

House Bill 17

By: Representatives Spencer of the 180th, Oliver of the 82nd, Rakestraw of the 19th, Brockway of the 102nd, Morris of the 156th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 9 and Article 2 of Chapter 5 of Title 49 of the Official Code of
2 Georgia Annotated, relating to limitations of actions and child abuse and deprivation records,
3 respectively, so as to extend the statute of limitations for actions for childhood sexual abuse;
4 to provide for a short title; to provide for limitations of liability for certain legal entities; to
5 change provisions relating to tolling of limitations for a minor's cause of action; to change
6 provisions relating to the tolling of limitations for tort actions while criminal prosecution is
7 pending; to change provisions relating to the confidentiality and use of certain records; to
8 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Hidden Predator Act."

13 **SECTION 2.**

14 Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to limitations of
15 actions, is amended by revising Code Section 9-3-33.1, relating to limitations for actions for
16 childhood sexual abuse, as follows:

17 "9-3-33.1.

18 (a)(1) As used in this ~~Code section~~ subsection, the term 'childhood sexual abuse' means
19 any act committed by the defendant against the plaintiff which act occurred when the
20 plaintiff was under ~~the age of 18 years~~ of age and which act would ~~have been proscribed~~
21 ~~by Code Section 16-6-1, relating to rape; Code Section 16-6-2, relating to sodomy and~~
22 ~~aggravated sodomy; Code Section 16-6-3, relating to statutory rape; Code Section 16-6-4,~~
23 ~~relating to child molestation and aggravated child molestation; Code Section 16-6-5,~~
24 ~~relating to enticing a child for indecent purposes; Code Section 16-6-12, relating to~~
25 ~~pandering; Code Section 16-6-14, relating to pandering by compulsion; Code Section~~

26 16-6-15, relating to solicitation of sodomy; Code Section 16-6-22, relating to incest; Code
 27 Section 16-6-22.1, relating to sexual battery; or Code Section 16-6-22.2, relating to
 28 aggravated sexual battery, or any prior laws of this state of similar effect which were in
 29 effect at the time the act was committed be in violation of:

- 30 (A) Rape, as prohibited in Code Section 16-6-1;
- 31 (B) Sodomy or aggravated sodomy, as prohibited in Code Section 16-6-2;
- 32 (C) Statutory rape, as prohibited in Code Section 16-6-3;
- 33 (D) Child molestation or aggravated child molestation, as prohibited in Code Section
 34 16-6-4;
- 35 (E) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5;
- 36 (F) Pandering, as prohibited in Code Section 16-6-12;
- 37 (G) Pandering by compulsion, as prohibited in Code Section 16-6-14;
- 38 (H) Solicitation of sodomy, as prohibited in Code Section 16-6-15;
- 39 (I) Incest, as prohibited in Code Section 16-6-22;
- 40 (J) Sexual battery, as prohibited in Code Section 16-6-22.1; or
- 41 (K) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2.

42 ~~(b)(2)~~ Notwithstanding Code Section 9-3-33 and except as provided in subsection (d) of
 43 this Code section, ~~any~~ Any civil action for recovery of damages suffered as a result of
 44 childhood sexual abuse committed before July 1, 2015, shall be commenced ~~within five~~
 45 years of on or before the date the plaintiff attains the age of ~~majority~~ 23.

46 (b)(1) As used in this subsection, the term 'childhood sexual abuse' means any act
 47 committed by the defendant against the plaintiff which act occurred when the plaintiff
 48 was under 18 years of age and which act would be in violation of:

- 49 (A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;
- 50 (B) Rape, as prohibited in Code Section 16-6-1;
- 51 (C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years
 52 of age or older at the time of the act;
- 53 (D) Aggravated sodomy, as prohibited in Code Section 16-6-2;
- 54 (E) Child molestation or aggravated child molestation, as prohibited in Code Section
 55 16-6-4, unless the violation would be subject to punishment as provided in paragraph
 56 (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code
 57 Section 16-6-4;
- 58 (F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless
 59 the violation would be subject to punishment as provided in subsection (c) of Code
 60 Section 16-6-5;
- 61 (G) Incest, as prohibited in Code Section 16-6-22;
- 62 (H) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2; or

63 (I) Part 2 of Article 3 of Chapter 12 of Title 16.

64 (2) Notwithstanding Code Section 9-3-33, any civil action for recovery of damages
 65 suffered as a result of childhood sexual abuse committed on or after July 1, 2015, shall
 66 be commenced on or before the date the plaintiff attains the age of 53.

67 (c)(1) As used in this subsection, the term 'entity' means an institution, agency, firm,
 68 business, corporation, or other public or private legal entity.

69 (2) If the person committing the act of childhood sexual abuse was employed by an
 70 entity that owed a duty of care to the victim, or the defendant and the plaintiff were
 71 engaged in some activity over which such entity had some degree of responsibility or
 72 control, damages against such entity shall be awarded under this Code section only if
 73 there is a finding of negligence on the part of such entity.

74 (d)(1) It is the express intent of the General Assembly that for a period of two years
 75 following July 1, 2015, plaintiffs of any age who were time barred from filing a civil
 76 action for injuries resulting from childhood sexual abuse due to the expiration of the
 77 statute of limitations in effect on June 30, 2015, shall be permitted to file such actions
 78 before July 1, 2017, thereby reviving those civil actions which had lapsed or technically
 79 expired under the law in effect on June 30, 2015.

80 (2) The revival of a claim as provided in paragraph (1) of this subsection shall not apply
 81 to:

82 (A) Any claim that has been litigated to finality on the merits in a court of competent
 83 jurisdiction prior to July 1, 2015. Termination of a prior civil action on the basis of the
 84 expiration of the statute of limitations shall not constitute a claim that has been litigated
 85 to finality on the merits; and

86 (B) Any written, compromised settlement agreement which has been entered into
 87 between a plaintiff and a defendant when the plaintiff was represented by an attorney
 88 who was admitted to practice law in this state at the time of the settlement, and the
 89 plaintiff signed the agreement.

90 (e) On and after July 1, 2017, this Code section shall be applied only prospectively."

91 **SECTION 3.**

92 Said chapter is further amended by revising Code Section 9-3-90, relating to persons under
 93 disability or imprisoned when cause of actions accrues, as follows:

94 "9-3-90.

95 (a) Individuals ~~Minors and persons~~ who are legally incompetent because of mental
 96 retardation or mental illness, who are such when the cause of action accrues, shall be
 97 entitled to the same time after their disability is removed to bring an action as is prescribed
 98 for other persons.

99 (b) Except as otherwise provided in Code Section 9-3-33.1, individuals who are less than
 100 18 years of age when a cause of action accrues shall be entitled to the same time after he
 101 or she reaches the age of 18 years to bring an action as is prescribed for other persons.

102 ~~(b)~~(c) No action accruing to a ~~person~~ an individual imprisoned at the time of its accrual
 103 which, ~~prior:~~

104 (1) Prior to July 1, 1984, has been barred by the provisions of this chapter ~~relating to~~
 105 ~~limitations of actions~~ shall be revived by this chapter, as amended. ~~No action accruing~~
 106 ~~to a person imprisoned at the time of its accrual which would; or~~

107 (2) Would be barred before July 1, 1984, by the provisions of this chapter, as amended,
 108 but which would not be so barred by the provisions of this chapter in force immediately
 109 prior to July 1, 1984, shall be barred until July 1, 1985."

110 **SECTION 4.**

111 Said chapter is further amended by revising Code Section 9-3-99, relating to tolling of
 112 limitations for tort actions while criminal prosecution is pending, as follows:

113 "9-3-99.

114 The running of the period of limitations with respect to any cause of action in tort that may
 115 be brought by the victim of an alleged crime which arises out of the facts and
 116 circumstances relating to the commission of such alleged crime committed in this state
 117 shall be tolled from the date of the commission of the alleged crime or the act giving rise
 118 to such action in tort until the prosecution of such crime or act has become final or
 119 otherwise terminated, provided that such time does not exceed six years, except as
 120 otherwise provided in Code Section 9-3-33.1."

121 **SECTION 5.**

122 Article 2 of Chapter 5 of Title 49 of the Official Code of Georgia Annotated, relating to child
 123 abuse and deprivation records, is amended in Code Section 49-5-41, relating to persons and
 124 agencies permitted access to records, by adding a new subsection to read as follows:

125 "(f) Notwithstanding Code Section 49-5-40, a child who alleges that he or she was abused
 126 shall be permitted access to records concerning a report of child abuse allegedly committed
 127 against him or her which are in the custody of the department or other state or local agency
 128 when he or she reaches 18 years of age; provided, however, that prior to such child
 129 reaching 18 years of age, if the requestor is not the subject of such report, such reports shall
 130 be made available to such child's parent or legal guardian or a deceased child's duly
 131 appointed representative when the requestor or his or her attorney submits a sworn affidavit
 132 that attests that such information is relevant to a pending or proposed civil action; and

133 provided, further, that such reports shall still be subject to confidentiality pursuant to
134 paragraph (4) of subsection (a) of Code Section 50-18-72."

135 **SECTION 6.**

136 Said article is further amended by revising subsection (c) of Code Section 49-5-44, relating
137 to penalties for unauthorized access to records and use of records in public and criminal
138 proceedings, as follows:

139 "(c) Records made confidential by Code Section 49-5-40 and information obtained from
140 such records ~~may~~ shall not be made a part of any record which is open to the public except
141 that:

142 (1) A a district attorney may use and make public that record or information in the course
143 of any criminal prosecution for any offense which constitutes or results from child abuse;
144 and

145 (2) The parties in a civil action may use and make public that record or information in
146 the course of a civil action for childhood sexual abuse, as such term is defined in Code
147 Section 9-3-33.1."

148 **SECTION 7.**

149 This Act shall become effective on July 1, 2015.

150 **SECTION 8.**

151 All laws and parts of laws in conflict with this Act are repealed.