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SB 158 - Human Trafficking

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SB 158 - Human Trafficking

Cover Page Footnote

The Act authorizes the Division of Family and Children Services (DFCS) to provide care and supervision without a court order for children who are victims of human trafficking. Additionally, the Act requires law enforcement and DFCS to refer child victims to authorized victim assistance organizations. Children may now also now be removed from their homes without parental consent if they are found to be victims of human trafficking. The Act expands the criminal definition of human trafficking to assign criminal liability to those who benefit financially from another's sexual servitude. The Act restricts the crime of prostitution to those eighteen years of age or older. The Act repeals the crime of pandering by compulsion. The Act provides that the use of property for human trafficking or certain drug-related charges constitutes a nuisance. Lastly, the Act defines notice requirements for nuisance related charges.

CRIMES AND OFFENSES

Sexual Offenses: Amend Titles 9, 15, 16, 17, and 41 of the Official Code of Georgia Annotated, Relating to Civil Practice, Courts, Crimes and Offenses, Criminal Procedure, and Nuisances, Respectively, so as to Provide Additional Safeguards and Protections against Human Trafficking; Authorize DFCS to Provide Care and Supervision to Children Who Are Victims of Human Trafficking; Expand Prohibitions against Trafficking of Persons for Labor or Sexual Servitude; Revise the Definition of Prostitution; Increase the Penalties for certain Sexual Offenses; Repeal the Crime of Pandering by Compulsion; Provide that the Use of Certain Property in Connection with Sexually Related Offenses or Drug Related Offenses Constitutes a Nuisance and to Provide for what Constitutes Notice of Such Use; Provide a Short Title; Provide for Related Matters; Conform Certain Cross-references; Provide an Effective Date and for Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 9-3-33 (amended); 15-11-130, -133 (amended); 15-21-208 (amended); 16-5-46 (amended); 16-6-9, -13, -14 (amended); 16-14-3 (amended); 17-8-55 (amended); 41-3-1 (amended)
BILL NUMBER:	SB 158
ACT NUMBER:	30
GEORGIA LAWS:	2019 Ga. Laws 30
SUMMARY:	The Act authorizes the Division of Family and Children Services (DFCS) to provide care and supervision without a court order for children who are victims of human trafficking. Additionally, the Act requires law enforcement and DFCS to refer child victims to authorized victim assistance organizations. Children may now also

now be removed from their homes without parental consent if they are found to be victims of human trafficking. The Act expands the criminal definition of human trafficking to assign criminal liability to those who benefit financially from another's sexual servitude. The Act restricts the crime of prostitution to those eighteen years of age or older. The Act repeals the crime of pandering by compulsion. The Act provides that the use of property for human trafficking or certain drug-related charges constitutes a nuisance. Lastly, the Act defines notice requirements for nuisance related charges.

EFFECTIVE DATE: July 1, 2019

History

For years, Georgia has continuously battled human trafficking for labor and sexual servitude.¹ Georgia's well-developed tourism and agriculture industries combined with its robust infrastructure, including an international airport, major highways, and ports, allow traffickers to profit while easily transporting victims.² Recognizing that the state needed more tools to face this issue, state representatives introduced Senate Bill (SB) 158 to address the effects of human trafficking. Over the past decade, human trafficking has likely increased due to the ubiquity of the internet.³ However, the full extent of human trafficking is difficult to quantify as a majority of

1. Brandon Howard & Laurin Nutt, *Crimes and Offenses*, 28 GA. ST. U. L. REV. 131, 132 (2011) ("Atlanta is considered a hub for human trafficking."); Abe Varner & Will Kelbaugh, *Crimes Against Person*, 30 GA. ST. U. L. REV. 119, 120 (2013) ("In the past years, Georgia's reputation for sex trafficking has been one of the worst in the country.").

2. MEREDITH BAILEY & JENNIFER WADE, GA. BUREAU OF INVESTIGATION, HUMAN TRAFFICKING IN GEORGIA: A SURVEY OF LAW ENFORCEMENT 1 (2014) [hereinafter GEORGIA SURVEY].

3. Interview with Chuck Boring, Deputy Chief Assistant Dist. Att'y, Cobb County (May 13, 2019) (on file with the Georgia State University Law Review) [hereinafter Boring Interview].

cases go unreported, and those that are reported are often overlooked because local law enforcement has not been adequately trained on the issue.⁴ Further, as recently as 2012, a majority of law enforcement agencies in Georgia had no formal documentation of human trafficking cases or victims.⁵ Since human trafficking was first criminalized in the State of Washington in 2003,⁶ staggering statistics, both worldwide and domestic, have bolstered public outcry against human trafficking and increased awareness around the issue.⁷ Though Georgia was already being nationally recognized for its progressive legislation combatting human trafficking, the opportunity remained for additional legislation.⁸ Senator Brian Strickland (D-17th) stated that SB 158 was introduced now because of the “growing concern about hotels and other establishments enabling human trafficking to occur on their premises”⁹ and because “our laws [were] not up to date to address the numerous juvenile victims of these crimes.”¹⁰ Further, Governor Brian Kemp (R), who took office in 2019, and his wife, Marty Kemp, were influential in the introduction of human trafficking related legislation.¹¹ Senator Strickland, working directly with the Kemp administration, explained that “[p]rior to taking office, [t]he Governor and First Lady learned about horrors of human trafficking occurring in Georgia and were inspired to make this a priority issue this [l]egislative session.”¹² Although Georgia’s legislature has undertaken related bills in the past, in the 2019 Session, representatives “directly addressed the

4. GEORGIA SURVEY, *supra* note 2, at 3.

5. *Id.* at 4.

6. *Human Trafficking State Laws*, NAT’L CONF. ST. LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx> [<https://perma.cc/BUQ9-YRYW>].

7. GEORGIA SURVEY, *supra* note 2, at 9.

8. *Id.* at 4. “The Polaris Project recognizes Georgia as a ‘Tier 1 State’ for its progressive legislative framework combating human trafficking, but also highlights additional laws that could be enacted to bolster the state’s statutes (Polaris Project, 2013). The Polaris Project is a leading human trafficking advocacy group that operates the National Human Trafficking Resource Center hotline, conducts research and trainings on trafficking issues, and provides services to victims.” *Id.*

9. Electronic Mail Interview with Sen. Brian Strickland (D-17th) (May 17, 2019) (on file with the Georgia State University Law Review) [hereinafter Strickland Interview].

10. *Id.*

11. *Id.*; Boring Interview, *supra* note 3.

12. Strickland Interview, *supra* note 9.

businesses profiting off [of] this activity” and considered “how to handle juveniles that are the victims of human trafficking.”¹³

One event which possibly influenced the introduction of SB 158 was Super Bowl LIII, which took place in Atlanta in February 2019.¹⁴ Historically, and in 2019, human trafficking reports spiked in cities hosting the Super Bowl.¹⁵ Atlanta has always been a hotbed of human trafficking, but the problem was exacerbated by the massive influx of people and money into the city.¹⁶ Many news reports were circulating in February 2019, warning people to be on the lookout for human traffickers in Atlanta.¹⁷

However, the greater Atlanta area combatted sex-trafficking long before the 2019 Super Bowl, and local prosecutors eventually began to think of creative ways to tackle the problem.¹⁸ In 2018, the Cobb County District Attorney’s Office participated in a successful investigation of human traffickers at the Masters Inn, a hotel in Marietta, Georgia.¹⁹ Utilizing a new strategy, the Cobb District Attorney’s Office used Georgia’s nuisance statute to successfully prosecute the hotel that was facilitating sex trafficking and hold it criminally liable.²⁰ Before that conviction, “[n]obody had taken a nuisance action against a hotel before for sex trafficking.”²¹ District Attorney Chuck Boring and his team “used the ‘substantially drug-related’ portion of the nuisance statute” to facilitate the hotel’s nuisance liability.²² With the additions included in SB 158,

13. *Id.*

14. Alexis Stevens, *Arrests up to 40 in Super Bowl Sex-Trafficking Investigation, Feds Say*, ATLANTA J.-CONST. (Feb. 1, 2019), <https://www.ajc.com/news/crime—law/arrests-super-bowl-sex-trafficking-investigation-feds-say/bsTBchzgw9efZCilmAwQjP/> [<https://perma.cc/2ZQ5-AZBW>].

15. *Id.*

16. *Id.*

17. Greg Bluestein, *Georgia Lawmakers Prepare New Crackdown on Sex Traffickers*, ATLANTA J.-CONST. (Jan. 2, 2019), <https://www.ajc.com/news/state—regional-govt—politics/georgia-lawmakers-prepare-new-crackdown-sex-traffickers/h6Gd7HcapwL805ummkSNJM/> [<https://perma.cc/9U5V-TY8V>].

18. Varner & Kelbaugh, *supra* note 1; Boring Interview, *supra* note 3.

19. Boring Interview, *supra* note 3.

20. Boring Interview, *supra* note 3; *see generally* Consent Order on Complaint to Abate Nuisance and for Injunctive Relief at the Masters Inn, State of Ga. v. Hiraba Corp., No. 18-1-4213-58 (Cobb Cty. Super. Ct. Dec. 19, 2018) (consent order requiring hotel to, among other things, be placed under court supervision, take measures to make the building safer, agree to police monitorization of video cameras, and implement new staff training).

21. Boring Interview, *supra* note 3.

22. *Id.*

prosecutors no longer have to rely on a clumsy drug-related nuisance statute to prosecute sex trafficking in the hotel industry.²³ “Some parts of this bill were gradual changes from previous legislation, but what is really novel about the bill is the nuisance part,” explained District Attorney Boring. Although every state has passed legislation addressing human trafficking, the policies regarding the treatment of victims and aspects of prosecution vary.²⁴ SB 158 was not explicitly based on another state’s or federal law, making this legislation unique to Georgia.²⁵

Bill Tracking of SB 158

Consideration and Passage by the Senate

Senators Brian Strickland (R-17th), Blake Tillery (R-19th), Renee Unterman (R-45th), Mike Dugan (R-30th), and Butch Miller (R-49th) sponsored SB 158 in the Senate.²⁶ On February 22, 2019, the Senate first read SB 158, and Lieutenant Governor Geoff Duncan (R) assigned the bill to the Senate Judiciary Committee.²⁷ The Committee favorably reported the bill on February 26, 2019.²⁸ On February 27, 2019, the Senate read the bill a second time.²⁹ The Senate then voted to pass the bill on March 1, 2019, by a vote of 54 to 0.³⁰ After the House passed the substitute on March 26, the Senate agreed to the substitute on March 29, 2019, by a vote of 52 to 0.³¹ The Senate then

23. *Id.*

24. *Human Trafficking Overview*, NAT’L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking.aspx> [https://perma.cc/PT26-KNBP].

25. ANNE TEIGEN, NAT’L CONF. ST. LEGISLATURES, PROSECUTING HUMAN TRAFFICKERS 5 (2018). Rhode Island, Alabama, and Mississippi have passed statutes allowing businesses and corporations to be prosecuted for trafficking crimes. *Id.* Courts in those states may also impose heavy fines or prevent culpable businesses from entering into certain government contracts. *Id.* Further, “[p]rosecutors around the country are using existing civil law to pursue businesses complicit in human trafficking.” *Id.* at 7. For example, in 2017, Los Angeles used a civil abatement statute to rectify the practices of a notorious Motel 6 location, effectively prohibiting human traffickers from accessing the property. *Id.*

26. Georgia General Assembly, SB 158, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/SB/158> [hereinafter SB 158, Bill Tracking].

27. *Id.*

28. State of Georgia Final Composite Sheet, SB 158, May 22, 2019.

29. *Id.*

30. *Id.*

31. *Id.*

sent SB 158 to Governor Brian Kemp (R) on April 5, 2019.³² Governor Kemp signed it into law on April 18, 2019.³³ The bill took effect on July 1, 2019.³⁴

Consideration and Passage by the House

Representative Bert Reeves (R-34th) sponsored SB 158 in the House.³⁵ On March 4, 2019, the House first read SB 158.³⁶ The following day, the House read the bill for a second time and Speaker David Ralston (R-7th) assigned it to the Juvenile Justice Committee.³⁷ On March 21, 2019, the Juvenile Justice Committee met and favorably reported a Committee substitute to SB 158.³⁸ The Committee substitute contained many changes to the original bill.

First, the substitute removed the distinction of “commercial” sexual exploitation from the definition of children suspected of being victims of sexual exploitation in Section 1-3 of the bill.³⁹ Additionally in Section 1-3, the substitute clarified that any victim assistance organizations utilized shall be certified by the Criminal Justice Coordinating Council, pursuant to Code section 15-21-132.⁴⁰ Next, in Section 1-5, the substitute made the language defining the offense of human trafficking more concise.⁴¹ In Section 1-6, the substitute raised the age requirement for the crime of prostitution to eighteen years of age or older from seventeen years of age or older.⁴² The substitute also clarified the penalties for those convicted for violating Code sections 16-6-9 through 16-6-12 in Section 1-7 of the bill, requiring both a fine and period of imprisonment.⁴³

The substitute had numerous changes to Section 1-9, which is the provision containing the updated nuisance statute.⁴⁴ First, the

32. *Id.*

33. *Id.*

34. State of Georgia Final Composite Sheet, SB, 158, May 22, 2019.

35. SB 158, Bill Tracking, *supra* note 26.

36. State of Georgia Final Composite Sheet, SB, 158, May 22, 2019.

37. *Id.*

38. *Id.*

39. SB 158 (HCS), 2019 Ga. Gen. Assemb.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

substitute tied the definition of “sexually related charges” to the relevant Code sections.⁴⁵ Next, the substitute changed the notice requirements for sexually related nuisances from a conviction for sexually related charges or notification from the District Attorney’s office of the county where the property in question is located, to indictment by a grand jury for sexually related charges, or the filing of an accusation by a prosecuting attorney that results in a conviction, plea of guilty, or similar outcome.⁴⁶ The substitute also expanded and clarified the definition of sexually related nuisances.⁴⁷ Finally, the substitute provided an affirmative defense for property owners who cooperate with law enforcement.⁴⁸ The substitute also added an additional section for drug-related nuisance in Section 1-10.⁴⁹ On March 26, 2019, the House voted to pass SB 158 by a vote of 167 to 0, after adopting the Committee substitute.⁵⁰

The Act

As a whole, the Act contains various provisions that address a variety of subjects related to human trafficking.

Section 1

The Act, in Section 1-1, states that it shall be known as the “Anti-Human Trafficking Protective Response Act.”⁵¹ Sections 1-2 through 1-4 address Title 15 of the Official Code of Georgia Annotated.⁵² Section 1-2 revised Code section 15-11-133 (a).⁵³ The Act authorizes Georgia’s Division of Family and Child Services (DFCS) to provide emergency care and supervision for up to seven days to child victims of trafficking for labor or sexual servitude without a court order.⁵⁴

45. SB 158 (HCS), 2019 Ga. Gen. Assemb.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. State of Georgia Final Composite Sheet, SB, 158, May 22, 2019.

51. 2019 Ga. Laws 30, § 1-1, at 74.

52. 2019 Ga. Laws 30, §§ 1-2, -3, -4, at 74–75.

53. 2019 Ga. Laws 30, § 1-2, at 74–75.

54. O.C.G.A. § 15-11-133(a) (Supp. 2019).

Section 1-3 adds a new Code section to 15-11-130 that requires law enforcement, state agency employees, and DFCS to refer any child suspected of being a victim of sexual exploitation or trafficking to a victim assistance organization.⁵⁵ The organization must be certified by the Criminal Justice Coordinating Council.⁵⁶ The purpose of this section is to provide trauma-informed services including case management, placement, access to educational and legal services, and mental health services to potential and actual victims of sexual trafficking.⁵⁷ Section 1-4 authorizes law enforcement or an officer of the court to remove a child from their home without consent from his or her parents, guardian, or legal custodian if the child is a victim of trafficking for labor or sexual servitude.⁵⁸

Section 1-5 revises the definition of human trafficking found in Code section 16-5-46.⁵⁹ The Act amends paragraph (2) by providing that knowingly soliciting and patronizing individuals for the purpose of sexual servitude constitutes the crime of human trafficking.⁶⁰ The Act further revises paragraph (3) by stating that anyone who benefits financially or by receiving anything of value from another's sexual servitude commits the offense of human trafficking.⁶¹ The legislators intended to provide a means for holding those who facilitate human trafficking criminally liable.⁶² For example, hotel owners who turn a blind eye to the human trafficking occurring in their rooms can now be prosecuted.⁶³ In paragraph (f)(1), the Act adds sexual servitude, in addition to labor servitude, to the sentencing requirements.⁶⁴ Paragraph (f)(2), dealing with the sentencing requirement for committing the offense of trafficking for labor or sexual servitude against children under eighteen years of age, removes the caveat that the child must have been coerced or deceived into being trafficked.⁶⁵

55. 2019 Ga. Laws 30, § 1-3, at 75.

56. § 15-11-130(a).

57. 2019 Ga. Laws 30, § 1-3, at 75.

58. § 15-11-133.

59. 2019 Ga. Laws 30 § 1-5, at 75–76.

60. *Id.*

61. *Id.*

62. *See generally* Strickland Interview, *supra* note 9.

63. *Id.*

64. 2019 Ga. Laws 30, § 1-5, at 75–76.

65. *Id.*

The Act, in Section 1-6, alters Code section 16-6-9 by requiring that individuals must be over the age of eighteen in order to commit the offense of prostitution.⁶⁶ The legislature's intent behind this change was likely to reflect a widespread opinion that so often individuals under the age of eighteen are not committing prostitution of their own volition, but are instead victims of sex trafficking.⁶⁷

Section 1-7 of the Act relates to the penalties for violating Code sections 16-6-9 through 16-6-12.⁶⁸ The Act modifies paragraph (b)(2), which formerly allowed different penalties if the offense involved a person who was over sixteen years old but not yet eighteen.⁶⁹ The Act now provides in paragraph (2) that involving a person under eighteen, instead of sixteen, results in a felony conviction and requires both imprisonment and a fine, instead of imprisonment *or* a fine.⁷⁰

In Section 1-8, the Act repeals pandering by compulsion, formerly found in Code section 16-6-14.⁷¹

In the Act, the legislators intended to provide prosecutors with the ability to prosecute those who knowingly participate in human trafficking by allowing it to take place behind their walls.⁷² Section 1-9 amends Code section 41-3-1, the nuisance statute.⁷³ First, the Act defines "sexually related charges" by reference to the relevant Code sections that explain sexually related offenses in the Official Code of Georgia Annotated.⁷⁴ In order for this statute to apply, the Act requires that a person must have either been indicted under sexually related charges by a grand jury or been convicted, pled guilty, pled *nolo contendere*, participated in adjudication in an accountability court, or had their charges dismissed after successful completion of a pretrial diversion program.⁷⁵

66. 2019 Ga. Laws 30, § 1-5, at 75–76 (codified at O.C.G.A. § 16-6-9 (2019)).

67. Michelle Dempsey, *Decriminalizing Victims of Sex Trafficking*, 52 AM. CRIM. L. REV. 207, 209 (2015).

68. 2019 Ga. Laws 30, § 1-7, at 76.

69. *Id.*

70. § 16-6-13.

71. 2019 Ga. Laws 30, § 1-8, at 76.

72. Strickland Interview, *supra* note 9.

73. 2019 Ga. Laws 30, § 1-9, at 77.

74. O.C.G.A. § 41-3-1(a) (Supp. 2019).

75. *Id.*

The Act continues by explaining that anyone who knowingly uses a building, structure, or place for the purpose of committing sexually related charges shall be guilty of maintaining a nuisance.⁷⁶ Further, the Act describes that the ground itself and any related fixtures or furniture where these offenses were committed shall be deemed a nuisance as well.⁷⁷

Section 1-9 details two instances that constitute *prima facie* evidence of nuisance.⁷⁸ The first instance is a conviction, a plea of guilty, a plea of *nolo contendere*, an adjudication in an accountability court, or a completion after a successful pretrial diversion program of the owner or operator of the structure where any sexually related charges occurred.⁷⁹ Second, if a county's prosecuting attorney notifies a property owner in writing of two or more unrelated instances of sexually related charges occurring within two years of one another, a criminal nuisance has occurred.⁸⁰

However, if the owner or the owner's agent cooperates with law enforcement in the matter, no evidence of nuisance will be considered.⁸¹ The intent behind this section is to encourage cooperation between property owners and law enforcement to decrease human trafficking.⁸² Finally, Section 1-9 states that its provisions shall be cumulative, and not repeal other existing remedies for sexually related nuisances.⁸³ Overall, the intent behind this section was to ensure that prosecutors had the ability to hold property owners criminally liable for facilitating human trafficking.⁸⁴

Section 1-10 is almost a mirror image of Section 1-9, except it addresses drug-related charges instead of sex-related charges.⁸⁵ First, the Act defines substantial drug-related activity as six or more unrelated incidents that result in drug-related charges within two years of one another on the same piece of property.⁸⁶ Second, the Act

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. O.C.G.A. § 41-3-1(a) (Supp. 2019).

81. *Id.*

82. Strickland Interview, *supra* note 9.

83. 2019 Ga. Laws 30, § 1-9, at 77.

84. Strickland Interview, *supra* note 9.

85. 2019 Ga. Laws 30, § 1-10, at 78.

86. O.C.G.A. § 41-3-1.1 (Supp. 2019).

provides that if the county's prosecuting attorney notifies a property owner of three or more unrelated drug-related charges occurring within a two-year period, *prima facie* evidence of nuisance shall be present.⁸⁷ Section 1-10 also includes a section exculpating property owners from criminal nuisance if they cooperate with law enforcement.⁸⁸

Section 2

The Act also revised the definition of childhood sexual abuse, as related to civil practice, in Code section 9-3-33.1.⁸⁹ In Section 2-1, the Act removed pandering by compulsion from the definition of acts taken against those under the age of eighteen that constitute childhood sexual abuse.⁹⁰ The Act, in Sections 2-2 through 2-6, removed pandering by compulsion from a variety of Code sections: the mandatory financial penalty list in 15-21-208, the list of statutes related to civil forfeiture of motor vehicles in 16-6-13.2, the list of statutes related to civil forfeiture of property and proceeds in 16-6-13.3, the list of statutes related to Racketeer Influenced and Corrupt Organizations in 16-14-3, and the list of statutes related to testimony of a child less than seventeen years old outside the physical presence of the accused in 17-8-55.⁹¹

Section 3

Lastly, the Act, in Section 3-1, states that it shall be effective on July 1, 2019, and shall apply to offenses occurring on or after that date.⁹²

87. *Id.*

88. *Id.*

89. 2019 Ga. Laws 30, § 2-1, at 78–79.

90. *Id.*

91. 2019 Ga. Laws 30, §§ 2-2 to -6, at 79–80.

92. 2019 Ga. Laws 30, § 3-1, at 80.

*Analysis**Avoiding Constitutional Issues*

No constitutional provisions were affected by the Act; however, another consideration in repealing pandering by compulsion in Section 1-8 was to avoid potential issues with the rule of lenity in future prosecutions under the new law.⁹³ Under the rule of lenity, the accused is entitled to have the lesser of two penalties enforced if uncertainty exists as to which penal clause is applicable to his conduct.⁹⁴ Prior to the Act, a person committed pandering by compulsion “when he or she by duress or coercion causes a person to perform an act of prostitution” and, if convicted, the person was “punished by imprisonment for not less than one nor more than ten years.”⁹⁵

Causing a person to commit an act of prostitution is similar to, if not effectively the same type of conduct as, knowingly subjecting an individual to sexual servitude.⁹⁶ Thus, if the crime of pandering by compulsion had remained in the Act, which was punishable by a maximum of ten years, a defense attorney representing a defendant charged with another sex trafficking crime, (one that may carry far greater sentences), could theoretically argue that the rule of lenity applies.⁹⁷ Therefore, the defendant could possibly receive a lesser punishment than the legislature intended. This would undermine one of the purposes of the Act, which is to increase penalties for certain sexual offenses.⁹⁸

93. Boring Interview, *supra* note 3.

94. Dixon v. State, 278 Ga. 4, 7, 596 SE.2d 147, 150 (2004) (conflicting nature of punishments for misdemeanor statutory rape and felony child molestation required defendant only be sentenced for the misdemeanor).

95. O.C.G.A. § 16-6-14 (2001).

96. 2019 Ga. Laws 30, § 1-5, at 75–76 (“A person commits the offense of trafficking an individual for sexual servitude when that person knowingly: (1) Subjects an individual to or maintains an individual in sexual servitude . . .”).

97. § 16-6-14.

98. *See supra* The Act.

Providing for Victims

The majority of United States jurisdictions criminalize the actions of sex trafficking victims.⁹⁹ Specifically, over thirty states treat even child victims as criminals.¹⁰⁰ Prior to the Act, not only could a seventeen-year-old be convicted of prostitution in Georgia, but also other crimes related to prostitution, such as keeping a place of prostitution, pimping, and pandering.¹⁰¹ Crimes related to prostitution received lesser punishment if the child involved in the crime was between the ages of sixteen and eighteen years of age.¹⁰² Additionally, prior to the Act, an individual under the age of eighteen had to be “coerced or deceived into being trafficked” for their abuser to receive a harsher punishment of twenty-five to fifty years of imprisonment.¹⁰³ These changes, although they received some opposition from lawmakers, fall in line with a more recent national understanding that *all* minors, even those who do not self-identify as victims, are “typically considered incapable of freely choosing to engage in commercial sex.”¹⁰⁴ Thus, the Act removes the criminalization of certain minors who are involved in prostitution, instead rightfully recognizing them as victims and placing harsher punishments on their abusers.¹⁰⁵

In addition to the age revisions, the Act ensures further protection for child victims by allowing law enforcement or a court officer to remove children from their homes if they are victims of trafficking, even if their parents do not consent.¹⁰⁶ This measure, along with the new provision requiring law enforcement to refer any suspected child victim to a victim assistance organization certified by the Criminal

99. Dempsey, *supra* note 67, at 210.

100. *Id.*

101. *See supra* The Act.

102. *Id.*

103. *See supra* The Act; Howard & Nutt, *supra* note 1, at 145 (explaining how, in 2011, Georgia’s legislature specifically added coercion and deceptive language to HB 200 to ensure that those who voluntarily sell “sexual services without being under the duress of coercion or deception will not be exemp[t] from prosecution.”).

104. Dempsey, *supra* note 67, at 210.

105. *See supra* The Act.

106. *See supra* The Act.

Justice Coordinating Council, is a drastic departure from what Georgia has afforded victims in the past.¹⁰⁷

Specifically, although Georgia has adopted prior laws for the purpose of protecting and aiding trafficking victims, none seem to go as far as those outlined in the Act. For example, in 2011, House Bill (HB) 200 was passed to provide greater protections for human trafficking victims and increase penalties for perpetrators, but many of the penalties were discretionary.¹⁰⁸ Further, the bill only established “guidelines and procedures” for law enforcement training and required that a trafficking victim be given “notice” about the availability of federal compensation.¹⁰⁹ In 2013, HB 141 was passed and requires certain businesses to post a “notice with information to assist victims of human trafficking” that includes a toll-free number to the National Human Trafficking Resource Center hotline, and imposes a misdemeanor fine if a business fails to cooperate.¹¹⁰ In 2015, SB 8 was passed to extend the statute of limitations for child sex trafficking victims and to incorporate federal guidelines for victim support services; however, none of these prior laws mandate the same protections to victims as the Act does, and all were passed under the legal definition that children between the ages of sixteen and eighteen could consent to commercial sex.¹¹¹

Georgia’s New Approach to Combatting Sex Trafficking

While parts of the Act altering age requirements reflect a better understanding of how to assist trafficking victims properly, other parts of the Act serve to prevent the actual crime of trafficking by focusing on the perpetrators.¹¹² The prime example of this focus is the Act’s updated nuisance statute.¹¹³ Codifying sexually related charges as they relate to bringing a nuisance action against a property

107. *See infra* Providing for Victims.

108. Howard & Nutt, *supra* note 1, at 142–43.

109. *Id.*

110. Varner & Kelbaugh, *supra* note 1, at 120.

111. Harry M. Rowland III & Christine H. Lee, *SB 8 – SR 7 – Crimes and Offenses: Sexual Offense (Safe Harbor/Rachel’s Law Act)*, 32 GA. ST. U. L. REV. 43, 44 (2015).

112. *See supra* The Act.

113. 2019 Ga. Laws 30, § 1-9, at 77.

owner represents a significant step forward for prosecutors.¹¹⁴ Prior to the additions in Section 1-9 of the Act, prosecutors utilized the drug-related portion of the previous nuisance statute to hold hotels known for facilitating or turning a blind eye to sex trafficking occurring on their property criminally liable.¹¹⁵ However, the drug-related statute required a drug-related indictment to have occurred, and the majority of crimes are not indicted but rather filed by an accusation.¹¹⁶ The new provisions to Code section 41-3-1 in Section 1-9 of the Act eliminates this hurdle by defining “sexually related charges” as the following:

[A] violation of Code Section 16-5-46, 16-62, 16-6-8, 16-6-9, 16-6-10, 16-6-11, 16-6-12, 16-6-15, or 16-6-16 when: (1) returned in an indictment by a grand jury; or (2) filed as an accusation by a prosecuting attorney that results in a conviction, a plea of guilty under any first offender statute, a plea of nolo contendere, adjudication in an accountability court, or a dismissal as a result of successful completion of a pretrial diversion program.¹¹⁷

Even though this provision helps cure the issues prosecutors previously faced in bringing a nuisance charge, it also protects property owners by ensuring that any nuisance violations are only tied to an indictment or an accusation that actually resulted in an admission of guilt.¹¹⁸

Potential Consequences

Although not anticipated, the Act’s updated nuisance statute could have unintended consequences for certain property owners. Specifically, large franchisors that do not have control over the operations of their subsidiary branches could theoretically be reached by this law if a subsidiary allows sex trafficking to take place on the

114. *See id.*

115. Boring Interview, *supra* note 3.

116. *Id.*

117. O.C.G.A. § 41-3-1 (Supp. 2019).

118. Boring Interview, *supra* note 3.

property. For example, some franchisors merely act as the “brand name,” and maintain little to no control over the actual establishments themselves. However, it is unlikely that local prosecutors will use the statute to prosecute high-level franchisors, such as franchisors of hotels, for the behavior of lower subsidiary branches.¹¹⁹ Additionally, a property owner cannot be held liable for unknowingly facilitating or allowing human trafficking to occur on the premise.¹²⁰ Therefore, if a franchisor truly had no control over the operations of its subsidiary, it would be impossible to “knowingly erect, establish, continue, maintain, use, own, or lease any building structure or place for the purposes of sexually related charges” as the Act requires.¹²¹

Further, and partially as a result of lobbying efforts, the “cooperation” exception was added to the Act in Section 1-9.¹²² This allows property owners to escape nuisance liability as long as they cooperate with law enforcement.¹²³ However, the word “cooperation” is not defined in the Act but is used in stating that “[a]ny such sexually related charges which result directly from cooperation between the property owner or his or her agent and a law enforcement agency shall not be considered as evidence of a nuisance under this Code section.”¹²⁴ Thus, the interpretation of “cooperation” is yet to be fully known. Most likely, “cooperation” will require the property owner to report any illegal sexually related conduct or suspicious activity occurring on the premises to the county’s prosecutor or to law enforcement.¹²⁵ And in that event, if an arrest resulted from the report, it would not qualify as evidence in a nuisance prosecution against the property owner.¹²⁶ Overall, in drafting the bill, the legislature recognized that eradicating human trafficking can best be achieved by a joint-effort between law

119. *See id.*

120. § 41-3-1(b).

121. *Id.*

122. *Id.*

123. *Id.*

124. 2019 Ga. Laws 30, § 1-9, at 77.

125. Boring Interview, *supra* note 3.

126. *Id.*

enforcement and the hospitality industry.¹²⁷ Therefore, “cooperation” should be construed to reflect the importance of that partnership.

Additionally, even though uncertainty remains as to how exactly how “cooperation” will be interpreted by the judiciary, prosecuting a property owner under the updated nuisance statute is still a very high burden.¹²⁸ It is also unlikely that law enforcement will use their already limited resources to go after property owners that are actively reporting crime on the premises.¹²⁹ Thus, the likelihood of abuse by either law enforcement or the hospitality industry seems minimal.

Unresolved Issues

Like any law, the implications of the Act will likely only reach as far as the amount of resources afforded to law enforcement and the governing bodies enforcing it.¹³⁰ The Act intends to encourage property owners to keep a well-trained staff and watchful eye over the conduct occurring on their property and to report any activity that raises a red flag.¹³¹ After the successful prosecution of the Masters Inn, some hotels have reached out to district attorneys’ offices to seek proper training and knowledge on the subject of human trafficking.¹³² Ideally, the Act will encourage other property owners to do the same. However, because human trafficking is such an under-reported crime, the problem will likely persist.¹³³ Ideally, the provisions in this new law will equip Georgia to fight more effectively against the crime of human trafficking and better provide for its victims.

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127. Boring Interview, *supra* note 3.

128. *Id.*

129. *Id.*

130. *Id.* (“We can legislate all day, but if we don’t have the resources there’s nothing we can do. With the current resources, the new law will help, but of course, it is not going to solve the problem.”).

131. O.C.G.A. § 41-3-1(a).

132. Boring Interview, *supra* note 3.

133. *Id.*