~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 12, 2021

**S. 230**

Introduced by Senators Shealy, Hutto, Jackson and Gustafson

S. Printed 5/12/21--S.

Read the first time January 12, 2021.

**A** **BILL**

TO AMEND SECTION 16-3-2020(G) OF THE 1976 CODE, RELATING TO TRAFFICKING VICTIMS WHO ARE MINORS, TO PROVIDE THAT MINORS ENGAGED IN COMMERCIAL SEXUAL ACTIVITY OR TRAFFICKING ARE PRESUMED TO BE DOING SO UNDER COERCION OR AS THE RESULT OF A REASONABLE FEAR OF A THREAT, TO PROVIDE FOR AN AFFIRMATIVE DEFENSE OF THESE VICTIMS, AND TO PROVIDE FOR EXPUNGEMENT FOR THESE VICTIMS.

Amend Title To Conform

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

SECTION 1. Section 16-3-2010(7) of the 1976 Code is 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 16-15-395, 16-15-405, or 16-15-410; or

(l) promoting or participating in prostitution of a minor pursuant to Section 16-15-415 or 16-15-425.”

SECTION 2. Sections 16-3-2020(F) and (G) of the 1976 Code are amended to read:

(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 of a violation of this article, ~~or~~ prostitution, or any other non-violent offense may motion the court to vacate the conviction and expunge the record of the conviction for an offense committed as a direct result of, or incidental or related to, trafficking. The court may grant the motion on a finding that the person’s participation was a direct result of being a victim. For purposes of this subsection, nonviolent offense means all offenses not listed in Section 16-1-60.

(G) If the victim was a minor at the time of the offense, the victim of trafficking in persons may not be prosecuted in court ~~or~~ pursuant to this article, for a prostitution offense, or for any other nonviolent offense if it is determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking. For purposes of this subsection, nonviolent offense means all offenses not listed in Section 16-1-60. A person under the age of eighteen who is a victim of trafficking in persons in violation of this title shall not be found in violation of or be the subject of a

delinquency petition if it is determined after investigation that the victim’s conduct was a direct result of, or incidental or related to, trafficking.

SECTION 3. The rights delineated under SECTION 2 of this act shall apply retroactively.

SECTION 4. This act takes effect upon approval by the Governor.

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