**South Carolina General Assembly**

125th Session, 2023-2024

**A213, R238, S142**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Shealy, Gustafson, Goldfinch, Hutto, Jackson, Campsen, McLeod, Setzler and Garrett

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Introduced in the Senate on January 10, 2023

Introduced in the House on March 28, 2023

Last Amended on June 26, 2024

Currently residing in the Senate

Governor's Action: July 2, 2024, Signed

Summary: Trafficking in persons, luring a child

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/30/2022 Senate Prefiled

 11/30/2022 Senate Referred to Committee on **Judiciary**

 1/10/2023 Senate Introduced and read first time (Senate Journal‑page 79)

 1/10/2023 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 79)

 2/2/2023 Senate Referred to Subcommittee: Hutto (ch), Matthews,
 Rice, Senn, Adams

 2/8/2023 Scrivener's error corrected

 2/22/2023 Senate Committee report: Favorable with amendment **Judiciary** (Senate Journal‑page 9)

 2/27/2023 Scrivener's error corrected

 3/9/2023 Senate Committee Amendment Adopted (Senate Journal‑page 14)

 3/9/2023 Senate Amended (Senate Journal‑page 14)

 3/13/2023 Scrivener's error corrected

 3/14/2023 Senate Amended (Senate Journal‑page 18)

 3/15/2023 Scrivener's error corrected

 3/15/2023 Senate Read second time (Senate Journal‑page 24)

 3/15/2023 Senate Roll call Ayes-40 Nays-0 (Senate Journal‑page 24)

 3/16/2023 Senate Read third time and sent to House (Senate Journal‑page 7)

 3/28/2023 House Introduced and read first time (House Journal‑page 35)

 3/28/2023 House Referred to Committee on **Judiciary** (House Journal‑page 35)

 4/23/2024 House Committee report: Favorable with amendment **Judiciary** (House Journal‑page 3)

 4/24/2024 Scrivener's error corrected

 4/25/2024 House Amended (House Journal‑page 10)

 4/25/2024 House Read second time (House Journal‑page 10)

 4/25/2024 House Roll call Yeas-97 Nays-0 (House Journal‑page 12)

 4/25/2024 House Unanimous consent for third reading on next legislative day (House Journal‑page 13)

 4/26/2024 Scrivener's error corrected

 4/27/2024 House Read third time and returned to Senate with amendments (House Journal‑page 2)

 5/8/2024 Senate House amendment amended (Senate Journal‑page 167)

 5/8/2024 Senate Roll call Ayes-45 Nays-0

 5/8/2024 Senate Returned to House with amendments (Senate Journal‑page 167)

 5/9/2024 House Non-concurrence in Senate amendment (House Journal‑page 62)

 5/9/2024 House Roll call Yeas-0 Nays-102 (House Journal‑page 63)

 5/9/2024 Senate Senate insists upon amendment and conference committee appointed Hutto, Gustafson, Adams (Senate Journal‑page 14)

 5/9/2024 House Conference committee appointed Bernstein, Guest, Connell (House Journal‑page 144)

 6/26/2024 House Free conference powers granted

 6/26/2024 House Roll call Yeas-103 Nays-2

 6/26/2024 House Free conference committee appointed Berstien,
 Connell, Guest

 6/26/2024 House Free conference report received and adopted (House Journal‑page 679)

 6/26/2024 House Roll call Yeas-100 Nays-1

 6/26/2024 Senate Free conference powers granted (Senate Journal‑page 19)

 6/26/2024 Senate Free conference committee appointed Hutto, Gustafson, Adams (Senate Journal‑page 19)

 6/26/2024 Senate Roll call Ayes-41 Nays-0 (Senate Journal‑page 19)

 6/26/2024 Senate Roll call Ayes-42 Nays-0 (Senate Journal‑page 30)

 6/26/2024 House Ordered enrolled for ratification

 6/27/2024 Ratified R 238

 7/2/2024 Signed By Governor

 7/17/2024 Effective date 07/02/24

 7/17/2024 Act No. 213

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**VERSIONS OF THIS BILL**

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(A213, R238, S142)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 16‑3‑2010, RELATING TO THE DEFINITION OF “SEX TRAFFICKING”, SO AS TO EXPAND THE DEFINITION TO INCLUDE SEXUAL EXPLOITATION OF A MINOR AND PROMOTING OR PARTICIPATING IN PROSTITUTION OF A MINOR; BY AMENDING SECTION 16‑3‑2020, RELATING TO TRAFFICKING IN PERSONS, PENALTIES, MINOR VICTIMS AND DEFENSES, SO AS TO PROVIDE THAT A TRAFFICKING VICTIM MAY RAISE DURESS AND COERCION AS AN AFFIRMATIVE DEFENSE TO OFFENSES COMMITTED AS A DIRECT RESULT OR INTERRELATED TO TRAFFICKING, TO PROVIDE THAT A TRAFFICKING VICTIM MAY HAVE CERTAIN OFFENSES EXPUNGED IF THE OFFENSES WERE A DIRECT RESULT OR INTERRELATED TO BEING A VICTIM OF TRAFFICKING, AND TO PROVIDE SIMILAR PROVISIONS FOR MINOR TRAFFICKING VICTIMS AND TO REQUIRE THE MINOR TO BE REFERRED TO THE DEPARTMENT OF SOCIAL SERVICES; BY ADDING SECTION 16‑25‑130 SO AS TO ESTABLISH THE ADDRESS CONFIDENTIALITY PROGRAM WITHIN THE ATTORNEY GENERAL’S OFFICE TO PROTECT THE VICTIMS OF DOMESTIC VIOLENCE, HUMAN TRAFFICKING, STALKING, HARASSMENT, AND OTHER SEXUAL OFFENSES; BY AMENDING SECTION 16‑3‑910, RELATING TO KIDNAPPING, SO AS TO ALLOW SENTENCING FOR THE KIDNAPPING OFFENSES WHEN ALSO SENTENCED FOR MURDER; BY ADDING SECTION 16‑15‑340 SO AS TO CREATE THE OFFENSE OF LURING A CHILD AND PROVIDE A PENALTY AND DEFENSES TO PROSECUTION; AND TO PROVIDE THAT CERTAIN PROVISIONS IN THIS ACT ARE RETROACTIVE.

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

Definition

SECTION 1. Section 16‑3‑2010(7) of the S.C. 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;

 (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.

Trafficking in persons, crimes committed by victims

SECTION 2. Section 16‑3‑2020(F) and (G) of the S.C. Code is amended to read:

 (F) In a prosecution or adjudication 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 or adjudication, if the offenses were committed as a direct result of, or interrelated to trafficking. A victim of trafficking in persons convicted or adjudicated delinquent of a violation of this article, prostitution, or any other nonviolent misdemeanor or Class F felony offenses may motion the court to expunge the record of the conviction or adjudication for a nonviolent misdemeanor or Class F felony offense committed as a direct result of, or interrelated to trafficking. The court may grant the motion on a finding by a preponderance of evidence that the person’s participation in the offense was a direct result of or interrelated to being a victim of trafficking. The court may consider any prior rulings made by a court on the petitioners use of the affirmative defense provided in this section. An alleged victim of trafficking who files a motion to expunge the record pursuant to this subsection must file reasonable notice of the motion with the original prosecuting agency for the underlying offense and reasonable notice must be given or attempted to be given to any victims pursuant to the Victim’s Bill of Rights. For purposes of this subsection, nonviolent misdemeanor offense or Class F felony means all offenses listed in Section 16‑1‑20(A)(6), (7), (8), and (9).

 (G) If the victim was a minor under the age of eighteen at the time of the offense, the victim of trafficking in persons may not be prosecuted in court or adjudicated delinquent for a violation of this article, a prostitution offense, or for any other nonviolent misdemeanor or Class F felony offense if it is determined after investigation that the victim committed the offense as a direct result of, or interrelated to trafficking. For purposes of this subsection, nonviolent misdemeanor offense or Class F felony means all offenses listed in Section 16‑1‑20(A)(6), (7), (8), and (9). However, if the victim is still under the age of eighteen, the victim must be referred by law enforcement or the prosecuting agency to the Department of Social Services in accordance with Sections 63‑7‑20, 63‑7‑310, 63‑7‑630, 63‑7‑980 and 63‑11‑2400. The department must assess the referral and proceed according to the provisions in Title 63.

Victim address confidentiality program

SECTION 3. Article 1, Chapter 25, Title 16 of the S.C. Code is amended by adding:

 Section 16‑25‑130. (A) For the purposes of this section:

 (1) “Address” means the residential street address, school address, or work address of an individual, as specified on the application for a program participant under this section.

 (2) “Address confidentiality program” or “program” means the address confidentiality program established by this section.

 (3) “Application assistant” means an employee of an agency or nonprofit organization who provides counseling, referral, shelter, or other specialized services to victims of domestic violence, dating violence, human trafficking, sexual offenses, stalking, or harassment and who has been designated by the Attorney General to assist persons with applications to participate in the address confidentiality program.

 (4) “Designated address” means the address assigned to a program participant by the Attorney General pursuant to this section.

 (5) “Domestic violence” means any act that is described in Chapter 25, Title 16.

 (6) “Human trafficking” has the same meaning as provided in Article 19, Chapter 3, Title 16.

 (7) “Mailing address” means an address that is recognized for delivery by the United States Postal Service.

 (8) “Program participant” means a person certified by the Attorney General to participate in the program.

 (9) “Sexual offense” means any act that is described in Articles 7 and 8, Chapter 3, Title 16.

 (10) “Stalking” has the same meaning as provided in Article 17, Chapter 3, Title 16.

 (11) “Harassment” has the same meaning as provided in Article 17, Chapter 3, Title 16.

 (B) The address confidentiality program is established to protect victims of domestic violence, human trafficking, stalking, harassment, or sexual offenses by authorizing the use of designated addresses for such victims. The program is administered by the Attorney General under the following application and certification procedures:

 (1) Upon the recommendation of an application assistant, the following persons may apply to the Attorney General for assignation of a designated address:

 (a) an individual;

 (b) a parent, guardian, custodian, legal counsel, or other appropriate adult acting on behalf of a minor; or

 (c) a guardian acting on behalf of an incapacitated person.

 (2) The Attorney General may approve an application only if it is filed with the Office of the Attorney General in the manner established and on a form prescribed by the Attorney General. A completed application must contain:

 (a) the application’s preparation date, the applicant’s signature, and the signature and victim service provider number of the application assistant who assisted the applicant in applying to be a program participant;

 (b) a designation of the Attorney General as agent for the purposes of service of process and for receipt of first‑class, certified or registered mail;

 (c) the mailing address where the applicant may be contacted by the Attorney General or his designee and the telephone number or numbers at which the applicant may be called by the Attorney General or his designee; and

 (d) one or more addresses or mailing addresses that the applicant requests be concealed, if disclosure may jeopardize the applicant’s safety or increase the risk of violence to the applicant or members of the applicant’s household.

 (3) Upon receipt of a properly completed application, the Attorney General may certify the applicant as a program participant. A program participant is certified for four years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The Attorney General shall send notification of lapsing certification and a reapplication form to a program participant at least four weeks prior to the expiration of the program participant’s certification.

 (4) The Attorney General shall forward first‑class, certified or registered mail to the appropriate program participants.

 (5)(a) An applicant may not file an application knowing that it:

 (i) contains false or incorrect information; or

 (ii) falsely claims that disclosure of the address or mailing address listed in the application threatens the safety of the applicant, the applicant’s children, the minor, or incapacitated person on whose behalf the application is made.

 (b) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

 (i) contains false or incorrect information; or

 (ii) falsely claims that disclosure of the address or mailing address listed in the application threatens the safety of the applicant, the applicant’s children, the minor, or incapacitated person on whose behalf the application is made.

 (C) Certification for the program may be canceled if one or more of the following conditions apply:

 (1) a program participant obtains a name change, unless the program participant provides the Attorney General with documentation of a legal name change within thirty business days of the name change;

 (2) there is a change in a program participant’s residential street address from the address listed on the application, unless the program participant provides the Attorney General with notice of the change in such manner as the Attorney General provides; or

 (3) the applicant or program participant files an application knowing that it:

 (a) contains false or incorrect information; or

 (b) falsely claims that disclosure of the address or mailing address listed in the application threatens the safety of the applicant, the applicant’s children, the minor, or incapacitated person on whose behalf the application is made.

 (D) Notwithstanding the provisions of subsection (E), state and local government agencies and the courts shall accept and use only the designated address as the program participant’s address upon demonstration of a program participant’s certification in the program.

 (E) As the Attorney General determines appropriate, he may make a program participant’s address or mailing address available for use by granting an exemption to:

 (1) a law enforcement agency, a commissioner or other chief administrator of a state or local government agency, or the commissioner’s or administrator’s designee, if:

 (a) the agency has a bona fide statutory, administrative, or law enforcement need for the program participant’s address or mailing address such that the agency is unable to fulfill its statutory duties and obligations without the address or mailing address; and

 (b) the program participant’s address or mailing address will be used only for those statutory, administrative, or law enforcement purposes and otherwise will be kept under seal and excluded from public inspection; or

 (2) a person identified in a court order, if the Attorney General receives a court order that specifically orders the disclosure of a particular program participant’s address and mailing address and the reasons stated for the disclosure.

 (F) A program participant’s application and supporting materials, and the program’s state email account, are not public record pursuant to Chapter 4, Title 30, the Freedom of Information Act, and must be kept confidential by the Attorney General.

 (G) The Attorney General, his employees, application assistance agencies designated under this section, and the employees or volunteers of such agencies shall not be liable for any injury, loss, or damage resulting from any act or omission under this section, except if the injury, loss, or damage is caused by an act or omission pursuant to this section that is criminal, grossly negligent, intentional, or wilful. The State asserts this immunity under Section 15‑78‑20.

 (H) This section does not create, and shall not be construed to create, a new cause of action or substantive legal right against the State or an officer or employee thereof.

 (I) A participant in the address confidentiality program may not be mailed an absentee ballot unless the participant has requested an absentee ballot pursuant to Section 7‑15‑330. The participant’s absentee ballot must be the same ballot used in the precinct assigned to the participant’s residential street address. The request for an absentee ballot submitted by the participant is not a public record pursuant to Chapter 4, Title 30, the Freedom of Information Act, and must be kept confidential by the county board of voter registration and elections to which the request was made.

Kidnapping, when also sentenced for murder

SECTION 4.A. Section 16‑3‑910 of the S.C. Code is amended to read:

 Section 16‑3‑910. A person who unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years.

B. Nothing contained in this SECTION may be construed to repeal, replace, or preclude application of any other criminal statute.

Luring a child, offense created

SECTION 5. Article 3, Chapter 15, Title 16 of the S.C. Code is amended by adding:

 Section 16‑15‑340. (A) As used in this section, "child" means a person under sixteen years of age.

 (B) A person eighteen years of age or older who, with the intent to harm a child or for any other unlawful purpose, lures, entices, or attempts to lure or entice a child, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

 (C) Mistake of age is not a defense to prosecution pursuant to the provisions of this section. However, it is an affirmative defense to prosecution pursuant to the provisions of this section if the:

 (1) person lured, enticed, or attempted to lure or entice, the child for a lawful purpose; or

 (2) person’s actions were otherwise reasonable under the circumstances, and the person did not have the intent to harm the child.

 (D) The penalties provided in this section are in addition to other penalties as provided by law for kidnapping or any other offense, as warranted. The offense of luring a child is not intended to be a lesser included offense of kidnapping or any other offense.

Retroactivity of SECTION 2 regarding crimes committed by victims of trafficking in persons

SECTION 6. The rights delineated under SECTION 2 of this act shall apply retroactively.

Severability clause

SECTION 7. 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.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 27th day of June, 2024.

Approved the 2nd day of July, 2024.

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