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SB 8 - SR 7 – Crimes and Offenses: Sexual Offenses (Safe Harbor / Rachel’s Law Act)

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CRIMES AND OFFENSES

Sexual Offenses: Amend Chapter 3 of Title 9, Code Section 95 of Article 2 of Chapter 6 of Title 15, Chapter 21 of Title 15, Chapter 6 of Title 16, Code Section 12 of Article 2 of Chapter 1 of Title 42, and Article 1 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, Relating to Limitations of Actions, Priorities of Distribution of Fines, Bond Forfeitures, Surcharges, Additional Fees, and Costs in Cases of Partial Payments into the Court, Payment and Disposition of Fines and Forfeitures, Sexual Offenses, the State Sexual Offender Registry, and Children and Youth Services, Respectively, so as to Increase Protection and Resources for Children Who Have Been Sexually Exploited; Extend the Statute of Limitations for Actions for Childhood Sexual Abuse; Change Provisions Relating to the Statute of Limitations for Injuries to the Person; Change Provisions Relating to Tolling of Limitations for a Minor’s Cause of Action; Change Provisions Relating to the Tolling of Limitations for Tort Actions While Criminal Prosecution is Pending; Create the Safe Harbor for Sexually Exploited Children Fund and the Safe Harbor for Sexually Exploited Children Fund Commission; Provide for Definitions; Provide for Appointment of Members of the Commission and Personnel; Provide for Duties of the Commission and Allow for Expenses; Provide for Recommendations of Changes in State Programs, Laws, and Policies; Provide for Acceptance of Federal Funds and Individual Donations; Provide for Fines and Penalties; Provide for Collection of Fines and Disposition of Moneys Collected; Impose a State Regulatory Assessment on Certain Adult Entertainment Establishments; Provide for the Powers, Duties, and Authority of the Department of Revenue and the Commissioner of Revenue; Provide for a Duty to Collect; Provide for the Priority of the Fund When Partial Payments Are Made; Expand Forfeiture Proceedings Involving Pimping Under Certain Circumstances to Include Keeping a Place of Prostitution, Pimping, Pandering, and Pandering by Compulsion; Require Registration on the State Sexual Offender Registry When an Individual is Convicted of Trafficking a Person for Sexual

Servitude; Require the Department of Human Services to Implement a Plan to Provide Services to Sexually Exploited Children; Provide for a Short Title; Provide for Legislative Findings and a Purpose Statement; Provide for Related Matters; Provide for an Effective Date and Contingent Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 9-3-33, -33.1, -90, -99 (amended); 15-6-95 (amended); 15-21-200, -201, -202, -203, -204, -205, -206, -207, -208, -209 (new); 16-3-6 (amended); 16-6-13.2, -13.3 (new); 42-1-12 (amended); 49-5-8 (amended)

BILL NUMBER: SB 8

ACT NUMBER: 95

GEORGIA LAWS: 2015 Ga. Laws 675

SUMMARY: The Act extends the statute of limitations for child sex trafficking victims from the age of twenty-three to the age of twenty-five for actions committed on or after July 1, 2015. The Act also incorporates federal guidelines for victim support services, increases penalties for sex trafficking, requires convicted sex traffickers to register as sex offenders, and allows for the forfeiture of vehicles used in trafficking and any money gained from the crimes. The Act also creates the Safe Harbor for Sexually Exploited Children Fund and the Safe Harbor for Sexually Exploited Children Fund Commission. The Fund will be a separate entity of the state treasury, and funds will be used to provide care, rehabilitative services, residential housing, health services, and social

services to sexually exploited children through persons or programs designated by the Commission. An additional fine of \$2,500 will be imposed on defendants eighteen years of age or older who are found guilty of trafficking a person for sexual servitude and other clearly defined criminal defenses; this additional fine will be deposited in the Fund.

EFFECTIVE DATE:

O.C.G.A. §§ 9-3-33, -33.1, -90, -99; 16-3-6; 16-6-13.2, -13.3; 42-1-12; 49-5-8, July 1, 2015; O.C.G.A. §§ 15-6-95, 15-21-200 to -209, January 1, 2017¹

LEGISLATIVE BRANCH

Appropriations: Amend Article III, Section IX, Paragraph VI of the Georgia Constitution so as to Provide that the General Assembly by General Law May Impose Additional Penalties for the Offenses of Keeping a Place of Prostitution, Pimping, Pandering, Pandering by Compulsion, Solicitation of Sodomy, Masturbation for Hire, Trafficking of Persons for Sexual Servitude, or Sexual Exploitation of Children; May Impose Assessments on Adult Entertainment Establishments; and May Provide for the Allocation of Such Additional Penalties and Assessments to the Safe Harbor for Sexually Exploited Children Fund, as Provided by Law, for the Purpose of Providing Care and Rehabilitative and Social Services to Individuals in this State who have been or may be Sexually Exploited; Provide that Such Funds Shall not Lapse; Provide for Related Matters; Provide for the Submission of this Amendment for Ratification or Rejection; and for Other Purposes

1. 2015 Ga. Laws 675, § 6-1, at 688. “Part 3 . . . shall become effective on January 1, 2017, provided that a constitutional amendment . . . is ratified by the voters in the November, 2016, General Election amending the Constitution of Georgia . . . to provide specific funding to the Safe Harbor for Sexually Exploited Children Fund.” *Id.*

PARAGRAPH:	GA. CONST. art. III, § 9, para. 6 (amended)
RESOL. NUMBER:	SR 7
ACT NUMBER:	306
GEORGIA LAWS:	2015 Ga. Laws 1497
SUMMARY:	Senate Resolution 7 provides a funding mechanism for the Safe Harbor for Sexually Exploited Children Fund by placing a constitutional amendment for approval by Georgia voters on the 2016 ballot. The proposed amendment would allow the Georgia General Assembly to set additional penalties or fees in cases where a person is found guilty of severe sex crimes, including keeping a place of prostitution, pimping, pandering, trafficking of persons for sexual servitude, or sexual exploitation of children. The proposed amendment would also permit the General Assembly to impose state regulatory fees on adult entertainment establishments.

History

Senator Renee Unterman (R-45th) first recognized human trafficking as an issue in 2008 when a minister of a downtown church showed up in her office.² He told stories about children being sold underneath the stoop of his church's porch for sex.³ He talked about meeting with them, getting to know them, and attempting to take care of them.⁴ To Senator Unterman, these stories were unbelievable; but after a trip to speak with the judges of the Fulton County Juvenile

2. Telephone Interview with Sen. Renee Unterman (R-45th) (Apr. 21, 2015) [hereinafter Unterman Interview].

3. *Id.*

4. *Id.*

Court, she learned that they were all too true.⁵ Next, Senator Unterman visited Angela’s House, a non-profit safe house, where she spoke with a twelve-year-old girl who was being sold for sex prior to her rescue.⁶ Since then, Senator Unterman has sponsored numerous bills dealing with the sex trafficking of minors, from bills expanding the definition of sexual exploitation to bills requiring a minimum age of employees in adult entertainment establishments.⁷

Human trafficking is the “buying, selling and smuggling of people to profit from their forced labor or sexual servitude.”⁸ Contrary to common belief, the majority of human trafficking victims in Georgia do not come from foreign countries.⁹ Instead, most are domestically trafficked and many come from Georgia.¹⁰ According to recent law enforcement statistics, modern human trafficking is “overwhelmingly related to sex rather than labor trafficking.”¹¹ In Georgia, the majority of human trafficking victims are located in non-rural areas with higher density populations.¹² Specifically, Atlanta has become known as a hub for human trafficking.¹³

Due to the black-market nature of human trafficking, exact statistics on the number of human trafficking victims do not exist. The U.S. Department of State’s *Trafficking in Persons Report* estimated that 14,500 to 17,500 individuals are trafficked annually into the United States.¹⁴ However, other estimates are as high as

5. *Id.*

6. *Id.*

7. See, e.g., Sen. Renee S. Unterman: 2015–2016 Regular Session, GA. GEN. ASSEMBLY, <http://www.legis.ga.gov/Legislation/en-US/MemberLegislation.aspx?Member=53&Session=20> (last visited Sept. 15, 2015).

8. *Human Trafficking Overview*, NAT’L CONF. OF STATE LEGISLATORS (May 9, 2014), <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-overview.aspx>.

9. MEREDITH BAILEY & JENNIFER WADE, GEORGIA BUREAU OF INVESTIGATION, HUMAN TRAFFICKING IN GEORGIA: A SURVEY OF LAW ENFORCEMENT 4 (2014), available at https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/2014%20Human%20Trafficking%20Report.pdf.

10. *Id.*; see also Sen. Renee Unterman, *Providing a “Safe Harbor” for Georgia Children*, GEORGIA GOV (Feb. 12, 2015), <http://georgia.gov/blog/2015-02-12/providing-%E2%80%9Csafe-harbor%E2%80%9D-georgia%E2%80%99s-children>.

11. BAILEY & WADE, *supra* note 9, at 4.

12. *Id.* (acknowledging that victim services and law enforcement in these areas tend to be larger and have units specialized in the area of human trafficking).

13. Abe Varner & Will Kelbaugh, *Crimes and Offenses: Crimes Against the Person*, 30 GA. ST. U. L. REV. 119, 120 (2013).

14. BAILEY & WADE, *supra* note 9, at 8.

50,000.¹⁵ Whatever the number of international individuals trafficked into the U.S. each year, it pales in comparison to the number of victims trafficked domestically. It is estimated that 300,000 American youths are at risk for sexual exploitation and 200,000 minors are sexually exploited annually.¹⁶ From 2008 to 2010, 40% of the suspected incidents of human trafficking in the United States involved the prostitution of a child or child sexual exploitation.¹⁷ In 2012, 55% of the human trafficking cases in Georgia involved the trafficking of minors.¹⁸

The sex trade takes many forms and occurs in all types of venues. The sex industry generates over \$14 billion annually.¹⁹ However, only approximately 10% of this industry is street level prostitution.²⁰ The other 90% comes through legal businesses such as strip clubs, escort services, and massage parlors.²¹ In fact, many traffickers use these legitimate businesses as fronts for trafficking by luring in young girls living in poverty with job offers and trapping them in a life of prostitution.²²

Unfortunately, hardworking Georgians pay for the damage caused by traffickers.²³ Aside from siphoning money out of the economy into the black market,²⁴ there are other unforeseen consequences. It costs the State of Georgia \$80,000 a year to rehabilitate a child who is the victim of sex trafficking.²⁵ This includes psychiatric services, residential treatment, vocational training, and numerous other reintegration techniques.²⁶ Since 2009, the state budget includes

15. *Id.*

16. *Id.*; see also Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, UNIV. OF PENN. SCH. OF SOC. WORK 13–14 (Feb. 2, 2002), available at <https://maggiemcneill.files.wordpress.com/2011/04/estes-weiner-2001.pdf>.

17. BAILEY & WADE, *supra* note 9, at 8 (48% involved adult prostitution).

18. *Id.* at 10–11 (stating that 105 out of 190 trafficking cases involved minors).

19. COOK CNTY. COMM’N ON WOMEN’S ISSUES, *THE REALITIES OF HUMAN TRAFFICKING IN COOK COUNTY: STRATEGIES FOR ENDING THE EXPLOITATION OF WOMEN AND GIRLS 4* (2007), available at <http://www.cookcountyil.gov/wp-content/uploads/2014/06/human-trafficking-report.pdf> [hereinafter COOK CNTY. COMM’N].

20. *Id.*

21. *Id.*

22. *See, e.g., id.* at 7.

23. *See* Unterman Interview, *supra* note 2.

24. *See* COOK CNTY. COMM’N, *supra* note 19, at 4.

25. Unterman Interview, *supra* note 2.

26. *See id.*

money for therapeutic services to help offset these costs.²⁷ The Governor’s Office for Children and Families created a system of care that is funded with this money through multiple state agencies.²⁸ But there is no guarantee this funding can continue, so there remains no long-term solution for Georgia when it comes to caring for and rehabilitating this growing population of abused children.²⁹ Therefore, Georgia needs a long term funding solution that does not draw solely from taxpayer dollars.

Bill Tracking of SB 8 and SR 7

Consideration and Passage by the Senate

SB 8

Senators Renee Unterman (R-45th), Gloria S. Butler (D-55th), Butch Miller (R-49th), and Judson Hill (R-32nd) sponsored Senate Bill (SB) 8 and Senate Resolution (SR) 7 in the Senate.³⁰ The bill was first read on the Senate floor on January 14, 2015.³¹ President Pro Tempore David Shafer (R-48th) assigned the bill to the Senate Judiciary Non-Civil Committee, and the Committee favorably reported it by substitute on February 10, 2015.³² The substitute provided additions to the definition of “childhood sexual abuse” for the purpose of revising the limitations on civil actions for childhood sexual abuse.³³ The substitute added an article to create the Safe Harbor for Sexually Exploited Children Fund and the Safe Harbor for Sexually Exploited Children Fund Commission.³⁴ Additionally, the substitute modified provisions for forfeiture proceedings in relation to pimping,³⁵ expanded specifications for the State Sexual Offender

27. *Id.*

28. *Id.*

29. *Id.*

30. Georgia General Assembly, SB 8, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/8>; Georgia General Assembly, SR 7, Resolution Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SR/7/>.

31. State of Georgia Final Composite Status Sheet, SB 8, May 14, 2015.

32. *Id.*

33. SB 8 (SCS) § 2-2, p. 3–4, ln. 67–115, 2015 Ga. Gen. Assem.; *id.* § 2-3 p. 4–5, ln. 120, 124–31, 132; *id.* § 2-4, p. 5, ln. 145.

34. *Id.* § 3-1, p. 5–10, ln. 152–316, 323–24.

35. *Id.* § 4-1, p. 10–11, ln. 331–37, 339, 340, 341; *id.* § 4-2, p. 11, ln. 346–51.

Registry,³⁶ and proposed that the Department of Human Services provide services to sexually exploited children.³⁷ The bill was read for the second time on February 11, 2015, and then for the third time on February 12, 2015.³⁸ One floor amendment added findings that a correlation exists between adult live entertainment establishments and sexual exploitation.³⁹ The Senate passed the Committee substitute with the floor amendment on February 12, 2015, by a vote of 52 to 3.⁴⁰

SR 7

SR 7 was first read on the Senate floor on January 14, 2015.⁴¹ SR 7 was referred to the Judiciary Non-Civil Committee and on February 10, 2015,⁴² the Senate Committee offered a substitute to amend the Constitution to empower the General Assembly to create penalties and fees for those adjudged guilty of prostitution and other forms of sexual exploitation.⁴³ There was one floor amendment that revised the wording of the resolution; the Senate subsequently agreed to the amendment.⁴⁴ The resolution was read on the Senate floor for a second time on February 11, 2015, then for a third time on February 12, 2015.⁴⁵ The Senate passed the substitute to SR 7 on February 12, 2015, by a vote of 53 to 3.⁴⁶

Consideration and Passage by the House

SB 8

Representative Tom Weldon (R-3rd) sponsored SB 8 and SR 7 in the House.⁴⁷ The House read the bill for the first time on the House

36. *Id.* § 4-3, p. 11–12, ln. 358–59, 384, 389–420.

37. *Id.* § 4-4, p. 13–14, ln. 425–46.

38. State of Georgia Final Composite Status Sheet, SB 8, May 14, 2015.

39. SB 8 (SCSFA), p. 1, ln. 5–9, 2015 Ga. Gen. Assem.

40. Georgia Senate Voting Record, SB 8 (Feb. 12, 2015).

41. State of Georgia Final Composite Status Sheet, SR 7, May 14, 2015.

42. *Id.*

43. SR 7 (SCS), § 1, p. 1–2, ln. 16–47, 2015 Ga. Gen. Assem.

44. SR 7 (SCSFA), § 1, p. 1, ln. 23–24, 2015 Ga. Gen. Assem.

45. State of Georgia Final Composite Status Sheet, SR 7, May 14, 2015.

46. Georgia Senate Voting Record, SR 7 (Feb. 12, 2015).

47. Georgia General Assembly, SB 8, Bill Tracking, <http://www.legis.ga.gov/legislation/en->

floor on February 17, 2015.⁴⁸ The bill was read for the second time on February 18, 2015.⁴⁹ SB 8 was referred to the House Juvenile Justice Committee, which favorably reported the bill by substitute on March 25, 2015.⁵⁰ The substitute acknowledged, similar to many other state and local governments, there are secondary effects of sexual exploitation on children in connection with adult entertainment establishments that allow the sale, consumption, and possession of alcohol.⁵¹ Notably, the Committee clarified the meaning of the word “assessments” regarding establishments that may be subject to assessments for violations of sexual crimes, not to be construed as a “fee.”⁵² The substitute revised the affirmative defenses to certain sexual crimes,⁵³ added a paragraph to the section related to the State Sexual Offender Registry,⁵⁴ and provided amendments or entirely repealed sections regarding forfeiture proceedings in relation to pimping.⁵⁵

The bill was read for a third time and passed on March 31, 2015,⁵⁶ and the House passed the substitute by a vote of 150 to 22.⁵⁷ The Senate agreed to the House Substitute by a vote of 50 to 2 on April 2, 2015.⁵⁸ SB 8 was sent to Governor Nathan Deal (R) on April 9, 2015, and he signed the bill on May 5, 2015.⁵⁹

SR 7

SR 7 was first read in the House on February 17, 2015, and again on February 18, 2015.⁶⁰ The resolution was referred to the House Juvenile Justice Committee, which favorably reported the Resolution

US/Display/20152016/SB/8; Georgia General Assembly, SR 7, Resolution Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SR/7/>.

48. State of Georgia Final Composite Status Sheet, SB 8, May 14, 2015.

49. *Id.*

50. *Id.*

51. See SB 8 (HCS) § 3-1, p. 5–6, ln. 161–67, 2015 Ga. Gen. Assem.

52. *Id.* § 3-1, p. 5–6, ln. 161–67.

53. *Id.* § 4-1, p. 11, ln. 337–45.

54. *Id.* § 4-2, p. 12–13, ln. 382–416.

55. *Id.* § 5A-2, p. 14, ln. 464–69; *id.* § 5B-2, p. 15, ln. 487–97.

56. State of Georgia Final Composite Status Sheet, SB 8, May 14, 2015.

57. Georgia House of Representatives Voting Record, SB 8 (Mar. 31, 2015).

58. Georgia Senate Voting Record, SB 8 (Apr. 2, 2015).

59. State of Georgia Final Composite Status Sheet, SB 8, May 14, 2015.

60. State of Georgia Final Composite Status Sheet, SR 7, May 14, 2015.

by substitute on March 25, 2015,⁶¹ offering stylistic and word changes.⁶² SR 7 was read for a third time, and the House adopted the substitute on March 31, 2015,⁶³ by a vote of 151 to 18.⁶⁴ The Senate agreed to the House amendment on April 2, 2015, by a vote of 46 to 3.⁶⁵ The resolution was sent to the Governor on April 9, 2015, and he signed it on May 12, 2015.⁶⁶

SB 8: The Act

The Act amends the following portions of the Official Code of Georgia Annotated: Article 2 of Chapter 3 of Title 9 relating to specific periods of limitations for civil actions; Article 2 of Chapter 6 of Title 15 relating to priorities of distributions of fines, bond forfeitures, surcharges, additional fees, and costs in cases of partial payments into the courts; Chapter 21 of Title 15 relating to payment and disposition of fines and forfeitures; Chapter 6 of Title 16 relating to sexual offenses; Article 2 of Chapter 1 of Title 42 relating to the State Sexual Offender Registry; and Article 1 of Chapter 5 of Title 49 relating to children and youth services.⁶⁷ The Act is entitled the “Safe Harbor/Rachel’s Law Act.”⁶⁸ The Act’s overall purpose is to protect children from greater victimization by increasing protection and providing greater resources for children who have been sexually exploited.⁶⁹

Part II of the Act addresses legal procedures pertaining to causes of action for victims in two ways.⁷⁰ First, it clarifies the term “childhood sexual abuse”⁷¹ and extends the limitations for civil actions on the recovery of damages resulting from childhood sexual abuse committed before July 1, 2015, to “on or before the date the

61. *Id.*

62. SR 7 (HCS) § 1, p. 1–2, ln. 16–30, 2015 Ga. Gen. Assem.

63. State of Georgia Final Composite Status Sheet, SR 7, May 14, 2015.

64. Georgia House of Representatives Voting Record, SR 7 (Mar. 31, 2015).

65. Georgia Senate Voting Record, SR 7 (Apr. 2, 2015).

66. State of Georgia Final Composite Status Sheet, SR 7, May 14, 2015.

67. 2015 Ga. Laws 675, at 675–76.

68. 2015 Ga. Laws 675, § 1-1, at 676.

69. *Id.* at 677.

70. 2015 Ga. Laws 675, §§ 2-1–2-4, at 677–79.

71. O.C.G.A. § 9-3-33.1(a)(1) (Supp. 2015).

plaintiff attains the age of 23.”⁷² Second, it amends the period in which the plaintiff can bring a claim, providing that persons under the age of eighteen at the time the action accrues will be afforded the same time given to other persons after he or she reached age eighteen to bring a claim.⁷³

Part III of the Act adds several Code sections. Section 15-21-202 establishes the “Safe Harbor for Sexually Exploited Children Fund” (the Fund) as a separate fund in the state treasury for providing care, rehabilitative services, residential housing, and other provisions for sexually exploited children.⁷⁴ Additionally, Code section 15-21-202 creates the “Safe Harbor for Sexually Exploited Children Fund Commission” (the Commission) to maintain and oversee the disbursement of funds.⁷⁵ Code sections 15-21-203 through 15-21-209 outline the Commission’s composition⁷⁶ and powers.⁷⁷ Aside from the Commission’s actions, Code section 15-21-208 provides additional revenue for the Fund by permitting the imposition of additional fines for a sex trafficking conviction and directing said fines to the Fund.⁷⁸

Finally, Part III imposes a yearly fee and uniform assessments and regulations on certain adult entertainment establishments that serve alcohol on the premises.⁷⁹ In enumerating the purpose of the Act in Section 1, the General Assembly asserts that uniform assessments and regulations are necessary to “address the deleterious secondary effects” associated with child prostitution in connection with adult entertainment facilities that serve alcohol on premises.⁸⁰ The General

72. O.C.G.A. § 9-3-33.1(a)(2) (Supp. 2015).

73. O.C.G.A. § 9-3-90 (2007 & Supp. 2015). The Section also amends O.C.G.A. § 9-3-99 for the period of limitations for tort actions while criminal prosecution is pending. O.C.G.A. § 9-3-99 (Supp. 2015).

74. O.C.G.A. § 15-21-202 (2015).

75. O.C.G.A. § 15-31-202(a) (2015).

76. O.C.G.A. § 15-21-203 (2015) (delineating member qualifications, terms, and otherwise); O.C.G.A. § 15-21-204 (2015) (addressing compensation); O.C.G.A. § 15-21-205 (2015) (listing duties of commission members).

77. O.C.G.A. § 15-21-206 (2015) (empowering the commission to make recommendations to the Governor and General Assembly about changes to state programs, laws, and otherwise to further the purpose of the fund); O.C.G.A. § 15-2-207 (2015) (guiding the acceptance, solicitation, and placement of funds).

78. O.C.G.A. § 15-21-208 (2015).

79. O.C.G.A. § 15-21-209 (2015).

80. 2015 Ga. Laws 675, § 1-2, at 676–77.

Assembly specifically recognizes a correlation between such adult facilities and the sexual exploitation of children.⁸¹ In further justification for its actions, the Act points to other local governments that found the adult entertainment industry to enable child prostitution and sexual exploitation by providing access to, and a location for, those seeking to sexually exploit children; these deleterious effects “are exacerbated by the sale, possession, or consumption of alcohol in [adult industry] establishments.”⁸² To address any Constitutional issues regarding the assessments imposed on the live adult entertainment industry, the Act specifically states its purpose is not to restrict reasonable access to any materials or performances.⁸³

Part IV of the Act amends Code sections relating to crimes and offenses.⁸⁴ The Act specifically excuses child victims of sexual exploitation from prosecution under the same Code section.⁸⁵ The Act also revises the meaning of “dangerous sexual offense” in relation to the State Sexual Offender Registry, adding a list of offenses related to the victimization of children.⁸⁶ Furthermore, this Part provides counseling and other services for victims of sexual trafficking.⁸⁷ Among other findings, Part IV is based on the General Assembly’s conclusions that sexually exploited children should be treated as victims and are deserving of child welfare services including family support and counseling.⁸⁸ After a child is considered

81. *Id.* at 677.

82. *Id.*

83. *Id.* Specifically, materials and performances that are protected by the First Amendment of the Constitution of the United States and Article I Section I, Paragraph V of the Constitution of Georgia. *Id.*

84. 2015 Ga. Laws 675, § 4-1, at 684. Part IV amends Code sections 16-3-6, 42-1-12, and 49-5-8. 2015 Ga. Laws 675, §§ 4-1–4-3, at 684–86.

85. O.C.G.A. § 16-3-6(b) (2011 & Supp. 2015) states:

A person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed by an accused who was: (1) Less than 18 years of age at the time of the conduct such person was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46; or (2) Acting under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.

86. O.C.G.A. § 42-1-12(a)(10)(B.1) (Supp. 2015).

87. O.C.G.A. § 49-5-8(d) (Supp. 2015).

88. 2015 Ga. Laws 675, § 1-2, at 676.

a sexually exploited, the Act provides protection against further victimization.⁸⁹

Parts VA and VB amend Code sections relating to the forfeiture and seizure of property involving pimping and pandering and the proceeds from such forfeiture or seizure.⁹⁰

SR 7: The Resolution

The Resolution amends Article III, Section IX, Paragraph VI of the Georgia Constitution to provide a general law from which the General Assembly may be empowered to impose penalties for offenses related to sex trafficking or the sexual exploitation of children, execute duties related to the Fund, provide counseling and rehabilitation, and for other purposes in connection with the Act.⁹¹

Analysis

Both the Act and Resolution are part of a collective effort by law enforcement, prosecutors, and members of Georgia’s General Assembly to address sex trafficking of minors in Georgia.⁹² This approach is multifaceted. The Act protects sexually exploited minors from further victimization by ensuring that a protective response is in place.⁹³ The Resolution ensures such responses are capable of implementation by imposing additional penalties for offenses closely related to sex trafficking of minors, and ensuring these penalties are allocated into the Fund.⁹⁴

Constitutional Issues

By imposing “assessments” on adult entertainment businesses, outlined in the new Code section 15-21-209, the Act creates a potential First Amendment issue.⁹⁵ Specifically, the Act may be

89. *Id.* at 677.

90. 2015 Ga. Laws 675, §§ 5A-1–5B-2, at 687–88.

91. 2015 Ga. Laws 1497, § 1, at 1497–98.

92. Unterman Interview, *supra* note 2.

93. *See* 2015 Ga. Laws 675, § 1-2, at 675–77.

94. *See* 2015 Ga. Laws 1497, § 1, 1497–98.

95. *See* O.C.G.A. § 15-21-209 (2015).

construed to restrict the industry's ability to provide entertainment and directly inhibit their right to expression under the First Amendment of the U.S. Constitution.⁹⁶ To address this concern, Section 1-2 of the Act explicitly states:

The purpose and intended effect of this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution or Article I, Section I, Paragraph V of the Constitution of this state.⁹⁷

Furthermore, the Act is careful to analogize the yearly fee with taxes, instructing the commissioner of revenue to collect the assessments "in the same manner as taxes" so that the assessments do not manifest as a further imposition or penalty, but merely as a duty akin to paying taxes.⁹⁸ The Resolution further eliminates constitutional concerns by proposing to amend the Georgia Constitution to explicitly authorize the General Assembly to impose assessments on the adult entertainment industry.⁹⁹

Comparing SB 8 and SR 7 to Other Sex Trafficking Laws

The Polaris Project (Polaris) is a non-profit organization focused on eliminating sex trafficking.¹⁰⁰ One of Polaris's primary projects is to document the evolution, substance, and implementation of state sex trafficking laws on a state-by-state basis.¹⁰¹ Polaris even provides a model provision for comprehensive state legislation to combat human trafficking and encourage state legislatures to expand their sex trafficking policies.¹⁰² Based on the *2014 State Ratings on*

96. Video Recording of House Juvenile Justice Committee Meeting, Mar. 23, 2015 at 29 min., (remarks by Rep. Dexter Sharper (D-177th)) http://media.legis.ga.gov/hav/15_16/2015/committees/just/just032315EDITED.wmv [hereinafter House Video].

97. 2015 Ga. Laws 675, § 1-2, at 677.

98. O.C.G.A. § 15-21-209(d) (2015).

99. 2015 Ga. Laws 1497, § 1, at 1497.

100. *About*, POLARIS PROJECT, <http://www.polarisproject.org/about-us/overview> (last visited Sept. 16, 2015).

101. *See id.*

102. *Model Provisions of Comprehensive State Legislation to Combat Human Trafficking*, POLARIS PROJECT (Aug. 2010), http://www.polarisproject.org/storage/documents/Final_Comprehensive_ModelLaw__8_2010.pdf.

Human Trafficking Laws Report (2014 Report), all fifty states currently have some form of a sex trafficking statute.¹⁰³ But the statutes' comprehensiveness, the states' implementation of the statute, and the severity of penalties range drastically.¹⁰⁴ Polaris assesses state statutes using ten categories.¹⁰⁵ Each category is a critical component to the legal framework for combatting sex trafficking.¹⁰⁶ Only three states meet all ten categories: Delaware, Washington, and New Jersey.¹⁰⁷ Georgia legislation is among the thirty-nine states that Polaris considers “top tier”—the legislation meets seven or more categories.¹⁰⁸

In establishing the Act, Georgia is one of twenty-two states to have a “safe harbor” statutory provision.¹⁰⁹ Polaris defines a safe harbor provision to be a statutory recognition that sexually exploited children are victims of crime by either providing immunity or diversion services for the child.¹¹⁰ For example, Washington's statute provides that a minor arrested for prostitution is presumed to be a victim.¹¹¹ While Georgia's safe harbor provision does not provide an explicit presumption that a minor is a victim of trafficking, it does state that a minor accused of a sex crime will be found not guilty if established that she is a victim of human trafficking.¹¹²

The Act also empowers the Department of Human Resources to plan, coordinate, and develop access to rehabilitation programs and access for victims of sex trafficking, although at a much lower level

103. *2014 State Ratings on Human Trafficking Laws*, POLARIS PROJECT, http://www.polarisproject.org/storage/2014SRM_pamphlet_download.pdf (last visited Sept. 17, 2015) [hereinafter *2014 State Ratings PDF*].

104. *See id.* (listing the strength of state legislation to combat human trafficking, with scores ranging from 4 to 12).

105. *2014 State Ratings on Human Trafficking Laws Report*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws> (last visited Sept. 17, 2015) [hereinafter *2014 State Ratings Summary*].

106. *See id.* These ten categories include: sex trafficking provisions, labor trafficking provision, asset forfeiture and/or investigative tools, training and/or human trafficking task force, lower burden of proof for sex trafficking of minors, posting human trafficking hotline, safe harbor provisions, victim assistance, access to civil damages, and vacating convictions for victims of sex trafficking. *Id.*

107. *2014 State Ratings PDF*, *supra* note 103.

108. *Id.*

109. *Id.*

110. *Sex Trafficking of Minors and “Safe Harbor,”* POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/safe-harbor> (last visited Sept. 17, 2015).

111. WASH. REV. CODE. ANN. § 13.40.219 (West, Westlaw through 2015).

112. O.C.G.A. § 16-3-6(b) (2011 & Supp. 2015).

than many other states.¹¹³ These rehabilitation services include psychological counseling and vocational training.¹¹⁴ In comparison, Louisiana's statute concerning sex trafficking of minors includes a requirement that the Department of Public Safety and Corrections create safe houses in geographically appropriate areas across the state for minors who are victims of human trafficking.¹¹⁵ Although the Act may provide fewer services in comparison to Louisiana, the Resolution reinforces the General Assembly's power to impose additional penalties on individuals guilty of sex crimes.¹¹⁶ By channeling these penalties to the Fund, the Resolution punishes offenders and provides help at the same time, whereas other state statutes only provide for sexually exploited youth from the state budget without further punishing the offenders.¹¹⁷

The Act is unique in one aspect—the annual assessment imposed on adult entertainment businesses.¹¹⁸ California, among other states, does require adult entertainment facilities to display public awareness signs and fines businesses if they fail to display notices.¹¹⁹ In a sense, the assessment serves similar purpose to the notices—a warning to the adult entertainment industry. The Act has no condition precedent for the assessment.¹²⁰ Rather, it is mandatory for all adult entertainment businesses.¹²¹ These assessments are then directed into the Fund for the Department of Human Resources to use for rehabilitative services.¹²² Accordingly, the Act may be weaker in terms of the services it provides, but it is also one of the most stringent statutes given its effect on the adult entertainment industry.

113. See Unterman Interview, *supra* note 2; 2014 State Ratings PDF, *supra* note 103.

114. Unterman Interview, *supra* note 2.

115. LA. CHILD. CODE ANN. art. 725.2 (West, Westlaw through 2015).

116. 2015 Ga. Laws 1497, § 1, at 1497.

117. Compare *id.* at 1497–98, with LA. CHILD. CODE ANN. art. 725.2 (West, Westlaw through 2015).

118. O.C.G.A. § 15-21-209 (2015).

119. CAL. CIV. CODE. § 52.6(a), (e) (West, Westlaw through 2015).

120. See O.C.G.A. § 15-21-209 (2015).

121. *Id.* (declaring that each adult entertainment business “shall” pay).

122. O.C.G.A. § 15-21-209(c) (2015).

Comparing the Safe Harbor for Sexually Exploited Children Fund with Other Georgia Funds

Part of the state budget was recently appropriated to fund care and rehabilitative services for minor victims of sex trafficking, but there was no guarantee of renewal the following year.¹²³ If these social and rehabilitative services are to be effective, it is imperative that the funding not lapse.¹²⁴ Therefore, the General Assembly approved the Fund.¹²⁵

The Fund is modeled closely after Georgia’s Brain and Spinal Injury Trust Fund (Brain and Spinal Fund).¹²⁶ This was purposefully done due to the unprecedented success of the Brain and Spinal Fund.¹²⁷ Both funds help pay for the rehabilitation of victims by targeting those criminal offenders responsible for the injury.¹²⁸ The Brain and Spinal Fund “provid[es] care and rehabilitative services to citizens of [Georgia] who have survived neurotrauma with head or spinal cord injuries” because a vast majority of these injuries are a result of traumatic car accidents.¹²⁹ Similarly, the Fund “provid[es] care and rehabilitative and social services to individuals in this state who have been or may be sexually exploited.”¹³⁰ Unlike budget appropriations, funds placed in the Fund do not lapse.¹³¹

Both funds are also supported by court fees and increased criminal fines. The Brain and Spinal Injury Trust Fund is maintained with “additional penalties or fees in any case in any court in [Georgia] in which a person is adjudged guilty of an offense involving driving under the influence of alcohol or drugs or reckless driving.”¹³² This is similar to the Safe Harbor for Sexually Exploited Children Fund, which, in addition to the adult entertainment assessment, is supported with additional penalties for the offenses “of keeping a place of prostitution, pimping, pandering, pandering by compulsion,

123. Unterman Interview, *supra* note 2.

124. *Id.*

125. *See id.*

126. *Id.*

127. *Id.*

128. *See* GA. CONST. art. III, § 9, para. 6(k); 2015 Ga. Laws 1497, § 1, at 1497–98.

129. GA. CONST. art. III, § 9, para. 6(k); Unterman Interview, *supra* note 2.

130. *See* GA. CONST. art. III, § 9, para. 6(k); 2015 Ga. Laws 1497, § 1, at 1498.

131. 2015 Ga. Laws 1497, at 1497.

132. GA. CONST. art. III, § 9, para. 6(k).

solicitation of sodomy, masturbation for hire, trafficking of persons for sexual servitude, or sexual exploitation of children.”¹³³

Public Policy Concerns

Some legislators expressed concerns related to the Act, particularly regarding the assessment on adult entertainment businesses and the safe harbor provision.¹³⁴ One public policy concern with the annual assessment on adult entertainment businesses is that its cost will primarily be passed on to the dancers.¹³⁵ These dancers, who are often single mothers struggling financially, have to pay a stage fee each night for the opportunity to perform.¹³⁶ Some legislators are worried that when the annual assessment goes into effect, these businesses will simply increase their stage fee to offset the loss.¹³⁷ Others are concerned that it is simply not fair to target a particular industry in this way.¹³⁸

The response to this concern is twofold. First, proponents of the Act analogize the assessment with an impact fee.¹³⁹ Impact fees are targeted fees imposed by local governments to pay for a proportionate share of the costs incurred of public services or utilities.¹⁴⁰ Common impact fees are fees for water, sewer, storm drainage, and even roof run off.¹⁴¹ The Act’s proponents say the assessment pays for the protective response and rehabilitation of sex trafficking victims that is increased in communities where these businesses operate.¹⁴² Also, the assessment forces these businesses to give back to the community.¹⁴³ Other businesses voluntarily put money back into their community, whether sponsoring softball teams

133. 2015 Ga. Laws 1497, § 1, at 1497.

134. *See, e.g.*, House Video, *supra* note 96.

135. *Id.*

136. *Id.*

137. *Id.*

138. Unterman Interview, *supra* note 2.

139. *Id.*

140. GA. DEP’T OF CMTY. AFFAIRS, OFFICE OF PLANNING AND QUALITY GROWTH, HOW TO ADDRESS GEORGIA’S IMPACT FEE REQUIREMENTS 2, (last updated Apr. 2008) *available at* http://www.dca.state.ga.us/development/PlanningQualityGrowth/programs/documents/2009CIEGuide_00.pdf.

141. Unterman Interview, *supra* note 2.

142. *Id.*

143. *Id.*

or supporting local charities.¹⁴⁴ However, adult entertainment businesses are often not as involved in the community as more traditional brick and mortar establishments.¹⁴⁵ Thus, the assessment forces adult businesses to give more back to their respective communities.¹⁴⁶

The primary concern with the safe harbor provision is that it will create a loophole for sex traffickers if they are under the age of nineteen.¹⁴⁷ Legislators were concerned that sixteen to eighteen-year-old traffickers may avoid prosecution by falling within the safe harbor provision.¹⁴⁸ Because of this concern, the safe harbor, which had originally been set at eighteen years of age, had to be reduced to sixteen years of age before the Senate would pass the Bill.¹⁴⁹

However, the House understood that the safe harbor only applied to trafficking victims, not all individuals involved in trafficking.¹⁵⁰ After over ten hours of testimony in the House, which included testimony from Prosecuting Attorney's Counsel explaining how the safe harbor operated, the safe harbor was restored to its original scope of eighteen years of age.¹⁵¹ The testimony was centered on the fact that a trafficker cannot take advantage of the safe harbor.¹⁵² The safe harbor applies only to trafficking victims; it is not a blanket immunity provision for all minors committing sex crimes.¹⁵³

Harry M. Rowland III & Christine H. Lee

144. *See id.*

145. *Id.*

146. *Id.*

147. House Video, *supra* note 96, at 46 min. (remarks by Rep. Chuck Efstoration (R-104th)).

148. *Id.* (asking about a case in Gwinnett County where a seventeen-year-old was running a prostitution ring).

149. Compare SB 8, as introduced, § 4-1, p. 9, ln. 267–71, 2015 Ga. Gen. Assem., with O.C.G.A. § 16-3-6(b) (2011 & Supp. 2015); see Unterman Interview, *supra* note 2.

150. Unterman Interview, *supra* note 2.

151. O.C.G.A. § 16-3-6(b) (2011 & Supp. 2015); see also Unterman Interview, *supra* note 2.

152. Unterman Interview, *supra* note 2.

153. *See id.*