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PROPOSED HOUSE COMMITTEE SUBSTITUTE S162-PCS45579-ML-20

Short Title: Human Trafficking Restorative Justice.

(Public)

Sponsors:

Referred to:

March 2, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE RESTORATIVE JUSTICE TO VICTIMS OF HUMAN
3 TRAFFICKING.

4 The General Assembly of North Carolina enacts:

5
6 **MAKE DEFINITION OF "VICTIM" APPLY THROUGHOUT THE ARTICLE**

7 **SECTION 1.** G.S. 14-43.10(a) is amended by adding a new subdivision to read:

8 "(6) Victim. – Unless the context requires otherwise, a person subjected to the
9 practices set forth in G.S. 14-43.11, 14-43.12, or 14-43.13."

10
11 **PROVIDE AFFIRMATIVE DEFENSE FOR HUMAN TRAFFICKING VICTIMS**

12 **SECTION 2.(a)** Article 10A of Chapter 14 of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 14-43.15. Affirmative defense.**

15 (a) Affirmative Defense. – It is an affirmative defense to a prosecution under this Article
16 that the person charged with the offense was a victim at the time of the offense and was coerced
17 or deceived into committing the offense as a direct result of the person's status as a victim.

18 (b) Construction. – Nothing in this section shall be construed to limit or abrogate any
19 other affirmative defense to a prosecution under this Article available to a person by statute or
20 common law."

21 **SECTION 2.(b)** This section becomes effective December 1, 2018.

22
23 **PROVIDE CONFIDENTIALITY FOR HUMAN TRAFFICKING VICTIMS**

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

26 "**§ 14-43.16. Victim confidentiality; penalty for unlawful disclosure.**

27 (a) Confidentiality Requirement. – Except as otherwise provided in subsection (b) of this
28 section, the name, address, or other information that reasonably could be expected to lead directly
29 to the identity of any of the following, is confidential and shall not be considered a public record
30 as that term is defined in G.S. 132-1:

31 (1) A victim.

32 (2) An alleged victim.

33 (3) An immediate family member of a victim or alleged victim. For purposes of
34 this subdivision, the term "immediate family member" means a spouse, child,



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1 sibling, parent, grandparent, grandchild, or the spouse of an immediate family
2 member. This term includes stepparents, stepchildren, stepsiblings, and
3 adoptive relationships.

4 (b) Exceptions. – Information subject to the confidentiality requirement set forth in
5 subsection (a) of this section may be disclosed only for the following purposes:

6 (1) For use in a law enforcement investigation or criminal prosecution.

7 (2) To ensure the provision of medical care, housing, or family services or
8 benefits to any of the persons listed in subdivisions (1) through (3) of
9 subsection (a) of this section.

10 (3) Upon written request by any of the persons listed in subdivisions (1) through
11 (3) of subsection (a) of this section.

12 (4) As required by federal law or court order.

13 (c) Penalty. – A person who knowingly violates subsection (a) of this section is guilty of
14 a Class 3 misdemeanor."

15 **SECTION 3.(b)** This section becomes effective December 1, 2018.

17 **MODIFY LAW PROVIDING RESTITUTION FOR HUMAN TRAFFICKING VICTIMS**

18 **SECTION 4.(a)** G.S. 14-43.20 reads as rewritten:

19 **"§ 14-43.20. Mandatory restitution; victim services; forfeiture.**

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

22 (b) Restitution. – Restitution for a victim is mandatory under this Article. At a minimum,
23 the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed
24 under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA).
25 In addition, the judge may order any other amount of loss identified, including the gross income
26 or value to the defendant of the victim's labor or ~~services~~ services and any costs reasonably
27 certain to be incurred by or on behalf of the victim for medical care, psychological treatment,
28 temporary housing, transportation, funeral services, and any other services designed to assist a
29 victim recover from any injuries or loss resulting from an offense committed under
30 G.S. 14-43.11, 14-43.12, or 14-43.13.

31 ...

32 (e) Forfeiture. – A person who commits a violation of G.S. 14-43.11, 14-43.12, or
33 14-43.13 is subject to the property forfeiture provisions set forth in G.S. 14-2.3.

34 (f) Escheat. – If a judge finds that the victim to whom restitution is due under this Article
35 is unavailable to claim the restitution award, then the judge shall order the restitution be made
36 payable to the clerk of superior court in the county in which the conviction for the offense
37 requiring restitution occurred. If the victim fails to claim the restitution award within two years
38 of the date of the restitution order issued by the judge, the clerk shall remit the restitution proceeds
39 to the Crime Victims Compensation Fund established pursuant to G.S. 15B-23. Notwithstanding
40 any provision of G.S. 15B-23 to the contrary, funds remitted to the Crime Victims Compensation
41 Fund shall be used only to provide aid to victims who are (i) worthy and needy as determined by
42 the Crime Victims Compensation Commission and (ii) enrolled in public institutions of higher
43 education of this State."

44 **SECTION 4.(b)** G.S. 14-43.20(b), as amended by subsection (a) of this section,
45 becomes effective December 1, 2018, and applies to offenses committed on or after that date.
46 G.S. 14-43.20(f), as enacted by subsection (a) of this section, becomes effective December 1,
47 2018, and applies to orders for restitution entered on or after that date. The remainder of this
48 section becomes effective December 1, 2018.

50 **AMEND DEFINITION OF "ABUSED JUVENILES" TO INCLUDE ALL HUMAN** 51 **TRAFFICKING VICTIMS LESS THAN 18 YEARS OF AGE**

1 **SECTION 5.(a)** G.S. 7B-101 reads as rewritten:

2 "**§ 7B-101. Definitions.**

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

5 (1) Abused juveniles. – Any juvenile less than 18 years of age whose parent,
6 guardian, custodian, or caretaker:

7 ...

8 e. Creates or allows to be created serious emotional damage to the
9 juvenile; serious emotional damage is evidenced by a juvenile's severe
10 anxiety, depression, withdrawal, or aggressive behavior toward
11 himself or ~~others~~; others; or

12 f. Encourages, directs, or approves of delinquent acts involving moral
13 turpitude committed by the ~~juvenile~~; or juvenile.

14 g. ~~Commits or allows to be committed an offense under G.S. 14-43.11~~
15 ~~(human trafficking), G.S. 14-43.12 (involuntary servitude), or~~
16 ~~G.S. 14-43.13 (sexual servitude) against the child.~~

17 This term includes any juvenile less than 18 years of age who is a victim or is
18 alleged to be a victim of an offense under G.S. 14-43.11, 14-43.12, or
19 14-43.13, regardless of the relationship between the victim and the
20 perpetrator.

21 "

22 **SECTION 5.(b)** This section becomes effective December 1, 2018.

23
24 **AMEND RULE 412 OF THE EVIDENCE CODE TO INCLUDE CHARGES OF SEXUAL**
25 **SERVITUDE**

26 **SECTION 6.(a)** G.S. 8C-412(d) reads as rewritten:

27 "(d) Notwithstanding any other provision of law, unless and until the court determines that
28 evidence of sexual behavior is relevant under subdivision (b), no reference to this behavior may
29 be made in the presence of the jury and no evidence of this behavior may be introduced at any
30 time during the trial ~~of~~ of any of the following:

31 (1) A charge of rape or a lesser included offense of ~~rape~~; rape.

32 (2) A charge of a sex offense or a lesser included offense of a sex ~~offense~~;
33 ~~offense~~.

34 (3) An offense being tried jointly with a charge of rape or a sex offense, or with a
35 lesser included offense of rape or a sex offense.

36 (4) A charge of sexual servitude under G.S. 14-43.13.

37 Before any questions pertaining to such evidence are asked of any witness, the proponent of such
38 evidence shall first apply to the court for a determination of the relevance of the sexual behavior
39 to which it relates. The proponent of such evidence may make application either prior to trial
40 pursuant to G.S. 15A-952, or during the trial at the time when the proponent desires to introduce
41 such evidence. When application is made, the court shall conduct an in camera hearing, which
42 shall be transcribed, to consider the proponent's offer of proof and the argument of counsel,
43 including any counsel for the complainant, to determine the extent to which such behavior is
44 relevant. In the hearing, the proponent of the evidence shall establish the basis of admissibility
45 of such evidence. Notwithstanding subdivision (b) of Rule 104, if the relevancy of the evidence
46 which the proponent seeks to offer in the trial depends upon the fulfillment of a condition of fact,
47 the court, at the in camera hearing or at a subsequent in camera hearing scheduled for that
48 purpose, shall accept evidence on the issue of whether that condition of fact is fulfilled and shall
49 determine that issue. If the court finds that the evidence is relevant, it shall enter an order stating
50 that the evidence may be admitted and the nature of the questions which will be permitted."

1 **SECTION 6.(b)** This section becomes effective December 1, 2018, and applies to
2 trials held on or after that date.

3
4 **AMEND MEMBERSHIP OF HUMAN TRAFFICKING COMMISSION**

5 **SECTION 7.** G.S. 114-70(b) reads as rewritten:

6 "(b) Membership. – The Commission shall consist of ~~12~~no more than 15 members as
7 follows:

8 ...

9 (3) The Governor shall appoint one representative from each of the following:

- 10 a. The Department of Labor.
11 b. The Department of Justice.
12 c. The Department of Public Safety.
13 d. A health care representative.

14 (4) The following persons, or their designees, may serve as ex officio members
15 of the Commission:

- 16 a. The Director of the Administrative Office of the Courts.
17 b. The President of the North Carolina Conference of Superior Court
18 Judges.
19 c. The President of the North Carolina Association of District Court
20 Judges."

21
22 **STUDY SENTENCING AND POST-CONVICTION RELIEF FOR HUMAN**
23 **TRAFFICKING OFFENSES**

24 **SECTION 8.(a)** Study. – The North Carolina Human Trafficking Commission, in
25 consultation with the Conference of District Attorneys and the Office of Indigent Defense
26 Services, shall study the human trafficking offenses set forth in Article 10A of Chapter 14 of the
27 General Statutes. At a minimum, the study shall consider (i) the appropriate level of sentencing
28 for each offense, (ii) whether any revisions to the sentencing levels would reduce human
29 trafficking, and (iii) the effects of expanding the eligibility of any post-conviction relief to human
30 trafficking victims.

31 **SECTION 8.(b)** Report. – The North Carolina Human Trafficking Commission shall
32 submit its findings from the study required under subsection (a) of this section, including any
33 legislative recommendations, to the Joint Legislative Oversight Committee on Justice and Public
34 Safety by February 1, 2019.

35
36 **SEVERABILITY CLAUSE**

37 **SECTION 9.** If any provision of this act or its application is held invalid, the
38 invalidity does not affect other provisions or applications of this act that can be given effect
39 without the invalid provisions or application, and, to this end, the provisions of this act are
40 severable.

41
42 **EFFECTIVE DATE**

43 **SECTION 10.** Except as otherwise provided, this act is effective when it becomes
44 law.