**South Carolina General Assembly**

125th Session, 2023-2024

**S. 142**

**STATUS INFORMATION**

General Bill

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

Document Path: SR-0030KM23.docx

Introduced in the Senate on January 10, 2023

Introduced in the House on March 28, 2023

Last Amended on May 8, 2024

Currently residing in conference committee

Summary: Safe Harbor for Exploited Minors

**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](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 79](h:\sj\20230110.docx))

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](h:\sj\20230222.docx))

2/27/2023 Scrivener's error corrected

3/9/2023 Senate Committee Amendment Adopted ([Senate Journal‑page 14](h:\sj\20230309.docx))

3/9/2023 Senate Amended ([Senate Journal‑page 14](h:\sj\20230309.docx))

3/13/2023 Scrivener's error corrected

3/14/2023 Senate Amended ([Senate Journal‑page 18](h:\sj\20230314.docx))

3/15/2023 Scrivener's error corrected

3/15/2023 Senate Read second time ([Senate Journal‑page 24](h:\sj\20230315.docx))

3/15/2023 Senate Roll call Ayes-40 Nays-0 ([Senate Journal‑page 24](h:\sj\20230315.docx))

3/16/2023 Senate Read third time and sent to House ([Senate Journal‑page 7](h:\sj\20230316.docx))

3/28/2023 House Introduced and read first time ([House Journal‑page 35](h:\hj\20230328.docx))

3/28/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 35](h:\hj\20230328.docx))

4/23/2024 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 3](h:\hj\20240423.docx))

4/24/2024 Scrivener's error corrected

4/25/2024 House Amended ([House Journal‑page 10](h:\hj\20240425.docx))

4/25/2024 House Read second time ([House Journal‑page 10](h:\hj\20240425.docx))

4/25/2024 House Roll call Yeas-97 Nays-0 ([House Journal‑page 12](h:\hj\20240425.docx))

4/25/2024 House Unanimous consent for third reading on next legislative day ([House Journal‑page 13](h:\hj\20240425.docx))

4/26/2024 Scrivener's error corrected

4/27/2024 House Read third time and returned to Senate with amendments ([House Journal‑page 2](h:\hj\20240427.docx))

5/8/2024 Senate House amendment amended ([Senate Journal‑page 167](h:\sj\20240508.docx))

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

5/8/2024 Senate Returned to House with amendments ([Senate Journal‑page 167](h:\sj\20240508.docx))

5/9/2024 House Non-concurrence in Senate amendment ([House Journal‑page 62](h:\hj\20240509.docx))

5/9/2024 House Roll call Yeas-0 Nays-102 ([House Journal‑page 63](h:\hj\20240509.docx))

5/9/2024 Senate Senate insists upon amendment and conference committee appointed Hutto, Gustafson, Adams ([Senate Journal‑page 14](h:\sj\20240509.docx))

5/9/2024 House Conference committee appointed Bernstein, Guest, Connell ([House Journal‑page 144](h:\hj\20240509.docx))

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**VERSIONS OF THIS BILL**

[11/30/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/142_20221130.docx)

[02/08/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/142_20230208.docx)

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[04/23/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/142_20240423.docx)

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[04/26/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/142_20240426.docx)

[05/08/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/142_20240508.docx)

Indicates Matter Stricken

Indicates New Matter

House Amendments Amended

May 08, 2024

S. 142

Introduced by Senators Shealy, Gustafson, Goldfinch, Hutto, Jackson, Campsen, McLeod, Setzler and Garrett

S. Printed 05/08/24--S.

Read the first time January 10, 2023

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A bill

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; and by amending Section 16-3-2020, relating to Trafficking in persons, penalties, minor victims AND defenses, SO AS to provide that a sex trafficking victim may raise duress and COERCION as an affirmative defense to nonviolent offenses committed as a direct result or incident to the trafficking, to provide that a minor sex trafficking victim may not be convicted for nonviolent offenses committed as a direct result or incident to the trafficking, and to provide that a minor sex trafficking victim cannot be found in violation of or be the subject of a DELINQUENCY petition if the minor’s conduct was a direct result of or incidental to or related to trafficking; and so as to provide that the provisions in this act are retroactive.

Amend Title To Conform

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

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; 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 S.C. 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,interrelated to trafficking. A victim of trafficking in persons convicted or adjudicated delinquent of a violation of this article, or prostitution, or any other nonviolent misdemeanor or class F felony offenses may motion the court to vacate the conviction and 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 ofbeing a victim. 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 pursuant or adjudicated delinquent for a violation of this article, or 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 toincidental or related 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). A person under the age of eighteen who is a victim of trafficking in persons in violation of this title shall not be found in violation of or be the subject of a delinquency petition if it is determined after investigation that the victim’s conduct was a direct result of, or incidental or related to, trafficking 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.

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 of 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, or 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, or 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, or 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 willful. 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.

SECTION 4. Article 16, Chapter 3, Title 16 of the S.C. Code is amended by adding:

Section 16‑3‑1656. (A) In order to ensure the safety of adult and child victims of domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses and their families, a nonprofit victim assistance organization whose mission is, at least in part, to end domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses and whose core services include counseling and other services to victims of domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses shall protect the confidentiality and privacy of persons receiving services.

(B) Except as provided in this section, a nonprofit victim assistance organization whose mission is, at least in part, to end domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses and whose core services include counseling and other services to victims of domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses must not:

(1) disclose, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected; or

(2) disclose, reveal, or release individual client information without the informed, written, reasonably time‑limited consent of the person about whom information is sought; or in the case of an unemancipated minor, of the minor and the minor's parent or legal guardian; or in the case of an incapacitated person, of the legally appointed guardian of the incapacitated person. However, consent for release may not be given by the abuser or alleged abuser of the minor or incapacitated person, or the abuser or alleged abuser of the other parent of the minor. If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

(C) If release of information protected by this section is compelled by statutory mandate or court order, the organization providing services shall:

(1) make reasonable attempts to provide notice to persons affected by the disclosure of information; and

(2) take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

(D) A nonprofit victim assistance organization providing services of domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses may share:

(1) non‑personally identifying data in the aggregate regarding services to their clients and non‑personally identifying demographic information in order to comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements;

(2) court‑generated information and law enforcement‑generated information contained in secure, governmental registries for protection order or restraining order enforcement purposes; and

(3) law enforcement‑generated and prosecution‑generated information necessary for law enforcement and prosecution purposes.

(E) In no circumstance may a nonprofit victim assistance organization whose mission is, at least in part, to end domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses and whose core services include counseling or other services to victims of domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses require a person to provide a consent to release personally identifying information as a condition of eligibility for the services provided.

(F) Nothing in this section prohibits reporting by individuals who are mandated reporters under Sections 43‑35‑25 or 63‑7‑310.

SECTION 5. Chapter 11, Title 19 of the S.C. Code is amended by adding:

Section 19‑11‑110. (A) For purposes of this section:

(1) “Advocate” means an employee, agent, or volunteer of a nonprofit victim assistance organization whose mission is, at least in part, to end domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses and whose core services include shelter, counseling, or other services to victims of domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses.

(2) “Client” means a person who consults a nonprofit victim assistance organization whose mission is, at least in part, to end domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses and whose core services include counseling or other services to victims of domestic violence, dating violence, human trafficking, stalking, harassment, or sexual offenses for the purpose of obtaining, on behalf of that person or someone else, advice, counseling, or other services concerning mental, physical, emotional, or other injuries, whether the client seeks or receives services within the criminal justice system, and whether a civil or criminal action arises as a result of the allegations.

(B) In any trial or inquiry in any suit, action, or proceeding in any court or before any person having, by law or consent of the parties, authority to examine witnesses or hear evidence, unless otherwise required by law, an advocate may not, without informed, written, and reasonably time‑limited consent of the victim:

(1) be examined as to any communication made to the advocate by a client;

(2) disclose personally identifying information; or

(3) divulge records kept during the course of providing shelter, counseling, or other services to the client.

(C) This privilege belongs to the client and may not be waived, except by express consent. The privilege continues even if the client is unreachable. Consent may not be implied because the client is a party to a civil proceeding. The privilege terminates upon the death of the client.

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

SECTION 4. SECTION 1, SECTION 2, and SECTION 3 of this act take effect upon approval by the Governor. The remaining SECTIONS of this act take effect.on July 1, 2025.

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