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HOUSE AMENDMENTS AMENDED

March 10, 2020

**S. 194**

Introduced by Senators Shealy and Senn

S. Printed 3/10/20--S. [SEC 3/11/20 11:20 AM]

Read the first time January 8, 2019.

**A** **BILL**

TO AMEND SECTIONS 16-15-90 AND 16-15-100, RELATING TO PROSTITUTION, TO INCREASE THE PENALTIES FOR SOLICITATION OF PROSTITUTION, ESTABLISHING OR KEEPING A BROTHEL OR HOUSE OF PROSTITUTION, OR CAUSING OR INDUCING ANOTHER TO PARTICIPATE IN PROSTITUTION; TO ESTABLISH THE AFFIRMATIVE DEFENSE OF BEING A VICTIM OF HUMAN TRAFFICKING; AND TO INCREASE THE PENALTIES FOR SOLICITING, CAUSING, OR INDUCING ANOTHER FOR OR INTO PROSTITUTION WHEN THE PROSTITUTE HAS A MENTAL DISABILITY.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16-15-90 of the 1976 Code is amended to read:

“Section 16-15-90. (A) It shall be unlawful to:

(1) ~~Engage~~ engage in prostitution or offer oneself for the purpose of prostitution; or

(2) ~~Aid or abet prostitution knowingly;~~

~~(3)~~ ~~Procure or solicit for the purpose of prostitution;~~

~~(4)~~ ~~Expose~~ expose indecently the private person for the purpose of prostitution or other indecency~~;~~

~~(5)~~ ~~Reside in, enter or remain in any place, structure, building, vehicle, trailer or conveyance for the purpose of lewdness, assignation or prostitution;~~

~~(6)~~ ~~Keep or set up a house of ill fame, brothel or bawdyhouse;~~

~~(7)~~ ~~Receive any person for purposes of lewdness, assignation or prostitution into any vehicle, conveyance, trailer, place, structure or building;~~

~~(8)~~ ~~Permit any person to remain for the purpose of lewdness, assignation or prostitution in any vehicle, conveyance, trailer, place, structure or building;~~

~~(9)~~ ~~Direct, take or transport, offer or agree to take or transport or aid or assist in transporting any person to any vehicle, conveyance, trailer, place, structure or building or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;~~

~~(10) Lease or rent or contract to lease or rent any vehicle, conveyance, trailer, place, structure or building or part thereof believing or having reasonable cause to believe that it is intended to be used for any of the purposes herein prohibited; or~~

~~(11)~~ ~~Aid, abet, or participate knowingly in the doing of any of the acts herein prohibited~~.

(B) A person who violates this section is guilty of a misdemeanor and, upon conviction:

(1) for a first offense, must be fined not more than two hundred dollars or imprisoned not more than thirty days, or both;

(2) for a second offense, must be fined not more than one thousand dollars or imprisoned not more than six months, or both;

(3) for a third or subsequent offense, must be fined not more than three thousand dollars or imprisoned not more than one year, or both.

(C) It is an affirmative defense to a prosecution for a violation of this section subject to the requirements of Section 16-3-2020(F),that, during the commission of the offense, the defendant was a victim of trafficking in persons as defined by Section 16-3-2010(9).

(D) Notwithstanding the other provisions of this section, a minor under the age of eighteen at the time of the incident may not be prosecuted pursuant to this section.”

SECTION 2. Section 16-15-100 of the 1976 Code is amended to read:

“Section 16-15-100. (A) It shall ~~further~~ be unlawful to:

(1) procure or solicit a person for the purpose of prostitution;

~~(1)~~(2) ~~Procure~~ procure a ~~female~~ person to be an inmate for a house of prostitution;

~~(2)~~(3) ~~Cause~~ cause, induce, persuade, or encourage by promise~~, threat, violence, or by any scheme or device~~ a ~~female~~ person to become a prostitute or to remain an inmate of a house of prostitution;

~~(3)~~(4) ~~Induce~~ induce, persuade, or encourage a ~~female~~ person to come into or leave this State for the purpose of prostitution or to become an inmate in a house of prostitution;

~~(4)~~(5) ~~Receive~~ receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure ~~any female~~ a person to become a prostitute or an inmate in a house of prostitution;

~~(5)~~(6) ~~Accept~~ accept or receive knowingly any money or other thing of value without consideration from a prostitute; ~~or~~

(7) reside in, enter, or remain in a place, structure, building, vehicle, trailer, or conveyance for the purpose of lewdness, assignation, or prostitution;

(8) keep or set up a house of ill fame, brothel, or bawdyhouse;

(9) receive a person for purposes of lewdness, assignation, or prostitution into a vehicle, conveyance, trailer, place, structure, or building;

(10) permit a person to remain for the purpose of lewdness, assignation, or prostitution in a vehicle, conveyance, trailer, place, structure, or building;

(11) direct, take, or transport, offer or agree to take or transport, or aid or assist in transporting a person to a vehicle, conveyance, trailer, place, structure, or building, or to another person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;

(12) lease, rent, or contract to lease or rent a vehicle, conveyance, trailer, place, structure, building, or part thereof believing or having reasonable cause to believe that it is intended to be used for any of the purposes herein prohibited; or

~~(6)~~(13) ~~Aid~~ knowingly aid, abet, or participate ~~knowingly~~ in the doing of any of the acts ~~herein~~ prohibited in this section.

(B)(1) A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction:

(a) for a first offense, must be fined not less than two hundred fifty dollars and not more than one thousand dollars or imprisoned not more than thirty days, or both. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, a first offense charged for this item may be tried in magistrate or municipal court;

(b) for a second offense, must be fined not less than five hundred dollars and not more than three thousand dollars or imprisoned not more than six months, or both;

(c) for a third or subsequent offense, must be fined not less than one thousand five hundred dollars and not more than five thousand dollars or imprisoned not more than one year, or both.

(2) A person who violates a provision of this section where the prostitute has been adjudicated or meets the definition to be found severely or profoundly mentally disabled beyond a reasonable doubt, is guilty of a felony and, upon conviction, must be fined not less than one thousand five hundred dollars and not more than five thousand dollars or imprisoned not more than two years, or both.”

SECTION 3. Section 16-15-110 of the 1976 Code is repealed.

SECTION 4. A. Section 16‑3‑2010(7) of the 1976 Code, as last amended by Act 238 of 2018, is further amended to read:

“(7) ‘Sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by any person:

(a) criminal sexual conduct pursuant to Section 16‑3‑651;

(b) criminal sexual conduct in the first degree pursuant to Section 16‑3‑652;

(c) criminal sexual conduct in the second degree pursuant to Section 16‑3‑653;

(d) criminal sexual conduct in the third degree pursuant to Section 16‑3‑654;

(e) criminal sexual conduct with a minor pursuant to Section 16‑3‑655;

(f) engaging a child for sexual performance pursuant to Section 16‑3‑810;

(g) producing, directing, or promoting sexual performance by a child pursuant to Section 16‑3‑820;

(h) sexual battery pursuant to Section 16‑3‑651;

(i) sexual conduct pursuant to Section 16‑3‑800; ~~or~~

(j) sexual performance pursuant to Section 16‑3‑800;

(k) sexual exploitation of a minor pursuant to Section 16‑3‑395, 16‑3‑405, or 16‑3‑410; or

(l) promoting or participating in prostitution of a minor pursuant to Section 16‑3‑415 or 16‑3‑425.”

B. Section 16‑3‑2020(A) and (F) of the 1976 Code, as last amended by Act 238 of 2018, is further amended to read:

“(A) A person is guilty of trafficking in persons if he:

(1) recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to, or for the purposes of, sex trafficking, forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons;

(2) aids, abets, or conspires with another person to violate the criminal provisions of this section; or

(3) knowingly gives, agrees to give, or offers to give anything of value so that any person may engage in commercial sexual activity with another person when he knows that the other person is a victim of trafficking in persons.

(F) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, trafficking. A victim of trafficking in persons convicted, or adjudicated delinquent, of a violation of this article or prostitution may motion the court to vacate the conviction and expunge the record of the conviction. The court may grant the motion on a finding that the person’s participation in the offense was a direct result of being a victim.”

C. Section 17‑30‑70 of the 1976 Code is amended to read:

“Section 17‑30‑70. (A) An application for an order authorizing or approving the interception of wire, oral, or electronic communications must be initiated by the Chief of SLED. After reviewing the application, the Attorney General or his designated Assistant Attorney General may authorize the submission of the application to a judge of competent jurisdiction for, and the judge may grant in conformity with this chapter, an order authorizing or approving the interception of wire, oral, or electronic communications by:

(1) the South Carolina Law Enforcement Division for the investigation of the offense as to which the application is made when the interception may provide or has provided evidence of the commission of the offenses of murder (Section 16‑3‑10); assault and battery with intent to kill (Section 16‑3‑620); kidnapping (Section 16‑3‑910); voluntary manslaughter (Section 16‑3‑50); armed robbery (Section 16‑11‑330(A)); attempted armed robbery (Section 16‑11‑330(B)); drug trafficking as defined in Sections 44‑53‑370(e) and 44‑53‑375(C); arson in the first degree (Section 16‑11‑110(A)); arson in the second degree (Section 16‑11‑110(B)); trafficking in persons (Article 19, Chapter 3, Title 16); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); or attempt to commit any of the above offenses (Section 16‑1‑80). This interception may also be authorized when it may provide or has provided evidence of any conspiracy or solicitation to commit any violation of the offenses specified in this subsection;

(2) the South Carolina Law Enforcement Division for the investigation of the offense as to which the application is made when the interception may provide or has provided evidence of the commission of any offense related to terrorism or the commission of a terrorist act, any offense related to bombs, destructive devices, bacteriological and biological weapons, and weapons of mass destruction as provided for in Article 7, Chapter 23, Title 16 or evidence of any conspiracy or solicitation to commit any crime specifically enumerated in this subsection; or

(3) an individual operating under a contract with the South Carolina Law Enforcement Division for the investigation of an offense listed in subsection (1) or (2). Any interception conducted under this chapter by persons authorized by this subsection must conduct the interception under the direct supervision of an agent or officer of the South Carolina Law Enforcement Division.

(B) Any person authorized to intercept wire, oral, or electronic communications pursuant to this section must have completed training provided by SLED pursuant to Section 17‑30‑145.”

D. Article 19, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑2110. A person acting on behalf of a minor victim of a violation of the provisions of this article may petition the court with jurisdiction over the offense for the appointment of a special advocate or guardian ad litem for the minor victim. The Crime Victim Services Division of the Office of the Attorney General shall coordinate the provision of such special advocate with the court when the court deems a special advocate for the minor victim is warranted. The division shall work with the Human Trafficking Task Force to ensure that the rights of the minor victim are protected pursuant to the provisions of Article 15, Chapter 3 regarding victim and witness services and pursuant to the provisions of Section 16‑3‑2070. The division and the task force also must ensure that any special advocate for a minor victim is trained in handling trafficking in person cases.”

E. Article 19, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑2120. In order to ensure that the appropriate persons are properly trained and prepared to identify and handle cases involving a violation of the provisions of this article, and in accordance with the requirements of Section 16‑3‑2050(E)(7) requiring the Human Trafficking Task Force to develop and provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials, the Criminal Justice Academy, the Prosecution Coordination Commission, and Court Administration are directed to work directly with the task force to ensure that law enforcement officers, prosecutors, and summary, family, and circuit court judges, respectively, are trained to recognize the signs of these offenses and the possible sensitive nature of the offenses including the effect on its victims. Training must be coordinated with the task force who may wish to utilize the expertise of Human Trafficking Acute Crisis Care and Resource Centers which meet criteria developed by the Attorney General through the task force according to the requirements of Section 16‑3‑2020(H). Additionally, training must include, but is not limited to, the protection of minor victims of trafficking in persons and sex trafficking in particular.”

F. Article 19, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑2130. (A) A person commits the offense of promoting travel for prostitution or sex trafficking if he knowingly sells or offers to sell travel services that include travel for the purpose of engaging in prostitution as defined in Section 16‑15‑90 or 16‑15‑100 or sex trafficking as defined in this article. A travel agency or charter tour operator may not:

(1) promote travel for prostitution;

(2) sell, advertise, or otherwise offer to sell travel services:

(a) for the purpose of engaging in prostitution or sex trafficking;

(b) that consist of tourism packages or activities using and offering any illegal sexual act as enticement for tourism; or

(c) that provides or purports to provide access to sex escorts or sexual services.

(B) A person who violates the provisions of this section is guilty of the felony of promoting travel for prostitution or sex trafficking and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

(C) No travel agency or charter tour operator shall engage in selling, advertising, or otherwise offering to sell travel services, tourism packages, or activities that solicit or encourage travel for the purpose of engaging in prostitution or sex trafficking. Upon violation of this section by a travel agency or charter tour operator, the Attorney General may petition the court for an order revoking the articles of incorporation of the travel agency or charter tour operator. The court, as part of a proceeding pursuant this section, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.

(D) There is a rebuttable presumption that a travel agency or charter tour operator using advertisements that include the term ‘sex tours’ or ‘sex travel’ or include depictions of human genitalia is in violation of the provisions of this section.”

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 7. This act takes effect upon approval by the Governor.

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