

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

HOUSE BILL 198
RATIFIED BILL

AN ACT TO IMPLEMENT RECOMMENDATIONS MADE BY THE NORTH CAROLINA
HUMAN TRAFFICKING COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REDUCE DEMAND FOR HUMAN TRAFFICKING

CRIMINALIZE BUYER CONDUCT IN INSTANCES OF SEXUAL SERVITUDE

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

"§ 14-43.13. **Sexual servitude.**

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

...."

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

PROHIBIT THE PROMOTION OR SALE OF SEX TOURISM SERVICES

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

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

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

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

- (1) An offense under Article 7B of Chapter 14 of the General Statutes.
- (2) Any of the following offenses involving the sexual exploitation of a minor:
 - a. G.S. 14-190.16.
 - b. G.S. 14-190.17.
 - c. G.S. 14-190.17A.
- (3) Any of the following offenses involving indecent liberties with a minor:
 - a. G.S. 14-202.1.
 - b. G.S. 14-202.4.
- (4) Any of the following prostitution offenses:
 - a. G.S. 14-204.
 - b. G.S. 14-205.1.
 - c. G.S. 14-205.2.



d. G.S. 14-205.3.

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

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

PART II. CIVIL AND POST-CONVICTION RELIEF FOR HUMAN TRAFFICKING VICTIMS

PROVIDE A CIVIL CAUSE OF ACTION FOR HUMAN TRAFFICKING VICTIMS

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

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

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

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

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

(2) Compensatory damages, which includes the following:

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

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

(3) General damages for noneconomic losses.

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

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

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

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

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

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

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

EXPAND EXPUNCTION ELIGIBILITY FOR HUMAN TRAFFICKING VICTIMS

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

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

- (1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.
- (2) The person satisfies any one of the following criteria:
 - a. ~~The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).~~
 - b. The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.
 - c. The person received was discharged and the charge was dismissed upon completion of a conditional discharge pursuant to under G.S. 14-204(b)."

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

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

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

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

- a. A Class A through G felony.
- b. An offense that includes assault as an essential element of the offense.
- c. An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- d. Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3A, or 14-321.1.
- e. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
- f. An offense under G.S. 14-401.16.
- g. A traffic offense.
- h. Any offense that is an attempt to commit an offense described in sub-subdivisions a. through g. of this subdivision.

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

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

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

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

- (2) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (3) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a search by the Department of Public Safety for any outstanding warrants. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety, which shall conduct the search and report its findings to the court.
- (4) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

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

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

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the offense in question.
- (2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, or licensed social workers.

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

- (1) The criteria set out in subsection (b) of this section are satisfied.
- (2) The petitioner has no outstanding warrants.
- (3) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

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

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

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

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

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

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

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

...."

SECTION 4.(d) G.S. 7B-3200 reads as rewritten:

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

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

(1) The offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.

(1a) The person has been released from juvenile court jurisdiction.

(2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

The requirements set forth in subdivision (2) of this subsection shall not apply to a person whose participation in the offense was a result of having been a victim of human trafficking as defined in G.S. 14-43.10 or a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act, 22 U.S.C. § 7102.

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

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

(1) An affidavit by the petitioner that includes all of the following statements:

a. ~~the~~ That the petitioner has been of good behavior since the adjudication and, in the case of a adjudication.

b. If the petition is based on a delinquency adjudication, that the petitioner has been released from juvenile court jurisdiction and has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States, or the laws of this State or any other state;state.

c. If the petitioner is not subject to the requirements set forth in subdivision (2) of subsection (b) of this section, the affidavit shall state that the petitioner was adjudicated delinquent for an offense the petitioner participated in as a result of having been a victim of human trafficking as defined in G.S. 14-43.10 or a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act, 22 U.S.C. § 7102.

(2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are ~~good; and~~ good.

- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was adjudicated delinquent or undisciplined.

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

...."

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

EXPAND GROUNDS FOR APPROPRIATE RELIEF FOR HUMAN TRAFFICKING VICTIMS

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

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

...

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

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

EXPAND THE ELIGIBILITY OF VACATUR FOR NONVIOLENT OFFENSES RESULTING FROM A DEFENDANT'S VICTIMIZATION

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

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

(a) A motion for appropriate relief seeking to vacate a conviction for ~~prostitution~~ a nonviolent offense based on the grounds set out in G.S. 15A-1415(b)(10) shall be filed in the court where the conviction occurred. The motion may be filed at any time following the entry of a verdict or finding of ~~guilty under G.S. 14-204.~~ guilty. Any motion for appropriate relief filed under this section shall state why the facts giving rise to this motion were not presented to the trial court and shall be made with due diligence after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section. ~~Reasonable notice of the~~ The motion shall be contemporaneously served upon the State, the district attorney in the prosecutorial district in which the conviction was entered. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the motion.

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

- (1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.
- (2) Certified records of "approval notices" or "enforcement certifications" generated from federal immigration proceedings available to such victims.
- (3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.
- (4) A sworn statement or affidavit from a federal, State, or local law enforcement officer who investigated the violation of G.S. 14-43.11, G.S. 14-43.13, or the federal Trafficking Victims Protection Act, as stated within the defendant's motion.

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

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

PART III. SEVERABILITY CLAUSE/EFFECTIVE DATE

SEVERABILITY CLAUSE

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

EFFECTIVE DATE

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

In the General Assembly read three times and ratified this the 11th day of July, 2019.

s/ Carl Ford
 Presiding Officer of the Senate

s/ Tim Moore
 Speaker of the House of Representatives

Roy Cooper
 Governor

Approved _____m. this _____ day of _____, 2019