

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

D

SENATE BILL 683
PROPOSED COMMITTEE SUBSTITUTE S683-CSSA-38 [v.5]

5/6/2013 6:11:22 PM

Short Title: Safe Harbor/Victims of Human Trafficking.

(Public)

Sponsors:

Referred to:

April 4, 2013

A BILL TO BE ENTITLED
AN ACT TO CREATE A SAFE HARBOR FOR VICTIMS OF HUMAN TRAFFICKING
AND FOR PROSTITUTED MINORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-43.11 reads as rewritten:

"§ 14-43.11. Human trafficking.

(a) A person commits the offense of human trafficking when that ~~person~~ person (i) knowingly or in reckless disregard of the fact recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual ~~servitude~~ servitude or (ii) knowingly or in reckless disregard of the fact causes a minor to be held in involuntary servitude or sexual servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

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

(d) A person who is not a legal resident of North Carolina, and would consequently be ineligible for State public benefits or services, shall be eligible for the public benefits and services of any State agency if the person is otherwise eligible for the public benefit and is a victim of an offense charged under this section. Eligibility for public benefits and services shall terminate at such time as the victim's eligibility to remain in the United States is terminated under federal law."

SECTION 2. G.S. 14-43.12 reads as rewritten:

"§ 14-43.12. Involuntary servitude.

(a) A person commits the offense of involuntary servitude when that person knowingly and willfully or in reckless disregard holds another in involuntary servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.



* S 6 8 3 - C S S A - 3 8 - V - 5 *

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

(d) Nothing in this section shall be construed to affect the laws governing the relationship between an unemancipated minor and his or her parents or legal guardian.

(e) If any person reports a violation of this section, which violation arises out of any contract for labor, to any party to the contract, the party shall immediately report the violation to the sheriff of the county in which the violation is alleged to have occurred for appropriate action. A person violating this subsection shall be guilty of a Class 1 misdemeanor."

SECTION 3. 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 subjects or maintains another in sexual servitude.

(b) A person who violates this section is guilty of a ~~Class F~~ Class E felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

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

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section."

SECTION 4.(a) The following statutes are repealed: G.S. 14-190.18, 14-190.19, 14-203, 14-204, 14-204.1, 14-205, 14-207, and 14-208.

SECTION 4.(b) G.S. 14-206 is recodified as G.S. 14-203.9.

SECTION 5. Article 27 is amended by adding the following new sections to read:

"§ 14-203.1. Definitions.

The following definitions apply in this Article:

(1) Advance prostitution. – The term includes all of the following:

a. Soliciting for a prostitute by performing any of the following acts when acting other than a prostitute or a patron of a prostitute:

1. Soliciting another for the purpose of prostitution.

2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.

3. Directing another to a place knowing the direction is for the purpose of prostitution.

4. Using the Internet, including any social media website, to solicit another for the purpose of prostitution.

b. Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting other than a prostitute or a patron of a prostitute:

1. Knowingly granting or permitting the use of the place for the purpose of prostitution.

2. Granting or permitting the use of the place under circumstances from which the person could reasonably know that the place is used or is to be used for purposes of prostitution.

3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person should know that the place is being used for the purpose of prostitution.

(2) Minor. – Any person who is less than 18 years of age.

(3) Profit from prostitution. – When acting other than a prostitute, to receive anything of value for personally rendered prostitution services or to receive anything of value from a prostitute, if the thing received is not for lawful consideration and the person knows it was earned in whole or in part from the practice of prostitution.

(4) Prostitute. – A person who engages in prostitution.

(5) Prostitution. – The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, for any money, property, token, object, or article, or anything of value.

"§ 14-203.2. Prostitution.

(a) Offense. – Any person who knowingly engages in prostitution is guilty of a Class 1 misdemeanor.

(b) First offender; deferred prosecution. –

(1) Whenever any person who has not previously been convicted of or placed on probation for violation of this section pleads guilty to or is found guilty of a violation of this section, the court, without entering a judgment and with the consent of such person, shall sentence the person to probation pursuant to this subsection.

(2) When a person is placed on probation, the court shall enter an order specifying a period of probation of 12 months and shall defer further proceedings in the case until the conclusion of the period or until the filing of a petition alleging violation of a term or condition of probation.

(3) The conditions of probation shall be that the person (i) not violate any criminal statute of any jurisdiction, (ii) refrain from possessing a firearm or other dangerous weapon, (iii) submit to periodic drug testing at a time and in a manner as ordered by the court, but no less than three times during the period of the probation, with the cost of the testing to be paid by the probationer, (iv) obtain a vocational assessment administered by a program approved by the court, and (v) attend no fewer than ten counseling sessions administered by a program approved by the court.

(4) The court may, in addition to other conditions, require that the person do any of the following:

a. Make a report to and appear in person before or participate with the court or such courts, person, or social service agency as directed by the court in the order of probation.

b. Pay a fine and costs.

c. Attend or reside in a facility established for the instruction or residence of defendants on probation.

d. Support the person's dependents.

e. Refrain from having in the person's body the presence of any illicit drug prohibited by the North Carolina Controlled Substances Act, unless prescribed by a physician, and submit samples of the person's blood or urine or both for tests to determine the presence of any illicit drug.

(5) Upon violation of a term or condition of probation, the court may enter a judgment on its original finding of guilt and proceed as otherwise provided.

(6) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person. Upon the discharge of the person and dismissal of the proceedings against the

person under this subsection, the person is eligible to apply for expunction of records pursuant to G.S. 15A-145.6.

(7) Discharge and dismissal under this subsection shall not be deemed a conviction for purposes of structured sentencing or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(8) There may be only one discharge and dismissal under this section.

(c) Immunity from prosecution for minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor, that person shall be immune from prosecution under this section, and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302."

"§14-203.3. Solicitation of prostitution.

Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class F felony. Any person who solicits a minor or a person who is severely or profoundly mentally disabled for the purpose of prostitution is guilty of a Class C felony.

"§ 14-203.4. Promoting prostitution.

(a) Any person who knowingly performs any of the following acts commits promoting prostitution:

(1) Advances prostitution as defined in G.S. 14-203.1.

(2) Profits from prostitution by doing any of the following:

a. Compelling a person to become a prostitute.

b. Arranging or offering to arrange a situation in which a person may practice prostitution.

c. Any means other than those described in sub-subdivisions a. and b. of this subdivision, including from a person who patronizes a prostitute. This sub-subdivision does not apply to a person engaged in prostitution who is a minor. A person cannot be convicted of promoting prostitution under this sub-subdivision if the practice of prostitution underlying the offense consists exclusively of the accused's own acts of prostitution under G.S. 14-203.2.

(b) Except as otherwise provided in this subsection, a violation of this section is a Class F felony. A violation of this section within 1,000 feet of real property comprising a school is a Class C felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class C felony.

"§ 14-203.5. Promoting prostitution of a minor or mentally disabled person.

(a) Any person who knowingly performs any of the following acts commits promoting prostitution of a minor or mentally disabled person:

(1) Advances prostitution as defined in G.S. 14-203.1, where a minor or severely or profoundly mentally disabled person engaged in prostitution, or any person engaged in prostitution in the place of prostitution is a minor or is severely or profoundly mentally disabled at the time of the offense.

- (2) Profits from prostitution by any means where the prostitute is a minor or is severely or profoundly mentally disabled at the time of the offense.
- (3) Confines a minor or a severely or profoundly mentally disabled person against the person's will by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or by administering to the minor or severely or profoundly mentally disabled person, without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and does any of the following:
- a. Compels the minor or severely or profoundly mentally disabled person to engage in prostitution.
 - b. Arranges a situation in which the minor or severely or profoundly mentally disabled person may practice prostitution.
 - c. Profits from prostitution by the minor or severely or profoundly mentally disabled person.

(b) For purposes of this section, administering drugs, as described in subdivision (3) of subsection (a) of this section, or an alcoholic intoxicant to a minor or a severely or profoundly mentally disabled person shall be deemed to be without consent if the administering is done without the consent of the parents or legal guardian or if the administering is performed or permitted by the parents or legal guardian for other than medical purposes.

(c) Except as otherwise provided in this subsection, a violation of subdivisions (1) or (2) of subsection (a) of this section is a Class B2 felony. A violation of subdivision (3) of subsection (a) of this section is a Class B1 felony. A violation of this section within 1,000 feet of real property comprising a school is a Class B1 felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.6 (patronizing a prostitute), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class B1 felony.

(d) Any person convicted of a violation of this section that involves promoting prostitution of a minor or mentally disabled person by keeping a place of prostitution with minors or severely or profoundly mentally disabled person as prostitutes or convicted of a violation of subdivision (3) of subsection (a) of this section is subject to the property forfeiture provisions set forth in G.S. 14-2.3.

"§ 14-203.6. Patronizing a prostitute.

(a) Any person who knowingly performs any of the following acts with a person not his or her spouse commits patronizing a prostitute:

- (1) Engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute.
- (2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification.

(b) Except as otherwise provided in this subsection, a violation of this section is a Class F felony. A violation of this section within 1,000 feet of real property comprising a school is a Class C felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), or G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution) is a Class C felony.

"§ 14-203.7. Patronizing a minor or mentally disabled person engaged in prostitution.

(a) Any person who engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4), or any sexual contact as defined in G.S. 14-27.1(5) for the purpose of sexual arousal or gratification, with a prostitute that is a minor or is a severely or profoundly mentally disabled person, commits the offense of patronizing a minor or mentally disabled person engaged in prostitution.

(b) It is an affirmative defense to the charge of patronizing a minor or mentally disabled person engaged in prostitution that the accused reasonably believed that the person was of the age of 18 years or over or was not a severely or profoundly mentally disabled person at the time of the act giving rise to the charge.

(c) Except as otherwise provided in this subsection, a violation of this section is a Class C felony. A violation of this section within 1,000 feet of real property comprising a school is a Class B2 felony. A violation of this section by a person with a prior conviction for a violation of this section or a violation of G.S. 14-203.2 (prostitution), G.S. 14-203.3 (solicitation of prostitution), G.S. 14-203.4 (promoting prostitution), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), or G.S. 14-203.6 (patronizing a prostitute) is a Class B2 felony."

"§ 14-203.10. Certain probation conditions.

(a) If a person convicted of a crime under this Article receives a sentence which includes probation, and that person is infected with a venereal disease, the period of probation may commence only upon such terms and conditions as shall insure medical treatment therefor and prevent the spread thereof, and the court may order any convicted defendant to be examined for venereal disease.

(b) No female who is convicted under this Article shall be placed on probation in the care or charge of any person except a female probation officer."

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

"§ 14-203.15. Vehicle impoundment.

(a) In addition to any other penalty provided by law, a law enforcement officer who arrests a person for a violation under this Article may tow and impound any vehicle used by the person in the commission of the offense. The person arrested for the violation shall be charged a fee of one thousand dollars (\$1,000) to recover the vehicle. The local law enforcement agency that has jurisdiction where the arrest was made shall collect the fee. The person may recover the vehicle from the impound after a minimum of two hours after arrest upon payment of the fee.

(b) Five hundred dollars (\$500.00) of the fee shall be distributed to the unit of government whose law enforcement officers made the arrest, for the costs incurred by the unit of government to tow and impound the vehicle. Upon the defendant's conviction of one or more of the offenses in connection with which the vehicle was impounded and the fee imposed under this section, the remaining five hundred dollars (\$500) of the fee shall be deposited into the Crime Victims Compensation Fund established in G.S. 15B-23 and shall be used to provide services for persons encountered during the course of an investigation into any violation of Article 27 of Chapter 14 of the General Statutes, G.S. 14-43.11, and G.S. 14-43.13, provided such persons constitute prostituted persons or other victims of human trafficking.

(c) Upon the presentation by the defendant of a signed court order showing that the defendant has been acquitted of all of the offenses in connection with which a vehicle was impounded and a fee imposed under this section, or that the charges against the defendant for those offenses have been dismissed, the unit of government shall refund the fee of one thousand dollars (\$1,000) to the defendant."

SECTION 7. G.S. 15A-290(c)(1) reads as rewritten:

"(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

- (1) Any felony offense against a minor, including any violation of G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), ~~G.S. 14-190.18 (Promoting prostitution of a minor), G.S. 14-190.19 (Participating in prostitution of a minor), G.S. 14-203.5 (Promoting prostitution of a minor or mentally disabled person), G.S. 14-203.7 (Patronizing a minor or mentally disabled person engaged in prostitution)~~ or G.S. 14-202.1 (Taking indecent liberties with children).

...."

SECTION 8. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a3) Deferred Prosecution for Prostitution. – A defendant whose prosecution is deferred pursuant to G.S. 14-203.2(b), may be placed on probation as provided in this Article."

SECTION 9. G.S. 15A-1342(a1) reads as rewritten:

"(a1) Supervision of Defendants on Deferred Prosecution. – The Section of Community Corrections of the Division of Adult Correction of the Department of Public Safety may be ordered by the court to supervise an offender's compliance with the terms of a deferred prosecution agreement entered into under ~~G.S. 15A-1341(a1)~~. G.S. 15A-1341(a1) or (a3). Violations of the terms of the agreement shall be reported to the court as provided in this Article and to the district attorney in the district in which the agreement was entered."

SECTION 10. G.S. 15A-1415(b) is amended by adding a new subdivision to read:

"(10) The defendant was convicted of a first offense of prostitution under G.S. 14-203.2 and prosecution of the offense was not deferred pursuant to G.S. 14-203.2(b); 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 11. Article 89 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-1416.1. Motion by the defendant to vacate prostitution conviction for sex trafficking victim."

(a) The Court of Appeals has jurisdiction to hear a motion for appropriate relief filed on the grounds set out in G.S. 15A-1415(b)(10). A motion to vacate a conviction for prostitution may be filed at any time following the entry of a verdict or finding of guilty under G.S. 14-203.2. 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 motion shall be served upon the State.

(b) The court may grant the motion if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking. Evidence of such may

include any of the following documents listed in subdivisions (1) through (3) 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 trafficker charged with a trafficking 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.

(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances."

SECTION 12. Article 5 of Chapter 14 of the General Statutes is amended by adding a new section to read:

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

(a) The following definitions apply in this section:

- (1) Prostitution offense – A conviction for (i) violation G.S. 14-203.2, or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to December 1, 2013.
- (2) Violent felony or violent misdemeanor – A Class A through G felony or a Class A1 misdemeanor or an offense that includes assault as an essential element of the offense.

(b) A person who has been convicted of a prostitution offense may file a petition in the court 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.
 - c. The person was sentenced under the deferred prosecution provisions in G.S. 14-203.2 and is eligible to apply for an expunction under G.S. 14-203.2(c).

(c) The petition shall not be filed earlier than three years after the person has served the full sentence imposed on the person. The petition shall contain all of the following:

- (1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of a violent felony or violent misdemeanor, (ii) has been of good moral character since the date of conviction of the prostitution offense in question, and (iii) has not been convicted of any felony or misdemeanor under the laws of the United States or the laws of this State or any other state since the date of the conviction of the prostitution offense in question.
- (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

1 of the petitioner in the community in which the petitioner lives and that the
2 petitioner's character and reputation are good.
3 (3) A statement that the petition is a motion in the cause in the case wherein the
4 petitioner was convicted.
5 (4) An application on a form approved by the Administrative Office of the
6 Courts requesting and authorizing (i) a State and national criminal history
7 record check by the Department of Justice using any information required by
8 the Administrative Office of the Courts to identify the individual; (ii) a
9 search by the Department of Justice for any outstanding warrants or pending
10 criminal cases; and (iii) a search of the confidential record of expunctions
11 maintained by the Administrative Office of the Courts. The application shall
12 be forwarded to the Department of Justice and to the Administrative Office
13 of the Courts, which shall conduct the searches and report their findings to
14 the court.
15 (5) An affidavit by the petitioner that no restitution orders or civil judgments
16 representing amounts ordered for restitution entered against the petitioner
17 are outstanding.
18 (d) The petition shall be served upon the district attorney of the court wherein the case
19 was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to
20 file any objection thereto and shall be duly notified as to the date of the hearing of the petition.
21 The district attorney shall make his or her best efforts to contact the victim, if any, to notify the
22 victim of the request for expunction prior to the date of the hearing.
23 (e) The court in which the petition was filed shall take the following steps and shall
24 consider the following issues in rendering a decision upon a petition for expunction of records
25 of a prostitution offense under this section:
26 (1) Call upon a probation officer for additional investigation or verification of
27 the petitioner's conduct during the period since the date of conviction of the
28 prostitution 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
31 officers and district attorneys.
32 (f) The court shall order that the person be restored, in the contemplation of the law, to
33 the status the person occupied before the arrest or indictment or information if the court finds
34 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 remained of good moral character and has been free of
37 conviction of any felony or misdemeanor, other than a traffic violation, for
38 three years from the date of conviction of the prostitution offense in
39 question.
40 (3) The petitioner has no outstanding warrants or pending criminal cases.
41 (4) The petitioner has no outstanding restitution orders or civil judgments
42 representing amounts ordered for restitution entered against the petitioner.
43 (5) The search of the confidential records of expunctions conducted by the
44 Administrative Office of the Courts shows that the petitioner has not been
45 previously granted an expunction, other than an expunction for a prostitution
46 offense.
47 (g) No person as to whom an order has been entered pursuant to subsection (f) of this
48 section shall be held thereafter under any provision of any laws to be guilty of perjury or
49 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
50 the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the
51 provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all

1 prostitution convictions to the certifying Commission regardless of whether or not the
2 prostitution convictions were expunged pursuant to the provisions of this section.

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

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

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

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

21 **SECTION 13.** G.S. 15A-1340.16(d) is amended by adding the following
22 subdivisions to read:

23 "(19a) The offense is a violation of G.S. 14-43.11 (human trafficking),
24 G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude)
25 and involved multiple victims.

26 (19b) The offense is a violation of G.S. 14-43.11 (human trafficking),
27 G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude)
28 and the victim suffered serious injury as a result of the offense."

29 **SECTION 14.** G.S. 15B-2(2) reads as rewritten:

30 **"§ 15B-2. Definitions.**

31 As used in this Article, the following definitions apply, unless the context requires
32 otherwise:

33 ...

34 (2) Claimant. – Any of the following persons who claims an award of
35 compensation under this Article:

36 a. A victim;

37 b. A dependent of a deceased victim;

38 c. A third person who is not a collateral source and who provided
39 benefit to the victim or his family other than in the course or scope of
40 his employment, business, or profession;

41 d. A person who is authorized to act on behalf of a victim, a dependent,
42 or a third person described in ~~subdivision e.~~ sub-subdivision c.;

43 e. A person who was convicted of a first offense under G.S. 14-203.2
44 and whose participation in the offense was a result of having been a
45 trafficking victim under G.S. 14-43.11 or G.S. 14-43.13 or a victim
46 of a severe form of trafficking under the federal Trafficking Victims
47 Protection Act (22 U.S.C. § 7102(13)).

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

51"

SECTION 15. 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 G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; crime against nature, as provided in G.S. 14-177; incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; ~~promoting the prostitution of the juvenile as provided in G.S. 14-190.18;~~ promoting prostitution of a minor or mentally disabled person as provided in G.S. 14-203.5; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
 - e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; ~~or~~
 - f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the ~~juvenile~~ juvenile;
 - g. Commits or allows to be committed an offense under G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude against the child).

...."

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

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

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

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

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

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

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

SECTION 17. The introductory language in G.S. 14-190.13 reads as rewritten:

"§ 14-190.13. Definitions for certain offenses concerning minors.

The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a ~~minor~~; ~~G.S. 14-190.18, promoting prostitution of a minor; G.S. 14-190.19, participating in prostitution of a minor.~~ minor."

SECTION 18. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a)(statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1)(felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), ~~G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor),~~ G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a)(taking indecent liberties with a student), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person), G.S. 14-203.7 (patronizing a minor or mentally

disabled person engaged in prostitution); G.S. 14-318.4(a1)(parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2)(commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 19. G.S. 15A-830(a)(7) reads as rewritten:

"(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:

- a. A Class A, B1, B2, C, D, or E felony.
- b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11; 14-190.17; ~~14-190.19~~; 14-202.1; 14-203.7; 14-277.3A; 14-288.9; 20-138.5; or former G.S. 14-277.3.
- c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.
- d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); 14-33.2; 14-277.3A; or former G.S. 14-277.3.
- e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.
- f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
- g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.
- h. Any violation of a valid protective order under G.S. 50B-4.1."

SECTION 20. G.S. 90-210.25B(b) reads as rewritten:

"(b) For purposes of this Article, the term "sexual offense against a minor" means a conviction of any of the following offenses: G.S. 14-27.4A(a) (sex offense with a child; adult offender), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-190.16 (first-degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), ~~G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor)~~, G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-203.5 (promoting prostitution of a minor or mentally disabled person); G.S. 14-203.7 (patronizing a minor or mentally disabled person engaged in prostitution); G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term shall also include a conviction of the following: any attempt, solicitation, or conspiracy to commit any of these offenses or any aiding and abetting any of these offenses. The term shall also include a conviction in another jurisdiction for an offense which if committed in this State has the same or substantially similar elements to an offense against a minor as defined by this section."

SECTION 21. G.S. 114-15(b1) reads as rewritten:

"(b1) The State Bureau of Investigation is further authorized, upon request of the Governor or Attorney General, to investigate the solicitation, commission, or attempted

commission, by means of a computer, computer network, computer system, electronic mail service provider, or the Internet, of the crimes defined in the following statutes:

- (1) G.S. 14-190.6;
- (2) G.S. 14-190.7;
- (3) G.S. 14-190.8;
- (4) G.S. 14-190.14;
- (5) G.S. 14-190.15;
- (6) G.S. 14-190.16;
- (7) G.S. 14-190.17;
- (8) G.S. 14-190.17A;
- ~~(9) G.S. 14-190.18;~~
- ~~(10) G.S. 14-190.19;~~
- (11) G.S. 14-202.3;
- (12) G.S. 14-203.5;
- (13) G.S. 14-203.7.

Upon determining the location of the criminal violation, the State Bureau of Investigation shall promptly notify the sheriff and local law enforcement of its investigation."

SECTION 22. G.S. 115C-296(d)(2) reads as rewritten:

- "(2) The State Board shall automatically revoke the license of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; ~~Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19;~~ Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; ~~Prostitution, G.S. 14-204; Prostitution, G.S. 14-203.2; Promoting prostitution of a minor or mentally disabled person, G.S. 14-203.5; Patronizing a minor or mentally disabled person engaged in prostitution, G.S. 14-203.7;~~ and child abuse under G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's license unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same

1 person as the teacher or school administrator. If the teacher or school
2 administrator provides this written notice to the Board, the Board shall not
3 revoke the license unless it can establish as a fact that the defendant and the
4 teacher or school administrator are the same person."

5 **SECTION 23.** This act becomes effective December 1, 2013, and applies to
6 offenses committed on or after that date. Prosecutions for offenses committed before the
7 effective date of this act are not abated or affected by this act, and the statutes that would be
8 applicable but for this act remain applicable to those prosecutions.