

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 202X

BILL NUMBER: XX

Short Title: North Carolina Survivors Justice Act

(Public)

Sponsor:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE RELIEF TO SURVIVORS OF HUMAN TRAFFICKING AND  
3 DOMESTIC VIOLENCE WHOSE ABUSE WAS A CONTRIBUTING FACTOR TO  
4 THEIR CRIMINAL OFFENSE; TO CREATE A NEWLY ENUMERATED  
5 MITIGATING FACTOR IN FELONY SENTENCING FOR SUCH SURVIVORS; TO  
6 ESTABLISH HISTORY OF HUMAN TRAFFICKING OR DOMESTIC VIOLENCE  
7 AS QUALIFYING FOR EXTRAORDINARY MITIGATION; TO AMEND THE  
8 REASONABLENESS STANDARD FOR SELF-DEFENSE IN CASES WHERE THE  
9 DEFENDANT HAS BEEN THE VICTIM OF DOMESTIC VIOLENCE OR HUMAN  
10 TRAFFICKING; AND TO CREATE A NEW PROVISION IN THE CODE OF  
11 EVIDENCE SUPPORTING THE ADMISSIBILITY OF EVIDENCE OF DOMESTIC  
12 VIOLENCE AND EXPERT TESTIMONY ON ITS EFFECTS.

13  
14 The General Assembly of North Carolina enacts:

15  
16 **PART I. RELIEF FOR SURVIVORS OF HUMAN TRAFFICKING AND**  
17 **DOMESTIC VIOLENCE.**

18 **SECTION 1.(a)** This bill shall be known as the North Carolina Human  
19 Trafficking Victims and Survivors Justice Act.

20 **SECTION 1.(b)** Chapter 15A of the General Statutes is amended by adding a  
21 new Article to read:

22 “Article 89A.  
23 “North Carolina Human Trafficking Victims and Survivors Justice Act.  
24 **“§ 15A-1423. Definitions.**

25 (a) As used in this act:

26 (1) “Domestic violence” is used as defined in G.S. 50B-1(a).

- 1           (2) “Abused juvenile” is used as defined in G.S. 7B-101(1).  
2           (3) “Neglected juvenile” is used as defined in G.S. 7B-101(15).  
3           (4) “Human trafficking” means a person subjected to the practices set forth in  
4           G.S. 14-43.11, 14-43.12, or 14-43.13.  
5           (5) “Psychological abuse” means a pattern of real, attempted, or threatened  
6           mental intimidation, threats, coercive control, economic or financial  
7           control, or humiliation that provokes fear of harm perpetrated against the  
8           defendant or the defendant’s children by: someone with whom the  
9           defendant is in a personal relationship defined in G.S. 50B-1(b)(1-6); a  
10           parent, guardian, custodian, or caretaker of the defendant; or a person who  
11           subjected or aided in the subjection of the defendant to Human Trafficking.  
12           (6) “Sentencing hearing” means a postconviction hearing in which the  
13           defendant is brought before the court for imposition of a sentence.

14 **§ 15A-1424. Alternative Sentences for Survivors of Domestic Violence and Human**  
15 **Trafficking.**

16           (a) During a hearing to (1) sentence a person or (2) accept a plea of guilty, if the  
17 court finds that (a) the defendant was subjected to acts of domestic violence, human  
18 trafficking, psychological abuse, or was an abused or neglected juvenile; (b) such abuse  
19 was a significant contributing factor to the offense; and (c) it is in the interest of justice,  
20 the court must impose a sentence in accordance with this section. Defendants who are  
21 survivors of domestic violence or human trafficking as defined in this Act and who enter  
22 a plea agreement cannot be required to waive their rights to seek relief pursuant to this  
23 section.

24           (b) The defendant may present evidence that they were subjected to acts of domestic  
25 violence, human trafficking, psychological abuse, or was an abused or neglected juvenile  
26 and that the abuse was a significant contributing factor to the offense. Evidence may  
27 include, but is not limited to:

- 28           (1) Evidence indicating the defendant sought law enforcement assistance in  
29           response to the abuse;  
30           (2) Evidence indicating the defendant sought services from a counselor, social  
31           worker, domestic violence program, or other relevant agency in response to  
32           the abuse;  
33           (3) Evidence indicating the defendant sought medical attention in response to  
34           the abuse  
35           (4) Evidence of defendant’s medical records documenting the abuse;  
36           (5) Testimony from witnesses to the abuse;  
37           (6) Evidence of the effects of battering;  
38           (7) Evidence of post-traumatic stress disorder or related stress disorders on the  
39           defendant;  
40           (8) Evidence pertaining to the alleged abuser’s history of abuse including but  
41           not limited to North Carolina Department of Social Services Involvement

1 or Petitions, Temporary Protective Order Petitions, Ex-Parte Orders, and  
2 final orders;

3 (9) Expert testimony, including those relevant facts and circumstances relating  
4 to domestic violence, human trafficking, psychological abuse, or abuse or  
5 neglect of a juvenile that are the bases of the expert's opinion;

6 (10) Relevant communications and reliable hearsay about the examples in sub-  
7 parts (1) to (9); and

8 (11) Any other evidence that the court determines is credible or has probative  
9 value.

10 (c) If the defendant makes the required showing in § 15A-1424(b) that the defendant  
11 was a survivor of domestic violence, human trafficking, psychological abuse, or was an  
12 abused or neglected juvenile; that person shall be punished for an offense that is two  
13 classes lower, except that a Class A or Class B1 felony is punished as a Class C felony, a  
14 Class B2 felony is punished as a Class D felony, a Class H felony is punished as a Class  
15 1 misdemeanor, and a Class I felony is punished as a Class 2 misdemeanor. Making the  
16 required showing in § 15A-1424(b) satisfies § 15A-1340.13(g) qualifying the defendant  
17 for extraordinary mitigation. § 15A-1340.13(h) does not apply to defendants who qualify  
18 for extraordinary mitigation through § 15A-1424.

19 (d) The right of the State to appeal as outlined in N.C.G.S. 15A-1445(a)(3) shall not  
20 apply to sentences determined under this Act.

### 21 **§ 15A-1425. Resentencing for Survivors of Domestic Violence and Trafficking.**

22 (a) Where a criminal court has imposed a criminal judgment and sentence upon a  
23 defendant and the defendant is serving the sentence, a new, lesser sentence shall be given  
24 following a hearing if the court determines (a) the defendant was subjected to acts of  
25 domestic violence, human trafficking, psychological abuse or was an abused or neglected  
26 juvenile; (b) such abuse was a significant contributing factor to the offense; and (c) it is  
27 in the interest of justice. Nothing in this section shall prevent the parties to the action from  
28 entering into an agreement for relief, including an agreement as to any aspect, procedural  
29 or otherwise, of a motion under this section.

30 (b) Any person who is (a) confined in an institution under the custody and control  
31 of the Department of Adult Correction, (b) serving a sentence for an offense committed  
32 prior to the effective date of this act, and (c) eligible for an alternative sentence under §  
33 15A-1424(a) and (b) of this act, is entitled to submit the application to the court to apply  
34 for resentencing under § 15A-1423(c). If the court finds that the person has met the  
35 requirements to apply for resentencing as provided in subsection (a) of this section, the  
36 court shall provide notice to the person that he or she may submit an application for  
37 resentencing. Upon such notification, the person may request and the court shall appoint  
38 an attorney to assist the person in the preparation of and proceedings on the application  
39 for resentencing.

40 (1) The application shall be served upon the District Attorney in the county or  
41 judicial district where the conviction occurred. The state shall file its  
42 response, if any, within 60 days of being served with the motion. The state

- 1           shall be given notice and an opportunity to respond at any sentencing  
2           hearing conducted pursuant to this subsection.
- 3           (2) If the state files its response, and the court determines that the motion  
4           complies with the requirements of paragraph (b)(3) of this subsection, the  
5           court shall order a hearing to occur after the state has filed its response, but  
6           not more than 90 days from the date the motion was filed.
- 7           (3) If in the application the defendant presents reliable evidence that the  
8           defendant was subjected to acts of domestic violence, human trafficking,  
9           psychological abuse, or was an abused or neglected juvenile, and that the  
10           abuse was a significant contributing factor to the offense, the defendant  
11           shall be entitled to a hearing.
- 12           (4) Upon receiving the application, the court must either issue an order or  
13           schedule a hearing within 120 days.
- 14           (5) If based upon the application or evidence presented at the hearing, the court  
15           determines that the defendant has not shown by a preponderance of the  
16           evidence that abuse occurred and was a significant contributing factor to  
17           the offense, the court shall notify such person, dismiss his or her request  
18           without prejudice, and enter an order to such effect.
- 19           (6) If based upon evidence presented at the hearing, the court determines that  
20           the defendant has shown by a preponderance of the evidence that abuse  
21           occurred and was a significant contributing factor to the offense, the court  
22           shall enter an order, modifying the defendant's sentence to fall within the  
23           range prescribed by § 15A-1424(c).
- 24           (7) The right of the State to appeal as outlined in N.C.G.S. 15A-1445(a)(3)  
25           shall not apply to any order issued under this section.
- 26           (c) Any order issued by a court pursuant to this section must include written findings  
27           of fact and the reasons for said order.
- 28           (d) An appeal may be taken as of right in accordance with applicable provisions of  
29           this chapter (a) from an order denying resentencing or (b) from a new sentence imposed  
30           under this provision.
- 31           (e) The provisions of Chapter 7A of the General Statutes with regard to the  
32           appointment of counsel for indigent defendants are applicable to proceedings under §  
33           15A-1425. The court may also make appropriate orders relieving indigent defendants of  
34           all or a portion of the costs of such proceedings under this section.

35  
36 **PART II. MITIGATING FACTOR FOR CIRCUMSTANCES OF HUMAN**  
37 **TRAFFICKING AND DOMESTIC VIOLENCE**

38           **SECTION 2.(a)** G.S. § 15A-1340.16(e) reads as rewritten:

39           “(e) Mitigating Factors. – The following are mitigating factors:

- 40           (1) The defendant committed the offense under duress, coercion, threat, or  
41           compulsion that was insufficient to constitute a defense but significantly  
42           reduced the defendant's culpability.

- 1 (2) The defendant was a passive participant or played a minor role in the  
2 commission of the offense.
- 3 (3) The defendant was suffering from a mental or physical condition that was  
4 insufficient to constitute a defense but significantly reduced the defendant's  
5 culpability for the offense.
- 6 (4) The defendant's age, immaturity, or limited mental capacity at the time of  
7 commission of the offense significantly reduced the defendant's culpability for  
8 the offense.
- 9 (5) The defendant has made substantial or full restitution to the victim.
- 10 (6) The victim was more than 16 years of age and was a voluntary participant  
11 in the defendant's conduct or consented to it.
- 12 (7) The defendant aided in the apprehension of another felon or testified  
13 truthfully on behalf of the prosecution in another prosecution of a felony.
- 14 (8) The defendant acted under strong provocation, or the relationship between  
15 the defendant and the victim was otherwise extenuating.
- 16 (8A) The defendant suffered a continuing pattern of abuse, and that abuse was  
17 a factor in the commission of the offense.
- 18 (9) The defendant could not reasonably foresee that the defendant's conduct  
19 would cause or threaten serious bodily harm or fear, or the defendant exercised  
20 caution to avoid such consequences.
- 21 (10) The defendant reasonably believed that the defendant's conduct was  
22 legal.
- 23 (11) Prior to arrest or at an early stage of the criminal process, the defendant  
24 voluntarily acknowledged wrongdoing in connection with the offense to a law  
25 enforcement officer.
- 26 (12) The defendant has been a person of good character or has had a good  
27 reputation in the community in which the defendant lives.
- 28 (13) The defendant is a minor and has reliable supervision available.
- 29 (14) The defendant has been honorably discharged from the Armed Forces of  
30 the United States.
- 31 (15) The defendant has accepted responsibility for the defendant's criminal  
32 conduct.
- 33 (16) The defendant has entered and is currently involved in or has successfully  
34 completed either (i) a drug treatment program, (ii) an alcohol treatment  
35 program, or (iii) a mental, behavioral, or medical health related treatment  
36 program, subsequent to arrest and prior to trial.
- 37 (17) The defendant supports the defendant's family.
- 38 (18) The defendant has a support system in the community.
- 39 (19) The defendant has a positive employment history or is gainfully  
40 employed.
- 41 (20) The defendant has a good treatment prognosis, and a workable treatment  
42 plan is available.

1 (21) Any other mitigating factor reasonably related to the purposes of  
2 sentences.

3 ”SECTION 2.(b) G.S. § 15A-1340.13(g)(1) reads as rewritten:

4 “(1) That extraordinary mitigating factors of a kind significantly greater than in the normal  
5 case are present.

6 (A) Qualifying for relief under § 15A-1424 establishes that the mitigating  
7 factors are of a kind significantly greater than in the normal case.”

8 SECTION 2.(c) G.S. § 15A-1340.13(h) reads as rewritten:

9 “(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. – The court shall not  
10 impose an intermediate sanction pursuant to subsection (g) of this section if:

11 (1) The offense is a Class A or Class B1 felony except as provided by G.S.  
12 15A-1424(c);

13 (2) The offense is a drug trafficking offense under G.S. 90-95(h) or a drug  
14 trafficking conspiracy offense under G.S. 90-95(i); or

15 (3) The defendant has five or more points as determined by G.S. 15A-  
16 1340.14.”

### 17 18 **PART III. RELEVANCE OF EVIDENCE OF HUMAN TRAFFICKING AND** 19 **DOMESTIC VIOLENCE TO SELF-DEFENSE CLAIMS**

20 SECTION 3.(a) G.S. § 14-51.3 reads as rewritten:

21 “§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.

22 (a) A person is justified in using force, except deadly force, against another when  
23 and to the extent that the person reasonably believes that the conduct is necessary to  
24 defend himself or herself or another against the other's imminent use of unlawful  
25 force. However, a person is justified in the use of deadly force and does not have a  
26 duty to retreat in any place he or she has the lawful right to be if either of the  
27 following applies:

28 (1) He or she reasonably believes that such force is necessary to prevent  
29 imminent death or great bodily harm to himself or herself or another.

30 (2) Under the circumstances permitted pursuant to G.S. 14-51.2.

31 (b) A person who uses force as permitted by this section is justified in using such  
32 force and is immune from civil or criminal liability for the use of such force, unless  
33 the person against whom force was used is a law enforcement officer or bail  
34 bondsman who was lawfully acting in the performance of his or her official duties  
35 and the officer or bail bondsman identified himself or herself in accordance with any  
36 applicable law or the person using force knew or reasonably should have known that  
37 the person was a law enforcement officer or bail bondsman in the lawful  
38 performance of his or her official duties.

39 (c) Evidence of past acts of domestic violence as defined in G.S. 50B-1(a) or human  
40 trafficking as defined in G.S. 14-43.11, 14-43.12, or 14-43.13 against the defendant  
41 by the victim, including but not limited to expert testimony, is relevant to the

1 defendant’s objective and subjective reasonableness and the imminence of the  
2 threatened harm to the defendant or another person.

3 (d) If the defendant is or was an abused or neglected juvenile as defined in G.S.  
4 7B-101 and the victim was someone as defined in G.S. 7B-101(3), 7B-101(8), 7B-  
5 101(15a), or 7B-101(18b) who perpetuated past acts against the defendant as defined  
6 in G.S. 7B-101(1)(a-g), then the reasonableness of the defendant’s state of mind  
7 under (a) shall be determined from the perspective of an abused or neglected juvenile  
8 who has been a victim of those past acts.”

9 **SECTION 3.(b)** Article 4 of Chapter 8C of the General Statutes is amended by  
10 adding a new section to read:

11 **“Rule 416. Evidence of Domestic Violence and Its Effects.**

12 (a) In this section, ‘Domestic Violence’ includes:

13 (1) ‘Domestic Violence’ is defined as physical, emotional, sexual, mental, or  
14 financial abuse, or any combination thereof, perpetrated against the  
15 defendant by a person with whom the defendant party has or has had a  
16 personal relationship as defined in Section 50B-1(b)(1-6) of the General  
17 Statutes.

18 (2) Family Member Violence. ‘Family Member Violence’ is defined as  
19 physical, emotional, sexual, mental, or financial abuse, or any combination  
20 thereof, perpetuated against the defendant by a member of the defendant’s  
21 family whether related by blood, marriage, or adoption. ‘Family Member’  
22 is defined in Section 14-43.17(a)(3) of the General Statutes.

23 (3) Caretaker Violence. ‘Caretaker Violence’ is defined as physical, emotional,  
24 sexual, mental, or financial abuse, or any combination thereof, perpetuated  
25 against the defendant by someone who is a Caretaker of the defendant.  
26 ‘Caretaker’ is defined in Section 7B-101(3) of the General Statutes.

27 (b) In a criminal action, expert testimony regarding Domestic Violence and its effects,  
28 including the nature and effect of physical, emotional, or mental abuse on the  
29 beliefs, perceptions, or behavior of victims of domestic violence is admissible and  
30 is relevant to prove the justification of self-defense, substantial contributing  
31 factors, to negate malice, or to mitigate the imposition of a sentence.

32 (c) Expert opinion testimony on Domestic Violence and its effects shall be considered  
33 testimony which is the product of reliable principles and methods within the  
34 meaning of Section 702(a)(2) of Chapter 8C of the General Statutes.

35  
36 **PART IV. EFFECTIVE DATE**

37 **SECTION 4.(a)** Except as otherwise provided, this act is effective when it  
38 becomes law. This act shall apply retroactively such that people who would have qualified  
39 for relief under this act had it been in effect at the time of their sentencing shall be able to  
40 apply for retroactive relief.