d)** This section becomes effective on December 1, 2019, and applies
19 to petitions filed on or after that date.

20 21 **EXPAND GROUNDS FOR APPROPRIATE RELIEF FOR HUMAN TRAFFICKING** 22 **VICTIMS**

23 **SECTION 5.(a)** G.S. 15A-1415(b) reads as rewritten:

24 "(b) The following are the only grounds which the defendant may assert by a motion for
25 appropriate relief made more than 10 days after entry of judgment:

26 ...

27 (10) The defendant was convicted of a ~~first offense of prostitution under G.S.~~
28 ~~14-204, and the court did not discharge the defendant and dismiss the charge~~
29 ~~pursuant to G.S. 14-204(b);~~ nonviolent offense as defined in G.S. 15A-145.9;
30 the defendant's participation in the offense was a result of having been a victim
31 of human trafficking under G.S. 14-43.11, sexual servitude under
32 G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. §
33 7102(13)); and the defendant seeks to have the conviction vacated."

34 **SECTION 5.(b)** This section becomes effective December 1, 2019, and applies to
35 motions filed on or after that date.

36 37 **EXPAND THE ELIGIBILITY OF VACATUR FOR NONVIOLENT OFFENSES** 38 **RESULTING FROM A DEFENDANT'S VICTIMIZATION**

39 **SECTION 6.(a)** G.S. 15A-1416.1 reads as rewritten:

40 "**§ 15A-1416.1. Motion by the defendant to vacate ~~prostitution~~ a nonviolent offense**
41 **conviction for ~~sex~~ human trafficking victim.**

42 (a) A motion for appropriate relief seeking to vacate a conviction for ~~prostitution~~ a
43 nonviolent offense based on the grounds set out in G.S. 15A-1415(b)(10) shall be filed in the
44 court where the conviction occurred. The motion may be filed at any time following the entry of
45 a verdict or finding of ~~guilty under G.S. 14-204.~~ guilty. Any motion for appropriate relief filed
46 under this section shall state why the facts giving rise to this motion were not presented to the
47 trial court and shall be made with due diligence after the defendant has ceased to be a victim of
48 such trafficking or has sought services for victims of such offenses, subject to reasonable
49 concerns for the safety of the defendant, family members of the defendant, or other victims of
50 such trafficking that may be jeopardized by the bringing of such motion or for other reasons
51 consistent with the purpose of this section. ~~Reasonable notice of the~~ The motion shall be

1 contemporaneously served upon the State, the district attorney in the prosecutorial district in
2 which the conviction was entered. The district attorney shall have 30 days thereafter in which to
3 file any objection thereto and shall be duly notified as to the date of the hearing of the motion.

4 (b) The court may grant the motion if, in the discretion of the court, the defendant has
5 demonstrated, by the preponderance of the evidence, that the violation was a direct result of the
6 defendant having been a victim of human trafficking or sexual servitude, servitude and that the
7 offense would not have been committed but for the defendant having been a victim of human
8 trafficking or sexual servitude. Evidence of such may include any of the following documents
9 listed in subdivisions (1) through ~~(3)~~ (4) of this subsection; alternatively, the court may consider
10 such other evidence as it deems of sufficient credibility and probative value in determining
11 whether the defendant is a trafficking victim:

12 (1) Certified records of federal or State court proceedings which demonstrate that
13 the defendant was a victim of a person charged with an offense under
14 G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.

15 (2) Certified records of "approval notices" or "enforcement certifications"
16 generated from federal immigration proceedings available to such victims.

17 (3) A sworn statement from a trained professional staff of a victim services
18 organization, an attorney, a member of the clergy, or a medical or other
19 professional from whom the defendant has sought assistance in addressing the
20 trauma associated with being trafficked.

21 (4) A sworn statement or affidavit from a federal, State, or local law enforcement
22 officer who investigated the violation of G.S. 14-43.11, G.S. 14-43.13, or the
23 federal Trafficking Victims Protection Act, as stated within the defendant's
24 motion.

25 ...

26 (d) A previous or subsequent conviction shall not affect a person's eligibility for relief
27 under this section."

28 **SECTION 6.(b)** This section becomes effective December 1, 2019, and applies to
29 motions filed on or after that date.

30 **PART III. SEVERABILITY CLAUSE/EFFECTIVE DATE**

31 **SEVERABILITY CLAUSE**

32 **SECTION 7.** If any section or provision of this act is declared unconstitutional or
33 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
34 the part so declared to be unconstitutional or invalid.
35

36 **EFFECTIVE DATE**

37 **SECTION 8.** Except where otherwise provided, this act becomes effective on July
38 1, 2019.
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