

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2018**

**DRAFT**

Short Title: Human Trafficking Restorative Justice.

(Public)

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Sponsors:

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Referred to:

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A BILL TO BE ENTITLED  
AN ACT TO PROVIDE RESTORATIVE JUSTICE TO  
VICTIMS OF HUMAN TRAFFICKING.

The General Assembly of North Carolina enacts:

**AMEND DEFINITION OF VICTIM**

**SECTION 1.** G.S. 14-43.10 reads as rewritten:

**“§ 14-43.10. Definitions.**

(a) Definitions. – The following definitions apply in this Article:

(1) Coercion. – The term includes all of the following:

- a. Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person.
- b. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule.
- c. Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person.
- d. Providing a controlled substance, as defined by G.S. 90-87, to a person.

(2) Deception. – The term includes all of the following:

- a. Creating or confirming another's impression of an existing fact or past event that is false and which the accused knows or believes to be false.
- b. Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt.
- c. Promising benefits or the performance of services that the accused does not intend to deliver or perform or knows will not be delivered or performed.

(3) Involuntary servitude. – The term includes the following:

- 1 a. The performance of labor, whether or not for compensation, or whether  
2 or not for the satisfaction of a debt; and  
3 b. By deception, coercion, or intimidation using violence or the threat of  
4 violence or by any other means of coercion or intimidation.  
5 (4) Minor. – A person who is less than 18 years of age.  
6 (5) Sexual servitude. – The term includes the following:  
7 a. Any sexual activity as defined in G.S. 14-190.13 for which anything of  
8 value is directly or indirectly given, promised to, or received by any  
9 person, which conduct is induced or obtained by coercion or deception  
10 or which conduct is induced or obtained from a person under the age of  
11 18 years; or  
12 b. Any sexual activity as defined in G.S. 14-190.13 that is performed or  
13 provided by any person, which conduct is induced or obtained by  
14 coercion or deception or which conduct is induced or obtained from a  
15 person under the age of 18 years.  
16 (6) Victim. – A person subjected to the practices set forth in G.S. 14-43.11,  
17 14-43.12, or 14-43.13.”  
18

## 19 AFFIRMATIVE DEFENSES FOR HUMAN TRAFFICKING VICTIMS

20 SECTION 2. G.S. 14-43.15 reads as rewritten:

### 21 “§ 14-43.15. Affirmative defenses.

22 (a) In any prosecution for an offense listed in this Article, it shall be an affirmative defense  
23 that the person charged with the offense was a victim at the time of the offense and was coerced  
24 or deceived into committing the offense as a direct result of the person’s status as a victim.

25 (b) Nothing in this section shall be construed to limit any affirmative defenses available to  
26 a person by statute or at common law.”  
27

## 28 CONFIDENTIALITY OF HUMAN TRAFFICKING VICTIMS

29 SECTION 3. G.S. 14-43.16 reads as rewritten:

### 30 “§ 14-43.16. Victim confidentiality; penalty for unlawful disclosure.

31 (a) The identities, addresses, images, or any other identifying information of a victim or  
32 an alleged victim and of the victim or alleged victim’s immediate family shall be confidential and  
33 not public records under Chapter 132 of the General Statutes.

34 (b) Such confidential information may only be disclosed:

35 (1) for use in a law enforcement investigation or criminal prosecution;

36 (2) to ensure provision of medical care, housing, and family services or benefits to the  
37 victim or an alleged victim and of the victim or alleged victim’s immediate family;

38 (3) upon written request by the victim or alleged victim; or

39 (4) as otherwise required by state and federal law or by court order.

40 (c) Any person who knowingly violates this section is guilty of a Class 3 misdemeanor.”  
41

## 42 RESTITUTION MODIFICATIONS

43 SECTION 4. G.S. 14-43.20 reads as rewritten:

### 44 “§ 14-43.20. Mandatory restitution; victim services; forfeiture.

45 (a) ~~Definition. For purposes of this section, a "victim" is a person subjected to the~~  
46 ~~practices set forth in G.S. 14-43.11, 14-43.12, or 14-43.13.~~

1 (b)(a) Restitution. – Restitution for a victim is mandatory under this Article. At a minimum,  
2 the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed  
3 under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA).  
4 In addition, the judge may order any other amount of loss identified, including the gross income  
5 or value to the defendant of the victim's labor or ~~services~~services and any costs reasonably certain  
6 to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary  
7 housing, transportation, or funeral services.

8 (b) Escheat of restitution. – If a judge finds that the victim to whom restitution is due is  
9 unavailable to claim the restitution award, then the restitution shall be made payable to the Clerk  
10 of Superior Court in the county in which the conviction occurred. The clerk shall remit the  
11 restitution proceeds to the Victims Compensation Fund if the victim fails to claim the proceeds  
12 within two years of the date of the restitution order.

13 (c) Trafficking Victim Services. – Subject to the availability of funds, the Department of  
14 Health and Human Services may provide or fund emergency services and assistance to individuals  
15 who are victims of one or more offenses under G.S. 14-43.11, 14-43.12, or 14-43.13.

16 (d) Certification. – The Attorney General, a district attorney, or any law enforcement  
17 official shall certify in writing to the United States Department of Justice or other federal agency,  
18 such as the United States Department of Homeland Security, that an investigation or prosecution  
19 under this Article for a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 has begun and the  
20 individual who is a likely victim of one of those crimes is willing to cooperate or is cooperating  
21 with the investigation to enable the individual, if eligible under federal law, to qualify for an  
22 appropriate special immigrant visa and to access available federal benefits. Cooperation with law  
23 enforcement shall not be required of victims who are under 18 years of age. This certification shall  
24 be made available to the victim and the victim's designated legal representative.

25 (e) A person who commits a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 is subject  
26 to the property forfeiture provisions set forth in G.S. 14-2.3.”

27  
28 **AMEND RULE 412 OF THE EVIDENCE CODE TO INCLUDE CHARGES OF SEXUAL**  
29 **SERVITUDE**

30 **SECTION 5.** Rule 412 of Chapter 8C reads as rewritten:

31 **“Rule 412. Rape or sex offense cases; relevance of victim's past behavior.**

32 (a) As used in this rule, the term "sexual behavior" means sexual activity of the  
33 complainant other than the sexual act which is at issue in the indictment on trial.

34 (b) Notwithstanding any other provision of law, the sexual behavior of the complainant is  
35 irrelevant to any issue in the prosecution unless such behavior:

- 36 (1) Was between the complainant and the defendant; or
- 37 (2) Is evidence of specific instances of sexual behavior offered for the purpose of  
38 showing that the act or acts charged were not committed by the defendant; or
- 39 (3) Is evidence of a pattern of sexual behavior so distinctive and so closely  
40 resembling the defendant's version of the alleged encounter with the  
41 complainant as to tend to prove that such complainant consented to the act or  
42 acts charged or behaved in such a manner as to lead the defendant reasonably  
43 to believe that the complainant consented; or
- 44 (4) Is evidence of sexual behavior offered as the basis of expert psychological or  
45 psychiatric opinion that the complainant fantasized or invented the act or acts  
46 charged.

1 (c) Sexual behavior otherwise admissible under this rule may not be proved by reputation  
2 or opinion.

3 (d) Notwithstanding any other provision of law, unless and until the court determines that  
4 evidence of sexual behavior is relevant under subdivision (b), no reference to this behavior may  
5 be made in the presence of the jury and no evidence of this behavior may be introduced at any time  
6 during the trial of:

7 (1) A charge of rape or a lesser included offense of rape;

8 (2) A charge of a sex offense or a lesser included offense of a sex offense; or

9 (3) An offense being tried jointly with a charge of rape or a sex offense, or with a  
10 lesser included offense of rape or a sex ~~offense-offense; or~~

11 (4) A charge of sexual servitude pursuant to G.S. 14-43.13.

12 Before any questions pertaining to such evidence are asked of any witness, the proponent of such  
13 evidence shall first apply to the court for a determination of the relevance of the sexual behavior  
14 to which it relates. The proponent of such evidence may make application either prior to trial  
15 pursuant to G.S. 15A-952, or during the trial at the time when the proponent desires to introduce  
16 such evidence. When application is made, the court shall conduct an in camera hearing, which  
17 shall be transcribed, to consider the proponent's offer of proof and the argument of counsel,  
18 including any counsel for the complainant, to determine the extent to which such behavior is  
19 relevant. In the hearing, the proponent of the evidence shall establish the basis of admissibility of  
20 such evidence. Notwithstanding subdivision (b) of Rule 104, if the relevancy of the evidence which  
21 the proponent seeks to offer in the trial depends upon the fulfillment of a condition of fact, the  
22 court, at the in camera hearing or at a subsequent in camera hearing scheduled for that purpose,  
23 shall accept evidence on the issue of whether that condition of fact is fulfilled and shall determine  
24 that issue. If the court finds that the evidence is relevant, it shall enter an order stating that the  
25 evidence may be admitted and the nature of the questions which will be permitted.

26 (e) The record of the in camera hearing and all evidence relating thereto shall be open to  
27 inspection only by the parties, the complainant, their attorneys and the court and its agents, and  
28 shall be used only as necessary for appellate review. At any probable cause hearing, the judge shall  
29 take cognizance of the evidence, if admissible, at the end of the in camera hearing without the  
30 questions being repeated or the evidence being resubmitted in open court.”

## 31 32 **AMEND MEMBERSHIP OF HUMAN TRAFFICKING COMMISSION**

33 **SECTION 6.** G.S. 143A-55.10(b) reads as rewritten:

34 (b) Membership. – The Commission shall consist of 12 members as follows:

35 (1) The President Pro Tempore of the Senate shall appoint one representative from  
36 each of the following:

37 a. The public at large.

38 b. A county sheriff's department.

39 c. A city or town police department.

40 d. Legal Aid of North Carolina.

41 (2) The Speaker of the House of Representatives shall appoint one representative  
42 from each of the following:

43 a. The public at large.

44 b. North Carolina Coalition Against Human Trafficking.

45 c. A faith-based shelter or benefits organization providing services to  
46 victims of human trafficking.

- 1 d. A district attorney.
- 2 (3) The Governor shall appoint one representative from each of the following:
- 3 a. The Department of Labor.
- 4 b. The Department of Justice.
- 5 c. The Department of Public Safety.
- 6 d. A health care representative.
- 7 (4) The following persons, or their designees, may serve as ex officio members of
- 8 the Commission:
- 9 a. The Director of the Administrative Office of the Courts.
- 10 b. The President of the Conference of Superior Court Judges.
- 11 c. The President of the Association of District Court Judges.
- 12

### 13 **STUDY ON SENTENCING AND POST-CONVICTION RELIEF**

14 **SECTION 7.(a) Study.** – The North Carolina Human Trafficking Commission, in

15 consultation with the Conference of District Attorneys and the Office of Indigent Defense

16 Services, shall conduct a study on the human trafficking offenses contained within Article 10A,

17 Chapter 14 of the General Statutes. The study shall, at a minimum, consider (i) the appropriate

18 level of sentencing for each offense; (ii) whether any changes to sentencing levels would reduce

19 human trafficking; and (iii) the effects of expanding the eligibility of any post-conviction relief to

20 human trafficking victims.

21 **SECTION 7.(b) Report.** – The North Carolina Human Trafficking Commission shall

22 submit its findings under subsection (a) of this section, including any legislative recommendations,

23 to the Joint Legislative Oversight Committee on Justice and Public Safety by February 1, 2019.

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### 25 **SEVERABILITY CLAUSE**

26 **SECTION 8.** If any section or provision of this act is declared unconstitutional or invalid

27 by the courts, it does not affect the validity of this act as a whole or any part other than the part so

28 declared to be unconstitutional or invalid.

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### 30 **EFFECTIVE DATE**

31 **SECTION 9.** Section 6 and Section 7 are effective when this act becomes law. The

32 remainder of this act becomes effective December 1, 2018.

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