~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 5, 2021

**S. 230**

Introduced by Senators Shealy, Hutto and Jackson

S. Printed 5/5/21--S. [SEC 5/6/21 3:11 PM]

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 230) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ 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 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 incidental or related to, trafficking. A victim of trafficking in persons convicted or adjudicated delinquent of a violation of this article, ~~or~~ prostitution, or any other non-violent offense may motion the court to vacate the conviction or adjudication and expunge the record of the conviction or adjudication 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 in the offense was a direct result of being a victim~~ by a preponderance of the evidence that the person’s participation in the offense was a direct result of, or incidental to, being a victim of trafficking. For any hearing scheduled pursuant to this subsection, the alleged victim of trafficking must file reasonable notice 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.

(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 adjudicated delinquent pursuant to this article or a prostitution offense~~, if it is determined after investigation that the victim committed the offense as 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. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill updates provisions related to trafficking in persons by including a presumption that a minor under the age of eighteen who is engaged in commercial sexual activity or sex trafficking is doing so under coercion or a reasonable fear of a threat. It also provides such minors an affirmative defense when they are under prosecution for other non-violent offenses when the offenses were committed as a direct result of, or incidental or related to, trafficking. A minor who is a victim of trafficking in persons and is convicted or adjudicated delinquent of a non-violent offense related to trafficking may motion the court to vacate the conviction or adjudication and expunge such records. The court may grant the motion should it find by a preponderance of the evidence that the minor’s participation in the offense was directly or incidentally related to being a victim.

**Judicial Department.**

The bill provides a minor engaged in commercial sexual activity or sexual trafficking is presumed to be doing so under coercion, provides for an affirmative defense regarding nonviolent offenses incidental to trafficking, and provides a conviction may be vacated and expunged. As this bill creates a new affirmative defense for nonviolent crimes, it is not possible to calculate the reduction for the magistrate and municipal courts or general sessions caseloads, the increased number of trials where the defense will be raised, or the number of fillings to vacate a conviction. It is anticipated that these changes can be managed within the existing budget of the Judicial Department.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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.

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

SECTION 1. Section 16-3-2020(G) of the 1976 Code is amended to read:

“(G)(1) A minor under the age of eighteen who is engaged in commercial sexual activity or sex trafficking is presumed to be doing so under coercion or a reasonable fear of a threat. If the victim was a minor at the time of the offense, the victim of trafficking in persons may not be prosecuted in court pursuant to this article or a prostitution offense, if it is determined after investigation that the victim committed the offense as a direct result of, or incidental or related to, trafficking.

(2) In a prosecution of a minor who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing other nonviolent offenses for which he is subject to prosecution or adjudication, if the offenses were committed as a direct result of, or incidental or related to, trafficking. For the purposes of this subsection, ‘nonviolent offenses’ means all offenses not listed in Section 16‑1‑60.

(3) A minor who is a victim of trafficking in persons convicted or adjudicated delinquent of a violation of this article or any other nonviolent offense committed as a direct result of, or incidental or related to, trafficking may motion a court to vacate the conviction or adjudication and expunge the record of the conviction. The court may grant the motion on a finding by a preponderance of the evidence that the person’s participation in the offense was a direct result of, or incidental or related to, being a victim.”

SECTION 2. This act takes effect upon approval by the Governor.

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