

Senate Bill 565

By: Senators Strickland of the 17th, Kirkpatrick of the 32nd, Jones II of the 22nd, Albers of the 56th and Rhett of the 33rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to procedure for sentencing and imposition of punishment, so as to provide that at
3 any time after conviction for a misdemeanor or felony offense a defendant convicted of an
4 offense and sentenced as a direct result of being a victim of trafficking for labor or sexual
5 servitude may petition the sentencing court to grant the relief of vacatur; to provide that a
6 person convicted of an offense and sentenced as a direct result of being a victim of
7 trafficking for labor or sexual servitude shall be eligible for parole consideration; to provide
8 that at any time after conviction for a misdemeanor or felony offense a person convicted of
9 an offense and sentenced as a direct result of being a victim of trafficking for labor or sexual
10 servitude may petition the State Board of Pardons and Paroles to consider parole; to provide
11 for such petitions; to provide for petitions under seal; to provide that a defendant whose
12 conviction is vacated shall receive certain payments according to rules and regulations
13 promulgated by the Criminal Justice Coordinating Council; to provide that testimony from
14 certain individuals relative to such petitions may be taken by remote electronic means; to
15 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
16 for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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18

SECTION 1.

19 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
20 procedure for sentencing and imposition of punishment, is amended by revising Code
21 Section 17-10-21, relating to vacating of sentence for trafficking victim defendants, as
22 follows:

23 "17-10-21.

24 (a)(1) A defendant convicted of an offense and sentenced as a direct result of the
25 defendant being the victim of an offense of trafficking under Code Section 16-5-46 may
26 petition the court imposing the sentence to vacate such conviction. Such court shall
27 maintain the jurisdiction, power, and authority to vacate such conviction and sentence.

28 (2) The defendant shall serve the petition provided for under paragraph (1) of this
29 subsection upon the prosecuting attorney, and such petition:

30 (A) Shall be submitted on a form promulgated by the Attorney General;

31 (B) Shall be submitted ~~no earlier than six months~~ at any time following conviction and
32 sentencing for a misdemeanor or felony offense ~~or no earlier than one year following~~
33 ~~completion of the sentence for a felony offense;~~

34 (C) Shall be submitted with a copy of his or her criminal history background check
35 report conducted by the Georgia Crime Information Center that has been completed no
36 more than three business days prior to the filing of the petition; provided, however, that
37 the defendant shall not be charged a fee by the Georgia Crime Information Center for
38 a report produced for purposes of this Code section; and

39 (D) May include documentation of a defendant's status as a victim of an offense of
40 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,
41 that official documentation shall not be required to obtain relief under this Code
42 section. Such documentation shall create a rebuttable presumption that the defendant
43 was a victim of trafficking under Code Section 16-5-46. As used in this subparagraph,
44 the term 'official documentation' includes, but is not limited to, the following:

- 45 (i) A copy of an official record, certification, or eligibility letter from a federal, state,
46 tribal, or local proceeding showing that the defendant was a victim of trafficking
47 under Code Section 16-5-46;
- 48 (ii) An affidavit, a letter, or sworn testimony from a member of the clergy, medical
49 professional, member of a victim services organization, or certified, licensed, or
50 registered professional from whom the defendant has sought assistance, counseling,
51 or legal counsel related to his or her victimization; or
- 52 (iii) Any other evidence that the court determines is of sufficient credibility or
53 probative value.
- 54 (3) No defendant with an outstanding warrant issued by a jurisdiction in this state or any
55 other state or by the United States shall file a petition provided for under paragraph (1)
56 of this subsection.
- 57 (4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such
58 conviction or fails to respond to such petition within 30 days of service, the court
59 imposing the conviction and sentence shall, without notice or hearing, issue an order
60 vacating the conviction and sentence and shall also issue an order restricting access to
61 criminal history record information for such offense.
- 62 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the
63 court shall hold a hearing within 90 days of the filing of the petition. The court shall
64 hear evidence and determine, by a preponderance of the evidence, whether the
65 defendant committed such offense as a direct result of being the victim of an offense
66 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the
67 evidence, that the defendant committed such offense as a direct result of being the
68 victim of an offense of trafficking under Code Section 16-5-46, the court may issue an
69 order vacating the conviction and sentence.
- 70 (B) If such order to vacate is issued, the court shall also issue an order restricting
71 access to criminal history record information for such offense and no fee shall be

72 charged by the Georgia Crime Information Center or any other entity for restricting
73 access to criminal history record information under this paragraph.

74 (C) As used in this paragraph, the term 'restrict' shall have the same meaning as set
75 forth in Code Section 35-3-37.

76 (b)(1) A person convicted of an offense and sentenced as a direct result of the person
77 being the victim of an offense of trafficking under Code Section 16-5-46 shall be eligible
78 for parole consideration;

79 (2) Such person shall serve the petition provided for under paragraph (1) of this
80 subsection upon the State Board of Pardons and Paroles, and such petition:

81 (A) Shall be submitted on a form promulgated by the State Board of Pardons and
82 Paroles;

83 (B) Shall be submitted at any time following conviction and sentencing for a
84 misdemeanor or felony offense;

85 (C) Shall be submitted with a copy of the petitioner's criminal history background
86 check report conducted by the Georgia Crime Information Center that has been
87 completed no more than three business days prior to the filing of the petition; provided,
88 however, that the petitioner shall not be charged a fee by the Georgia Crime
89 Information Center for a report produced for purposes of this Code section; and

90 (D) May include documentation of the petitioner's status as a victim of an offense of
91 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,
92 that official documentation shall not be required to obtain relief under this Code
93 section. Such documentation shall create a rebuttable presumption that the petitioner
94 was a victim of trafficking under Code Section 16-5-46. As used in this subparagraph,
95 the term 'official documentation' includes, but is not limited to, the following:

96 (i) A copy of an official record, certification, or eligibility letter from a federal, state,
97 tribal, or local proceeding showing that the defendant was a victim of trafficking
98 under Code Section 16-5-46;

