

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 855
Apr 11, 2013
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH70298-LH-130A (03/13)

Short Title: Human Trafficking.

(Public)

Sponsors: Representatives Schaffer and Presnell (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF ABUSED JUVENILE TO INCLUDE A MINOR WHO IS A VICTIM OF HUMAN TRAFFICKING, TO PROVIDE THAT MISTAKE OF AGE AND CONSENT OF A MINOR ARE NOT DEFENSES TO PROSECUTION OF AN OFFENSE OF HUMAN TRAFFICKING, TO REQUIRE MANDATORY RESTITUTION FOR VICTIMS OF HUMAN TRAFFICKING, TO PROVIDE THAT A MINOR SHALL NOT BE PROSECUTED FOR THE OFFENSE OF PROSTITUTION, TO PROVIDE FOR THE EXPUNCTION OF CERTAIN PERSONS CONVICTED OF PROSTITUTION, TO PROVIDE THAT A PERSON WITH ONE CONVICTION FOR PROSTITUTION THAT IS THE RESULT OF BEING A HUMAN TRAFFICKING VICTIM IS ELIGIBLE FOR VICTIM'S COMPENSATION, TO MAKE EDUCATORS AWARE OF HUMAN TRAFFICKING ISSUES AND TO PROVIDE RESOURCES AND MATERIALS ON HUMAN TRAFFICKING TO EDUCATORS AND FOR DISTRIBUTION TO SCHOOL PERSONNEL, STUDENTS, AND PARENTS, AND TO DIRECT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A CENTRAL HOTLINE FOR REPORTING SUSPECTED CASES OF HUMAN TRAFFICKING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101(1) reads as rewritten:

"§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:
 - a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
 - d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in



* D R H 7 0 2 9 8 - L H - 1 3 0 A *

1 G.S. 14-27.4; sexual offense with a child by an adult offender, as
 2 provided in G.S. 14-27.4A; second degree sexual offense, as
 3 provided in G.S. 14-27.5; sexual act by a custodian, as provided in
 4 G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as
 5 provided in G.S. 14-43.14; crime against nature, as provided in
 6 G.S. 14-177; incest, as provided in G.S. 14-178; preparation of
 7 obscene photographs, slides, or motion pictures of the juvenile, as
 8 provided in G.S. 14-190.5; employing or permitting the juvenile to
 9 assist in a violation of the obscenity laws as provided in
 10 G.S. 14-190.6; dissemination of obscene material to the juvenile as
 11 provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or
 12 disseminating material harmful to the juvenile as provided in
 13 G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual
 14 exploitation of the juvenile as provided in G.S. 14-190.16 and
 15 G.S. 14-190.17; promoting the prostitution of the juvenile as
 16 provided in G.S. 14-190.18; and taking indecent liberties with the
 17 juvenile, as provided in G.S. 14-202.1;

- 18 e. Creates or allows to be created serious emotional damage to the
 19 juvenile; serious emotional damage is evidenced by a juvenile's
 20 severe anxiety, depression, withdrawal, or aggressive behavior
 21 toward himself or others; ~~or~~
 22 f. Encourages, directs, or approves of delinquent acts involving moral
 23 turpitude committed by the ~~juvenile~~-juvenile;
 24 g. Commits or allows to be committed an offense under G.S. 14-43.11
 25 (human trafficking), G.S. 14-43.12 (involuntary servitude), or
 26 G.S. 14-43.13 (sexual servitude against the child).

27"

28 **SECTION 2.** G.S. 14-43.11 is amended by adding a new subsection to read:

29 "(c1) Mistake of age is not a defense to prosecution under this section. Consent of a minor
 30 is not a defense to prosecution under this section."

31 **SECTION 3.** G.S. 14-43.12 is amended by adding a new subsection to read:

32 "(c1) Mistake of age is not a defense to prosecution under this section. Consent of a minor
 33 is not a defense to prosecution under this section."

34 **SECTION 4.** G.S. 14-43.13 is amended by adding a new subsection to read:

35 "(b1) Mistake of age is not a defense to prosecution under this section. Consent of a minor
 36 is not a defense to prosecution under this section."

37 **SECTION 5.** Article 10A of Chapter 14 of the General Statutes is amended by
 38 adding a new section to read:

39 **§ 14-43.20. Mandatory restitution; victim services; forfeiture.**

40 (a) Definition. – For purposes of this section, a "victim" is a person subjected to the
 41 practices set forth in G.S. 14-43.11, 14-43.12, or 14-43.13.

42 (b) Restitution. – Restitution for a victim is mandatory under this Article. In addition to
 43 any other amount of loss identified, the court shall order restitution including the greater of (i)
 44 the gross income or value to the defendant of the victim's labor or services or (ii) the value of
 45 the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the
 46 Fair Labor Standards Act (FLSA) or the Minimum Wage Law, whichever is greater.

47 (c) Trafficking Victim Services. – Subject to the availability of funds, the Department
 48 of Health and Human Services may provide or fund emergency services and assistance to
 49 individuals who are victims of one or more offenses under G.S. 14-43.11, 14-43.12, or
 50 14-43.13.

1 (d) Certification. – The Attorney General, a district attorney, or any law enforcement
2 official shall certify in writing to the United States Department of Justice or other federal
3 agency, such as the United States Department of Homeland Security, that an investigation or
4 prosecution under this Article for a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 has begun
5 and the individual who is a likely victim of one of those crimes is willing to cooperate or is
6 cooperating with the investigation to enable the individual, if eligible under federal law, to
7 qualify for an appropriate special immigrant visa and to access available federal benefits.
8 Cooperation with law enforcement shall not be required of victims who are under 18 years of
9 age. This certification shall be made available to the victim and the victim's designated legal
10 representative.

11 (e) A person who commits a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 is
12 subject to the property forfeiture provisions set forth in G.S. 14-2.3."

13 **SECTION 6.** Article 27 of Chapter 14 of the General Statutes is amended by
14 adding a new section to read:

15 **"§ 14-208.1. No prosecution of minor for prostitution; minor engaged in prostitution**
16 **taken into temporary custody as abused juvenile and reported to department**
17 **of social services.**

18 (a) For purposes of this section, the term "minor" has the same definition as
19 G.S. 14-190.13.

20 (b) No minor shall be prosecuted for a violation of this Article.

21 (c) Notwithstanding G.S. 14-208, if it is determined, after a reasonable detention for
22 investigative purposes, that a person suspected of or charged with a violation of this Article is a
23 minor, that person shall be immune from prosecution under this Article, and instead shall be
24 subject to the temporary protective custody provision of G.S. 7B-1900, 7B-1901, and 7B-1905.
25 Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into
26 custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11
27 and G.S. 14-43.13 to the director of the department of social services in the county where the
28 minor resides or is found, as appropriate, which shall commence an initial investigation into
29 child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

30 **SECTION 7.** Article 5 of Chapter 14 of the General Statutes is amended by adding
31 a new section to read:

32 **"§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

33 (a) The following definitions apply in this section:

34 (1) Prostitution offense. – A conviction of a defendant for prostitution under
35 Article 27 of Chapter 14 of the General Statutes.

36 (2) Violent felony or violent misdemeanor. – A Class A through G felony, a
37 Class A1 misdemeanor, or an offense that includes assault as an essential
38 element of the offense.

39 (b) A person who pleads guilty to or is guilty of a prostitution offense may file a
40 petition in the court where the person was convicted for expunction of the prostitution offense
41 from the person's criminal record provided that all the following criteria are met:

42 (1) The person has not previously been convicted of any violent felony or
43 violent misdemeanor under the laws of the United States, the laws of this
44 State, or any other state.

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

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

- 1 b. The person was less than 18 years old at the time that the person
2 committed the offense.
- 3 (c) The petition shall not be filed earlier than three years after the person has served the
4 full sentence imposed on the person. The petition shall contain all of the following:
- 5 (1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of
6 a violent felony or violent misdemeanor, (ii) has been of good moral
7 character since the date of conviction of the prostitution offense in question,
8 and (iii) has not been convicted of any felony or misdemeanor under the
9 laws of the United States, the laws of this State, or any other state since the
10 date of the conviction of the prostitution offense in question.
- 11 (2) Verified affidavits of two persons who are not related to the petitioner or to
12 each other by blood or marriage, that they know the character and reputation
13 of the petitioner in the community in which the petitioner lives and that the
14 petitioner's character and reputation are good.
- 15 (3) A statement that the petition is a motion in the cause in the case wherein the
16 petitioner was convicted.
- 17 (4) An application on a form approved by the Administrative Office of the
18 Courts requesting and authorizing (i) a State and national criminal history
19 record check by the Department of Justice using any information required by
20 the Administrative Office of the Courts to identify the individual, (ii) a
21 search by the Department of Justice for any outstanding warrants or pending
22 criminal cases, and (iii) a search of the confidential record of expunctions
23 maintained by the Administrative Office of the Courts. The application shall
24 be forwarded to the Department of Justice and to the Administrative Office
25 of the Courts, which shall conduct the searches and report their findings to
26 the court.
- 27 (5) An affidavit by the petitioner that no restitution orders or civil judgments
28 representing amounts ordered for restitution entered against the petitioner
29 are outstanding.
- 30 (d) The petition shall be served upon the district attorney of the court wherein the case
31 was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to
32 file any objection thereto and shall be duly notified as to the date of the hearing of the petition.
- 33 (e) The court in which the petition was filed shall take the following steps and shall
34 consider the following issues in rendering a decision upon a petition for expunction of records
35 of a prostitution offense under this section:
- 36 (1) Call upon a probation officer for additional investigation or verification of
37 the petitioner's conduct during the period since the date of conviction of the
38 prostitution offense in question.
- 39 (2) Review any other information the court deems relevant, including, but not
40 limited to, affidavits or other testimony provided by law enforcement
41 officers and district attorneys.
- 42 (f) The court shall order that the person be restored, in the contemplation of the law, to
43 the status the person occupied before the arrest, indictment, or information if the court finds all
44 of the following after a hearing:
- 45 (1) The criteria set out in subsection (b) of this section are satisfied.
46 (2) The petitioner has remained of good moral character and has been free of
47 conviction of any felony or misdemeanor, other than a traffic violation, for
48 three years from the date of conviction of the prostitution offense in
49 question.
- 50 (3) The petitioner has no outstanding warrants or pending criminal cases.

- 1 (4) The petitioner has no outstanding restitution orders or civil judgments
- 2 representing amounts ordered for restitution entered against the petitioner.
- 3 (5) The search of the confidential records of expunctions conducted by the
- 4 Administrative Office of the Courts shows that the petitioner has not been
- 5 previously granted an expunction, other than an expunction for a prostitution
- 6 offense.

7 (g) No person as to whom an order has been entered pursuant to subsection (f) of this
 8 section shall be held thereafter under any provision of any laws to be guilty of perjury or
 9 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
 10 the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the
 11 provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all
 12 prostitution convictions to the certifying Commission regardless of whether or not the
 13 prostitution convictions were expunged pursuant to the provisions of this section.

14 Persons required by State law to obtain a criminal history record check on a prospective
 15 employee shall not be deemed to have knowledge of any convictions expunged under this
 16 section.

17 (h) The court shall also order that the conviction of the prostitution offense be expunged
 18 from the records of the court and direct all law enforcement agencies bearing record of the
 19 same to expunge their records of the conviction. The clerk shall notify State and local agencies
 20 of the court's order as provided in G.S. 15A-150.

21 (i) Any other applicable State or local government agency shall expunge from its
 22 records entries made as a result of the conviction ordered expunged under this section. The
 23 agency shall also reverse any administrative actions taken against a person whose record is
 24 expunged under this section as a result of the charges or convictions expunged. This subsection
 25 shall not apply to the Department of Justice for DNA records and samples stored in the State
 26 DNA Database and the State DNA Databank.

27 (j) Any person eligible for expunction of a criminal record under this section shall be
 28 notified about the provisions of this section by the probation officer assigned to that person. If
 29 no probation officer is assigned, notification of the provisions of this section shall be provided
 30 by the court at the time of the conviction of the prostitution offense which is to be expunged
 31 under this section."

32 **SECTION 8.** G.S. 15B-2(2) reads as rewritten:

33 **"§ 15B-2. Definitions.**

34 As used in this Article, the following definitions apply, unless the context requires
 35 otherwise:

- 36 ...
- 37 (2) Claimant. – Any of the following persons who claims an award of
 - 38 compensation under this Article:
 - 39 a. A victim;
 - 40 b. A dependent of a deceased victim;
 - 41 c. A third person who is not a collateral source and who provided
 - 42 benefit to the victim or his family other than in the course or scope of
 - 43 his employment, business, or profession;
 - 44 d. A person who is authorized to act on behalf of a victim, a dependent,
 - 45 or a third person described in ~~subdivision e.~~ sub-subdivision c.;
 - 46 e. A person who was convicted of a first offense under Article 27 and
 - 47 whose participation in the offense was a result of having been a
 - 48 trafficking victim under G.S. 14-43.11 or G.S. 14-43.13 or a victim
 - 49 of a severe form of trafficking under the federal Trafficking Victims
 - 50 Protection Act (22 U.S.C. § 7102(13)).

1 The claimant, however, may not be the offender or an accomplice of the
2 offender who committed the criminally injurious ~~conduct~~conduct, except as
3 provided in sub-subdivision e. of this subdivision.

4"

5 **SECTION 9.** G.S. 115C-12 is amended by adding a new subdivision to read:

6 "(41) To provide awareness and training materials on human trafficking. – The
7 State Board of Education, in collaboration with the Department of Health
8 and Human Services, Division of Social Services, shall provide awareness
9 and training materials for local boards of education on human trafficking,
10 including strategies for the prevention of trafficking."

11 **SECTION 10.** G.S. 115C-47 is amended by adding a new subdivision to read:

12 "(61) To provide information on human trafficking. – Local boards of education
13 shall obtain resource information on human trafficking, including strategies
14 for the prevention of trafficking of children; and materials for distribution
15 that describe local, State, and national resources to which students, parents,
16 school resource officers, counselors, and school personnel can refer for
17 information on human trafficking, including strategies for prevention of
18 trafficking of children."

19 **SECTION 11.** G.S. 143B-153 is amended by adding a new subdivision to read:

20 "(9) The Department of Health and Human Services shall establish a single
21 statewide toll-free telephone number to be used as a central hotline for
22 reporting suspected cases of human trafficking. In addition, the Department
23 of Health and Human Services shall also work with the county departments
24 of social services to establish hotlines for reporting cases of human
25 trafficking."

26 **SECTION 12.** This act becomes effective December 1, 2013.