

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS GEORGIA

### FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

#### *Legal Components:*

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*
- 1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*
- 1.3 *Commercial sexual exploitation of children (CSEC) or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*
- 1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

#### *Legal Analysis<sup>1</sup>:*

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*

Paralleling federal law, Georgia's human trafficking law does not require a showing of force, fraud, or coercion of minors under 18 to qualify as sex trafficking. Under Ga. Code Ann. § 16-5-46(c) (Trafficking of persons for labor or sexual servitude), trafficking occurs when one "knowingly subjects another person to or maintains another person in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude." Ga. Code Ann. § 16-5-46(c). Pursuant to Ga. Code Ann. § 16-5-46(a)(6), "sexual servitude" is defined as "(A) Any sexually explicit conduct<sup>2</sup> or performance involving sexually explicit conduct for which anything of value

<sup>1</sup> Unless otherwise specified, all references to Georgia statutes were taken from the Official Code of Georgia Annotated (LEXIS through 2011 Extraordinary Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-173, approved 8/16/12). This report includes legislation enacted before August 1, 2012.

<sup>2</sup> Ga. Code Ann. § 16-5-46(a)(5) refers to Ga. Code Ann. § 16-12-100 for the definition of "sexually explicit conduct." Ga. Code Ann. § 16-12-100(4)(Sexual exploitation of children) defines "sexually explicit conduct" as the following:

(4) "Sexually explicit conduct" means actual or simulated:

is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or (B) Any sexually explicit conduct or performance involving sexually explicit conduct which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.” If committed against a minor under 18, trafficking is a felony punishable by imprisonment for 10–20 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-5-46(f)(2). If, however, the minor was “coerced or deceived into being trafficked,” the crime is punishable by imprisonment for 25–50 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-5-46(f)(2).

1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*

The following laws make CSEC a crime in Georgia:

1. Under Ga. Code Ann. § 16-6-11 (Pimping),

A person commits the offense of pimping when he or she performs any of the following acts:

- (1) Offers or agrees to procure a prostitute for another;
- (2) Offers or agrees to arrange a meeting of persons for the purpose of prostitution;
- (3) Directs or transports another person to a place when he or she knows or should know that the direction or transportation is for the purpose of prostitution;
- (4) Receives money or other thing of value from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or
- (5) Aids or abets, counsels, or commands another in the commission of prostitution or aids or assists in prostitution where the proceeds or profits derived therefrom are to be divided on a pro rata basis.

Pursuant to Ga. Code Ann. § 16-6-13(b)(1) (Penalties for violating Code Sections 16-6-9 through 16-6-12), when the victim is 16 or 17, the crime is punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the victim is under the age of 16, the perpetrator is guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

2. A person is guilty of pandering, according to Ga. Code Ann. § 16-6-12 (Pandering),

[W]hen he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.

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- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
  - (B) Bestiality;
  - (C) Masturbation;
  - (D) Lewd exhibition of the genitals or pubic area of any person;
  - (E) Flagellation or torture by or upon a person who is nude;
  - (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
  - (G) Physical contact in an act of apparent sexual stimulation or gratification with any person’s unclothed genitals, pubic area, or buttocks or with a female’s nude breasts;
  - (H) Defecation or urination for the purpose of sexual stimulation of the viewer; or
  - (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

When the victim is 16 or 17, the crime is punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the victim is under the age of 16, the perpetrator is guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

3. Under Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), “A person having or exercising control over the use of any place or conveyance which would offer seclusion or shelter for the practice of prostitution commits the offense of keeping a place of prostitution when he knowingly grants or permits the use of such place for the purpose of prostitution.” When the victim is 16 or 17, the crime is punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the victim is under the age of 16, the perpetrator is guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

4. Ga. Code Ann. § 16-12-100(b) (Sexual exploitation of children) states in part,

(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

....

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

....

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct can be found or purchased.

....

This crime is a felony punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(g)(1). However, no fine will be imposed if “the person so convicted is a member of the immediate family of the victim.” Ga. Code Ann. § 16-12-100(g)(1).<sup>3</sup>

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<sup>3</sup> In addition, those convicted of sexual offenses face heightened penalties under Ga. Code Ann. § 17-10-6.2 (“Sexual offense” defined; split sentence; deviation from mandatory minimum sentence). Under subsection (a), “sexual offense” is defined to include, “(6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, unless subject to the provisions of subsection (c) of Code Section 16-6-5” and “(10) Sexual exploitation of children, as defined in Code Section 16-12-100.”<sup>3</sup> Under subsection (b), subject to exceptions in subsection (c), “notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to the offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory imprisonment, an additional probated sentence of at least one year.” Subsection (c) states,

(c)(1) In the court’s discretion, the court may deviate from the mandatory minimum sentence as set forth in subsection (b) of this Code section, or any portion thereof, provided that:

(A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;

(B) The defendant did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;

5. Ga. Code Ann. § 16-6-15(a) (Solicitation of sodomy) states, “A person commits the offense of solicitation of sodomy when he solicits another to perform or submit to an act of sodomy. Except as provided in subsection (b) of this Code section, a person convicted of solicitation of sodomy shall be punished as for a misdemeanor.” This statute further states in subsection (b), “A person convicted of solicitation of sodomy when such offense involves the solicitation of a person or persons under the age of 18 years to perform or submit to an act of sodomy for money shall be guilty of a felony” punishable by imprisonment for 5–20 years and a fine of \$2,500–\$10,000.

Although not exclusively commercial, the following crimes could still apply in cases of commercial sexual exploitation of children:

1. Under Ga. Code Ann. § 16-6-3(a) (Statutory rape), statutory rape occurs when an individual “engages in sexual intercourse with any person under the age of 16 years and not his or her spouse . . . .” If an individual under 21 commits this crime, it is punishable by imprisonment for 1–20 years. Ga. Code Ann. § 16-6-3(b). If the individual is 21 years or older and commits this crime, it is punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-6-3(b). If the victim is 14 or 15 and the perpetrator is 18 or under and not more than 4 years older than the victim, the crime is a misdemeanor. Ga. Code Ann. § 16-6-3(c). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).
2. According to Ga. Code Ann. § 16-6-4(a) (Child molestation; aggravated child molestation), child molestation occurs when an individual

- (1) Does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person; or
- (2) By means of an electronic device, transmits images of a person engaging in, inducing, or otherwise participating in any immoral or indecent act to a child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.

Upon a first conviction, this crime is punishable by imprisonment for 5–20 years, and “the Department of Corrections shall provide counseling to such defendant.” Ga. Code Ann. § 16-6-4(b)(1). A second or subsequent offense is punishable by imprisonment for 10–30 years or life imprisonment. Ga. Code Ann. § 16-6-4(b)(1). If the victim is 14 or 15 and the perpetrator is 18 or under and not more than 4 years older than the victim, the crime is a misdemeanor. Ga. Code Ann. § 16-6-4(b)(2). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2). Additionally, the crime is aggravated child molestation if the child is physically injured or if the crime involves sodomy. Ga. Code Ann. § 16-6-4(c). If the charge is based on an act that involves sodomy, the victim is “at least 13 but less than 16,” and the perpetrator is 18 or under and no more than 4 years older than the victim, the charge is a misdemeanor. Ga. Code Ann. § 16-6-4(d)(2). Otherwise, aggravated child molestation is punishable by life imprisonment or a split sentence including minimum imprisonment of 25 years and probation for life. Ga. Code Ann. § 17-10-6.1(b)(2); 16-6-4(d)(1).

3. Ga. Code Ann. § 16-6-5(a) (Enticing a child for indecent purposes) states, “A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent

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- (C) The court has not found evidence of a relevant similar transaction;
  - (D) The victim did not suffer any intentional physical harm during the commission of the offense;
  - (E) The offense did not involve the transportation of the victim; and
  - (F) The victim was not physically restrained during the commission of the offense.

acts.”<sup>4</sup> This crime is punishable by imprisonment for 10–30 years. Ga. Code Ann. § 16-6-5(b). Subsection (c), however, provides that “[i]f the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.” Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).<sup>5</sup>

4. Ga. Code Ann. § 16-12-100.2(c)(1) (Computer or electronic pornography and child exploitation prevention) is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2). It states,

A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

- (A) Compiles, enters into, or transmits by computer or other electronic device;
  - (B) Makes, prints, publishes, or reproduces by other computer or other electronic device;
  - (C) Causes or allows to be entered into or transmitted by computer or other electronic device;
- or
- (D) Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement, or any child’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

Ga. Code Ann. § 16-12-100.2(d)(1) (Computer or electronic pornography and child exploitation prevention) also makes it a crime to “intentionally or willfully . . . utilize a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, on-line messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child to commit any illegal act described in Code Section 16-6-2,<sup>6</sup> relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency or to engage in any conduct that by its nature is an unlawful sexual offense against a child.” This felony is punishable by imprisonment for 1–20 years and a fine not to exceed \$25,000, “provided, however, that, if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a high and aggravated nature.

### 1.3 *Commercial sexual exploitation of children (CSEC) or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

The state CSEC statutes listed above do not reference the state human trafficking law to clarify that CSEC victims are sex trafficking victims. Similarly Ga. Code Ann. § 16-6-9 (Prostitution) and Ga. Code Ann. §

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<sup>4</sup> Kelley v. State, 686 S.E.2d 810, 813 (Ga. Ct. App. 2009) (quoting Cimildoro v. State, 387 SE 2d 335, 336 (Ga. 1990)) (“Here, the asportation element was satisfied by ample evidence of enticement; Kelley initiated contact with B. B., asked her to have sexual intercourse with him, offered her money to do so, and arranged a place to pick B. B. up so that they could have sex at his home.” (footnotes omitted)).

<sup>5</sup> See *supra* note 3.

<sup>6</sup> The Georgia Supreme Court concluded in *Powell v. State* that “O.C.G.A. § 16-6-2, insofar as it criminalizes the performance of private, unforced, non-commercial acts of sexual intimacy between persons legally able to consent, ‘manifestly infringes upon a constitutional provision’ which guarantees to the citizens of Georgia the right of privacy.” 510 S.E. 2d 18, 26 (Ga. 1998) (quoting *Miller v. State*, 472 S.E.2d 74, 78 (Ga. 1996)).

16-6-16 (Masturbation for hire) do not refer to the human trafficking law when the person charged is a minor.

- 1.3.1 Recommendation: Amend Ga. Code Ann. § 16-6-11 (Pimping), § 16-6-12 (Pandering), § 16-6-10 (Keeping a place of prostitution), § 16-12-100(b) (Sexual exploitation of children), § 16-6-15(a) (Solicitation of sodomy), § 16-6-9 (Prostitution) and § 16-6-16 (Masturbation for hire) when the person charged is a minor, to identify prostituted minors as victims of sex trafficking under Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude).

- 1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

Ga. Code Ann. § 16-14-4(a), (b) (Prohibited activities)<sup>7</sup> states,

- (a) It is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.
- (b) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

“Racketeering activity” is defined in Ga. Code Ann. § 16-14-3 (Definitions) to include prostitution, keeping a place of prostitution, pimping, pandering, and pandering by compulsion, and trafficking of persons for labor or sexual servitude. Ga. Code Ann. § 16-14-3(9)(A)(xi), (xxx). Under Ga. Code Ann. § 16-14-3(8)(A), “Pattern of racketeering activity” is defined as including

- (A) Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity . . . .

Racketeering is a felony punishable by imprisonment for 5–20 years, “a fine that does not exceed the greater of \$25,000.00 or three times the amount of any pecuniary value gained by him from such violation,” or both. Ga. Code Ann. § 16-14-5. Asset forfeiture exists for racketeering crimes, and Ga. Code Ann. § 16-14-7(a) (Forfeiture proceedings) states in part, “All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering activity is subject to forfeiture to the state.”

Similarly, it is an offense “for any person employed by or associated with a criminal street gang to conduct or participate in criminal gang activity through the commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.” Ga. Code Ann. § 16-15-4(a). “Any offense defined as racketeering activity by Code Section 16-14-3” also constitutes criminal gang activity. Ga. Code Ann. 16-15-3(1)(A). Ga. Code Ann. § 16-15-3(2) defines a “criminal street gang” as “any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in criminal gang activity as defined in paragraph (1) of this Code section.”

In addition to any other penalty provided by law, any violation of Ga. Code Ann. § 16-15-4(a) is punishable by imprisonment for 5–15 years, a fine of \$10,000–\$15,000, or both. Ga. Code Ann. § 16-5-4(k)(1). Additionally, “(1) All property which is directly or indirectly used or intended for use in any

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<sup>7</sup> For additional information, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHI-WhitePaperFederalStateRacketeeringGangCrimeLaws.pdf>.

manner to facilitate a violation of this chapter; and (2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this chapter” is subject to forfeiture. Ga. Code Ann. § 16-15-5(a).

Additionally, if the perpetrator was found guilty of the racketeering statute, which includes Ga. Code Ann. § 16-5-46 (Trafficking in persons for labor or sexual servitude), § 16-6-11 (Pimping), and § 16-6-12 (Pandering), a victim may seek civil remedies pursuant to Ga. Code Ann. § 16-14-6. Furthermore, Ga. Code Ann. § 16-14-6(c) (Available civil remedies) states,

Any person who is injured by reason of any violation of Code Section 16-14-4 [Prohibited activities – racketeering] shall have a cause of action for three times the actual damages sustained and, where appropriate, punitive damages. Such person shall also recover attorneys’ fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

- 1.4.1: Recommendation: Amend the RICO statute to include the following crimes as “racketeering activity”: Ga. Code Ann. § 16-12-100(b) (Sexual exploitation of children), and Ga. Code Ann. § 16-6-15(a) (Solicitation of sodomy).

***Legal Components:***

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.*
  - 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*
  - 2.3 *Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*
  - 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
  - 2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*
  - 2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*
  - 2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*
  - 2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*
  - 2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*
  - 2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*
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***Legal Analysis:***

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.*

Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) might apply to buyers of sex with victims of domestic minor sex trafficking through the term “obtain.” Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),<sup>8</sup> have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”<sup>9</sup> a person under 18 to engage in commercial sex.<sup>10</sup> It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) could apply to buyers of commercial sex since sexual servitude is defined as “[a]ny sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years...” Ga. Code Ann. § 16-5-46(6)(A).

- 2.1.1 Recommendation: Amend Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) to clarify that it applies to buyers of commercial sex with minors.

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<sup>8</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>9</sup> 18 U.S.C. § 1591(a).

<sup>10</sup> See, e.g., Indictment at 1, United States v. Oflyng, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.



2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*

Ga. Code Ann. § 16-6-12 (Pandering) has been applied to buyers. The law states, “A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.”<sup>11</sup> Although this law is not specific to minors, it does provide for heightened penalties when a minor is involved. Ga. Code Ann. § 16-6-13(b).<sup>12</sup>

Under Ga. Code Ann. § 16-6-5(a) (Enticing a child for indecent purposes), “A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.” Asportation is an element of this crime, and it “is satisfied ‘whether the “taking” involves physical force, enticement, or persuasion.’”<sup>13</sup>

2.3 *Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*

Ga. Code Ann. § 16-6-12 (Pandering), the applicable statute for solicitation of prostitution, states, “A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.” Although Ga. Code Ann. § 16-6-12 (Pandering) is age-neutral, Ga. Code Ann. § 16-6-13 provides heightened penalties for this crime when a minor is the subject of the solicitation. When the victim is 16 or 17, the crime is punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the victim is under the age of 16, the perpetrator is guilty of a felony punishable by imprisonment for 10-30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

In the cases in which it is applicable to buyers, enticing a child for indecent purposes under Ga. Code Ann. § 16-6-5 is a crime that can only apply when the victim is a minor under 16 years old. Ga. Code Ann. § 16-6-5(a).

2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*

If the state human trafficking law applies to buyers, according to Ga. Code Ann. § 16-5-46(f)(2), if committed against a minor under 18, trafficking is a felony punishable by imprisonment for 10–20 years, a fine not to exceed \$100,000, or both. If, however, the minor was “coerced or deceived into being trafficked,” the crime is punishable by imprisonment for 25–50 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-5-46(f)(2).

If a buyer is convicted under Ga. Code Ann. § 16-6-12 (Pandering) and the victim is 16 or 17, the buyer is guilty of a felony punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga.

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<sup>11</sup> See *Fluker v. State*, 282 S.E.2d 112, 115 (Ga. 1981) (concerning an earlier version of the statute) (In *Fluker*, two appellants faced charges of pandering for “soliciting a named female to perform an act of prostitution.” The appellants unsuccessfully challenged this statute’s applicability to buyers of commercial sex, and the court stated, “Even if the primary emphasis of the present pandering statute is . . . upon the recruitment of females into the practice of prostitution, the fact remains, as we have pointed out, that the statute’s wording renders one guilty of pandering when he solicits a female to commit an act of prostitution, either for himself or another.”)

<sup>12</sup> See *supra* Section 1.2 for sexual offenses which may apply to buyers of commercial sex acts with minors.

<sup>13</sup> *Kelley v. State*, 686 S.E.2d 810, 813 (Ga. Ct. App. 2009) (quoting *Cimildoro v. State*, 387 SE 2d 335, 336 (Ga. 1990)) (“Here, the asportation element was satisfied by ample evidence of enticement; Kelley initiated contact with B. B., asked her to have sexual intercourse with him, offered her money to do so, and arranged a place to pick B. B. up so that they could have sex at his home.” (footnotes omitted)).

Code Ann. § 16-6-13(b)(1). If the victim is under 16, the buyer is guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

A buyer convicted of Ga. Code Ann. § 16-12-100.2(c) (Computer or electronic pornography and child exploitation prevention) faces imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).

A buyer convicted of occupying a room for an immoral purpose, under Ga. Code Ann. § 43-21-61, is guilty of a misdemeanor punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).

Enticing a minor under 16 for indecent purposes, under Ga. Code Ann. § 16-6-5, is punishable by imprisonment for 10–30 years. Ga. Code Ann. § 16-6-5(b). If the victim is 14 or 15 years old and the accused is 18 or younger and no more than 4 years older than the victim, the crime is a misdemeanor. Ga. Code Ann. § 16-6-5(c). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).

Additionally, although the following laws do not expressly deal with commercial transactions, offenders could face penalties under the sexual offense laws of Ga. Code Ann. § 16-6-3 (Statutory rape) and Ga. Code Ann. § 16-6-4 (Child molestation), which both involve sexual acts with minors. If the victim is 14 or 15 and the perpetrator is less than 18 and no more than 4 years older than the victim, the crime of statutory rape is a misdemeanor. Ga. Code Ann. § 16-6-3(c). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2). If the offender is under 21, statutory rape is punishable by imprisonment for 1–20 years. Ga. Code Ann. § 16-6-3(b). If the offender is 21 or older, the crime is punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-6-3(b). Child molestation is generally punishable by imprisonment for 5–20 years. Ga. Code Ann. § 16-6-4(b)(1). If, however, the victim is 14 or 15, and the offender is less than 18 and no more than 4 years older than the victim, the crime of child molestation is only a misdemeanor. Ga. Code Ann. § 16-6-4(b)(2). In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment however, if the buyer has a prior conviction for a federal sex offense<sup>14</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>15</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>16</sup>

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<sup>14</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

an offense under section 1591 [18 USCS § 1591] (relating to sex trafficking of children), 2241 [18 USCS § 2241] (relating to aggravated sexual abuse), 2242 [18 USCS § 2242] (relating to sexual abuse), 2244(a)(1) [18 USCS § 2244(a)(1)] (relating to abusive sexual contact), 2245 [18 USCS § 2245] (relating to sexual abuse resulting in death), 2251 [18 USCS § 2251] (relating to sexual exploitation of children), 2251A [18 USCS § 2251A] (relating to selling or buying of children), 2422(b) [18 USCS § 2422(b)] (relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).

<sup>15</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>16</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or

2.4.1 Recommendation: Include Ga. Code Ann. § 16-6-12 (Pandering) as an enumerated sexual offense in Ga. Code Ann. § 17-10-6.2 (Punishment for sexual offenders) to bring heightened penalties to bear on buyers.

2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*

Although it is not expressly commercial, buyers could be charged with Ga. Code Ann. § 16-12-100.2(d)(1), (Computer or electronic pornography and child exploitation) which states,

It shall be unlawful for any person intentionally or willfully to utilize a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, on-line messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child to commit any illegal act described in Code Section 16-6-2,<sup>17</sup> relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$25,000. Ga. Code Ann. § 16-12-100.2(d)(2). If, however, the victim is 14 or 15, and the defendant is not more than three years older than the victim, the crime is only a misdemeanor. Ga. Code Ann. § 16-12-100.2(d)(2). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).

2.5.1 Recommendation: Amend Ga. Code Ann. § 16-12-100.2(d)(1), (Computer or electronic pornography and child exploitation) to raise the age of a minor victim to under 18 and include use of the Internet to commit Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) or § 16-6-12 (Pandering).

2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*

If the state human trafficking statute applies to buyers of commercial sex with minors, the mistake of age defense is not allowed, because the statute states that “[t]he age of consent for sexual activity or the accused’s lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.” Ga. Code Ann. § 16-5-46(d).

Regarding the heightened penalties that apply to pandering, the law does not explicitly prohibit the mistake of age defense. Ga. Code Ann. § 16-6-13. Therefore, it is possible, albeit unlikely, that buyers could use a mistake of age defense.

Case law clarifies that knowledge of a victim’s age is not a necessary element of either statutory rape or child molestation and states in dicta that “[w]ith regard to statutory rape . . . , the defendant’s knowledge of the age of the female is not an essential element of the crime . . . and therefore it is no defense that the accused reasonably believed that the prosecutrix was of the age of consent.”<sup>18</sup>

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both.); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>17</sup> *See supra* note 6.

<sup>18</sup> *Haywood v. State*, 642 S.E.2d 203, 204 (Ga. Ct. App. 2007) (quoting *Tant v. State*, 281 S.E.2d 357 (Ga. Ct. App. 2007)) (alteration in the original). *Haywood* further states,

2.6.1 Recommendation: Enact a provision that explicitly states that mistake of age is not a defense to Ga. Code Ann. § 16-6-13 (Pandering).

2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*

Ga. Code Ann. § 16-6-13, which sets the penalty for violations of Ga. Code Ann. § 16-6-12 (Pandering) staggers penalties based on the victim's age. If the victim is 16 or 17, the buyer will be guilty of a felony punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both; whereas, if the victim is under 16, the buyer will be guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. §§ 16-6-13(b)(1), (2).

2.7.1 Recommendation: Amend Ga. Code Ann. § 16-6-13 so that violations of Ga. Code Ann. § 16-6-12 (Pandering) are sufficiently high for all minors under 18.

2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*

If Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) applies to buyers, those who purchase sex with a minor under 18 may be subject to a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2). Additionally, the buyer would face mandatory asset forfeiture<sup>19</sup> of “[a]ll real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Code section. . . Forfeiture shall be had by the same procedure set forth in Code Section 16-14-7.” Ga. Code Ann. § 16-5-46(g). “Forfeiture shall be had by a civil procedure. . .” Ga. Code Ann. §16-14-7. The net proceeds of the forfeiture is to be deposited in the general fund of the state treasury. Ga. Code Ann. § 16-14-7(k). Seizure of forfeitable property is governed by Ga. Code Ann. §16-14-7(f).

Pursuant to Ga. Code Ann. § 16-6-13(b)(1), a person convicted of Ga. Code Ann. § 16-6-12 (Pandering) when the minor involved is 16 or 17, may face a fine between \$2,500 and \$10,000. If the minor involved is under 16, the punishment may involve a fine not to exceed \$100,000. Ga. Code Ann. § 16-6-13(b)(2). Additionally, a buyer is subject to motor vehicle forfeiture under Ga. Code Ann. § 16-6-13.2(c) (Defined terms; prosecution; forfeiture and seizure of property) when the buyer has a prior conviction of Ga. Code Ann. § 16-6-12. Asset forfeiture pursuant to this section is discretionary and civil in nature. The items forfeited shall be disposed of pursuant to Ga. Code Ann. § 16-13-49(u)(Contraband; forfeiture; seizure), which provides for the sale of the property and distribution to government agencies.

Additionally, for violating Ga. Code Ann. § 16-12-100(b)(8) (Sexual exploitation of children; reporting violation; forfeiture; penalties) by possessing child pornography, a buyer will be subject to asset forfeiture pursuant to Ga. Code Ann. § 16-12-100(e)(1)(B) and must forfeit “such interest as the person may have in: . . . [a]ny property used, or intended to be used, to commit such offense.” This forfeiture action is criminal in nature and mandatory. The property forfeited shall also be disposed of pursuant to Ga. Code Ann. § 16-13-49(u) (Contraband; forfeiture; seizure), which provides for the sale of the property and distribution to government agencies.

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Haywood also argues that the evidence regarding F. M.'s age would somehow be relevant to the charges of rape and child molestation. As Haywood was found not guilty of rape, and as his conviction for child molestation merged with the conviction for statutory rape, this argument is moot. Moreover, we note that ‘knowledge of the victim’s age is not an element of the crime of child molestation. The legislature has carefully worded the child molestation statute so that the defendant’s knowledge of the age of the victim is not an element of the crime, just as it is not an element of the crime of statutory rape.’ *Id.* (quoting *Bennett v. State*, 631 S.E.2d 402, 404 (Ga. Ct. App. 2006)).

<sup>19</sup> For more information on asset forfeiture and seizure procedure, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>.

Finally, a buyer will be subject to restitution orders. Ga. Code Ann. § 17-14-3 (Restitution to victim; restitution as condition of probation) states, “. . . [I]n addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.” Consideration of restitution is mandatory, although the “nature and amount of restitution” is dependent upon considerations outlined in Ga. Code Ann. § 17-14-10(a) (Considerations for determining nature and amount of restitution; restitution deemed part of financial resources of victim) including:

- (1) The financial resources and other assets of the offender or person ordered to pay restitution including whether any of the assets are jointly controlled;
- (2) The earnings and other income of the offender or person ordered to pay restitution;
- (3) Any financial obligations of the offender or person ordered to pay restitution, including obligations to dependents;
- (4) The amount of damages;
- (5) The goal of restitution to the victim and the goal of rehabilitation of the offender;
- (6) Any restitution previously made;
- (7) The period of time during which the restitution order will be in effect; and
- (8) Other factors which the ordering authority deems to be appropriate.

## 2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*

Under Ga. Code Ann. § 16-12-100(b)(8) (Sexual exploitation of children; reporting violation; forfeiture; penalties), “It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” Additionally, “It is unlawful for any person knowingly to . . . purchase . . . any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct can be found or purchased.” Ga. Code Ann. § 16-12-100(b)(6). A person who violates this statute is guilty of a felony, which is punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(g)(1).

Under Ga. Code Ann. § 16-12-100.2(c)(1)(D) (Computer or electronic pornography and child exploitation prevention), any person who “[b]uys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement, or any child’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct,” is guilty of a felony punishable by imprisonment for 1-20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).

In comparison, a federal conviction for possession of child pornography<sup>20</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>21</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>22</sup>

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<sup>20</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4)(A) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>21</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>22</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a

2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*

Under Ga. Code Ann. § 42-1-12(e) (State sexual offender registry), registration is required for, among others, individuals, “convicted on or after July 1, 1996, of a criminal offense against a victim who is a minor;” and those “convicted on or after July 1, 1996, of a dangerous sexual offense.” Ga. Code Ann. § 42-1-12(a)(9)(B) states in part,

(B) “Criminal offense against a victim who is a minor” with respect to convictions occurring after June 30, 2001, means any criminal offense under Title 16 or any offense under federal law or the laws of another state or territory of the United States which consists of:

...

(iii) Criminal sexual conduct toward a minor;

(iv) Solicitation of a minor to engage in sexual conduct;

...

(viii) Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor’s body engaged in sexually explicit conduct;

(ix) Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct;

(x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct; or

(xi) Any conduct which, by its nature, is a sexual offense against a victim who is a minor.

Likewise, pursuant to Ga. Code Ann. § 42-1-12(a)(10)(B),

(B) “Dangerous sexual offense” with respect to convictions occurring after June 30, 2006, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

...

(iv) Rape in violation of Code Section 16-6-1;<sup>23</sup>

(v) Sodomy in violation of Code Section 16-6-2;<sup>24</sup>

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

...

(xv) Sexual exploitation of children in violation of Code Section 16-12-100;. . .

(xvii) Computer pornography and child exploitation prevention in violation of Code Section 16-12-100.2;

...

(xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

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conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>23</sup> A rape occurs whenever the victim is a female under 10 years old. Ga. Code Ann. § 16-6-1(a)(2).

<sup>24</sup> *See supra* note 6.

A “minor” is defined as “any individual under the age of 18 years and any individual that the sexual offender believed at the time of the offense was under the age of 18 years if such individual was the victim of an offense.” Ga. Code. Ann. § 42-1-12(a)(14).

- 2.10.1 Recommendation: Amend the sex offender registry statute, Ga. Code Ann. § 42-1-12 (State Sexual Offender Registry), to include a registration requirement for the offenses of Ga. Code Ann. § 16-6-12 (Pandering) when the victim is a minor and Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) when the offense involves sexual conduct of a minor.

***Legal Components:***

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
  - 3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*
  - 3.3 *Using the Internet to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*
  - 3.4 *Financial penalties for traffickers, including asset forfeiture, are sufficiently high.*
  - 3.5 *Convicted traffickers are required to register as sex offenders.*
  - 3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control and potential exploitation.*
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***Legal Analysis:***

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*

Trafficking a child under the age of 18 is punishable by imprisonment for 10–20 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-5-46(f)(2). If the trafficker used “coercion or deception” in trafficking the minor, the penalty is life imprisonment or imprisonment for 25–50 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-5-46(f)(2). Additionally, under subsection (g), “All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Code section shall be subject to forfeiture to the state.”

A trafficker convicted of keeping a place of prostitution pursuant to Ga. Code Ann. § 16-6-10, pimping pursuant to Ga. Code Ann. § 16-6-11, or pandering pursuant to Ga. Code Ann. § 16-6-12 is guilty of a misdemeanor of a high and aggravated nature. Ga. Code Ann. § 16-6-13(a). Penalties, however, are heightened if the victim is under 18. Ga. Code Ann. § 16-6-13(b). If a person is convicted of any of the above offenses and the victim is 16 or 17, the trafficker is guilty of a felony punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the minor is under 16, the trafficker is guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

A trafficker who uses the computer to exploit a child may be convicted under Ga. Code Ann. § 16-12-100.2(c)(1), if he does any of the following:

- (A) Compiles, enters into, or transmits by computer or other electronic device;
- (B) Makes, prints, publishes, or reproduces by other computer or other electronic device;
- (C) Causes or allows to be entered into or transmitted by computer or other electronic device; or
- (D) Buys, sells, receives, exchanges, or disseminates any notice or statement, or advertisement or any child’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

Violating subsection (c) is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).

Under Ga. Code Ann. § 16-12-100(b)(3) (Sexual exploitation of children), “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.” This offense is a felony punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. §



16-12-100(g)(1). In addition, those convicted of sexual offenses face heightened penalties under Ga. Code Ann. § 17-10-6.2. Under subsection (a), “sexual offense” is defined to include, “(6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, unless subject to the provisions of subsection (c) of Code Section 16-6-5” and “(10) Sexual exploitation of children, as defined in Code Section 16-12-100.” Under subsection (b), subject to exceptions in subsection (c), “notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to the offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory imprisonment, an additional probated sentence of at least one year.” Subsection (c) states,

- (c) (1) In the court’s discretion, the court may deviate from the mandatory minimum sentence as set forth in subsection (b) of this Code section, or any portion thereof, provided that:
- (A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;
  - (B) The defendant did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;
  - (C) The court has not found evidence of a relevant similar transaction;
  - (D) The victim did not suffer any intentional physical harm during the commission of the offense;
  - (E) The offense did not involve the transportation of the victim; and
  - (F) The victim was not physically restrained during the commission of the offense.
- (2) If the court deviates in sentencing pursuant to this subsection, the judge shall issue a written order setting forth the judge’s reasons. Any such order shall be appealable by the defendant pursuant to Code Section 5-6-34, or by the State of Georgia pursuant to Code Section 5-7-1.

In comparison, if the victim is under the age of 14, a conviction under the TVPA<sup>25</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>26</sup> against a minor.

### 3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*

Under Ga. Code Ann. § 16-12-100(b)(3), “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.” Subsection (b)(1) states, “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.” These offenses are punishable by imprisonment for 5-20 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-12-100(g)(1). These offenses are also subject to the provisions of Ga. Code Ann. § 17-10-6.2.

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<sup>25</sup> See *supra* note 8.

<sup>26</sup> See *supra* note 14.

Ga. Code Ann. § 16-12-80(a) (Distributing obscene material; obscene material defined; penalty),<sup>27</sup> states in part,

A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so . . . .

A violation of § 16-12-80, is a misdemeanor of a high and aggravated nature, which is punishable by confinement up to 12 months, a fine not to exceed \$5,000, or both. Ga. Code Ann. §§ 17-10-4(a), 16-12-80(f). Ga. Code Ann. § 16-12-80 (Distributing obscene material; obscene material defined; penalty) is included in the definition of “racketeering activity.” Ga. Code Ann. § 16-14-3(9)(A)(xii). Therefore, if a trafficker is also convicted of racketeering, the offender could be guilty of a felony punishable by imprisonment for 5–20 years, “a fine that does not exceed the greater of \$25,000.00 or three times the amount of any pecuniary value gained by him from such violation,” or both Ga. Code Ann. § 16-14-5(a), (b). Additionally, racketeering is subject to asset forfeiture, pursuant to Ga. Code Ann. § 16-14-7(a) (Forfeiture proceedings), which states, “All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering activity is subject to forfeiture to the state.” Ga. Code Ann. § 16-14-7(a).

Similarly, “any offense defined as racketeering activity by Code Section 16-14-3” also constitutes criminal gang activity. Ga. Code Ann. 16-15-3(1)(A). Ga. Code Ann. § 16-15-3(2) defines “criminal street gang” as “any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in criminal gang activity as defined in paragraph (1) of this Code section.” It is an offense “for any person employed by or associated with a criminal street gang to conduct or participate in criminal gang activity through the commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.” Ga. Code Ann. § 16-15-4(a). Any violation of this provision is punishable by imprisonment for 5–15 years, a fine of \$10,000–\$15,000, or both. Ga. Code Ann. § 16-15-4(k)(1). Additionally, “(1) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this chapter; and (2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this chapter” is subject to forfeiture. Ga. Code Ann. § 16-15-5(a).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17 a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment however, if the trafficker has a prior conviction for a federal sex offense<sup>28</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>29</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>30</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>31</sup>

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<sup>27</sup> *But see* This That & the Other Gift & Tobacco, Inc. v. Cobb County, 285 F.3d 1319, 1324 (11th Cir. 2002) (holding that the part of Ga. Code Ann. § 16-12-80 that bans all advertising of sexual devices violates the First Amendment).

<sup>28</sup> *See supra* note 14.

<sup>29</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3)(B), (4)(A) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>30</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) or (a)(3) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided

3.3 *Using the Internet to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*

According to Ga. Code Ann. § 16-12-100.2(c) (Computer or electronic pornography and child exploitation prevention),

- (1) A person commits the offense of computer or electronic pornography if such person intentionally or willfully:
- (A) Compiles, enters into, or transmits by computer or other electronic device;
  - (B) Makes, prints, publishes, or reproduces by other computer or other electronic device;
  - (C) Causes or allows to be entered into or transmitted by computer or other electronic device;
- or
- (D) Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement, or any child's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child or the visual depiction of such conduct.

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).

Although not directly commercial, other sections of Ga. Code Ann. § 16-12-100.2, may be applied to those who use the Internet to lure a minor for the purpose of sex acts. Ga. Code Ann. § 16-12-100.2(d)(1) states,

It shall be unlawful for any person intentionally or willfully to utilize a computer on-line service or Internet service, including but not limited to a local bulletin board service, Internet chat room, e-mail, on-line messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by such person to be a child to commit any illegal act described in Code Section 16-6-2,<sup>32</sup> relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

This crime is a felony punishable by imprisonment for 1–20 years and a fine not to exceed \$25,000. Ga. Code Ann. § 16-12-100.2(d)(2). However, if the victim was 14 or 15 and the perpetrator was “no more than three years older than the victim,” the crime is a misdemeanor of a high and aggravated nature. Ga. Code Ann. § 16-12-100.2(d)(2).

3.4 *Financial penalties for traffickers, including asset forfeiture, are sufficiently high.*

A person convicted of trafficking under Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude), when the victim is under 18, could face a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2). Additionally, under subsection (g), the trafficker would be subject to mandatory asset forfeiture. “All real and personal property of every kind used or intended for use in the course of, derived

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in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>31</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>32</sup> *See supra* note 6.

from, or realized through a violation of this Code section shall be subject to forfeiture to the state.” Ga. Code Ann. § 16-5-46(g). Forfeiture shall be had by the same procedure set forth in Code Section 16-14-7.” Ga. Code Ann. § 16-5-46(g). “Forfeiture shall be had by a civil procedure. . .” Ga. Code Ann. §16-14-7. Seizure of forfeitable property is governed by Ga. Code. Ann. §16-14-7(f). The net proceeds of the forfeiture is to be deposited in the general fund of the state treasury. Ga. Code Ann. § 16-14-7(k).

If convicted of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), or, § 16-6-12 (Pandering), and the victim is between 16 and 18, the offender could be subject to a fine between \$2,500 and \$10,000. Ga. Code Ann. § 16-6-13(b)(1). If the victim is under 16, the trafficker could be subject to a fine not to exceed \$100,000. Ga. Code Ann. § 16-6-13(b)(2).

In addition, under Ga. Code Ann. § 16-6-13.3(a) a perpetrator must forfeit “[a]ny proceeds or money which is used, intended for use, used in any manner to facilitate, or derived from a violation of Code Section 16-6-11 [Pimping], wherein any of the persons involved in performing an act of prostitution is under the age of 18 . . . .” When convicted of pimping a minor, the perpetrator’s vehicle is also subject to forfeiture if the perpetrator has the requisite prior convictions or pleas. Ga. Code Ann. § 16-6-13.2(c)(1). Asset forfeiture pursuant to this section is discretionary and civil in nature. The items forfeited shall be disposed of pursuant to Ga. Code Ann. § 16-13-49(u)(Contraband; forfeiture; seizure), which provides for the sale of the property and distribution to government agencies.

An individual convicted of Ga. Code Ann. § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties) which includes using a minor in a sexually explicit performance or visual depiction, must forfeit any proceeds and “[a]ny property used, or intended to be used, to commit such offense.” Ga. Code Ann. § 16-12-100(e)(1).<sup>33</sup> This forfeiture action is criminal in nature and mandatory. The property forfeited shall also be disposed of pursuant to Ga. Code Ann. § 16-13-49(u) (Contraband; forfeiture; seizure), which provides for the sale of the property and distribution to government agencies.

Finally, a trafficker may be subject to restitution orders. Ga. Code Ann. § 17-14-3 (Restitution to victim; restitution as condition of probation) states, “. . . [I]n addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.” Consideration of restitution is mandatory, although the “nature and amount of restitution” is dependent upon considerations outlined in Ga. Code Ann. § 17-14-10(a) (Considerations for determining nature and amount of restitution; restitution deemed part of financial resources of victim) including:

- (1) The financial resources and other assets of the offender or person ordered to pay restitution including whether any of the assets are jointly controlled;
- (2) The earnings and other income of the offender or person ordered to pay restitution;
- (3) Any financial obligations of the offender or person ordered to pay restitution, including obligations to dependents;
- (4) The amount of damages;
- (5) The goal of restitution to the victim and the goal of rehabilitation of the offender;
- (6) Any restitution previously made;
- (7) The period of time during which the restitution order will be in effect; and
- (8) Other factors which the ordering authority deems to be appropriate.

### 3.5 *Convicted traffickers are required to register as sex offenders.*

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<sup>33</sup> Ga. Code Ann. § 16-12-100(e)(3) states, “The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.”

Under Ga. Code Ann. § 42-1-12(e) (State sexual offender registry), registration is required for, among others, individuals “convicted on or after July 1, 1996, of a criminal offense against a victim who is a minor;” and those “convicted on or after July 1, 1996, of a dangerous sexual offense.” Subsection 9(B) of Ga. Code Ann. § 42-1-12(a) states in part,

(B) “Criminal offense against a victim who is a minor” with respect to convictions occurring after June 30, 2001, means any criminal offense under Title 16 or any offense under federal law or the laws of another state or territory of the United States which consists of:

....

- (iv) Solicitation of a minor to engage in sexual conduct;
- (v) Use of a minor in a sexual performance;
- (vi) Solicitation of a minor to practice prostitution;
- (vii) Use of a minor to engage in any sexually explicit conduct to produce any visual medium depicting such conduct;
- (viii) Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor’s body engaged in sexually explicit conduct;
- (ix) Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct;
- (x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct; or
- (xi) Any conduct which, by its nature, is a sexual offense against a victim who is a minor.

Likewise, pursuant to Ga. Code Ann. § 42-1-12(a)(10)(B),

(B) “Dangerous sexual offense” with respect to convictions occurring after June 30, 2006, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

...

- (iv) Rape in violation of Code Section 16-6-1;<sup>34</sup>
- (v) Sodomy in violation of Code Section 16-6-2;<sup>35</sup>
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- ...
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- ...
- (xvii) Computer pornography and child exploitation prevention in violation of Code Section 16-12-100.2;
- ...
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

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<sup>34</sup> See *supra* note 23.

<sup>35</sup> See *supra* note 6.

A “minor” is defined as “any individual under the age of 18 years and any individual that the sexual offender believed at the time of the offense was under the age of 18 years if such individual was the victim of an offense.” Ga. Code Ann. § 42-1-12(a)(14).

- 3.5.1 Recommendation: Amend the sex offender registry statute, Ga. Code Ann. § 42-1-12 (State Sexual Offender Registry), to include Ga. Code Ann. § 16-6-11 (Pimping), § 16-6-12 (Pandering), and § 16-5-46 (Trafficking of persons for labor or sexual servitude) as offenses for which registration as a sex offender is required when the victim is a minor.

3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control and potential exploitation.*

Georgia does not specifically list the types of violent felonies that could cause the removal of a child from a parent. Ga. Code Ann. § 15-11-94(a) (Grounds for termination; other dispositions) states in part, “In considering the termination of parental rights, the court shall first determine whether there is present clear and convincing evidence of parental misconduct or inability as provided in subsection (b) of this Code section. If there is clear and convincing evidence of such parental misconduct or inability, the court shall then consider whether termination of parental rights is in the best interest of the child, after considering the physical, mental, emotional, and moral condition and needs of the child who is the subject of the proceeding, including the need for a secure and stable home.” Under subsection (b)(4),

- (A) The court determines parental misconduct or inability by finding that:
- (i) The child is a deprived child, as such term is defined in Code Section 15-11-2;<sup>36</sup>
  - (ii) The lack of proper parental care or control by the parent in question is the cause of the child’s status as deprived;
  - (iii) Such cause of deprivation is likely to continue or will not likely be remedied; and
  - (iv) The continued deprivation will cause or is likely to cause serious physical, mental, emotional, or moral harm to the child.
- (B) In determining whether the child is without proper parental care and control, the court shall consider, without being limited to, the following:
- • •
  - (iii) Conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship;
  - (iv) Egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, emotionally, or sexually cruel or abusive nature;
  - (v) Physical, mental, or emotional neglect of the child or evidence of past physical, mental, or emotional neglect of the child or of another child by the parent; and
  - (vi) Injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.
- (C) In addition to the considerations in subparagraph (B) of this paragraph, where the child is not in the custody of the parent who is the subject of the proceedings, in determining whether the child is without proper parental care and control, the court shall consider, without being limited

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<sup>36</sup> Ga. Code Ann. § 15-11-2(8) states,

“Deprived child” means a child who:

- (A) Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health or morals;
- (B) Has been placed for care or adoption in violation of law;
- (C) Has been abandoned by his or her parents or other legal custodian; or
- (D) Is without a parent, guardian, or custodian.

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a “deprived child.”

to, whether the parent without justifiable cause has failed significantly for a period of one year or longer prior to the filing of the petition for termination of parental rights:

.....

- 3.6.1 Recommendation: Amend Ga. Code Ann. § 15-11-94(a) (Grounds for termination; other dispositions) to specifically include convictions under Ga. Code Ann. § 16-6-11 (Pimping), § 16-6-12 (Pandering), and § 16-5-46 (Trafficking of persons for labor or sexual servitude) as grounds for terminating a trafficker's parental rights.

***Legal Components:***

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*
  - 4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*
  - 4.3 *Promoting and selling child sex tourism is illegal.*
  - 4.4 *Promoting and selling child pornography is illegal.*
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***Legal Analysis:***

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*

Under Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude), trafficking for sexual servitude occurs when a person “knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.” Ga. Code Ann. § 16-5-46(c). This language could reach some facilitators, but does not include terms such as “benefiting,” “assisting,” or “aiding,” which are terms more explicitly applicable to facilitators.

Georgia’s human trafficking law does, however, allow for the prosecution of corporations in certain circumstances. Ga. Code Ann. § 16-5-46(j). Specifically, a corporation can be prosecuted under the human trafficking law

for an act or omission constituting a crime under this Code section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

In addition to the trafficking law, Georgia has several other laws applicable to facilitators:

1. Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution) could apply to facilitators and specifically criminalizes “exercising control over the use of any place or conveyance which would offer seclusion or shelter for the practice of prostitution . . . when [the perpetrator] knowingly grants or permits the use of such place for the purpose of prostitution.” Similarly, pursuant to Ga. Code Ann. § 44-7-18(b) (Effect of leases for purposes of prostitution or assignation), leases entered into for the purposes of prostitution “shall be void.”
2. Ga. Code Ann. § 16-6-11 (Pimping). Although not specific to minors, the offense of pimping, as defined in Ga. Code Ann. § 16-6-11, includes when a person,
  - (3) Directs or transports another person to a place when he or she knows or should know that the direction or transportation is for the purpose of prostitution;
  - . . .
  - (5) Aids or abets, counsels, or commands another in the commission of prostitution or aids or assists in prostitution where the proceeds or profits derived therefrom are to be divided on a pro rata basis.



3. Ga. Code Ann. § 39-5-4 (Report of certain information; failure to report required information; penalties). According to this statute, “An interactive computer service doing business in this state that obtains knowledge of facts or circumstances from which a violation of any law of this state prohibiting child pornography is apparent shall make a report, as soon as reasonably possible, of such facts and circumstances to the Cyber Tipline at the National Center for Missing and Exploited Children.” Ga. Code Ann. § 39-5-4(a). A “knowing[] and willful[] violat[ion] [of] subsection (a)” is a misdemeanor. Ga. Code Ann. § 39-5-4(b). Subsequent violations raise the offense to a misdemeanor of a high and aggravated nature. Ga. Code Ann. § 39-5-4(b).
4. Ga. Code Ann. § 16-12-100(b) (Sexual exploitation of children; reporting violation; forfeiture; penalties), states in part, “It is unlawful for any person knowingly to employ, use, persuade, induce, entice or coerce any minor to engage in or *assist* any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.” Ga. Code Ann. § 16-12-100(b)(1) (emphasis added). The statute also states that “[i]t is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” Ga. Code Ann. § 16-12-100(b)(5).
5. Ga. Code Ann. § 16-12-100.2(c)(1)(D) (Computer or electronic pornography and child exploitation prevention) states,

A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

. . .

(D) Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement, or any child’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child [under 16] or the visual depiction of such conduct.

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).

Where a facilitator is also engaged in criminal gang activity, extra penalties may apply. It is an offense “for any person employed by or associated with a criminal street gang to conduct or participate in criminal gang activity through the commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.” Ga. Code Ann. § 16-15-4(a).<sup>37</sup> In addition to any other penalty provided by law, Any violation of this provision is punishable by imprisonment for 5–15 years, a fine of \$10,000–\$15,000, or both. Ga. Code Ann. § 16-5-4(k)(1). Additionally, “(1) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this chapter; and (2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this chapter” is subject to forfeiture. Ga. Code Ann. § 16-15-5(a).

4.1.1 Recommendation: Amend Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) to expressly include aiding, assisting and benefitting from human trafficking as prohibited conduct.

4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*

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<sup>37</sup> See discussion *supra* in Section 1.2.

A person convicted of trafficking under Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude), when the victim is under 18, could face a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2). Additionally, under subsection (g), “All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Code section shall be subject to forfeiture to the state.” Ga. Code Ann. § 16-5-46(g). “Forfeiture shall be had by the same procedure set forth in Code Section 16-14-7.” Ga. Code Ann. § 16-5-46(g). “Forfeiture shall be had by a civil procedure. . .” Ga. Code Ann. §16-14-7. Seizure of forfeitable property is governed by Ga. Code Ann. §16-14-7(f). The net proceeds of the forfeiture is to be deposited in the general fund of the state treasury. Ga. Code Ann. § 16-14-7(k).

Facilitators prosecuted under Ga. Code Ann. § 16-6-11 (Pimping) may face asset forfeiture. Under Ga. Code Ann. § 16-6-13.3 (Proceeds from pimping; forfeiture; distribution), “Any proceeds or money which is used, intended for use, used in any manner to facilitate, or derived from a violation of Code Section 16-6-11 [pimping], wherein any of the persons involved in performing an act of prostitution is under the age of 18, is contraband and forfeited . . .” Ga. Code Ann. § 16-6-13.3(a). Additionally, if the facilitator has a prior conviction for Ga. Code Ann. § 16-6-11, the facilitator may be subject to motor vehicle forfeiture. Ga. Code Ann. § 16-6-13.2(c). Asset forfeiture pursuant to this section is discretionary and civil in nature. The items forfeited shall be disposed of pursuant to Ga. Code Ann. § 16-13-49(u)(Contraband; forfeiture; seizure), which provides for the sale of the property and distribution to government agencies.

Additional forfeiture exists for those facilitators involved in using a minor for a sexual performance or visual depiction of sexually explicit conduct. Ga. Code Ann. § 16-12-100. Under Ga. Code Ann. § 16-12-100(e)(1), anyone “who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in: (A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and (B) Any property used, or intended to be used, to commit such offense.” This forfeiture action is criminal in nature and mandatory. The property forfeited shall also be disposed of pursuant to Ga. Code Ann. § 16-13-49(u) (Contraband; forfeiture; seizure), which provides for the sale of the property and distribution to government agencies.

Finally, a facilitator may be subject to restitution orders. Ga. Code Ann. § 17-14-3 states, “. . . [I]n addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.” Consideration of restitution is mandatory, although the order itself is dependent upon considerations outlined in Ga. Code Ann. § 17-14-10 including:

- (1) The financial resources and other assets of the offender or person ordered to pay restitution including whether any of the assets are jointly controlled;
- (2) The earnings and other income of the offender or person ordered to pay restitution;
- (3) Any financial obligations of the offender or person ordered to pay restitution, including obligations to dependents;
- (4) The amount of damages;
- (5) The goal of restitution to the victim and the goal of rehabilitation of the offender;
- (6) Any restitution previously made;
- (7) The period of time during which the restitution order will be in effect; and
- (8) Other factors which the ordering authority deems to be appropriate.

#### 4.3 *Promoting and selling child sex tourism is illegal.*

Georgia does not have a specific law that prohibits the promotion or sale of child sex tourism.

- 4.3.1 Recommendation: Enact a law prohibiting selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor or prostitution of a minor, if the travel or sale occurs in Georgia.

#### 4.4 *Promoting and selling child pornography is illegal.*

Pursuant to Ga. Code Ann. § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), promoting and selling pornography depicting children under 18 is illegal. Ga. Code Ann. § 16-12-100. Specifically, “It is unlawful for any person knowingly to . . . promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” Ga. Code Ann. § 16-12-100(b)(5). Similarly, it is also a crime to “advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct can be found or purchased.” Ga. Code Ann. § 16-12-100(b)(6). This crime is punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(g)(1).

Under Ga. Code Ann. § 16-12-100.2(c)(1) (Computer or electronic pornography and child exploitation prevention),

A person commits the offense of computer or electronic pornography if such person intentionally or willfully:

- (A) Compiles, enters into, or transmits by computer or other electronic device;
  - (B) Makes, prints, publishes, or reproduces by other computer or other electronic device;
  - (C) Causes or allows to be entered into or transmitted by computer or other electronic device;
- or
- (D) Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement or any child’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with an identifiable child [defined as under 16] or the visual depiction of such conduct.

The crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c) (2).

**Legal Components:**

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*
- 5.4 *Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*
- 5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

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**Legal Analysis:**

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*

Pursuant to Ga. Code Ann. § 17-14-2(9) (Definitions), Georgia defines a victim deserving restitution fairly broadly and states that a victim includes any

[n]atural person or his or her personal representative or, if the victim is deceased, his or her estate; . . . suffering damages caused by an offender’s unlawful act; provided, however, that the term “victim” shall not include any person who is concerned in the commission of such unlawful act as defined in Code Section 16-2-20 [When a person is a party to a crime].

Therefore, a sexually exploited child generally would qualify as a victim for purposes of restitution. Notably, however, if a court did determine that the minor “[i]ntentionally aid[ed] or abet[ed] in the commission of the crime,” under Ga. Code Ann. § 16-2-20(b)(3) (When a person is a party to a crime), the minor could no longer be considered a victim. Therefore, if a court considers a victim of domestic minor sex trafficking as aiding in his or her trafficking situation or prostitution, the minor may not be considered a victim.

For the purposes of crime victims’ compensation funds, a violation of Ga. Code Ann. § 16-5-46 (Trafficking in persons for labor or sexual servitude) is specifically included in the definition of “crime.”

Ga. Code Ann. § 17-15-2(3)(A). Pursuant to Ga. Code Ann. § 17-15-2(10) (Definitions), a “victim” is defined as someone who

- (A) Is injured physically, who dies, or who suffers financial hardship as a result of being injured physically as a direct result of a crime;
- (B) Suffers a serious mental or emotional trauma as a result of being threatened with a crime which could result in physical injury or death;
- (C) Suffers a serious mental or emotional trauma as a result of being present during the commission of a crime; or
- (D) Suffers a serious mental or emotional trauma as a result of being trafficked for labor or sexual servitude as defined in Code Section 16-5-46.

5.1.1 Recommendation: Amend the definition of “victim” under Ga. Code Ann. § 17-14-2(9) (Definitions) to specifically include victims of Ga. Code Ann. § 16-5-46 (Trafficking in persons for labor or sexual servitude) and Georgia’s CSEC offenses.

5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*

Under Ga. Code Ann. § 16-5-46(d), “The age of consent for sexual activity or the accused’s lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.”

5.2.1 Recommendation: Amend the crimes of Ga. Code Ann. § 16-6-11 (Pimping) and § 16-6-12 (Pandering) to specify that consent of a minor to the commercial sex acts is no defense to prosecution of a buyer or a trafficker.

5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*

Georgia’s prostitution statute reads broadly and does not exclude the prosecution of minors for prostitution. The prostitution statute states, “A person commits the offense of prostitution when he or she performs or offers or consents to perform a sexual act, including but not limited to sexual intercourse or sodomy, for money or other items of value.” Ga. Code Ann. § 16-6-9. The offense is punishable as a misdemeanor. Ga. Code Ann. § 16-6-13(a). Similarly, Ga. Code Ann. § 16-6-16 (Masturbation for hire) has no age distinctions and applies regardless of age. Ga. Code Ann. § 16-6-16.

Georgia does, however, provide an affirmative defense to victims of certain sexual crimes that states that “[a] person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.” Ga. Code Ann. § 16-3-6(b). “Sexual crime” is defined as “prostitution, sodomy, solicitation of sodomy, or masturbation for hire as such offenses are proscribed in Chapter 6 of Title 16.” Ga. Code Ann. § 16-3-6(a)(3).

5.3.1 Recommendation: Amend Ga. Code Ann. § 16-6-9 (Prostitution) and Ga. Code Ann. § 16-6-16 (Masturbation for hire) to provide that minors are immune from prosecution of these offenses and direct them to services.

5.4 *Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*

No law specifically states that a sexually exploited victim should receive a specific child protective response. For the chapter on “juvenile proceedings” related to delinquency, deprivation, and unruly children, under Ga. Code Ann. § 15-11-2(2), a child is defined as a person who is one of the following:

- (A) Under the age of 17 years;

- (B) Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or
- (C) Under the age of 18 years, if alleged to be a “deprived child” or a “status offender” as defined by this Code Section.

A sexually exploited child may fall within several categories, including “delinquent child,” “deprived child,” or “unruly child.”

A child is a “delinquent child” if the child “has committed a delinquent act and is in need of treatment or rehabilitation.” Ga. Code Ann. § 15-11-2(7). Pursuant to Ga. Code Ann. § 15-11-2(6), a “delinquent act” is,

- (A) An act designated a crime by the laws of this state, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the crime does not fall under subparagraph (C) of paragraph (12) of this Code section [offenses only applicable to children] and is not a juvenile traffic offense as defined in Code Section 15-11-73;
- (B) The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudged to have committed a delinquent act; or
- (C) Failing to appear as required by a citation issued with regard to a violation of Code Section 3-3-23.<sup>38</sup>

Therefore, if a child commits an act of prostitution, the child could be considered a delinquent. If the sexually exploited minor is found to be delinquent, the child may be detained, pursuant to Ga. Code Ann. § 15-11-48(a), in one of the following:

- (1) A licensed foster home or a home approved by the court which may be a public or private home or the home of the noncustodial parent or of a relative;
- (2) A facility operated by a licensed child welfare agency; or
- (3) A detention home or center for delinquent children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court.

A “deprived child” includes a child who “[i]s without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health or morals.” Ga. Code Ann. § 15-11-2(8)(A). “Child welfare and youth services” is responsible for, among other things, “protecting and caring for deprived children and youths,” and the Department of Human Services is authorized to assist the courts, if so requested, in providing placement and custodial care for children pending hearings before the juvenile court and casework services for children in the department’s legal custody. Ga. Code Ann. §§ 49-5-3(3)(B), 49-5-8. A deprived child may be placed in “[a] licensed foster home or a home approved by the court which may be a public or private home or the home of the noncustodial parent or of a relative,” “[a] facility operated by a licensed child welfare agency,” or “a shelter care facility operated by the court.” Ga. Code Ann. § 15-11-48(a), (f). Under Ga. Code Ann. § 15-11-55(a) (Disposition of deprived child; state’s policy favoring stable placements), “If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child,” including, pursuant to subsection (a)(1) “[p]ermit the child to remain with his or her parents, guardian, or other custodian, including a putative father, subject to conditions and limitations as the court prescribes . . .” Ga. Code Ann. § 15-11-55(a)(1). Under subsection (a)(2)(A), the court may choose to give “temporary legal custody,” to one of the following:

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<sup>38</sup> Ga. Code Ann. § 3-3-23 (Furnishing to, purchase of, or possession by persons under 21 years of age of alcoholic beverages; use of false identification; proper identification; dispensing, serving, selling, or handling by persons under 21 years of age in the course of employment; seller’s actions upon receiving false identification).

- (i) Any individual including a putative father who . . . is found by the court to be qualified to receive and care for the child;
- (ii) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;
- (iii) Any public agency authorized by law to receive and provide care for the child provided, however, that for the purpose of this Code section, the term “public agency” shall not include the Department of Juvenile Justice; or
- (iv) An individual in another state with or without supervision by an appropriate officer . . . .

Moreover, Georgia law specifically states that “[u]nless a child found to be deprived is found also to be delinquent, such child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.” Ga. Code Ann. § 15-11-55(b).

A child could be considered a “status offender,” according to Ga. Code Ann. § 15-11-2(11), if the child

is charged with or adjudicated of an offense which would not be a crime if it were committed by an adult, in other words, an act which is only an offense because of the perpetrator’s status as a child. Such offenses shall include, but are not limited to, truancy, running away from home, incorrigibility, and unruly behavior.

Under Ga. Code Ann. § 15-11-2(12), an “unruly child” is a child that does any of the following:

- (A) While subject to compulsory school attendance is habitually and without justification truant from school;
- (B) Is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or other custodian and is ungovernable;
- (C) Has committed an offense applicable only to a child;
- (D) Without just cause and without the consent of his or her parent or legal custodian deserts his or her home or place of abode;
- (E) Wanders or loiters about the streets of any city, or in or about any highway or any public place, between the hours of 12:00 Midnight and 5:00 A.M.;
- (F) Disobeys the terms of supervision contained in a court order which has been directed to such child, who has been adjudicated unruly; or
- (G) Patronizes any bar where alcoholic beverages are being sold, unaccompanied by such child’s parents, guardian, or custodian, or possesses alcoholic beverages; and
- (H) In any of the foregoing, is in need of supervision, treatment, or rehabilitation; or
- (I) Has committed a delinquent act and is in need of supervision, but not of treatment or rehabilitation.

When an unruly child is taken into custody, the person taking that child into custody may only maintain custody over the child for 12 hours. Ga. Code Ann. § 15-11-47(e)(1). As set out in Ga. Code Ann. § 15-11-47(e) the child may be returned to the parent, brought before the court, released, or detained in a facility for unruly children until the parent or guardian is contacted. According to Ga. Code Ann. § 15-11-45(a) (When child may be taken into custody), there are several ways a child can be taken into custody, including,

- (2) Pursuant to the laws of arrest;
- (3) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has committed a delinquent act or if there are reasonable grounds to believe that he or she is an unruly child;
- (4) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his or her surroundings and that his or her removal is necessary;

- (5) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has run away from his or her parents, guardian, or other custodian;
- (6) By a law enforcement officer or duly authorized officer of the court if a parent or guardian of a child has contacted a law enforcement agency and reported that the child is absent from parental custody without consent and a facility created pursuant to paragraph (2) of subsection (e) of Code section 15-11-47 is available; or
- (7) By a law enforcement officer or duly authorized officer of the court if a child is violating a curfew and a facility created pursuant to paragraph (2) of subsection (e) of Section 15-11-47 is available.

Pursuant to Ga. Code Ann. § 15-11-47(a) (Procedure on taking child into custody; detention; bail; detention of child alleged to be unruly) and § 15-11-48, if the child is taken into custody, then the child may be detained in a variety of settings, including a licensed foster home, a “facility operated by a licensed child welfare agency,” or, if alleged to be delinquent, a “detention home or center for delinquent children which is under the direction or supervision of the court . . .” Ga. Code Ann. § 15-11-48(a), (e), (f).

Generally, a child merely taken into custody “shall not be detained or placed in shelter care prior to the hearing . . .” Ga. Code Ann. § 15-11-46. Under Ga. Code Ann. § 15-11-46 (When detention of child permitted), however, a child taken into custody may be detained in any of the following circumstances:

- (1) The child’s detention or care is required to protect the person or property of others or of the child;
- (2) The child may abscond or be removed from the jurisdiction of the court;
- (3) The child has no parent, guardian, or custodian or other person able to provide supervision and care for him or her and return him or her to the court when required; or
- (4) An order for the child’s detention or shelter care has been made by the court pursuant to this article.

5.4.1 Recommendation: Establish a mandatory protective response procedure for victims of domestic minor sex trafficking that avoids criminal liability and provides instead specialized services and shelter for intervention and restoration.

5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*

Within the title on “social services,” a definition of “child abuse” for the article on “child abuse and deprivation records” includes, “(B) Neglect or exploitation of a child by a parent or caretaker thereof; (C) Sexual abuse of a child; or (D) Sexual exploitation of a child.” Ga. Code Ann. § 49-5-40(3). “Sexual exploitation” is defined as “conduct by any person who allows, permits, encourages, or requires that child to engage in: (A) Prostitution, as defined in Code Section 16-6-9 ; or (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.” Ga. Code Ann. § 49-5-40 (6). Similarly, “sexual abuse” is defined as including “a person’s employing, using, persuading, inducing, enticing or coercing any minor who is not that person’s spouse to engage in any act which involves: (A) Sexual intercourse . . . .” Ga. Code Ann. § 49-5-40 (5). However, the definition of “sexual abuse” does “not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor.” Ga. Code Ann. § 49-5-40(5).



- 5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.*

Title 49, the Children and Youth Act, does not supply a definition of “caregiver” for the child welfare statutes. However, under Georgia’s chapter on “juvenile proceedings” in title 15, a “custodian” includes, “[a] person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.” Ga. Code Ann. § 15-11-2(5)(A). “In loco parentis” is defined under title 49 as “a quasi-parental relationship inferred from and implied by the fact that a child or youth has been taken into a family and treated like any other member thereof, unless an express contract exists to the contrary.” Ga. Code Ann. § 49-5-3(11).

- 5.6.1 Recommendation: Amend the definition of “custodian” to include a person in control and possession of a sexually exploited child, so that a child under the control of a non-familial trafficker can come within the protective mandate of the Department of Human Services.

- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*

For the purposes of crime victims’ compensation funds, “crime” includes a violation of Ga. Code Ann. § 16-5-46 (Trafficking in persons for labor or sexual servitude). Ga. Code Ann. § 17-15-2(3)(A). Pursuant to Ga. Code Ann. § 17-15-2(9), a “victim” is defined as someone who endures at least one of the following:

- (A) Is injured physically, who dies, or who suffers financial hardship as a result of being injured physically as a direct result of a crime;
- (B) Suffers a serious mental or emotional trauma as a result of being threatened with a crime which could result in physical injury or death;
- (C) Suffers a serious mental or emotional trauma as a result of being present during the commission of a crime; or
- (D) Suffers a serious mental or emotional trauma as a result of being trafficked for labor or sexual servitude as defined in Code Section 16-5-46 [Trafficking in persons for labor or sexual servitude].

Therefore, since the crime of human trafficking is specifically mentioned, and since crime includes the definition of human trafficking, a victim would be eligible for compensation under this statute. Additionally, Georgia defines victims as those who are present during or suffer injury or emotional trauma from certain crimes, including “any act which constitutes a violation of Chapter 6 or Part 2 of Article 3 of Chapter 12 of Title 16,” which includes Ga. Code Ann. § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties) and § 16-12-100.2 (Computer or electronic pornography and child exploitation prevention). Ga. Code Ann. § 17-15-2(3)(A). Therefore, those victims who are exploited to produce pornography could obtain crime victims’ compensation funds.

Some crime victims may become ineligible or face reduced awards if they are considered accomplices to the crime, though human trafficking victims are specifically excluded from this ineligibility provision. Ga. Code Ann. § 17-15-7(e). Nonetheless, misidentified human trafficking victims could potentially face a reduced compensation award as a result of Ga. Code Ann. § 17-15-8(d) (Required findings; amount of award; rejection of claim; reductions) which states,

In determining the amount of an award, the director and board shall determine whether because of his or her conduct the victim of such crime contributed to the infliction of his or her injury, serious mental or emotional trauma, or financial hardship, and the director and board may reduce the amount of the award or reject the claim altogether in accordance with such determination.

Even if victims are able to access the victims' compensation funds, a claim for compensation "must be filed by the claimant not later than one year after the occurrence of the crime upon which such claim is based . . . provided, however, that, upon good cause shown, the board may extend that time for filing for a period not exceeding three years after such occurrence." Ga. Code Ann. § 17-15-5(b).

Similarly, it must be found that "the crime was promptly reported to the proper authorities," and "[i]n no case may an award be made where . . . such report was made more than 72 hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified." Ga. Code Ann. § 17-15-8(a)(3). The statute further provides that there is a presumption that good cause exists in cases of human trafficking victims suffering serious mental or emotional trauma as a result of being trafficked. Ga. Code Ann. § 17-15-8(a)(3). Therefore, the presumption of good cause for human trafficking victims lessens the effect of this ineligibility factor for these victims.

Notably, law enforcement officials are required to make human trafficking victims aware of the availability of federal victim compensation. Ga. Code Ann. § 17-17-6(a) states in part,

(a) Upon initial contact with a victim, all law enforcement and court personnel shall make available to the victim the following information written in plain language:

....

(2) The availability of victim compensation and, if the victim has been trafficked for labor or sexual servitude as defined in Code Section 16-5-46, compensation available through the federal government pursuant to 22 U.S.C. Section 7105 . . . .

#### 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*

Certain victim-friendly criminal justice procedures exist in Georgia.

Under Ga. Code Ann. § 16-5-46(e), "The sexual history or history of commercial sexual activity of a person alleged to have been trafficked or such person's connection by blood or marriage to an accused in the case or to anyone involved in such person's trafficking shall be excluded from evidence if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."

Similar protections exist for certain sex offenses, including § 16-6-1 (Rape), § 16-6-4 (Child molestation; aggravated child molestation), and § 16-6-22.2 (Aggravated sexual battery). Ga. Code Ann. § 24-4-412.<sup>39</sup> Georgia does not allow the defendant to raise evidence about the complaining witness's past sexual behavior. Ga. Code Ann. § 24-4-412(a). According to this statute, "[E]vidence relating to the past sexual behavior of the complaining witness shall not be admissible, either as direct evidence or on cross-examination of the complaining witness or other witnesses, except as provided in this Code section. For the purposes of this Code section, evidence of past sexual behavior includes, but is not limited to, evidence of the complaining witness's marital history, mode of dress, general reputation for promiscuity, nonchastity, or sexual mores contrary to the community standards." Ga. Code Ann. § 24-4-412(a). Under subsection (b), "[E]vidence relating to the past sexual behavior of the complaining witness may be introduced if the court, following the procedure described in subsection (c) of this Code section, finds that the past sexual behavior directly involved the participation of the accused and finds that the evidence expected to be introduced supports an inference that the accused could have reasonably believed that the complaining witness consented to the conduct complained of in the prosecution."

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<sup>39</sup> Ga. Code Ann. § 24-4-412 was added by the recent passage of House Bill 24. 2011 Ga. Laws 52 and becomes effective in 2013. Until 2013, these protections are provided under Ga. Code Ann. § 24-2-3.

Additionally, under Ga. Code Ann. § 24-8-820<sup>40</sup> (Testimony as to child’s description of sexual contact or physical abuse), “A statement made by a child under the age of 14 years describing any act of sexual contact or physical abuse performed with or on the child by another shall be admissible in evidence by the testimony of the person to whom made if the child is available to testify in the proceedings and the court finds that the circumstances of the statement provide sufficient indicia of reliability.”

Pursuant to Ga. Code Ann. § 17-8-54 (Persons in courtroom when person under age of 16 testifies concerning sexual offense), “[W]hen any person under the age of 16 is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, and court reporters.”

For children ten years of age and younger that are victims of the crimes of Ga. Code Ann. § 16-5-70 (Cruelty to children), § 16-6-1 (Rape), § 16-6-4 (Child molestation; aggravated child molestation), or § 16-6-5 (Sexual assault by persons with supervisory or disciplinary authority), the court can order that their testimony “be taken outside the courtroom and shown in the courtroom by means of a two-way closed circuit television.” Ga. Code Ann. § 17-8-55(a). However, such “[a]n order may be granted in such cases only if: (1) The testimony is taken during the criminal trial proceeding for such violation; and (2) The judge determines that testimony by the child victim in the courtroom will result in the child’s suffering serious emotional distress such that the child cannot reasonably communicate.” Ga. Code Ann. § 17-8-55(a).

Additionally, each county in Georgia is required to have a written child abuse protocol which deals with victims of child abuse and exploitation. Ga. Code Ann. § 19-15-2.

5.8.1 Recommendation: Amend Ga. Code Ann. § 24-4-412 to prohibit the defendant from raising evidence about the complaining witness’s past sexual behavior in prosecutions of pimping and pandering offenses.

5.8.2 Recommendation: Raise the age for courtroom protections afforded under Ga. Code Ann. § 17-8-54 (Persons in courtroom when person under age of 16 testifies concerning sexual offense) from 16 to 18 to protect all minors.

5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*

Georgia does not have automatic expungement, however, the Georgia Code provides for the sealing of records of delinquent or unruly children upon application to the court and a hearing. Ga. Code Ann. §15-11-79.2(b). Pursuant to Ga. Code Ann. § 15-11-79.2(b) (Sealing of records), in order to seal the records the court must find that:

- (1) Two years have elapsed since the final discharge of the person;
- (2) Since the final discharge of the person he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated a delinquent or unruly child and no proceeding is pending against the person seeking conviction or adjudication; and
- (3) The person has been rehabilitated.

Furthermore, under subsection (a), “Upon dismissal of a petition or complaint alleging delinquency or unruliness, or, in a case handled through informal adjustment, following completion of the informal

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<sup>40</sup> Ga. Code Ann. § 24-8-820 was added by the recent passage of House Bill 24 and becomes effective in 2013. 2011 Ga. Laws 52. Until 2013, these protections are provided under Ga. Code Ann. § 24-3-16.

adjustment, the court shall order the sealing of the files and records in the case, including those specified in Code Sections 15-11-82 and 15-11-83.”

Also, Ga. Code Ann. § 15-11-83(e) (When child shall be fingerprinted or photographed), which protects fingerprints and photographs of children, states,

Upon application of the child, fingerprints and photographs of a child shall be removed from the file and destroyed if a petition alleging delinquency is not filed or the proceedings are dismissed after either a petition is filed or the case is transferred to the juvenile court as provided in Code Section 15-11-30.4 [Transfer of criminal or quasi-criminal proceeding to juvenile court] or the child is adjudicated not to be a delinquent child. The court shall notify the deputy director of the Georgia Crime Information Center when fingerprints and photographs are destroyed pursuant to this subsection, and the Georgia Bureau of Investigation shall treat such records in the same manner as criminal history record information restricted pursuant to Code Section 35-3-37<sup>41</sup> [Inspection of criminal records; purging, modifying, of supplementing of records].<sup>42</sup>

5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*

Under Ga. Code Ann. § 17-14-3(a) (Requirement of restitution by offender as condition of relief generally), “[I]n addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.” Also, pursuant to Ga. Code Ann. § 17-14-9 (Amount of restitution), “The amount of restitution ordered shall not exceed the victim’s damages.” Ga. Code Ann. § 17-14-9. This award, however, will reduce the amount payable to the victim from the Crime Victims Compensation Board. Ga. Code Ann. § 17-14-6(c). Similarly, it sets off the amount a victim is eligible to recover in civil proceedings. Ga. Code Ann. § 17-14-11. Notably, the definition of “victim” for the article on “restitution” excludes “any person who is concerned in the commission of such unlawful act as defined in Code Section 16-2-20.”<sup>43</sup> Ga. Code Ann. § 17-14-2(9). Under Ga. Code Ann. § 16-2-20, “[a] person is concerned in the commission of a crime only if he,” among other things, “[i]ntentionally aids or abets in the commission of the crime.” Ga. Code Ann. § 16-2-20(b)(3). This provision could potentially inhibit domestic minor sex trafficking victims from recovering funds if courts view the victims as aiders or abettors in the crime.

- 5.10.1 Recommendation: Amend Ga. Code Ann. § 17-14-2(9) (Restitution–Definitions) to ensure access to restitution by clarifying that unlawful acts committed by a domestic minor sex trafficking victim as a result of his or her victimization do not make that victim a party to the crime or “concerned in the commission” of the crime.

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<sup>41</sup> As of July 1, 2013, the provision title for Ga. Code Ann. § 35-3-37 will be “Review of individual’s criminal history record information; definitions; privacy considerations; written application requesting review; inspection.”

<sup>42</sup> Here and elsewhere in this report that Ga. Code Ann. § 15-11-83 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 1176. 2012 Ga. Laws 709 (effective July 1, 2012).

<sup>43</sup> Ga. Code Ann. § 16-2-20 (When a person is a party to a crime) states,

- (a) Every person concerned in the commission of a crime is a party thereto and may be charged with and convicted of commission of the crime.
- (b) A person is concerned in the commission of a crime only if he:
  - (1) Directly commits the crime;
  - (2) Intentionally causes some other person to commit the crime under such circumstances that the other person is not guilty of any crime either in fact or because of legal incapacity;
  - (3) Intentionally aids or abets in the commission of the crime; or
  - (4) Intentionally advises, encourages, hires, counsels, or procures another to commit the crime.

5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Ga. Code. Ann. § 17-3-1 generally requires that prosecutions for felonies, unless otherwise stated, occur within four years of the commission of the crime if the victim was an adult or within seven years if the victim was under 18. Ga. Code Ann. § 17-3-1(c). Certain crimes can be prosecuted at any time, including murder, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery, but only “when deoxyribonucleic acid (DNA) evidence is used to establish the identity of the accused.” Ga. Code Ann. § 17-3-1(a), (d).<sup>44</sup>

Under Ga. Code Ann. § 17-3-2.1(b)<sup>45</sup> (Limitation on prosecution of certain offenses involving a victim under 16 years of age), “[f]or crimes committed on or after July 1, 2012, if the victim of: (1) Trafficking a person for sexual servitude, as defined in Code Section 16-5-46...(5) Child molestation or aggravated child molestation, as defined in Code Section 16-6-4; (6) Enticing a child for indecent purposes, as defined in Code Section 16-6.5...a prosecution may be commenced at any time.”

For related “childhood sexual abuse” civil actions, pursuant to Ga. Code Ann. § 9-3-33.1 (Actions for childhood sexual abuse), the case “shall be commenced within five years of the date the plaintiff attains the age of majority.” Ga. Code Ann. § 9-3-33.1(b). “Childhood sexual abuse” is defined as including actions committed against a victim less than 18 where the act would constitute statutory rape, child molestation, enticing a child for indecent purposes, pandering, pandering by compulsion, solicitation of sodomy, and sexual battery. Ga. Code Ann. § 9-3-33.1(a).

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<sup>44</sup> Here and elsewhere in this report that Ga. Code Ann. § 17-3-1 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 1176. 2012 Ga. Laws 709 (effective July 1, 2012).

<sup>45</sup> Here and elsewhere in this report that Ga. Code Ann. § 17-3-2.1 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 1176. 2012 Ga. Laws 709 (effective July 1, 2012).

**Legal Components:**

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*
- 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
- 6.5 *Using the Internet to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

**Legal Analysis:**

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.*

Georgia law provides for training of law enforcement officers on issues of trafficking. Ga. Code Ann. § 35-1-16 states,

(a) The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety Training Center shall establish guidelines and procedures for the incorporation of training materials and information in:

- (1) Methods for identifying, combating, and reporting incidents where a person has been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46 [Trafficking of persons for labor or sexual servitude];
- (2) Methods for providing proper detention facilities or alternatives to detention facilities for persons who have been trafficked for labor or sexual servitude . . . including providing information on therapeutic facilities for such persons; and
- (3) Methods for assisting persons who have been trafficked for labor or sexual servitude . . . including providing information on social service organizations available to assist such person.

(b) The guidelines and procedures listed in subsection (a) of this Code section shall be for use by law enforcement training centers monitored by the Georgia Peace Officer Standards and Training Council and monitored and funded by the Georgia Public Safety Training Center in all courses for which they have responsibility and oversight.

Ga. Code Ann. § 35-3-4(13), relating to the Georgia Bureau of Investigation, now has a new paragraph requiring the Bureau to “[i]dentify and investigate violations of Code Section 16-5-46 [Trafficking of persons for labor or sexual servitude].” Also, according to the Editor’s notes for Ga. Code Ann. ch. 5, tit. 49, the “General Assembly urged certain public organizations and state agencies to develop programs for the education and training of social services and criminal justice professionals in the areas of child abuse, sexual abuse, and sexual exploitation.” Ga. Code Ann. ch.5, tit. 49 editor’s notes (citing 1986 Ga. Laws 1204).

- 6.1.1 Recommendation: Require law enforcement to complete the training on human trafficking developed under Ga. Code. Ann. § 25-1-16.

- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*

Pursuant to Ga. Code Ann. § 16-11-66(a) (Interception of wire, oral, or electronic communication by party thereto; consent requirements for recording and divulging conversations to which child under 18 years is a party; parental exception), single party consent to audiotaping is allowable. Specifically, “Nothing in Code Section 16-11-62 [Eavesdropping, surveillance, or intercepting communication which invades privacy of another; divulging private message] shall prohibit a person from intercepting a wire, oral, or electronic communication where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.” Ga. Code Ann. § 16-11-66(a).

Notably, however, obtaining telephone and electronic communication of a minor under 18 requires a judicial order. Ga. Code Ann. § 16-11-66(b). Specifically, Ga. Code Ann. § 16-11-66(b) states in part,

Consent for the recording or divulging of the conversations of a child under the age of 18 years conducted by telephone or electronic communication shall be given only by order of a judge of a superior court upon written application . . . or by a parent or guardian of said child as provided in subsection (d) of this Code section [permitting parents to monitor and intercept certain conversations of their minor child]. Said recording shall not be used in any prosecution of the child in any delinquency or criminal proceeding. An application to a judge of the superior court made pursuant to this Code section need not comply with the procedures set out in Code Section 16-11-64.

A judge may issue the order, according to Ga. Code Ann. § 16-11-66(c), “(1) Upon finding probable cause that a crime has been committed; (2) Upon finding that the child understands that the conversation is to be recorded and that such child agrees to participate; and (3) Upon determining that participation is not harmful to such child.”

### 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*

Law enforcement may use wiretapping to investigate sex trafficking. Specifically, pursuant to Ga. Code Ann. § 16-11-64(c),

Upon written application, under oath, of the prosecuting attorney having jurisdiction over prosecution of the crime under investigation, or the Attorney General, made before a judge of superior court, said court may issue an investigation warrant permitting the use of such device, . . . for the surveillance of such person or place to the extent the same is consistent with and subject to the terms, conditions, and procedures provided for by Chapter 119 of Title 18 of the United States Code Annotated, as amended.

Relevant crimes that allow wiretapping, as outlined in 18 U.S.C. § 2516, include sex trafficking of children by force, fraud, or coercion; violence or travel in aid of racketeering activity; sexual exploitation of children; selling or buying of children; involvement with child pornography, child obscenity, or production of sexually explicit depictions of a minor; and transportation for illegal sexual activity. 18 U.S.C. § 2516(1)(c).

### 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*

Under Ga. Code Ann. § 16-12-100.2(g) (Computer or electronic pornography and child exploitation prevention), “The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section.”

Perpetrators caught by decoys are also unlikely to have the defense of entrapment. Entrapment is only a defense, according to Ga. Code Ann. § 16-3-25, if a person’s

conduct is induced or solicited by a government officer or employee, or agent of either, for the purpose of obtaining evidence to be used in prosecuting the person for commission of the crime. Entrapment exists where the idea and intention of the commission of the crime originated with a government officer or employee, or with an agent of either, and he, by undue persuasion, incitement, or deceitful means, induced the accused to commit the act which the accused would not have committed except for the conduct of such officer.

- 6.4.1 Recommendation: Amend Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude), § 16-6-12 (Pandering) and § 16-6-11 (Pimping) to prohibit a defendant from asserting a defense that the subject of the offense was a law enforcement officer.

6.5 *Using the Internet to investigate buyers and traffickers is a permissible investigative technique.*

Using the Internet to investigate buyers and traffickers is permissible. Pursuant to Ga. Code Ann. § 16-12-100.2(e)(1) (Computer or electronic pornography and child exploitation prevention),

A person commits the offense of obscene Internet contact with a child if he or she has contact with someone he or she knows to be a child or with someone he or she believes to be a child via a computer on-line service or Internet service . . . and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse . . . .

Therefore, even if the individual the perpetrator thought was a child was in fact a law enforcement officer, a crime has still occurred. The statute states even more explicitly that “[t]he sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section.” Ga. Code Ann. § 16-12-100.2(g).

Additionally, law enforcement officers have the ability to obtain search warrants for “stored wire or electronic communications and transactional records . . . .” Ga. Code Ann. § 16-11-66.1(c).

Lastly, provisions allow for the discovery of electronic documents under Ga. Code Ann. § 35-3-4.3. Specifically, Ga. Code Ann. § 35-3-4.3(a) states,

In any investigation of a violation of Code Section 16-5-46 involving trafficking of persons for labor or sexual servitude, the director, assistant director, or deputy director for investigations shall be authorized to issue a subpoena, with the consent of the Attorney General, to compel the production of books, papers, documents, or other tangible things, including records and documents contained within, or generated by, a computer or any other electronic device.

6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

Georgia has a Missing Children Information Center, which collects and disseminates information on missing children. Ga. Code Ann. § 35-3-81. Pursuant to Ga. Code Ann. § 35-1-8(a)(2), (3) (Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons), every law enforcement agency has a duty to do the following:

(2) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person and the agency shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

(3) Exchange such records and information as provided [above] . . . with other law enforcement agencies of this state, any other state, or the United States. With respect to missing minors, such information shall be transmitted immediately to other law enforcement agencies.



Additionally, pursuant to Ga. Code Ann. § 35-3-84 (Sending information to center), law enforcement must send the information acquired through Ga. Code Ann. § 35-1-8 or Ga. Code Ann. § 35-3-4 to the Missing Children Information Center.

Similarly, once a parent or guardian files a police report of a missing child, “[T]he local law enforcement agency receiving such report shall notify all of its on-duty law enforcement officers of the existence of the missing child report, communicate the report to all other law enforcement agencies having jurisdiction in the county and all law enforcement agencies of jurisdictions geographically adjoining that of the local law enforcement agency, and transmit the report to the Missing Children Information Center.” Ga. Code Ann. § 35-3-83.

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