



## **House Bill 582 Summary and Analysis**<sup>1</sup>

### **Origins of House Bill 582**

House Bill 582 (“HB 582”) was introduced by Representative Wendell Willard on February 26<sup>th</sup> of the Georgia 2009 General Assembly Legislative Session. HB 582 was assigned to the House Non-Civil Judiciary Committee.

### **Legislative Purpose**

The bill proposes to amend two sections of Chapter 6 of Title 16 of the Official Code of Georgia Annotated (“O.C.G.A.”) by mandating a minimum age of 18 for the prosecution of the offenses of prostitution and masturbation for hire. Under this proposed amendment, children under the age of 18 involved in the acts described as prostitution and masturbation for hire would not be considered law-breakers. The changes are intended to ensure that children involved in prostitution or masturbation for hire are treated as victims, rather than as offenders.

### **Summary and Explanation of the Proposed Changes**

Other sections of current Georgia law treat children under the age of 18 involved in prostitution and masturbation for hire as victims of a crime, rather than as offenders.<sup>2</sup> Current federal law also considers children under the age of 18 involved in commercial sexual exploitation to be victims of a crime. HB 582’s proposed amendments to Chapter 6 of O.C.G.A. Title 16 will create consistency among Georgia laws and federal laws concerning commercial sexual exploitation of children (“CSEC”). The bill proposes to amend Title 16, Chapter 6 in the following ways:

- 1. Amending Code Section 9 of Title 16, Chapter 6 so as to only allow individuals over the age of 18 to be able to commit the offense of prostitution.**
  - a. Current law:** Presently, O.C.G.A. §16-6-9 does not specify an age minimum for commission of the offense of prostitution.
  - b. Proposed change:** HB 582 adds the underlined language: “A person who is 18 years of age or older commits the act of prostitution when he or she...” thereby establishing a minimum age for one to be considered as an offender under the prostitution statute.
  
- 2. Amending Code Section 16 of Title 16, Chapter 6 so as to only allow individuals over the age of 18 to be able to commit the crime of masturbation for hire and to update the language of the statute to use gender-neutral terms.**

<sup>1</sup> March 17, 2009 by Jennifer Felner, Student Intern / MPH Candidate, Emory University Rollins School of Public Health Class of 2009 and Alyssa Parsons, Student Attorney, Emory University School of Law Class of 2010.

<sup>2</sup> O.C.G.A. §§ 16-6-10, 16-6-11, 16-6-12 (2009).



- a. **Current law:** Presently, O.C.G.A. §16-6-16 does not specify an age minimum for commission of the offense of masturbation for hire, nor does it use gender neutral terms when referring to offenders.
- b. **Proposed change:** HB 582 adds the underlined language: “A person who is 18 years of age or older, including a masseur or masseuse, commits the offense of masturbation for hire when he or she erotically stimulates the genital organs of another...” thereby establishing a minimum age for masturbation for hire and adding gender neutral terminology to refer to offenders.

### **Consistency Among State and Federal Prostitution and Anti-Human Trafficking Laws**

The Georgia Code’s current treatment of prostituted children is inconsistent among Code sections. Three sections of O.C.G.A. Title 16, Chapter 6 treat those who engage in promotion, sale, or purchase of sex from children as felony offenders who may serve between 5 and 20 years and pay fines of up to \$10,000.<sup>3</sup> The penalties associated with these offenses are relatively severe when compared to similar crimes committed against adults. These increased penalties clearly delineate the gravity of these crimes, as they involve child victims. The Georgia Code’s current treatment of children under the prostitution and masturbation for hire statutes is inconsistent with the treatment of children under Georgia’s Anti-Human Trafficking Statute, O.C.G.A. § 16-5-46. The Anti-Human Trafficking Statute criminalizes the promotion, sale, and purchase of sex from a child under the age of 18, within the context of human trafficking; the statute does not criminalize prostituted child victims. The Code sections defining prostitution<sup>4</sup> and masturbation for hire<sup>5</sup> as aforementioned, however, do not make specific statements about the treatment of children and make no minimum age requirement for the offense of prostitution. Therefore, a child may be a victim under some code sections, but an offender under others for the exact same interaction. The changes proposed by HB 582 will create consistency among these sections of the Georgia Code so as to ensure those children who are commercially sexually exploited are always recognized as victims, rather than treated as offenders under one statute and victims under another.

The Code’s current treatment of children under the prostitution and masturbation for hire statutes is also inconsistent with the treatment of children under federal law. According to the federal Trafficking Victims Protection Act (TVPA) and the reauthorized Act (TVPRA), a child under the age of 18 is considered to be a victim of human trafficking if he or she is induced to perform a commercial sex act as a result of sex trafficking.<sup>6</sup> The TVPA and TVPRA consider children involved in commercial sexual exploitation to be victims of a crime. The minimum age requirements proposed by HB 582 would, therefore, create consistency among the prostitution and masturbation for hire laws, Georgia’s other prostitution and trafficking related statutes, and the federal TVPA and TVPRA.

<sup>3</sup> *Id.*

<sup>4</sup> O.C.G.A. § 16-6-9 (2009).

<sup>5</sup> O.C.G.A. § 16-6-16 (2009).

<sup>6</sup> Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102 (9) (2009); 42 U.S.C. § 14044e (2009).



### Recommendation

The changes proposed by HB 582 to O.C.G.A. §§ 16-6-9 and 16-6-16 will benefit Georgia's children. First, the changes will create a safeguard for commercially sexually exploited children, allowing these child victims to avoid arrest and detention. It is crucial that victims of commercial sexual exploitation receive specialized treatment in a facility prepared to handle their special needs.<sup>7</sup> Arrest and detention increases the stigmatization of these child victims which can have harmful mental health effects and may contribute to their re-victimization.<sup>8</sup> Second, the changes create consistency among various Georgia Code sections addressing the issues of prostitution-related activities and human trafficking. These Code sections work together to make a clear statement that the state of Georgia believes children involved in prostitution are victims, rather than criminals, and that those adults involved in the promotion, sale, and purchase of sex from children should be held accountable for their detrimental actions. The Barton Child Law and Policy Clinic supports the passage of HB 582.

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<sup>7</sup> Francine T. Sherman, Annie E. Casey Foundation, *Detention Reform and Girls*, 13 PATHWAYS TO JUVENILE DETENTION REFORM 25 (2005), available at [http://www.aecf.org/upload/publicationfiles/jdai\\_pathways\\_girls.pdf](http://www.aecf.org/upload/publicationfiles/jdai_pathways_girls.pdf).

<sup>8</sup> *Id.*