

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 342

Short Title: Strengthen Human Trafficking Laws. (Public)

Sponsors: Representatives Presnell, Hardister, D. Hall, and Riddell (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

March 13, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN THE HUMAN TRAFFICKING LAWS.
3 The General Assembly of North Carolina enacts:

4
5 **CRIMINALIZE BUYER CONDUCT IN INSTANCES OF SEXUAL SERVITUDE**

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

7 "(a) A person commits the offense of sexual servitude when that person knowingly or in
8 reckless disregard of the consequences of the action ~~subjects or maintains~~ subjects, maintains, or
9 obtains another in for the purpose of sexual servitude."

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

12
13 **SOLICITATION OF PROSTITUTION/MISTAKE OF AGE IS NOT A DEFENSE**

14 **SECTION 2.(a)** G.S. 14-205.1(a) reads as rewritten:

15 "(a) Except as otherwise provided in this section, any person who solicits another for the
16 purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony
17 for a second or subsequent offense. Any person 18 years of age or older who willfully solicits a
18 minor for the purpose of prostitution is guilty of a Class G felony. Any person who willfully
19 solicits a person who has a severe or profound mental disability for the purpose of prostitution is
20 guilty of a Class E felony. Punishment under this section may include participation in a program
21 devised for the education and prevention of sexual exploitation (i.e. "John School"), where
22 available. A person who violates this subsection is not eligible for a disposition of prayer for
23 judgment continued under any circumstances. Mistake of age is not a defense to prosecution
24 under this subsection. Consent of a minor is not a defense to prosecution under this subsection."

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

27
28 **SEXUAL EXPLOITATION OF A MINOR/INCREASE PUNISHMENT**

29 **SECTION 3.(a)** G.S. 14-190.16 reads as rewritten:

30 **"§ 14-190.16. First degree sexual exploitation of a minor.**

31 ...

32 (d) Punishment and Sentencing. – Violation of this section is a Class ~~C~~B2 felony."

33 **SECTION 3.(b)** G.S. 14-190.17 reads as rewritten:

34 **"§ 14-190.17. Second degree sexual exploitation of a minor.**

35 ...



1 (d) Punishment and Sentencing. – Violation of this section is a Class ~~E~~C felony."

2 **SECTION 3.(c)** G.S. 14-190.17A reads as rewritten:

3 "**§ 14-190.17A. Third degree sexual exploitation of a minor.**

4 ...

5 (d) Punishment and Sentencing. – Violation of this section is a Class ~~H~~D felony."

6 **SECTION 3.(d)** This section becomes effective December 1, 2019, and applies to
7 offenses committed on or after that date.

8
9 **COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN LAWS/MANDATORY**
10 **RESTITUTION AND FORFEITURE**

11 **SECTION 4.(a)** Article 27 of Chapter 14 of the General Statutes is amended by
12 adding a new section to read:

13 "**§ 14-208.1. Mandatory restitution; forfeiture.**

14 (a) Definition. – For purposes of this section, a "victim" is any of the following:

15 (1) An individual solicited for the purpose of prostitution in violation of
16 G.S. 14-205.1.

17 (2) An individual patronized for prostitution in violation of G.S. 14-205.2.

18 (3) An individual promoted for prostitution in violation of G.S. 14-205.3.

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

24 (c) Forfeiture. – A person who commits a violation of G.S. 14-205.1, 14-205.2, or
25 14-205.3 is subject to the property forfeiture provisions set forth in G.S. 14-2.3."

26 **SECTION 4.(b)** Article 26 of Chapter 14 of the General Statutes is amended by
27 adding a new section to read:

28 "**§ 14-190.17B. Mandatory restitution; forfeiture.**

29 (a) Definition. – For purposes of this section, a "victim" is any of the following:

30 (1) A minor hired, employed, used, or permitted to do or assist in committing an
31 offense covered under G.S. 14-190.6.

32 (2) A minor sexually exploited in violation of G.S. 14-190.16, 14-190.17, or
33 14-190.17A.

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

39 (c) Forfeiture. – A person who commits a violation of G.S. 14-190.6, 14-190.16,
40 14-190.17, or 14-190.17A is subject to the property forfeiture provisions set forth in G.S. 14-2.3."

41 **SECTION 4.(c)** This section becomes effective December 1, 2019, and applies to
42 offenses committed on or after that date.

43
44 **HUMAN TRAFFICKING AND SEXUAL SERVITUDE/PROHIBIT BENEFITTING**
45 **FROM OFFENSE**

46 **SECTION 5.(a)** G.S. 14-43.11(a) reads as rewritten:

47 "(a) A person commits the offense of human trafficking when that person (i) knowingly
48 or in reckless disregard of the consequences of the action recruits, entices, harbors, transports,
49 provides, or obtains by any means another person with the intent that the other person be held in
50 involuntary servitude or sexual ~~servitude or servitude,~~ (ii) willfully or in reckless disregard of the
51 consequences of the action causes a minor to be held in involuntary servitude or sexual

1 ~~servitude~~.servitude, or (iii) knowingly or in reckless disregard of the consequences of the action
2 benefits financially or by receiving anything of value from the services of another person the
3 person knows is being held in involuntary servitude or sexual servitude."

4 **SECTION 5.(b)** G.S. 14-43.13, as amended by Section 1 of this act, reads as
5 rewritten:

6 "**§ 14-43.13. Sexual servitude.**

7 (a) A person commits the offense of sexual servitude when that person (i) knowingly or
8 in reckless disregard of the consequences of the action subjects, maintains, or obtains another for
9 the purpose of sexual ~~servitude~~.servitude or (ii) knowingly or in reckless disregard of the
10 consequences of the action benefits financially or by receiving anything of value from the
11 services of another person the person knows is being subjected to or maintained in sexual
12 servitude.

13 (b) A person who violates this section is guilty of a Class D felony if the victim of the
14 offense is an adult. A person who violates this section is guilty of a Class C felony if the victim
15 of the offense is a minor.

16 "...."

17 **SECTION 5.(c)** This section becomes effective December 1, 2019, and applies to
18 offenses committed on or after that date.

19 **PROHIBIT THE PROMOTION OR SALE OF SEX TOURISM SERVICES**

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

22 "**§ 14-208.1. Promoting travel for unlawful sexual conduct.**

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

27 (b) Offense. – A person commits the offense of promoting travel for unlawful sexual
28 conduct if the person sells or offers to sell travel services that the person knows to include travel
29 for the purpose of engaging in conduct that would constitute any one of the following if occurring
30 within 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:
37 a. G.S. 14-202.1.
38 b. G.S. 14-202.4.
39 (4) Any of the following prostitution offenses:
40 a. G.S. 14-204.
41 b. G.S. 14-205.1.
42 c. G.S. 14-205.2.
43 d. G.S. 14-205.3.

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

45 **SECTION 6.(b)** This section is effective December 1, 2019, and applies to offenses
46 committed on or after that date.

47 **HUMAN TRAFFICKING AND SEXUAL SERVITUDE/PROHIBIT DEFENSE BASED** 48 **ON USE OF LAW ENFORCEMENT DECOY**

49 **SECTION 7.(a)** G.S. 14-43.11(b) reads as rewritten:
50
51

1 "(b) A person who violates this section is guilty of a Class C felony if the victim of the
2 offense is an adult. A person who violates this section is guilty of a Class B2 felony if (i) the
3 victim of the offense is a ~~minor~~-minor or (ii) the person believed the victim of the offense was a
4 minor."

5 **SECTION 7.(b)** G.S. 14-43.13(b) reads as rewritten:

6 "(b) A person who violates this section is guilty of a Class D felony if the victim of the
7 offense is an adult. A person who violates this section is guilty of a Class C felony if (i) the
8 victim of the offense is a ~~minor~~-minor or (ii) the person believed the victim of the offense was a minor."

9 **SECTION 7.(c)** This section becomes effective December 1, 2019, and applies to
10 offenses committed on or after that date.

11 12 **HUMAN TRAFFICKING VICTIMS/EXPAND ELIGIBILITY FOR EXPUNCTION AND** 13 **VACATUR**

14 **SECTION 8.(a)** G.S. 7B-3200 reads as rewritten:

15 **"§ 7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and**
16 **undisciplined.**

17 ...

18 (b) Any person who has attained the age of 18 years may file a petition in the court where
19 the person was adjudicated delinquent for expunction of all records of that adjudication provided:

- 20 (1) The offense for which the person was adjudicated would have been a crime
21 other than a Class A, B1, B2, C, D, or E felony if committed by an adult.
- 22 (2) At Except as otherwise provided in this subdivision, at least 18 months have
23 elapsed since the person was released from juvenile court jurisdiction, and the
24 person has not subsequently been adjudicated delinquent or convicted as an
25 adult of any felony or misdemeanor other than a traffic violation under the
26 laws of the United States or the laws of this State or any other state. The
27 18-month requirement set forth in this subdivision does not apply to a person
28 whose participation in the offense was a result of having been a victim of
29 human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13,
30 or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

31 Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or
32 E felony if committed by an adult shall not be expunged.

33 (c) The petition shall contain, but not be limited to, all of the following:

- 34 (1) An affidavit by the petitioner that the petitioner has been of good behavior
35 since the adjudication and, in the case of a petition based on a delinquency
36 adjudication, that the petitioner has not subsequently been adjudicated
37 delinquent or convicted as an adult of any felony or misdemeanor other than
38 a traffic violation under the laws of the United States, or the laws of this State
39 or any other ~~state~~;state. Additionally, for a petitioner not subject to the
40 18-month requirement set forth in subdivision (2) of subsection (b) of this
41 section, the affidavit shall state that the petitioner was adjudicated delinquent
42 based on an offense the petitioner participated in as a result of having been a
43 victim of human trafficking under G.S. 14-43.11, sexual servitude under
44 G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. §
45 7102(13)).
- 46 (2) Verified affidavits of two persons, who are not related to the petitioner or to
47 each other by blood or marriage, that they know the character and reputation
48 of the petitioner in the community in which the petitioner lives and that the
49 petitioner's character and reputation are good; and
- 50 (3) A statement that the petition is a motion in the cause in the case wherein the
51 petitioner was adjudicated delinquent or undisciplined.

1 The petition shall be served upon the district attorney in the district wherein adjudication
2 occurred. The district attorney shall have 10 days thereafter in which to file any objection thereto
3 and shall be duly notified as to the date of the hearing on the petition.

4"

5 **SECTION 8.(b)** Article 5 of Chapter 15A of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 15A-145.9. Expunctions of certain offenses committed by human trafficking victims.**

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

9 (1) Nonviolent offense. – Any misdemeanor or felony offense not listed in
10 G.S. 15A-145.5(a).

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

14 (b) Expunction Authorized. – A person who has been convicted of a nonviolent offense
15 may file a petition in the court of the county where the person was convicted for expunction of
16 the nonviolent offense from the person's criminal record the court finds that the person was
17 coerced or deceived into committing the offense as a direct result of having been a trafficking
18 victim.

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

20 (1) An affidavit by the petitioner that the petitioner: (i) is a victim of human
21 trafficking; (ii) was coerced or deceived into committing the offense as a
22 direct result of their status as a trafficking victim; and (iii) has been of good
23 moral character since the date of conviction of the offense in question.

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

26 (3) An application on a form approved by the Administrative Office of the Courts
27 requesting and authorizing a search by the Department of Public Safety for
28 any outstanding warrants. The application shall be filed with the clerk of
29 superior court. The clerk of superior court shall forward the application to the
30 Department of Public Safety, which shall conduct the search and report its
31 findings to the court.

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

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

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

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

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

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

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

1 (2) The petitioner has remained of good moral character.

2 (3) The petitioner has no outstanding warrants.

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

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

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

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

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

25 (k) Costs Waived. – The costs of expunging the records shall not be taxed against the
26 petitioner."

27 **SECTION 8.(c)** G.S. 15A-1415(b) reads as rewritten:

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

30 ...

31 (10) The defendant was convicted of a ~~first offense of prostitution under G.S.~~
32 ~~14-204, and the court did not discharge the defendant and dismiss the charge~~
33 ~~pursuant to G.S. 14-204(b);~~ nonviolent offense as defined in G.S. 15A-145.9;
34 the defendant's participation in the offense was a result of having been a victim
35 of human trafficking under G.S. 14-43.11, sexual servitude under
36 G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. §
37 7102(13)); and the defendant seeks to have the conviction vacated."

38 **SECTION 8.(d)** G.S. 15A-1416.1 reads as rewritten:

39 "**§ 15A-1416.1. Motion by the defendant to vacate ~~prostitution~~ a nonviolent offense**
40 **conviction for sex-human trafficking victim.**

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

1"

2 **SECTION 8.(e)** Subsections (a) and (b) of this section become effective December
3 1, 2019, and apply to petitions filed on or after that date. Subsections (c) and (d) of this section
4 become effective December 1, 2019, and apply to motions filed on or after that date.

5
6 **FOUNDATIONS FOR DENIAL OF CLAIM OR REDUCTION OF AWARD UNDER CRIME
7 VICTIMS COMPENSATION ACT/EXEMPT CHILD SEX TRAFFICKING VICTIM**

8 **SECTION 9.(a)** G.S. 15B-11 reads as rewritten:

9 "**§ 15B-11. Grounds for denial of claim or reduction of award.**

10 ...

11 (d1) The provisions of subsections (a) through (d) of this section do not apply to a claim
12 or award of compensation for criminally injurious conduct against a minor in violation of
13 G.S. 14-43.11, 14-43.12, or 14-43.13.

14"

15 **SECTION 9.(b)** This act becomes effective December 1, 2019, and applies to
16 applications for an award filed on or after that date.

17
18 **SERVICES PROVIDED TO HUMAN TRAFFICKING VICTIMS WHO ARE
19 MINORS/STUDY**

20 **SECTION 10.(a)** Study. – The Human Trafficking Commission (Commission) shall
21 study the services provided by the State to a person under 18 years of age who is a victim of an
22 offense committed under G.S. 14-43.11, 14-43.12, or 14-43.13. The study shall include an
23 identification of all of the following:

- 24 (1) The services currently provided by the State.
25 (2) The costs incurred by the State for providing the services identified pursuant
26 to subdivision (1) of this subsection.
27 (3) The services not currently provided by the State that the Commission believes
28 would benefit victims.
29 (4) The estimated costs that would be incurred by the State for providing the
30 services identified pursuant to subdivision (3) of this subsection.
31 (5) The services most commonly provided by other states to victims of human
32 trafficking offenses who are under 18 years of age.
33 (6) Any other matter the Commission deems relevant to completing the study
34 required under this subsection.

35 **SECTION 10.(b)** Report. – The Commission shall report the findings of the study
36 required under subsection (a) of this section, including any legislative recommendations, to the
37 Joint Legislative Oversight Committee on Justice and Public Safety by March 15, 2020.

38
39 **SAVINGS CLAUSE**

40 **SECTION 11.** Prosecutions for offenses committed before the effective date of this
41 act are not abated or affected by this act, and the statutes that would be applicable but for this act
42 remain applicable to those prosecutions.

43
44 **EFFECTIVE DATE**

45 **SECTION 12.** Sections 10 and 12 of this act are effective when they become law.
46 Except as otherwise provided, this act becomes effective December 1, 2019.