

Senate Bill 326

By: Senators Karinshak of the 48th, Thompson of the 14th, Jones II of the 22nd, Tate of the 38th, Rahman of the 5th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 and Article 2 of Chapter 3 of Title 35 of the
2 Official Code of Georgia Annotated, relating to procedure for sentencing and imposition of
3 punishment and the Georgia Crime Information Center, respectively, so as to provide that
4 the court imposing sentence may grant the relief of vacatur for nonviolent convictions and
5 sentences of defendants who obtained such convictions and sentences as a direct result of
6 being victims of trafficking for labor or sexual servitude; to provide definitions; to provide
7 for the restriction of access to criminal history record information of individuals where such
8 criminal history record information relates to such convictions; to provide for notice and
9 hearing under certain circumstances; to provide for related matters; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
14 procedure for sentencing and imposition of punishment, is amended by adding a new Code
15 section to read as follows:

16 "17-10-21.

17 (a) As used in this Code section, the term:

18 (1) 'Nonviolent offense' means any offense other than a violent offense.

19 (2) 'Serious violent felony' shall have the same meaning as set forth in Code Section
20 17-10-6.1.

21 (3) 'Violent offense' means:

22 (A)(i) A serious violent felony;

23 (ii) Criminal attempt to commit a serious violent felony;

24 (iii) Aggravated assault;

25 (iv) Hijacking a motor vehicle in the first degree or hijacking an aircraft;

26 (v) Aggravated battery;

(vi) Aggravated stalking;

(vii) Arson in the first degree or in the second degree; or

(viii) Any offense which involves the use of a deadly weapon or destructive device;
and

(B) Those felony offenses deemed by the court to involve an allegation of actual or potential physical harm to another person.

(b)(1) Notwithstanding any other provision of law, a defendant convicted of a nonviolent offense and sentenced may petition the court imposing the sentence to vacate such conviction and sentence if such nonviolent offense was committed as a direct result of the defendant being the victim of a trafficking offense under Code Section 16-5-46. Such court shall be deemed to maintain the jurisdiction, power, and authority to vacate such conviction and sentence.

(2) The defendant shall serve the petition provided for under paragraph (1) of this subsection upon the prosecuting attorney.

(3) Upon notice and hearing, if the court finds by a preponderance of the evidence that the defendant committed such nonviolent offense as a direct result of being the victim of a trafficking offense under Code Section 16-5-46, the court imposing the sentence may issue an order vacating the conviction and sentence and, if so, shall also issue an order pursuant to subparagraph (B) of paragraph (2) of subsection (j) of Code Section 35-3-37."

SECTION 2.

Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia Crime Information Center, is amended by revising paragraph (2) of subsection (j) of Code Section 35-3-37, relating to review of individual's criminal history record information, definitions, privacy considerations, written application requesting review, and inspection, as follows:

"(2)(A) Except as provided for in subparagraph (B) of this paragraph, when ~~When~~ an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the court in which he or she was convicted to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear

evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case, and the public's interest in the criminal history record information being publicly available.

(B) When an individual was convicted of an offense and such conviction was vacated by the trial court pursuant to Code Section 17-10-21, the court shall contemporaneously issue an order with the order vacating the conviction that restricts access to the criminal history record information for the offense that was vacated."

SECTION 3.

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