

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

AS PASSED SENATE

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 for the
6 return of fines and fees paid by the defendant whose conviction is vacated; to provide that
7 testimony from certain individuals relative to such petitions may be taken by remote
8 electronic means; to provide for related matters; to provide for an effective date; to repeal
9 conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

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

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16 "17-10-21.

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

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

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

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

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

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

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

41 (ii) An affidavit, a letter, or sworn testimony from a member of the clergy, medical
42 professional, member of a victim services organization, or certified, licensed, or

43 registered professional from whom the defendant has sought assistance, counseling,
44 or legal counsel related to his or her victimization; or

45 (iii) Any other evidence that the court determines is of sufficient credibility or
46 probative value.

47 (3) No defendant with an outstanding warrant issued by a jurisdiction in this state or any
48 other state or by the United States shall file a petition provided for under paragraph (1)
49 of this subsection.

50 (4) If the prosecuting attorney, to the court, consents in writing to the vacatur of such
51 conviction or fails to respond to such petition within 30 days of service, the court
52 imposing the conviction and sentence shall, without notice or hearing, issue an order
53 vacating the conviction and sentence and shall also issue an order restricting access to
54 criminal history record information for such offense.

55 (5)(A) If the prosecuting attorney, to the court, objects in writing to the petition, the
56 court shall hold a hearing within 90 days of the filing of the petition. The court shall
57 hear evidence and determine, by a preponderance of the evidence, whether the
58 defendant committed such offense as a direct result of being the victim of an offense
59 of trafficking under Code Section 16-5-46. If the court finds, by a preponderance of the
60 evidence, that the defendant committed such offense as a direct result of being the
61 victim of an offense of trafficking under Code Section 16-5-46, the court may issue an
62 order vacating the conviction and sentence.

63 (B) If such order to vacate is issued, the court shall also issue an order restricting
64 access to criminal history record information for such offense and no fee shall be
65 charged by the Georgia Crime Information Center or any other entity for restricting
66 access to criminal history record information under this paragraph.

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

69 (b) When ~~the~~ a petition provided for under subsection (a) of this Code section is filed, it
70 shall be filed under seal.

71 (c)(1) For any sentence vacated pursuant to this Code section, the court vacating such
72 sentence shall include in the order to vacate an order for the return of any fines and fees
73 paid by the defendant under such sentence shall be returned to the defendant in the
74 amount paid by the defendant.

75 (2)(A) The entity to which the defendant paid such fines and fees shall return the fines
76 and fees to the defendant within 45 days of the entity's receipt of a request made by or
77 on behalf of a defendant for the return of such fines and fees. Any such request shall
78 be submitted in person or by registered or certified mail or statutory overnight delivery
79 and shall include a copy of the order to vacate and a statement of the amount of fines
80 and fees the defendant paid to the entity.

81 (B) The entity shall return the fines and fees received from the defendant regardless of
82 whether the entity currently holds these funds. If the entity has forwarded any portion
83 of the fines and fees to one or more secondary entities, each such secondary entity shall
84 return the amount forwarded by the forwarding entity to such secondary entity
85 within 15 days of a valid request by the forwarding entity. A valid request from the
86 forwarding entity shall include a copy of the order to vacate, an accounting of the fines
87 and fees paid by the defendant to the forwarding entity, and a statement of the amount
88 forwarded by the forwarding entity to the secondary entity.

89 (d) For purposes of considering such a petition provided for under subsection (a) of this
90 Code section, testimony from the defendant, petitioner, expert witness, or any other party
91 may be taken by the court by remote electronic means."

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SECTION 2.

93 This Act shall become effective upon its approval by the Governor or upon its becoming law
94 without such approval.

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SECTION 3.

96 All laws and parts of laws in conflict with this Act are repealed.