

PROTECTED INNOCENCE INITIATIVE

Creating A Uniform Standard Across States to Combat Domestic Minor Sex Trafficking



ANALYSIS AND RECOMMENDATIONS NORTH CAROLINA

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 Analysis¹:

- 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.*

North Carolina has distinguished domestic minor sex trafficking as a crime through its definition of “sexual servitude,” and does not require force, fraud, or coercion when a victim is under 18.

Under N.C. Gen. Stat. § 14-43.11(a) (Human trafficking), “A person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.” N.C. Gen. Stat. § 14-43.13(a) (Sexual servitude) separately criminalizes “knowingly subject[ing] or maintain[ing] another in sexual servitude.” Pursuant to N.C. Gen. Stat. § 14-43.10(a)(5) (Definitions), “sexual servitude” is defined to include the following:

¹ Unless otherwise specified, all references to North Carolina statutes were taken from the General Statutes of North Carolina (LEXIS through 2011 Reg. 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.

- a. Any sexual activity as defined in G.S. 14-190.13 [Definitions for certain offenses concerning minors]² 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; or
- b. Any sexual activity as defined in G.S. 14-190.13 that 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.

A violation of N.C. Gen. Stat. § 14-43.11 (Human trafficking) or N.C. Gen. Stat. § 14-43.13 (Sexual servitude), when the victim is an adult, is a Class F felony which carries a presumptive sentence of 13–16 months imprisonment. If the victim is a minor, the crime is a Class C felony which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-43.11(b), 14-43.13(b), 15A-1340.17(c).

Also contained in Article 10A (Human trafficking), N.C. Gen. Stat. § 14-43.14³ (Unlawful sale, surrender, or purchase of a minor) makes it a crime when a person,

acting with willful or reckless disregard for the life or safety of a minor, participates in any of the following: the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time, by any person in connection with the unlawful acquisition or transfer of the physical custody of a minor, except as ordered by the court.⁴

Violation of this provision is a Class F felony, which carries a presumptive sentence of 13–16 months imprisonment and a minimum fine of \$5,000, and “[f]or each subsequent violation, a person is guilty of a Class F felony and shall pay a minimum fine of ten thousand dollars (\$10,000).” N.C. Gen. Stat. §§ 14-43.12(b), 15A 1340.17(c). This offense does not specify the sale, surrender or purchase of a minor for the purpose of engaging the minor in commercial sexual activity, however, pursuant to § 14-43.14(d), “A violation of this section is a lesser included offense of G.S. 14-43.11 [Human trafficking],” which includes trafficking for sexual servitude, indicating the intent that this offense could apply in cases involving sex trafficking of minors. Additionally, N.C. Gen. Stat. § 14-43.14(e) states,

²“Sexual activity” is defined in N.C. Gen. Stat. § 14-190.13(5) as

Any of the following acts:

- a. Masturbation, whether done alone or with another human or an animal.
- b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.
- c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.
- d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.
- e. Excretory functions
- f. The insertion of any part of a person’s body, other than the male sexual organ, or of any object into another person’s anus or vagina, except when done as part of a recognized medical procedure.
- g. The lascivious exhibition of the genitals or pubic area of any person.

³ The text of N.C. Gen. Stat. § 14-43.14 included here and elsewhere in this report reflects passage of Senate Bill 910, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective December 1, 2012).

⁴ N.C. Gen. Stat. § 14-43.14(a) further provides, “This section does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful.”

When a person is convicted of a violation of this section, the sentencing court shall consider whether the person is a danger to the community and whether requiring the person to register as a sex offender pursuant to Article 27A of this Chapter would further the purposes of that Article as stated in G.S. 14-208.5. If the sentencing court rules that the person is a danger to the community and that the person shall register, then an order shall be entered requiring the person to register.

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.*

Several laws treat CSEC separately from non-commercial sex offenses.

1. N.C. Gen. Stat. § 14-190.18(a) (Promoting prostitution of a minor) makes it an offense if a person knowingly, “(1) Entices, forces, encourages, or otherwise facilitates a minor⁵ to participate in prostitution; or (2) Supervises, supports, advises, or protects the prostitution of or by a minor.” Promoting prostitution of a minor is a Class C felony, which carries a presumptive sentence of 58–73 months imprisonment.⁶ N.C. Gen. Stat. §§ 14-190.18(c), 15A-1340.17(c).⁷
2. N.C. Gen. Stat. § 14-190.19(a) (Participating in prostitution of a minor) makes it an offense for an adult to “patronize[] a minor prostitute.” Pursuant to N.C. Gen. Stat. § 14-190.19(a) (Participating in prostitution of a minor), “patronizing a minor prostitute” is defined as,
 - (1) Soliciting or requesting a minor to participate in prostitution;
 - (2) Paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or
 - (3) Paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement.

Participating in the prostitution of a minor is a Class F felony, which carries a presumptive sentence of 13–16 months imprisonment. N.C. Gen. Stat. §§ 14-190.19(c), 15A-1340.17(c).

3. N.C. Gen. Stat. § 14-190.16(a) (First degree sexual exploitation of a minor) makes it an offense if a person, while “knowing the character or content of the material or performance,”

⁵ Pursuant to N.C. Gen. Stat. § 14-190.13, “The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; G.S. 14-190.19, participating in prostitution of a minor. . . . (3) Minor.—An individual who is less than 18 years old and is not married or judicially emancipated.”

⁶ The sentences of imprisonment provided throughout this report are based on the assumption that the defendant has no prior felony or misdemeanor convictions, and that there are no aggravating or mitigating factors. A defendant with prior felony or misdemeanor convictions may be subject to a greater minimum sentence of imprisonment pursuant to N.C. Gen. Stat. §§ 15A-1340.14, 15A-1340.21. The presence of aggravating factors, such as where the “defendant involved a person under the age of 16 in the commission of the crime,” at least in felony convictions, may subject the defendant to an increased minimum sentence of imprisonment, while the presence of mitigating factors may decrease the sentencing range applicable to a defendant. N.C. Gen. Stat. §§ 15A-1340.16(d)(13), (e).

⁷ Pursuant to N.C. Gen. Stat. § 15A-1340.17(f), “Unless provided otherwise in a statute establishing a punishment for a specific crime, for offenders sentenced for a Class B1 through E felony that is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus 60 additional months.”

- (1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
- (2) Permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
- (3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
- (4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

First degree sexual exploitation of a minor is a Class C felony, which carries a sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-190.16(d), 15A-1340.17(c).

4. N.C. Gen. Stat. § 14-190.17 (Second degree sexual exploitation of a minor) makes it an offense if a person, “knowing the character or content of the material,”
 - (1) Records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or
 - (2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

Second degree sexual exploitation of a minor is a Class E felony, which carries a sentence of 20–25 months imprisonment. N.C. Gen. Stat. §§ 14-190.17(d), 15A-1340.17(c).

5. N.C. Gen. Stat. § 14-190.6 (Employing or permitting minor to assist in offense under Article) makes it a crime if any person 18 or older “intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article [Offenses against Public Morality and Decency] and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 [Obscene literature and exhibitions]”⁸ A violation of N.C. Gen. Stat. § 14-190.6 is a Class I felony, which carries a presumptive sentence of 4–6 months imprisonment. N.C. Gen. Stat. §§ 14-190.6, 15A-1340.17(c).

Certain non-commercial sexual offenses against children also may be applicable in cases of commercial sexual exploitation of a child. These include the following statutes:

1. N.C. Gen. Stat. § 14-39(a) (Kidnapping) states in part,
 - (a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

⁸ Material is “obscene” if all of the following apply: “(1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and (2) The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and (3) The material lacks serious literary, artistic, political, or scientific value; and (4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.” N.C. Gen. Stat. §14-190.1(b).

....

(5) Trafficking another person with the intent that the other person be held in involuntary servitude or sexual servitude in violation of G.S. 14-43.11 [Human trafficking].

(6) Subjecting or maintaining such other person for sexual servitude in violation of G.S. 14-43.13 [Sexual servitude].

Kidnapping is a Class C felony where “the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted,” which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-39(b), 15A-1340.17(c). Where “the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree and is punishable as a Class E felony,” which carries a presumptive sentence of 20–25 months imprisonment. N.C. Gen. Stat. §§ 14-39(b), 15A-1340.17(c).

2. N.C. Gen. Stat. § 14-202.3(a) (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) criminalizes the solicitation of a child by a computer by stating,

A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least five years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. . . .

Violation of N.C. Gen. Stat. § 14-202.3 is generally a Class H felony, which carries a presumptive sentence of 5–6 months imprisonment; however, if the defendant actually appears at the intended meeting location, the violation is a Class G felony carrying a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-202.3(c), 15A-1340.17(c).

3. N.C. Gen. Stat. § 14-27.2(a) (First-degree rape) states in part, “(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse: (1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; . . .” A violation of N.C. Gen. Stat. § 14-27.2 is a Class B1 felony carrying a presumptive sentence of 192–240 months imprisonment. N.C. Gen. Stat. §§ 14-27.2(b), 15A-1340.17(c).
4. N.C. Gen. Stat. § 14-27.2A(a) (Rape of a child; adult offender) makes it illegal for an adult to “engage[] in vaginal intercourse with a victim who is a child under the age of 13 years.” Violation of N.C. Gen. Stat. § 14-27.2A is a Class B1 felony, subject to a penalty enhancement that requires the defendant to receive a minimum sentence of 300 months imprisonment and be enrolled in satellite-based monitoring for life following release from prison. N.C. Gen. Stat. § 14-27.2A(b). In addition, the court may sentence the defendant up to life imprisonment without parole if it finds that “the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17.” N.C. Gen. Stat. § 14-27.2A(c).⁹

⁹ N.C. Gen. Stat. § 14-27.2A(c) states in full, “Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the

5. N.C. Gen. Stat. § 14-27.4 (First-degree sexual offense) makes it illegal, among other things, for a person who is at least 12 and at least four years older than the victim to engage in a sexual act with a child under 13. N.C. Gen. Stat. § 14-27.4(a)(1). Violation of N.C. Gen. Stat. § 14-27.4 is a Class B1 felony carrying a presumptive sentence of 192–240 months imprisonment. N.C. Gen. Stat. §§ 14-27.4(b), 15A-1340.17(c).
6. N.C. Gen. Stat. § 14-27.4A(a) (Sexual offense with a child; adult offender) makes it illegal for an adult to engage in a sexual act with a child under 13. Violation of N.C. Gen. Stat. § 14-27.4A is a Class B1 felony, subject to a penalty enhancement that requires the defendant to receive a minimum sentence of 300 months imprisonment and to be enrolled in satellite-based monitoring for life following release from prison. N.C. Gen. Stat. § 14-27.4A(b). In addition, the court may sentence the defendant to up life imprisonment without parole, if it finds that “the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17.” N.C. Gen. Stat. § 14-27.4A(c).¹⁰
7. N.C. Gen. Stat. § 14-27.7A (Statutory rape or sexual offense of person who is 13, 14, or 15 years old) makes it illegal for a person to engage “in vaginal intercourse or a sexual act” with a child who is 13, 14 or 15 where the defendant is at least four years older than the child. Where the defendant is at least six years older than the child and is not married to the child, a violation of N.C. Gen. Stat. § 14-27.7A is a Class B1 felony, which carries a presumptive sentence of 192–240 months imprisonment. N.C. Gen. Stat. §§ 14-27.7A(a), 15A-1340.17(c). Where “the defendant is more than four but less than six years older” than the child and is not married to the child, a violation of N.C. Gen. Stat. § 14-27.7A is a Class C felony, which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-27.7A(b), 15A-1340.17(c).

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 non-commercial offense of N.C. Gen. Stat. § 14-39(a)(4)–(6) (Kidnapping) is the only statute that references the human trafficking statute, N.C. Gen. Stat. § 14-43.11, or the sexual servitude statute, N.C. Gen. Stat. § 14-43.13. No CSEC statutes listed above refer to the human trafficking or sexual servitude statutes or otherwise clarify the minor victim’s status as a trafficking victim. Similarly, neither of North Carolina’s prostitution statutes, N.C. Gen. Stat. § 14-204 (Prostitution and various acts abetting prostitution unlawful) and § 14-204.1 (Loitering for the purpose of engaging in prostitution offense), refers to the human trafficking or sexual servitude statute when the person charged is a minor.

- 1.3.1 Recommendation: Amend N.C. Gen. Stat. § 14-190.6 (Employing or permitting minor to assist in offense under Article), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), § 14-190.18 (Promoting prostitution of a minor), § 14-190.19 (Participating in prostitution of a minor), § 14-204 (Prostitution and various acts abetting prostitution unlawful) and § 14-204.1 (Loitering for the purpose of engaging in prostitution offense) when the person engaged in prostitution is under

defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.”

¹⁰ See *supra* note 9.

18, to refer to N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude) in order to clarify the minor victim's status 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.

North Carolina's RICO statute¹¹ provides solely civil remedies and does not impose criminal liability or financial penalties on criminal enterprises that engage in domestic minor sex trafficking. The offense of continuing criminal enterprise under N.C. Stat. § 14-7.20, however, does impose criminal penalties on such enterprises. N.C. Stat. § 14-7.20 provides,

- (a) Any person who engages in a continuing criminal enterprise shall be punished as a Class H felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.
- (b) Any person who is convicted under subsection (a) of this section of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:
 - (1) The profits obtained by the person in the enterprise, and
 - (2) Any of the person's interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.
- (c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:
 - (1) The person violates any provision of this Chapter, the punishment of which is a felony; and
 - (2) The violation is a part of a continuing series of violations of this Chapter:
 - a. Which are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position, or any other position of management; and
 - b. From which the person obtains substantial income or resources.

All CSEC and trafficking offenses are felonies under Chapter 14 (Criminal Law) or the N.C. Gen. Stat. Thus for organizations of five or more persons, the organizers or managers may be criminally prosecuted and subject to forfeiture under this criminal statute as well as civil forfeiture procedures under the RICO Act. Unfortunately this precludes prosecution of smaller organizations and non-management participants of the enterprise.

- 1.4.1 Recommendation: Amend N.C. Gen. Stat. § 14-7.20 (Continuing Criminal Enterprise) to expressly include North Carolina's CSEC and trafficking offenses as predicate activity to facilitate the prosecution of trafficking enterprises.

¹¹ North Carolina's Racketeer Influenced and Corrupt Organizations Act (RICO Act) is codified under N.C. General Statutes Chapter 75D. N.C. Gen. Stat. § 75D-4 prohibits engaging in racketeering activity or a pattern thereof and any direct or indirect participation or direction of an enterprise (defined by § 75D-3(a) as ranging from a single person to legally organized entities and informal entities) engaging in such activities. The definition of racketeering activity includes all CSEC and trafficking offenses. See § 75D-3(b)-(c).

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.*

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.*

North Carolina’s human trafficking law, N.C. Gen. Stat. § 14-43.11 (Human trafficking), states in part, “A person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.” N.C. Gen. Stat. § 14-43.11(a). Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),¹² have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”¹³ a person under 18 to engage in commercial sex.¹⁴ It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in North Carolina’s trafficking statute may be similarly applied, and could, therefore, implicate buyers under N.C. Gen. Stat. § 14-43.11 (Human trafficking). However, North Carolina’s human trafficking law has an additional element of “intent” required to prove human trafficking. Therefore, the buyer would need to “obtain” the trafficked person “with the intent that the other person be held in involuntary servitude or sexual servitude.” N.C. Gen. Stat. § 14-43.11(a).

A buyer of commercial sex with a minor could more likely be prosecuted under N.C. Gen. Stat. § 14-43.13 (Sexual servitude). N.C. Gen. Stat. § 14-43.13 (Sexual servitude) separately criminalizes “knowingly

¹² 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.).

¹³ 18 U.S.C. § 1591(a).

¹⁴ See e.g., Indictment at 1, *United States v. Oflyng*, No. 09-00084-01-CR-W-SOW (W.D. Mo. March 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 (December 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

subject[ing] or maintain[ing] another in sexual servitude.” N.C. Gen. Stat. § 14-43.13(a). N.C. Gen. Stat. § 14-43.10(a)(5) defines “sexual servitude” as,

- a. Any sexual activity as defined in G.S. 14-190.13 [Definitions for certain offenses concerning minors] 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; or
- b. Any sexual activity as defined in G.S. 14-190.13 that 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.

The act of knowingly subjecting a person who happens to be a minor to “sexual activity”¹⁵ for which “anything of value” was given, promised or received to induce or obtain that activity appears to capture the crime of buying a commercial sex act with a minor and fall under N.C. Gen. Stat. § 14-43.13(a) (Sexual servitude).

The offense of unlawful sale, surrender, or purchase of a minor under N.C. Gen. Stat. § 14-43.14¹⁶ criminalizes “the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time, by any person in connection with the unlawful acquisition or transfer of the physical custody of a minor,” but does not specifically reference “solicitation” or “payment” for the purpose of engaging in sex acts with a minor so it does not clearly apply to buyers of commercial sex acts with minors.

- 2.1.1 Recommendation: Amend N.C. Gen. Stat. § 14-43.11 (Human trafficking) to make it clearly apply to the actions of to buyers when a minor is trafficked for the purpose of sexual servitude.
- 2.1.2 Recommendation: Amend N.C. Gen. Stat. § 14-43.14 (Unlawful sale, surrender, or purchase of a minor) to specifically include soliciting or purchasing sex acts with a minor.

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

CSEC laws separately criminalize buying sex with a minor. N.C. Gen. Stat. § 14-190.19 (Participating in prostitution of a minor) makes it an offense for an adult to “patronize a minor prostitute.” N.C. Gen. Stat. § 14-190.19(a) defines “patronizing a minor prostitute” as

1. Soliciting or requesting a minor to participate in prostitution;
2. Paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or
3. Paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement.

Participating in prostitution of a minor is a Class F felony, which carries a presumptive sentence of 13–16 months imprisonment. N.C. Gen. Stat. §§ 14-190.19(c), 15A-1340.17(c).

- 2.2.1 Recommendation: Raise the penalty for violations of N.C. Gen. Stat. § 14-190.19 (Participating in prostitution of a minor) to align with the penalty provided under N.C. Gen. Stat. § 14-43.13 (Sexual servitude).

¹⁵ See *supra* note 2.

¹⁶ See *supra* note 3.

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

North Carolina law differentiates between the crime of buying sex with an adult and the crime of buying sex with a minor. N.C. Gen. Stat. § 14-190.19 (Participating in prostitution of a minor) makes paying for sex with a minor a Class F felony, which carries a presumptive sentence of 13–16 months imprisonment. N.C. Gen. Stat. §§ 14-190.19(c), 15A-1340.17(c).

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

CSEC and sexual offense laws applicable to buyers of commercial sex with minors are offenses ranging from Class B1 felonies carrying sentences up to life imprisonment without the possibility of parole (presumptive sentence of 192-240 months imprisonment), as outlined below for N.C. Gen. Stat. § 14-27.2A and § 14-27.4A, to Class I felonies carrying presumptive sentences from 4–6 months imprisonment. N.C. Gen. Stat. § 15A-1340.17(c).

Buyers of commercial sex acts with minors convicted under N.C. Gen. Stat. § 14-43.11 (Human trafficking) or under N.C. Gen. Stat. § 14-43.13 (Sexual servitude), both Class C felonies where the victim is a minor, would be subject to a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-43.11(b), 14-43.13(b), 15A-1340.17(c). To the extent that N.C. Gen. Stat. § 14-43.14 (Unlawful sale, surrender, or purchase of a minor) applies to buyers, violation of this provision is a Class F felony, which carries a presumptive sentence of 13–16 months’ imprisonment and a minimum fine of \$5,000, and “[f]or each subsequent violation, a person is guilty of a Class F felony and shall pay a minimum fine of ten thousand dollars (\$10,000).” N.C. Gen. Stat. §§ 14-43.12(b), 15A 1340.17(c).

Buyers of commercial sex with minors convicted under N.C. Gen. Stat. § 14-190.19 (Participating in prostitution of a minor), a Class F felony, would be subject to a presumptive sentence of 13–16 months imprisonment. N.C. Gen. Stat. §§ 14-190.19(c), 15A-1340.17(c).

Sexual offense laws applicable to buyers range from Class C felonies, carrying a sentence of 58–73 months imprisonment, to Class B1 felonies, carrying a presumptive sentence of 192–240 months imprisonment, subject to certain penalty enhancements. N.C. Gen. Stat. § 15A-1340.17(c). N.C. Gen. Stat. § 14-27.2 (First-degree rape), § 14-27.2A (Rape of a child; adult offender), § 14-27.4 (First-degree sexual offense), and § 14-27.4A (Sexual offense with a child; adult offender) are each Class B1 felonies carrying presumptive sentences of 192–240 months imprisonment. N.C. Gen. Stat. §§ 14-27.2(b), 14-27.2A(b), 14-27.4(b), 14-27.7A(a), 14-27.4A(b), 15A-1340.17(c). Furthermore, in the case of a conviction under either N.C. Gen. Stat. § 14-27.2A (Rape of a child; adult offender) or § 14-27.4A (Sexual offense with a child; adult offender), defendants are subject to a penalty enhancement that requires the defendant to receive a minimum sentence of 300 months imprisonment and be enrolled in satellite-based monitoring for life following release from prison. N.C. Gen. Stat. §§ 14-27.2A(b), 14-27.4A(b). In addition, the court may sentence such a defendant up to life imprisonment without parole, if it finds that “the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17.” N.C. Gen. Stat. §§ 14-27.2A(c), 14-27.4A(c).

A buyer who engages in vaginal intercourse or a sexual act with a child who is 13, 14 or 15 where the defendant is at least four years older than the child could be convicted under N.C. Gen. Stat. § 14-27.7A (Statutory rape or sexual offense of a person who is 13, 14, or 15 years old). Where “the defendant is at least six years older” than the child and not married to the child, a violation of N.C. Gen. Stat. § 14-27.7A is a Class B1 felony, which carries a presumptive sentence of 192–240 months imprisonment. N.C. Gen. Stat. §§ 14-27.7A(a), 15A-1340.17(c). Where “the defendant is more than four but less than six years older” than the child and not

married to the child, a violation of N.C. Gen. Stat. § 14-27.7A is a Class C felony, which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-27.7A(b), 15A-1340.17(c).

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 offense¹⁷ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,¹⁸ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.¹⁹

2.4.1 Recommendation: Raise the penalty for violations of N.C. Gen. Stat. § 14-190.19 (Participating in prostitution of a minor) to align with the penalty provided under N.C. Gen. Stat. § 14-43.13 (Sexual servitude).

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.*

While not limited to commercial sex acts, the use of the Internet to solicit commercial sex acts with a minor falls under N.C. Gen. Stat. § 14-202.3(a) (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), which criminalizes the use of a computer by a person 16 or older who

knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least five years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. . . .

Violation of N.C. Gen. Stat. § 14-202.3 is generally a Class H felony, which carries a presumptive sentence of 5–6 months imprisonment; however, if “the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location,” the violation is a

¹⁷ 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).

¹⁸ 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).

¹⁹ 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 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).

Class G felony carrying a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-202.3(c), 15A-1340.17(c).

- 2.5.1 Recommendation: Amend N.C. Gen. Stat. § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) to impose enhanced penalties on those who use the Internet to solicit or commit a commercial sex act with a minor and raise the age of a minor victim to under 18.

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

N.C. Gen. Stat. § 14-190.19(b) (Participating in prostitution of a minor) expressly states that “[m]istake of age is not a defense to a prosecution under this section.” N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude), however, are silent on the availability of mistake of age defenses to defendants in a prosecution under those statutes.

Similarly, no defense of age mistake is permitted for a person who buys or possesses child pornography. N.C. Gen. Stat. § 14-190.17 (Second degree sexual exploitation of a minor), which criminalizes buying child pornography, expressly states that mistake of age is no defense to second degree sexual exploitation of a minor. N.C. Gen. Stat. § 14-190.17(c). N.C. Gen. Stat. § 14-190.17A (Third degree sexual exploitation of a minor), which criminalizes possession of child pornography, also includes language stating that mistake of age is no defense for third degree sexual exploitation of a minor. N.C. Gen. Stat. § 14-190.17A(c).²⁰

- 2.6.1 Recommendation: Amend N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude) to make clear that a mistake of age defense does not apply in a prosecution of a buyer of sex acts with a minor under 18 for sexual servitude.

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

North Carolina does not reduce the penalties for crimes committed against older minors under N.C. Gen. Stat. § 14-43.11 (Human trafficking) or § 14-43.13 (Sexual servitude). Each applies the same penalty when the victim is a “minor,” meaning, “[a] person who is less than 18 years of age.” N.C. Gen. Stat. § 14-43.10(a)(4). Similarly, pursuant to N.C. Gen. Stat. § 14-190.13, for “G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; . . . G.S. 14-190.19, participating in prostitution of a minor,” “minor” is defined as “[a]n individual who is less than 18 years old and is not married or judicially emancipated.”

- 2.7.1 Recommendation: Amend N.C. Gen. Stat. § 14-202.3(a) (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) to protect all minors under 18 years of age.

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.*

Buyers of sex with minors could be subject to several types of financial penalties, including fines, forfeiture, and restitution. Buyers of sex with minors convicted of criminal charges may be ordered to pay a fine. Pursuant to N.C. Gen. Stat. § 15A-1361, “A person who has been convicted of a criminal offense may be

²⁰ Additionally, N.C. Gen. Stat. § 14-190.18 (Promoting prostitution of a minor) and § 14-190.16 (First degree sexual exploitation of a minor) contain language prohibiting an age mistake defense. N.C. Gen. Stat. §§ 14-190.18(b), 14-190.16(c).

ordered to pay a fine as provided by law.”²¹ To the extent that N.C. Gen. Stat. § 14-43.14 (Unlawful sale, surrender, or purchase of a minor) applies to domestic minor sex trafficking, buyers face a minimum fine of \$5,000, and “[f]or each subsequent violation . . . a minimum fine of ten thousand dollars (\$10,000).” N.C. Gen. Stat. §§ 14-43.12(b), 15A 1340.17(c).

In addition, buyers are subject to mandatory, criminal asset forfeiture.²² Pursuant to N.C. Gen. Stat. § 14-2.3 (Forfeiture of gain acquired through criminal activity), “Except as is otherwise provided in Article 3 of Chapter 31A [Willful and unlawful killing of decedent], in the case of any violation of Article 13A [North Carolina street gang suppression act] of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.”

Buyers may also face forfeiture under nuisance laws. Pursuant to N.C. Gen. Stat. § 19-1 (What are nuisances under this chapter), the following may be deemed a nuisance:

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

....

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

....

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

Money and property may also be deemed a nuisance pursuant to N.C. Gen. Stat. § 19-1.3 (Personal property as a nuisance; knowledge of nuisance) which states,

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

- (1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;
- (2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;
- (3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

²¹ Pursuant to N.C. Gen. Stat. § 15A-1340.17(b) (Punishment limits for each class of offense and prior record level), “Any judgment that includes a sentence of imprisonment may also include a fine . . . Unless otherwise provided, the amount of the fine is in the discretion of the court.”

²² For additional information on asset forfeiture statutes and procedure, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>.

Additionally, N.C. Gen. Stat. § 19-6 (Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease) provides in part, “Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.”

Buyers also could be ordered to pay restitution to the domestic minor sex trafficking victim, as the court is required to consider a potential order of restitution at sentencing. Pursuant to N.C. Gen. Stat. § 15A-1340.34(a) (Restitution generally), “When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term ‘victim’ means a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.” Subsection (b) states in part, “If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.”²³ Under subsection (c), “When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.”

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

A person who buys child pornography may be prosecuted under N.C. Gen. Stat. § 14-190.17 (Second degree sexual exploitation of a minor), which makes it an offense if a person, “knowing the character or content of the material, . . . purchases . . . material that contains a visual representation of a minor engaged in sexual activity.” N.C. Gen. Stat. § 14-190.17(a)(2). N.C. Gen. Stat. § 14-190.17(c) (Second degree sexual exploitation of a minor) expressly states that mistake of age is no defense for second degree sexual exploitation of a minor. Second degree sexual exploitation of a minor is a Class E felony, which carries a presumptive sentence of 20–25 months imprisonment. N.C. Gen. Stat. §§ 14-190.17(d), 15A-1340.17(c).

In addition, a person who possesses child pornography may be prosecuted under N.C. Gen. Stat. § 14-190.17A (Third degree sexual exploitation of a minor), which makes it an offense if a person, “knowing the character or content of the material, . . . possesses material that contains a visual representation of a minor engaging in sexual activity.” N.C. Gen. Stat. § 14-190.17A(a). Third degree sexual exploitation of a minor is a Class H felony, which carries a presumptive sentence of 5–6 months imprisonment. N.C. Gen. Stat. §§ 14-190.17A(d), 15A-1340.17(c).

In comparison, a federal conviction for possession of child pornography²⁴ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁵ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²⁶

²³ The remainder of subsection (b) states, “If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.”

²⁴ 18 U.S.C. §§ 2252(a)(2), (a)(4) (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).

2.9.1 Recommendation: Raise penalties for buying and possessing pornography to align with federal penalties.

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

Convicted buyers of commercial sex acts with minors are required to register as sex offenders under Article 27A (Sex offender and public protection registration programs) of Chapter 14 (Criminal law) of the North Carolina General Statutes. Pursuant to N.C. Gen. Stat. § 14-208.7(a), “A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides.” A “reportable conviction” is defined by N.C. Gen. Stat. § 14-208.6(4)²⁷ as

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses . . .

. . .

e. A final conviction for a violation of G.S. 14-43.14 [Unlawful sale, surrender, or purchase of a minor], only if the court sentencing the individual issues an order pursuant to G.S. 14-43.14(e) requiring the individual to register.

The term, “sexually violent offense,” is defined in N.C. Gen. Stat. § 14-208.6(5) as,

a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), . . . G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), . . . G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), . . . G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), . . . G.S. 14-190.19 (participating in the prostitution of a minor), . . . G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act)

The North Carolina Human Trafficking Commission has been charged by the North Carolina General Assembly to consider “whether human trafficking should be added to the list of criminal convictions that require

²⁵ 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).

²⁶ 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 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).

²⁷ The text of N.C. Gen. Stat. § 14-208.6(4) included here and elsewhere in this report reflects passage of Senate Bill 910, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective December 1, 2012).

registration under the sex offender and public protection registration program.”²⁸ The Commission will terminate on December 31, 2014.

- 2.10.1 Recommendation: Amend the definition of “sexually violent offense” under N.C. Gen. Stat. § 14-208.6(5) (Definitions) to include N.C. Gen. Stat. § 14-43.11 (Human trafficking), if the crime is against a minor for the purpose of sexual servitude.

²⁸ The North Carolina Human Trafficking Commission was created by passage of House Bill 950, Section 15.3A, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective July 1, 2012).

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.*

Legal Analysis:

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

Traffickers prosecuted under N.C. Gen. Stat. § 14-43.11 (Human trafficking) face a Class C felony when the victim is a minor, which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-43.11(b), 15A-1340.17(c). Traffickers also could be prosecuted under N.C. Gen. Stat. § 14-43.13 (Sexual servitude), which is also a Class C felony when the victim is a minor, which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-43.13(b), 15A-1340.17(c). To the extent that N.C. Gen. Stat. § 14-43.14 (Unlawful sale, surrender, or purchase of a minor) applies to domestic minor sex trafficking, violation of this provision is a Class F felony, which carries a presumptive sentence of 13–16 months imprisonment and a minimum fine of \$5,000, and “[f]or each subsequent violation, a person is guilty of a Class F felony and shall pay a minimum fine of ten thousand dollars (\$10,000).” N.C. Gen. Stat. §§ 14-43.12(b), 15A-1340.17(c).

Traffickers may be prosecuted under N.C. Gen. Stat. § 14-190.18 (Promoting prostitution of a minor), which is a Class C felony and carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-190.18(c), 15A-1340.17(c).

Traffickers could also be prosecuted under N.C. Gen. Stat. § 14-39 (Kidnapping) in combination with a crime of human trafficking or sexual servitude. N.C. Gen. Stat. § 14-39 is a Class C felony and carries a presumptive sentence of 58–73 months imprisonment when “the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted.” N.C. Gen. Stat. §§ 14-39(b), 15A-1340.17(c). When the “person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree and is punishable as a Class E felony,” which carries a presumptive sentence of 20–25 months imprisonment. N.C. Gen. Stat. §§ 14-39(b), 15A-1340.17(c).

Traffickers convicted under N.C. Gen. Stat. § 14-43.14²⁹ (Unlawful sale, surrender, or purchase of a minor) will be guilty of a Class F felony, which carries a presumptive sentence of 13–16 months imprisonment and a minimum fine of \$5,000. N.C. Gen. Stat. §§ 14-43.12(b), 15A-1340.17(c).

²⁹ The text of N.C. Gen. Stat. § 14-43.14 included here and elsewhere in this report reflects passage of Senate Bill 910, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective December 1, 2012).

Traffickers prosecuted under N.C. Gen. Stat. § 14-190.16(a) (First degree sexual exploitation of a minor) will be guilty of a Class C felony, which carries a sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-190.16(d), 15A-1340.17(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³⁰ 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 offense³¹ against a minor.

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

Traffickers who create or distribute child pornography face prosecution under N.C. Gen. Stat. § 14-190.16 (First degree sexual exploitation of a minor) and § 14-190.17 (Second degree sexual exploitation of a minor).

N.C. Gen. Stat. § 14-190.16 makes it an offense, among other things, if a person, “knowing the character or content of the material or performance, . . . (4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity. N.C. Gen. Stat. § 14-190.16(a)(1), (4). First degree sexual exploitation of a minor is a Class C felony, which carries a sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-190.16(d), 15A-1340.17(c).

N.C. Gen. Stat. § 14-190.17(a) (Second degree sexual exploitation of a minor) removes the commercial benefit component in subsection (1), making it an offense if a person, “knowing the character or content of the material, . . . (1) Records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or (2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.” N.C. Gen. Stat. § 14-190.17(a). Second degree sexual exploitation of a minor is a Class E felony, which carries a presumptive sentence of 20–25 months imprisonment. N.C. Gen. Stat. §§ 14-190.17(d), 15A-1340.17(c).

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 offense³² against a minor. Additionally, a federal conviction for distribution of child pornography³³ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁴ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁵

³⁰ See *supra* note 12.

³¹ See *supra* note 17.

³² See *supra* note 17.

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

³⁴ 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 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 §§

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.*

While not limited to commercial sex acts, N.C. Gen. Stat. § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) criminalizes the use of the Internet to solicit commercial sex acts with a minor. N.C. Gen. Stat. § 14-202.3(a). Subsection (a) states in part,

A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least five years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. . . .

Violation of N.C. Gen. Stat. § 14-202.3 is a Class H felony, which carries a presumptive sentence of 5–6 months imprisonment; however, if “the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location,” the violation is a Class G felony carrying a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-202.3(c), 15A-1340.17(c).

- 3.3.1 Recommendation: Impose enhanced penalties under N.C. Gen. Stat. § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) where the defendant’s purpose is to solicit commercial sex acts with a minor. Additionally, amend N.C. Gen. Stat. § 14-202.3 to raise the age of the minor victim to 18.

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

Traffickers are subject to forfeiture, restitution, and also may be required to pay financial penalties and fines for violations of North Carolina’s laws. Traffickers convicted of criminal charges may be ordered to pay a fine. Pursuant to N.C. Gen. Stat. § 15A-1361, “A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law.”³⁶

Traffickers are subject to mandatory, criminal asset forfeiture following a felony conviction. Pursuant to N.C. Gen. Stat. § 14-2.3 (Forfeiture of gain acquired through criminal activity), “Except as is otherwise provided in

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).

³⁵ 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).

³⁶ Pursuant to N.C. Gen. Stat. § 15A-1340.17(b) (Punishment limits for each class of offense and prior record level), “Any judgment that includes a sentence of imprisonment may also include a fine . . . Unless otherwise provided, the amount of the fine is in the discretion of the court.” To the extent that N.C. Gen. Stat. § 14-43.14 (Unlawful sale, surrender, or purchase of a minor) applies to domestic minor sex trafficking, violation of this provision is a Class F felony, which carries a presumptive sentence of 13–16 months imprisonment and a minimum fine of \$5,000, and “[f]or each subsequent violation, a person is guilty of a Class F felony and shall pay a minimum fine of ten thousand dollars (\$10,000).” N.C. Gen. Stat. §§ 14-43.12(b), 15A 1340.17(c).

Article 3 of Chapter 31A [Willful and unlawful killing of decedent], in the case of any violation of Article 13A [North Carolina street gang suppression act] of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.” No specific seizure procedure is authorized. The property shall be forfeited directly to the state. N.C. Gen. Stat. §14-2.3.

Traffickers also could be ordered to pay restitution to the domestic minor sex trafficking victim, as the court is required to consider restitution at sentencing. Pursuant to N.C. Gen. Stat. § 15A-1340.34(a) (Restitution generally), “When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term ‘victim’ means a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.” Subsection (b) states, “If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.” N.C. Gen. Stat. § 15A-834 (Restitution), which is in Article 46, states, “A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes.”

Pursuant to N.C. Gen. Stat. § 15A-830(a)(7) (Definitions—Crime Victims’ Rights Act), a “victim” is defined to include, among others:

- A person against whom there is probable cause to believe one of the following crimes was committed:
 - a. A Class A, B1, B2, C, D, or E felony.³⁷
 - b. A Class F felony if it is a violation of one of the following: . . . 14-43.11 [Human trafficking, where the victim is not a minor]; 14-190.17 [Second degree sexual exploitation of a minor]; 14-190.19 [Participating in prostitution of a minor]
 -
 - e. A Class I felony if it is a violation of . . . 14-190.17A [Third degree sexual exploitation of a minor].
 - f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
 -

Under N.C. Gen. Stat. § 15A-1340.34 (c), “When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.”

Traffickers face financial penalties under both civil nuisance laws and the civil RICO statute. Both real and personal property may be declared a nuisance. Under N.C. Gen. Stat. § 19-1.3(3) (Personal property as a nuisance; knowledge of nuisance), “The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter: . . . (3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, . . . as well as the furniture and movable contents of a place used in connection with such prohibited conduct.” Pursuant to N.C. Gen. Stat. § 19-6, “All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article [Abatement of nuisances], are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used.” Furthermore, if a court finds under the article that leased premises are used by

³⁷ See *supra* note 47.

traffickers for the purpose of prostitution, the lease will be void and “cause[] the right of possession to revert and vest in” the property’s owner. N.C. Gen. Stat. § 19-6.

Traffickers’ property may also be subject to civil forfeiture if they violate the civil racketeering statute.³⁸ Pursuant to N.C. Gen. Stat. § 75D-3(c) (Definitions), “racketeering activity” includes all offenses under Chapter 14 [Criminal Law], unless they are specifically excluded, and offenses described in the federal law at 18 U.S.C. § 1961(1), which includes federal human trafficking offenses. Qualifying Chapter 14 offenses include N.C. Gen. Stat. § 14-39 (Kidnapping), § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.6 (Employing or permitting minor to assist in offense under Article), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), § 14-190.18 (Promoting prostitution of a minor), and § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act). N.C. Gen. Stat. § 75D-4 (Prohibited activities) states,

(a) No person shall:

- (1) Engage in a pattern of racketeering activity³⁹ or, through a pattern of racketeering activities or through proceeds derived therefrom, acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money; or
- (2) Conduct or participate in, directly or indirectly, any enterprise through a pattern of racketeering activity whether indirectly, or employed by or associated with such enterprise; or
- (3) Conspire with another or attempt to violate any of the provisions of subdivision (1) or (2) of this subsection.

(b) Violation of this section is inequitable and constitutes a civil offense only and is not a crime, therefore a mens rea or criminal intent is not an essential element of any of the civil offenses set forth in this section.

N.C. Gen. Stat. § 75D-5(a) (RICO civil forfeiture proceedings) provides that “[a]ll property of every kind used or intended for use in the course of, derived from, or realized through a racketeering activity or pattern of racketeering activity is subject to forfeiture to the State.”

Under N.C. Gen. Stat. § 75D-8(a) (Available RICO civil remedies),

(a) As part of a final judgment of forfeiture, any judge of the superior court may, after giving reasonable notice to potential innocent claimants, enjoin violations of G.S. 75D-4, by issuing appropriate orders and judgments:

- (1) Ordering any defendant to divest himself of any interest in any enterprise, real property, or personal property including property held by the entirety. Where property is held by the entirety and one of the spouses is an innocent person as defined in G.S. 75D-5(i), upon entry of a final judgment of forfeiture of entirety property, the judgment operates, to convert the entirety to a tenancy in common, and only the one-half undivided interest of the offending spouse shall be forfeited according to the provisions of this Chapter;

...

- (7) Any other equitable remedy appropriate to effect complete forfeiture of property subject to forfeiture, or to prevent future violations of this Chapter.

³⁸ For additional information on criminal RICO statutes, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHI-WhitePaperFederalStateRacketeeringGangCrimeLaws.pdf>

³⁹ “Pattern of racketeering activity” is defined as “engaging in at least two incidents of racketeering activity that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated and unrelated incidents, provided at least one of such incidents occurred after October 1, 1986, and that at least one other of such incidents occurred within a four-year period of time of the other, excluding any periods of imprisonment, after the commission of a prior incident of racketeering activity.” N.C. Gen. Stat. § 75D-3(b).

Furthermore, a trafficker may be required to pay treble damages under N.C. Gen. Stat. § 75D-8(c) (Available RICO civil remedies), which states,

Any innocent person who is injured or damaged in his business or property by reason of any violation of G.S. 75D-4 involving a pattern of racketeering activity shall have a cause of action for three times the actual damages sustained and reasonable attorneys [sic] fees. For purposes of this [provision], “pattern of racketeering activity” shall require that at least one act of racketeering activity be an act of racketeering activity other than (i) an act indictable under 18 U.S.C. § 1341 or U.S.C. § 1343, or (ii) an act which is an offense involving fraud in the sale of securities. . . .

Additionally, any injured person has “a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the State has in the same property or proceeds” so long as the injured person “intervene[s] in the forfeiture proceeding prior to its final disposition.” N.C. Gen. Stat. § 75D-8(d).

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

A conviction under N.C. Gen. Stat. § 14-43.13 (Sexual servitude) requires an individual to register as a sex offender under Article 27A (Sex Offender and Public Protection Registration Programs) of Chapter 14 (Criminal Law) of the North Carolina General Statutes. N.C. Gen. Stat. §§ 14-208.6(4), (5), 14-208.7 Pursuant to N.C. Gen. Stat. § 14-208.7(a), “A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides.” A “reportable conviction” is defined by N.C. Gen. Stat. § 14-208.6(4)⁴⁰ as,

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses . . .

. . .

e. A final conviction for a violation of G.S. 14-43.14 [Unlawful sale, surrender, or purchase of a minor], only if the court sentencing the individual issues an order pursuant to G.S. 14-43.14(e) requiring the individual to register.

The term “sexually violent offense” is defined in N.C. Gen. Stat. § 14-208.6(5) as,

a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), . . . G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), . . . G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), . . . G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), . . . G.S. 14-190.19 (participating in the prostitution of a minor), . . . G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act)

An “offense against a minor” is defined as “any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor’s parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor’s parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.” N.C. Gen. Stat. § 14-208.6(1m).

⁴⁰ See *supra* note 27.

- 3.5.1 Recommendation: Amend the definition of “sexually violent offense” under N.C. Gen. Stat. § 14-208.6(5) (Definitions) to include N.C. Gen. Stat. § 14-43.11 (Human trafficking) when the crime is perpetrated against a minor for the purpose of sexual servitude.

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.*

A conviction under N.C. Gen. Stat. § 14-43.11 (Human trafficking) or § 14-43.13 (Sexual servitude) is not specifically listed as grounds for terminating parental rights under N.C. Gen. Stat. § 7B-1111(a) (Grounds for terminating parental rights). N.C. Gen. Stat. § 7B-1111(a)(8) states in part that a court can terminate parental rights when “[t]he parent has committed murder or voluntary manslaughter of another child of the parent or other child residing in the home; has aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of the child, another child of the parent, or other child residing in the home; has committed a felony assault that results in serious bodily injury to the child, another child of the parent, or other child residing in the home; or has committed murder or voluntary manslaughter of the other parent of the child.” Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), a parent-trafficker’s parental rights could be terminated if the parent has abused or neglected the child, within the meanings of “abused juvenile” and “neglected juvenile” under N.C. Gen. Stat. § 7B-101 (Definitions). Additionally, a parent-trafficker’s parental rights could be terminated if “[t]he parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(11).⁴¹ Under N.C. Gen. Stat. § 7B-101(1)⁴² (Definitions),

(1) Abused juveniles.—Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

...

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; . . . incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional

⁴¹ The text of N.C. Gen. Stat. § 7B-1111(a) included here and elsewhere in this report reflects passage of House Bill 235, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective October 1, 2012).

⁴² The text of N.C. Gen. Stat. § 7B-101(1) included here and elsewhere in this report reflects passage of Senate Bill 910, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective December 1, 2012).

damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

Under N.C. Gen. Stat. § 7B-101(15), a child is considered a “neglected juvenile” when the child “does not receive proper care, supervision, or discipline from the juvenile’s parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile’s welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.”

While these definitions do not reference N.C. Gen. Stat. § 14-43.11 (Human trafficking) or § 14-43.13 (Sexual servitude), the express inclusion of crimes which could apply to a parent-trafficker⁴³ within the definition of “abused juveniles” suggests that a parent- trafficker’s parental rights could be terminated pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (Grounds for terminating parental rights).

- 3.6.1 Recommendation: Amend N.C. Gen. Stat. § 7B-101(1)(d) to include convictions under N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude) involving any minor as grounds for termination of parental rights.

⁴³ E.g., N.C. Gen. Stat. § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), § 14-190.18 (Promoting the prostitution of a minor), and § 14-190.6 (Employing or permitting minor to assist in offense under Article).

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.*

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 N.C. Gen. Stat. § 14-43.11, human trafficking occurs when a person “knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.” N.C. Gen. Stat. § 14-43.11(a). While this applies to some facilitators, it does not apply to those who knowingly benefit from trafficking. N.C. Gen. Stat. § 14-43.13(a) (Sexual servitude) also does not apply to those who knowingly benefit, since it only covers an individual who “knowingly subjects or maintains another in sexual servitude.”

Facilitators could be held culpable under N.C. Gen. Stat. § 14-190.18 (Promoting prostitution of a minor), which states, “A person commits the offense of promoting prostitution of a minor if he knowingly: (1) Entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or (2) Supervises, supports, advises, or protects the prostitution of or by a minor.” Promoting prostitution of a minor is a Class C felony, which carries a sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-190.18(c), 15A-1340.17(c).

- 4.1.1 Recommendation: Amend N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude) to prohibit knowingly or recklessly benefiting from the offenses of human trafficking and sexual servitude.

- 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.*

Facilitators convicted of criminal charges may be ordered to pay a fine. Pursuant to N.C. Gen. Stat. § 15A-1361, “A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law.”⁴⁴

Facilitators are subject to mandatory, criminal asset forfeiture. Pursuant to N.C. Gen. Stat. § 14-2.3 (Forfeiture of gain acquired through criminal activity), “Except as is otherwise provided in Article 3 of Chapter 31A

⁴⁴ Pursuant to N.C. Gen. Stat. § 15A-1340.17(b) (Punishment limits for each class of offense and prior record level), “Any judgment that includes a sentence of imprisonment may also include a fine . . . Unless otherwise provided, the amount of the fine is in the discretion of the court.” To the extent that N.C. Gen. Stat. § 14-43.14 (Unlawful sale, surrender, or purchase of a minor) applies to domestic minor sex trafficking, violation of this provision is a Class F felony, which carries a presumptive sentence of 13–16 months’ imprisonment and a minimum fine of \$5,000, and “[f]or each subsequent violation, a person is guilty of a Class F felony and shall pay a minimum fine of ten thousand dollars (\$10,000).” N.C. Gen. Stat. §§ 14-43.12(b), 15A 1340.17(c).

[Willful and unlawful killing of decedent], in the case of any violation of Article 13A [North Carolina street gang suppression act] of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.” There is no specified procedure in the statute. The property is forfeited directly to the state. N.C. Gen. Stat. §14-2.3.

Special forfeiture provisions would apply in the event that a facilitator was convicted under N.C. Gen. Stat. § 14-7.20 (Continuing criminal enterprise). Under N.C. Gen. Stat. § 14-7.20(b) (Continuing criminal enterprise), a person convicted of engaging in a continuing criminal enterprise is required to forfeit

1. The profits obtained by the person in the enterprise, and
2. Any of the person’s interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

Facilitators also could be ordered to pay restitution to the domestic minor sex trafficking victim, as the court is required to consider an order of restitution at sentencing. Pursuant to N.C. Gen. Stat. § 15A-1340.34(a) (Restitution generally), “When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term ‘victim’ means a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.” Subsection (b) states, “If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.” N.C. Gen. Stat. § 15A-834 (Restitution), which is in Article 46, states, “A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes.”

Pursuant to N.C. Gen. Stat. § 15A-830(a)(7) (Definitions—Crime Victims’ Rights Act), a “victim” is defined to include, among others:

- A person against whom there is probable cause to believe one of the following crimes was committed:
- a. A Class A, B1, B2, C, D, or E felony.⁴⁵
 - b. A Class F felony if it is a violation of one of the following: . . . 14-43.11 [Human trafficking, where the victim is not a minor]; 14-190.17 [Second degree sexual exploitation of a minor]; 14-190.19 [Participating in prostitution of a minor]
 -
 - e. A Class I felony if it is a violation of . . . 14-190.17A [Third degree sexual exploitation of a minor].
 - f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
 -

Under N.C. Gen. Stat. § 15A-1340.34 (c), “When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.”

Facilitators may also be subject to civil financial penalties under the civil nuisance laws and civil RICO statute. To the extent that a facilitator engages in activity or owns property that is deemed a nuisance under N.C. Gen.

⁴⁵ See *supra* note 47.

Stat. § 19-1(a) (What are nuisances under this Chapter) and N.C. Gen. Stat. § 19-1.3(3) (Personal property as a nuisance; knowledge of nuisance), the facilitator could be required to forfeit assets. Under N.C. Gen. Stat. § 19-1(a), “The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation [or] prostitution . . . shall constitute a nuisance.”

Under N.C. Gen. Stat. § 19-1.3(3) (Personal property as a nuisance; knowledge of nuisance), “The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter: . . . (3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, . . . as well as the furniture and movable contents of a place used in connection with such prohibited conduct.” Pursuant to N.C. Gen. Stat. § 19-6, “All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used.” Furthermore, the use of leased premises by traffickers for the purpose of prostitution will make the lease void and “causes the right of possession to revert and vest in” the property’s owner. N.C. Gen. Stat. § 19-6.

Facilitators may also be liable under the North Carolina Racketeer Influenced and Corrupt Organizations Act (RICO), N.C. Gen. Stat. Chap. 75D, if they engage in a “pattern of racketeering activity.”⁴⁶ Pursuant to N.C. Gen. Stat. § 75D-3(c) (Definitions), racketeering activity includes all offenses under Chapter 14 [Criminal Law], unless they are specifically excluded. Qualifying Chapter 14 offenses include N.C. Gen. Stat. § 14-39 (Kidnapping), § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.6 (Employing or permitting minor to assist in offense under Article), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), § 14-190.18 (Promoting prostitution of a minor), § 14-7.20 (Continuing criminal enterprise), and § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act).

N.C. Gen. Stat. § 75D-4 (Prohibited activities) states,

(a) No person shall:

- (1) Engage in a pattern of racketeering activity or, through a pattern of racketeering activities or through proceeds derived therefrom, acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money; or
- (2) Conduct or participate in, directly or indirectly, any enterprise through a pattern of racketeering activity whether indirectly, or employed by or associated with such enterprise; or
- (3) Conspire with another or attempt to violate any of the provisions of subdivision (1) or (2) of this subsection.

(b) Violation of this section is inequitable and constitutes a civil offense only and is not a crime, therefore a mens rea or criminal intent is not an essential element of any of the civil offenses set forth in this section.

N.C. Gen. Stat. § 75D-5(a) (RICO civil forfeiture proceedings) provides that “[a]ll property of every kind used or intended for use in the course of, derived from, or realized through a racketeering activity or pattern of racketeering activity is subject to forfeiture to the State.” Under N.C. Gen. Stat. § 75D-8(a) (Available RICO civil remedies),

(a) As part of a final judgment of forfeiture, any judge of the superior court may, after giving reasonable notice to potential innocent claimants, enjoin violations of G.S. 75D-4, by issuing appropriate orders and judgments:

⁴⁶ See *supra* note 39.

(1) Ordering any defendant to divest himself of any interest in any enterprise, real property, or personal property including property held by the entirety. Where property is held by the entirety and one of the spouses is an innocent person as defined in G.S. 75D-5(i), upon entry of a final judgment of forfeiture of entirety property, the judgment operates, to convert the entirety to a tenancy in common, and only the one-half undivided interest of the offending spouse shall be forfeited according to the provisions of this Chapter;

...
(7) Any other equitable remedy appropriate to effect complete forfeiture of property subject to forfeiture, or to prevent future violations of this Chapter.

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

There is no specific provision under North Carolina’s laws prohibiting child sex tourism.

4.3.1 Recommendation: Enact a law that prohibits 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 is occurring in North Carolina.

4.4 *Promoting and selling child pornography is illegal.*

N.C. Gen. Stat. § 14-190.16 (First degree sexual exploitation of a minor) makes it an offense, among other things, if a person, while “knowing the character or content of the material or performance, . . . (1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or . . . (3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or (4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.” First degree sexual exploitation of a minor is a Class C felony, which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-190.16(d), 15A-1340.17(c).

N.C. Gen. Stat. § 14-190.17 (Second degree sexual exploitation of a minor) makes it an offense if a person, “knowing the character or content of the material, . . . (1) Records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or (2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.” Second degree sexual exploitation of a minor is a Class E felony, which carries a sentence of 20–25 months imprisonment. N.C. Gen. Stat. §§ 14-190.17(d), 15A-1340.17(c).

4.4.1 Recommendation: Amend N.C. Gen. Stat. § 14-190.16 (First degree sexual exploitation of a minor) and § 14-190.17 (Second degree sexual exploitation of a minor) to raise penalties to align with federal penalties.

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.*

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.*

The Crime Victims’ Rights Act is the only North Carolina law that expressly refers to the crime of human trafficking and other CSEC laws within its definition of victim. Under N.C. Gen. Stat. § 15A-830(a)(7) (Definitions), a “victim” is defined to include,

- A person against whom there is probable cause to believe one of the following crimes was committed:
- a. A Class A, B1, B2, C, D, or E felony.⁴⁷

⁴⁷ *E.g.*, N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude) (Class C felonies, where the victim is a minor); § 14-190.16 (First degree sexual exploitation of a minor) (Class C felony); § 14-190.17 (Second degree sexual exploitation of a minor) (Class E felony); § 14-27.2 (First-degree rape) (Class B1 felony); § 14-27.2A (Rape of a child; adult offender) (Class B1 felony); § 14-27.4 (First-degree sexual offense) (Class B1 felony); § 14-27.4A (Sexual offense with a child; adult offender) (Class B1 felony); § 14-27.7A (Statutory rape or sexual offense of a person who is 13, 14, or 15 years old) (Class B1 or C felony, depending on the age of the defendant).

- b. A Class F felony if it is a violation of one of the following: . . . 14-43.11 [Human trafficking, where the victim is not a minor]; 14-190.17 [Second degree sexual exploitation of a minor]; 14-190.19 [Participating in prostitution of a minor]
-
- e. A Class I felony if it is a violation of . . . 14-190.17A [Third degree sexual exploitation of a minor].
- f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
-
- h. Any violation of a valid protective order under G.S. 50B-4.1.

The Crime Victim’s Compensation Act defines a “victim” as “[a] person who suffers personal injury or death proximately caused by criminally injurious conduct.” N.C. Gen. Stat. § 15B-2(13). “Criminally injurious conduct” is defined as including “[c]onduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State.” N.C. Gen. Stat. § 15B-2(5). Since domestic minor sex trafficking encompasses “conduct that by its nature poses a substantial threat of personal injury or death,” and the applicable crimes are punishable by imprisonment, the Crime Victim’s Compensation Act indirectly classifies a domestic minor sex trafficking or CSEC victim as a victim. N.C. Gen. Stat. § 15B-2(5).

For purposes of victim restitution under Chapter 15A, Article 81C (Restitution) “the term ‘victim’ means a person directly and proximately harmed as a result of the defendant's commission of the criminal offense.” N.C. Gen. Stat. § 15A-1340.34(a). “When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question.” Thus, if the defendant is prosecuted and convicted of a CSEC or trafficking offense, any victim of these crimes is included in the definition.

- 5.1.1 Recommendation: Amend the definition of “victim” in N.C. Gen. Stat. § 15B-2(13) (Definitions—Victims compensation) to expressly include victims of CSEC conduct in violation of N.C. Gen. Stat. § 14-190.18(a) (Promoting prostitution of a minor), § 14-190.19(a) (Participating in prostitution of a minor), § 14-190.16(a) (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), and § 14-190.6 (Employing or permitting minor to assist in offense under Article), as well as § 14-43.11(a) (Human trafficking) and § 14-43.13(a) (Sexual servitude).

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.*

The only law applicable to domestic minor sex trafficking victims specifying that consent is not a defense is N.C. Gen. Stat. § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), which states that “[c]onsent is not a defense to a charge under this section.” N.C. Gen. Stat. § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), § 14-190.17A (Third degree sexual exploitation of a minor), § 14-190.18 (Promoting prostitution of a minor), and § 14-190.19 (Participating in prostitution of a minor) do not refer to a defense of consent.

- 5.2.1 Recommendation: Amend N.C. Gen. Stat. § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), § 14-190.17A (Third degree sexual

exploitation of a minor), § 14-190.18 (Promoting prostitution of a minor), and § 14-190.19 (Participating in prostitution of a minor) to clarify that consent is not a defense to each crime.

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

N.C. Gen. Stat. § 14-204 (Prostitution and various acts abetting prostitution unlawful) and § 14-204.1 (Loitering for the purpose of engaging in prostitution offense) are age neutral, allowing minors to be prosecuted for these crimes. Without regard to the defendant's age, N.C. Gen. Stat. § 14-204 (Prostitution and various acts abetting prostitution unlawful) makes it illegal, among other things, "(6) To reside in, enter, or remain in any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution or assignation" and "(7) To engage in prostitution or assignation, or to aid or abet prostitution or assignation by any means whatsoever."

Similarly, N.C. Gen. Stat. § 14-204.1 (Loitering for the purpose of engaging in prostitution offense) applies to both adults and minors. N.C. Gen. Stat. § 14-204.1 (Loitering for the purpose of engaging in prostitution offense) makes it a Class 1 misdemeanor if a person, "remains or wanders about in a public place⁴⁸ and (1) Repeatedly beckons to, stops, or attempts to stop passers-by, or repeatedly attempts to engage passers-by in conversation; or (2) Repeatedly stops or attempts to stop motor vehicles; or (3) Repeatedly interferes with the free passage of other persons for the purpose of violating any subdivision of G.S. 14-204 [Prostitution and various acts abetting prostitution unlawful]"

- 5.3.1 Recommendation: Amend N.C. Gen. Stat. § 14-204 (Prostitution and various acts abetting prostitution unlawful) and § 14-204.1 (Loitering for the purpose of engaging in prostitution offense) to make minors immune from prosecution and refer cases involving minors in prostitution to N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude) to make clear that the prostituted minor is a trafficking victim.

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.*

Under N.C. Gen. Stat. § 7B-200 (Jurisdiction), "The court⁴⁹ has exclusive, original jurisdiction over any case involving a juvenile⁵⁰ who is alleged to be abused, neglected, or dependent."⁵¹ N.C. Gen. Stat. § 7B-200(a). Upon receiving a report alleging abuse, dependency, or neglect of a juvenile, the North Carolina Department of Social Services (DSS), pursuant to N.C. Gen. Stat. § 7B-302(a) (Assessment by director; access to confidential information; notification of person making the report), is required to "make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition."

⁴⁸ "For the purposes of this section, 'public place' means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility, or the doorways and entrance ways to any building which fronts on any of those places, or a motor vehicle in or on any of those places." N.C. Gen. Stat. § 14-204.1(a).

⁴⁹ "Court" is defined as "[t]he district court division of the General Court of Justice." N.C. Gen. Stat. § 7B-101(6).

⁵⁰ N.C. Gen. Stat. § 7B-101(14) defines "juvenile" as "[a] person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States." This definition reflects the text of N.C. Gen. Stat. § 7B-101(14) as amended by 2011 N.C. Sess. Laws 183 (effective on becoming law).

⁵¹ N.C. Gen. Stat. § 7B-101(9) defines a "dependent juvenile" as "[a] juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement." See *infra* Section 5.6 for definition of "neglected juvenile" and "abused juveniles."

If the report alleges abuse, DSS must initiate the assessment within 24 hours after receiving the report. N.C. Gen. Stat. § 7B-302(a). If the report alleges neglect or dependency, DSS must initiate the assessment within 72 hours of receiving the report. N.C. Gen. Stat. § 7B-302(a). N.C. Gen. Stat. § 7B-302(c), (d) states,

(c) If the assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a petition seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a petition that alleges the applicable facts to invoke the jurisdiction of the court. Where the assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

N.C. Gen. Stat. § 7B-500(a) (Taking a juvenile into temporary custody; civil and criminal immunity) permits a juvenile to be taken into temporary custody by a law enforcement officer or a DSS worker without a court order "if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order."

Under N.C. Gen. Stat. § 7B-501 (Duties of person taking juvenile into temporary custody),

(a) A person who takes a juvenile into custody without a court order under G.S. 7B-500 shall proceed as follows:

(1) Notify the juvenile's parent, guardian, custodian, or caretaker that the juvenile has been taken into temporary custody and advise the parent, guardian, custodian, or caretaker of the right to be present with the juvenile until a determination is made as to the need for nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile.

(2) Release the juvenile to the juvenile's parent, guardian, custodian, or caretaker if the person having the juvenile in temporary custody decides that continued custody is unnecessary.

(3) The person having temporary custody shall communicate with the director of the department of social services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority pursuant to G.S. 7B-502 for a determination of the need for continued custody.

(b) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless:

(1) A petition or motion for review has been filed by the director of the department of social services, and

(2) An order for nonsecure custody has been entered by the court.

Pursuant to N.C. Gen. Stat. § 7B-503(a) (Criteria for nonsecure custody),

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

....

(2) The juvenile has suffered physical injury or sexual abuse.

(3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection.

....

(5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order.

(6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

When an order is issued for nonsecure custody, N.C. Gen. Stat. § 7B-505 (Place of nonsecure custody) states,

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care; or
- (2) A facility operated by the department of social services; or
- (3) Any other home or facility, including a relative's home approved by the court and designated in the order.

However, commercially sexually exploited children could be taken into temporary custody for committing an offense related to their exploitation under North Carolina's laws and could be at risk of being placed in juvenile detention facilities. Under N.C. Gen. Stat. § 7B-1501(7) (Definitions), a "delinquent juvenile" is defined as "[a]ny juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government . . ."⁵² N.C. Gen. Stat. § 7B-1501(7). Furthermore, pursuant to N.C. Gen. Stat. § 7B-1900 (Taking a juvenile into temporary custody),

A juvenile may be taken into temporary custody without a court order under the following circumstances:

- (1) By a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b) [Arrest by law-enforcement officer].
- (2) By a law enforcement officer or a juvenile court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.
- (3) By a law enforcement officer, by a juvenile court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center, and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Department if there are reasonable grounds to believe the juvenile is an absconder from any residential facility operated by the Department or from an approved detention facility.

Under N.C. Gen. Stat. § 15A-401(b), "An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense, . . . in the officer's presence." Additionally, "An officer may arrest without a warrant any person who the officer has probable cause to believe: a. Has committed a felony; or b. Has committed a misdemeanor, and: 1. Will not be apprehended unless immediately

⁵² Pursuant to N.C. Gen. Stat. § 7B-1604 (Limitations on juvenile court jurisdiction), a minor 16 or older may be tried as an adult. The provision states,

- (a) Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile's sixteenth birthday is subject to prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an adult for the commission of a criminal offense.
- (b) A juvenile who is transferred to and convicted in superior court shall be prosecuted as an adult for any criminal offense the juvenile commits after the superior court conviction.

arrested, or 2. May cause physical injury to himself or others, or damage to property unless immediately arrested; . . .” N.C. Gen. Stat. § 15A-401(b).

Under N.C. Gen. Stat. § 7B-1901(a) (Duties of person taking juvenile into temporary custody),

(a) A person who takes a juvenile into custody without a court order under G.S. 7B-1900(1) or (2) shall proceed as follows:

(1) Notify the juvenile’s parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of the right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent, guardian, or custodian that the juvenile is in custody shall not be grounds for release of the juvenile.

(2) Release the juvenile to the juvenile’s parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary. In the case of a juvenile unlawfully absent from school, if continued custody is unnecessary, the person having temporary custody may deliver the juvenile to the juvenile’s school or, if the local city or county government and the local school board adopt a policy, to a place in the local school administrative unit.

(3) If the juvenile is not released, request that a petition be drawn pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has been drawn and verified, the person shall communicate with the juvenile court counselor. If the juvenile court counselor approves the filing of the petition, the juvenile court counselor shall contact the judge or the person delegated authority pursuant to G.S. 7B-1902 if other than the juvenile court counselor, for a determination of the need for continued custody.

Under subsection (b), “A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless a petition or motion for review has been filed and an order for secure or nonsecure custody has been entered.”

Pursuant to N.C. Gen. Stat. § 7B-1903(a) (Criteria for secure or nonsecure custody), the court will grant an order for nonsecure custody “only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and that: (1) The juvenile is a runaway and consents to nonsecure custody; or (2) The juvenile meets one or more of the criteria for secure custody,⁵³ but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.”

⁵³ The criteria for secure custody pursuant to N.C. Gen. Stat. § 7B-1903(b) are,

(1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.

(2) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with either (i) a misdemeanor at least one element of which is assault on a person or (ii) a misdemeanor in which the juvenile used, threatened to use, or displayed a firearm or other deadly weapon.

(2a) The juvenile has demonstrated that the juvenile is a danger to persons and is charged with a violation of G.S. 20-138.1 [Impaired driving] or G.S. 20-138.3 [Driving by person less than 21 years old after consuming alcohol or drugs].

(3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.

(4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.

(5) The juvenile is an absconder from (i) any residential facility operated by the Department or any detention facility in this State or (ii) any comparable facility in another state.

Pursuant to N.C. Gen. Stat. § 7B-1501(27) (Definitions), a domestic minor sex trafficking victim may also be treated as an “undisciplined juvenile,” which is defined as

- a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile’s parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or
- b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile’s parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

N.C. Gen. Stat. § 7B-2503(1) (Dispositional alternatives for undisciplined juveniles) states that when a minor is classified as an “undisciplined juvenile,” the minor may, among other dispositions, remain in his or her own home under supervision by the DSS, be placed “in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or some other suitable person,” or be placed “in the custody of a department of social services in the county of the juvenile’s residence.” Alternatively, the court may “[p]lace the juvenile under the protective supervision of a juvenile court counselor for a period of up to three months, with an extension of an additional three months in the discretion of the court.” N.C. Gen. Stat. § 7B-2503(2).

Additionally juvenile sex trafficking victims and commercially sexually exploited children are at risk of being tried as an adult for crimes committed as part of their exploitation. Pursuant to N.C. Gen. Stat. § 7B-1604, in North Carolina, all juveniles over 16 who commit any crimes are tried as adults. N.C. Gen. Stat. § 7B-1604 states,

- (a) Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile's sixteenth birthday is subject to prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an adult for the commission of a criminal offense.
- (b) A juvenile who is transferred to and convicted in superior court shall be prosecuted as an adult for any criminal offense the juvenile commits after the superior court conviction.

In addition, pursuant to N.C. Gen. Stat. § 7B-2200, any juvenile over age 13 who is charged with a felony is eligible for a transfer hearing on the prosecutor’s motion. Furthermore, transfer to superior court is mandatory for any juvenile over the age of 13 who commits a Class A felony. N.C. Gen. Stat. § 7B-2200 states,

(6) There is reasonable cause to believe the juvenile should be detained for the juvenile’s own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.

(7) The juvenile is alleged to be undisciplined by virtue of the juvenile’s being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, to evaluate the juvenile’s need for medical or psychiatric treatment or to facilitate reunion with the juvenile’s parents, guardian, or custodian.

(8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays.

The text of N.C. Gen. Stat. § 7B-1903(b) included here and elsewhere in this report reflects passage of House Bill 853, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective October 1, 2012).

After notice, hearing, and a finding of probable cause the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court if the juvenile was 13 years of age or older at the time the juvenile allegedly committed an offense that would be a felony if committed by an adult. If the alleged felony constitutes a Class A felony and the court finds probable cause, the court shall transfer the case to the superior court for trial as in the case of adults.

- 5.4.1 Recommendation: Establish a mandatory response law directing away from the criminal justice system and into a protective system any minor under the age of 18 involved in prostitution under N.C. Gen. Stat. § 14-204 or § 14-204.1, or any minor under the age of 18 who is a victim of human trafficking under N.C. Gen. Stat. § 14-43.11 or sexual servitude under § 14-43.13.

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

Under N.C. Gen. Stat. § 7B-101(1)⁵⁴ (Definitions),

- (1) Abused juveniles.—Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:
- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - ...
 - d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; rape of a child by an adult offender, as provided in G.S. 14-27.2A; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; sexual offense with a child by an adult offender, as provided in G.S. 14-27.4A; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14 . . . preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;
 - e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
 - f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

Pursuant to N.C. Gen. Stat. §7B-101(15) (Definitions), a “neglected juvenile” is defined more generally as

⁵⁴ See *supra* note 42.

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; . . . or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

While the definition of "abused juveniles" does not reference N.C. Gen. Stat. § 14-43.11 (Human trafficking), or § 14-43.13 (Sexual servitude), it does refer to North Carolina's CSEC laws and sexual offense laws. Additionally, N.C. Gen. Stat. § 14-43.14(c) provides, "A minor whose parent, guardian, or custodian has sold or attempted to sell a minor in violation of [Article 10A]⁵⁵ is an abused juvenile as defined by G.S. 7B-101(1).

The court may place the minor in the custody of the Department of Social Services or with such other person as is in the best interest of the minor."

- 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.*

The definition of "custodian" under N.C. Gen. Stat. § 7B-101(8) (Definitions) may be broad enough to cover situations in which a trafficker is in custody or control of a child. "Custodian" is defined as ". . . a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court." N.C. Gen. Stat. § 7B-101(8). Therefore, if the trafficker has assumed "the status and obligation of a parent," then it is possible that the trafficker could be considered a custodian.

- 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.*

A victim of domestic minor sex trafficking is an eligible claimant for Crime Victim's Compensation pursuant to N.C. Gen. Stat. § 15B-2(2)(a). A "victim" is defined as "[a] person who suffers personal injury or death proximately caused by criminally injurious conduct." N.C. Gen. Stat. § 15B-2(13). "Criminally injurious conduct" is defined as including "[c]onduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State." N.C. Gen. Stat. § 15B-2(5). Since domestic minor sex trafficking encompasses "conduct that by its nature poses a substantial threat of personal injury or death," and the applicable crimes are punishable by imprisonment, a domestic minor sex trafficking victim falls under the definition of victim for the purposes of Crime Victim's Compensation. N.C. Gen. Stat. § 15B-2(5). However, under N.C. Gen. Stat. § 15B-4(a) (Award of compensation), "Compensation shall only be paid for economic loss⁵⁶ and not for noneconomic detriment."

Even if domestic minor sex trafficking victims can recover funds, certain ineligibility factors and award reduction factors present special difficulties for domestic minor sex trafficking victims. For example, a

⁵⁵ The following offenses are included under Article 10A: § 14-43.11 (Human trafficking), § 14-43.12 (Involuntary servitude), § 14-43.13 (Sexual servitude), and § 14-43.14 (Unlawful sale, surrender, or purchase of a minor).

⁵⁶ Pursuant to N.C. Gen. Stat. § 15B-2(10), "economic loss" is defined as "[e]conomic detriment consisting only of allowable expense, work loss, replacement services loss, and household support loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment."

claimant's application for an award under N.C. Gen. Stat. Chapter 15B (Crime Victims Compensation Act) can be denied if not filed "within two years after the date of the criminally injurious conduct that caused the injury or death for which the claimant seeks the award," where "[t]he criminally injurious conduct was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and there was no good cause for the delay," or if "[t]he victim was participating in a felony at or about the time that the victim's injury occurred." N.C. Gen. Stat. § 15B-11(a)(1), (3), (6). An award may also be denied or reduced if it is found "that the claimant or victim, without good cause, has not fully cooperated with appropriate law enforcement agencies or in the prosecution of criminal cases with regard to the criminally injurious conduct that is the basis for the award." N.C. Gen. Stat. § 15B-11(c).

In addition, an award may be reduced if "[t]he victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred" or the victim "engaged in contributory misconduct." N.C. Gen. Stat. § 15B-11(b). Under subsection (b1), however, "The Commission or Director, whichever has the authority to decide a claim under G.S. 15B-10, shall exercise discretion in determining whether to deny a claim under subsection (b) of this section. In exercising discretion, the Commission or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. The Director or Commission shall deny claims upon a finding that there was contributory misconduct that is a proximate cause of becoming a victim. However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim." Since a domestic minor sex trafficking victim may be charged with the misdemeanors of N.C. Gen. Stat. § 14-204 (Prostitution and various acts abetting prostitution unlawful) or § 14-204.1 (Loitering for the purpose of engaging in prostitution offense), the award could be reduced.

5.7.1 Recommendation: Amend N.C. Gen. Stat. § 15B-11(a), (b) (Grounds for denial of claim or reduction of award) to establish exceptions for victims of domestic minor sex trafficking.

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

In a trial for rape or sexual offenses or attempts to commit either,⁵⁷ "the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the courtroom all persons except the officers of the court, the defendant and those engaged in the trial of the case." N.C. Gen. Stat. § 15-166.

Pursuant to N.C. Gen. Stat. § 8C-1, Rule 412 (Rape or sex offense cases; relevance of victim's past behavior), the use of reputation or opinion evidence of the past sexual behavior⁵⁸ of a victim of rape or a sexual offense is limited, and past sexual behavior of the victim is not to be considered during the prosecution unless certain circumstances apply. N.C. Gen. Stat. § 8C-1, Rule 412(b)-(d) states in part,

(b) Notwithstanding any other provision of law, the sexual behavior of the complainant is irrelevant to any issue in the prosecution unless such behavior:

- (1) Was between the complainant and the defendant; or
- (2) Is evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the defendant; or

⁵⁷ "Sexual offenses" is not defined for the purpose of this statute. However, presumably it applies to N.C. Chapter 14, Article 7A (Rape and other sex offenses), which does not include N.C. Gen. Stat. § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.18 (Promoting prostitution of a minor), § 14-190.19 (Participating in prostitution of a minor), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), or § 14-190.17A (Third degree sexual exploitation of a minor).

⁵⁸ "As used in this rule, the term 'sexual behavior' means sexual activity of the complainant other than the sexual act which is at issue in the indictment on trial." N.C. Gen. Stat. § 8C-1, Rule 412(a).

- (3) Is evidence of a pattern of sexual behavior so distinctive and so closely resembling the defendant's version of the alleged encounter with the complainant as to tend to prove that such complainant consented to the act or acts charged or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented; or
- (4) Is evidence of sexual behavior offered as the basis of expert psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged.
- (c) Sexual behavior otherwise admissible under this rule may not be proved by reputation or opinion.
- (d) Notwithstanding any other provision of law, unless and until the court determines that evidence of sexual behavior is relevant under subdivision (b), no reference to this behavior may be made in the presence of the jury and no evidence of this behavior may be introduced at any time during the trial of:
 - (1) A charge of rape or a lesser included offense of rape;
 - (2) A charge of a sex offense or a lesser included offense of a sex offense; or
 - (3) An offense being tried jointly with a charge of rape or a sex offense, or with a lesser included offense of rape or a sex offense.

....

In the prosecution of an individual under N.C. Gen. Stat. § 14-204 (Prostitution and various acts abetting prostitution unlawful) or § 14-204.1 (Loitering for the purpose of engaging in prostitution offense), however, reputation and evidence of prior convictions of the defendant are admissible as evidence. N.C. Gen. Stat. § 14-206.

Witness remote testimony may be authorized for a child under 16 pursuant to N.C. Gen. Stat. § 15A-1225.1, which states in subsection (b), "In a criminal proceeding, a child witness who has been found competent to testify may testify, under oath or affirmation, other than in an open forum when the court determines: (1) That the child witness would suffer serious emotional distress, not by the open forum in general, but by testifying in the defendant's presence, and (2) That the child's ability to communicate with the trier of fact would be impaired." N.C. Gen. Stat. § 15A-1225.1(a)(1), (b). Additionally, while a judge may, upon motion of a party, exclude witnesses from the courtroom during a trial, "when a minor child is called as a witness the parent or guardian may be present while the child is testifying even though his parent or guardian is to be called subsequently." N.C. Gen. Stat. § 15A-1225.

- 5.8.1 Recommendation: Amend N.C. Gen. Stat. § 8C-1, Rule 412(d) to clarify the inclusion of N.C. Gen. Stat. § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.18 (Promoting prostitution of a minor), and § 14-190.19 (Participating in prostitution of a minor) as "sex offenses" for which reputation or opinion evidence of past sexual behavior for victim witnesses is inadmissible in trials.

- 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.*

Pursuant to N.C. Gen. Stat. § 15A-145.5(c)(i)⁵⁹ (Expunction of certain misdemeanors and felonies; no age limitation), "a person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction⁶⁰ from the person's criminal record if the person has

⁵⁹ The text of N.C. Gen. Stat. § 15A-145(c) included here and elsewhere in this report reflects passage of House Bill 1023, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective December 1, 2012).

⁶⁰ Pursuant to § 15A-145.5 (Expunction of certain misdemeanors and felonies; no age limitation)

no other misdemeanor or felony convictions, other than a traffic violation, and was convicted of a nonviolent misdemeanor or nonviolent felony. . . .” The petition “shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later.

Pursuant to N.C. Gen. Stat. § 15A-145, a person “who has not previously been convicted of any felony, or misdemeanor other than a traffic violation,” who pleads guilty to or is found to be guilty of a misdemeanor committed before the person turned eighteen, “may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. N.C. Gen. Stat. § 15A-145(a)(i). The petition cannot be filed until “(i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later.” N.C. Gen. Stat. § 15A-145(a).

Additionally, N.C. Gen. Stat. § 15A-145.4(c)⁶¹ (Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony) states that any person “who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony” may file a petition seeking expunction. The petition “shall not be filed earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later.”

As a result, N.C. Gen. Stat. § 15A-145(a) (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) may permit domestic minor sex trafficking victims who pled guilty to or were found guilty of N.C. Gen. Stat. § 14-204 (Prostitution and various acts abetting prostitution unlawful) or § 14-204.1 (Loitering for the purpose of engaging in prostitution offense), both misdemeanors, to have the record expunged as it related to offenses committed before they turned eighteen, depending on when the two-year waiting period commenced.

However, younger minors adjudicated delinquent face a shorter waiting period for expungement of juvenile records under N.C. Gen. Stat. § 7B-3200 (Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined) which states,

- (a) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated undisciplined for expunction of all records of that adjudication.
- (b) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:
 - (1) The offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.
 - (2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult shall not be expunged.

(a) For purposes of this section, the term “nonviolent misdemeanor” or “nonviolent felony” means any misdemeanor or felony except the following:

- (1) A Class A through G felony or a Class A1 misdemeanor.

. . . .

⁶¹ The text of N.C. Gen. Stat. § 15A-145.4 included here and elsewhere in this report reflects passage of House Bill 1023, 2011-2012 Leg., 2d Reg. Sess. (N.C. 2012) (effective December 1, 2012).

....

- 5.9.1 Recommendation: Amend N.C. Gen. Stat. §§ 15A-145.4(c) (Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony), § 15A-145(a) (Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors) and § 7B-3200 (Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined) to eliminate the waiting period for expungement of offenses committed by sex trafficking and CSEC victims as a result of their victimization.

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.*

A court must consider restitution following a conviction. Pursuant to N.C. Gen. Stat. § 15A-1340.34(a) (Restitution generally), “When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term ‘victim’ means a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.”

Subsection (b) states, “If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.” N.C. Gen. Stat. § 15A-834 (Restitution), which is in Article 46, states, “A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes.”

Pursuant to N.C. Gen. Stat. § 15A-830(a)(7) (Definitions–Crime Victims’ Rights Act), a “victim” is defined to include, among others:

- A person against whom there is probable cause to believe one of the following crimes was committed:
 - a. A Class A, B1, B2, C, D, or E felony.⁶²
 - b. A Class F felony if it is a violation of one of the following: . . . 14-43.11 [Human trafficking, where the victim is not a minor]; 14-190.17 [Second degree sexual exploitation of a minor]; 14-190.19 [Participating in prostitution of a minor]
 -
 - e. A Class I felony if it is a violation of . . . 14-190.17A [Third degree sexual exploitation of a minor].
 - f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
 -

Pursuant to N.C. Gen. Stat. § 15A-1340.35(a)(1) (Basis for restitution), “In determining the amount of restitution, the court shall consider,” among other things, “(1) In the case of an offense resulting in bodily injury to a victim: a. The cost of necessary medical and related professional services and devices or equipment relating to physical, psychiatric, and psychological care required by the victim; b. The cost of necessary physical and occupational therapy and rehabilitation required by the victim; and c. Income lost by the victim as a result of the offense.”

⁶² See *supra* note 47.

In addition, domestic minor sex trafficking victims may be able to pursue civil remedies under the Crime Victims Financial Recovery Assistance Act, codified at N.C. Gen. Stat. Chapter 15B Article 2. N.C. Gen. Stat. § 15B-30 (Declaration of policy and purpose) recognizes that “[n]o person who commits a crime should thereafter gain monetary profit as the result of committing the crime.” N.C. Gen. Stat. § 15B-34 (Civil action to recover profits or funds; responsibilities of the Commission), codified in The Crime Victims Financial Recovery Assistance Act, authorizes a victim of a crime for which the offender was convicted, and certain other specified “eligible person[s],” to bring a civil action against the offender “for damages arising out of the offense for which the offender was convicted,” subject to a three year statute of limitations. N.C. Gen. Stat. §§ 15B-30(1), 15B-34(a).

Furthermore, a trafficker may be required to pay damages due to a civil suit under the civil racketeering statute. A defendant is liable for triple damages under N.C. Gen. Stat. § 75D-8(c) (Available RICO civil remedies), which states,

Any innocent person who is injured or damaged in his business or property by reason of any violation of G.S. 75D-4 involving a pattern of racketeering activity shall have a cause of action for three times the actual damages sustained and reasonable attorneys [sic] fees. For purposes of this [provision], “pattern of racketeering activity” shall require that at least one act of racketeering activity be an act of racketeering activity other than (i) an act indictable under 18 U.S.C. § 1341 or U.S.C. § 1343, or (ii) an act which is an offense involving fraud in the sale of securities. . . .

....

Additionally, any injured person has “a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the State has in the same property or proceeds” so long as the injured person “intervene[s] in the forfeiture proceeding prior to its final disposition.” N.C. Gen. Stat. § 75D-8(d).

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.

North Carolina does not have any statute of limitations for felony prosecutions.⁶³

Under N.C. Gen. Stat. § 1-52 (Three years), the following actions are included in the list of those with a 3-year limitation: “(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated. . . . (19) For assault, battery, or false imprisonment.” Subsection (16) states, however, “Unless otherwise provided by statute, for personal injury or physical damage to claimant’s property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.” N.C. Gen. Stat. § 1-52(16). Pursuant to N.C. Gen. Stat. § 1-56 (All other actions, 10 years), “An action for relief not otherwise limited by this subchapter may not be commenced more than 10 years after the cause of action has accrued.”

However, pursuant to N.C. Gen. Stat. §1-15.1(a) (Statutes of limitation and repose for civil actions seeking to recover damages arising out of a criminal act),

Notwithstanding any other provision of law, if a defendant is convicted of a criminal offense and is ordered by the court to pay restitution or restitution is imposed as a condition of probation, special

⁶³ State v. Hardin, 75 (N.C. Ct. App. 1973) (“In North Carolina, there is no statute of limitations barring the prosecution of a felony.”)

probation, work release, or parole, then all applicable statutes of limitation and statutes of repose, except as established herein, are tolled for the period set forth in this subsection for purposes of any civil action brought by an aggrieved party against that defendant for damages arising out of the offense for which the defendant was convicted. Any statute of limitation or repose applicable in the civil action shall be tolled from the time of entry of the court order

- (1) Requiring that restitution be made,
 - (2) Making restitution a condition of probation or special probation, or
 - (3) Recommending that restitution be made a condition of work release or parole,
- and until the defendant has paid in full the amount of restitution ordered or imposed. Except as provided in G.S. 15B-34, an action to recover damages arising out of the criminal offense shall not be commenced more than 10 years from the last act of the defendant giving rise to the cause of action.

Additionally, N.C. Gen. Stat. § 1-17(a) (Disabilities) states in part, “A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the real property, when the person must commence his or her action, or make the entry, within three years next after the removal of the disability, and at no time thereafter.” Section (a) further states that “[f]or the purpose of this section” a person “within the age of 18 years” is considered to be “under a disability.”

Civil actions brought under North Carolina’s RICO statutes are subject to a five year statute of limitations, starting from the time that “the conduct in violation of a provision of this Chapter [RICO] terminates or the claim for relief accrues, whichever is later.” N.C. Gen. Stat. § 75D-9 (Period of limitations as to civil proceedings under this chapter). However, “If a civil action is brought by the State for forfeiture or to prevent any violation of the Chapter, then the running of this period of limitations with respect to any innocent person’s claim for relief which is based upon any matter complained of in such action by the State, shall be suspended during the pendency of the action by the State and for two years thereafter.” N.C. Gen. Stat. § 75D-9.

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.*

Pursuant to 2007 Sess. Laws 547, sec. 11,⁶⁴ North Carolina law directs the North Carolina Justice Academy to

establish protocols suitable for the training of State and local law enforcement officers. The protocols shall be made available to all State and local law enforcement agencies so that the agencies may conduct training on:

- (1) The phenomenon of human trafficking and State and federal laws on human trafficking.
- (2) How to recognize and identify victims of one or more of the practices set forth in G.S. 14-43.11 [Human trafficking], G.S. 14-43.12 [Involuntary servitude], or G.S. 14-43.13 [Sexual servitude].
- (3) Methods for protecting trafficking victims and possible trafficking victims, and advising them of their rights.
- (4) Procedures and techniques for handling specialized needs of victims who may face cultural, language, and other barriers that impede ability to request and obtain available services.

Nothing in this section shall be construed to require the North Carolina Justice Academy to conduct training of State or local law enforcement officers.

- 6.1.1 Recommendation: Amend 2007 Sess. Laws 547, sec. 11 to make training on human trafficking for law enforcement mandatory or enact a law mandating training on human trafficking for law enforcement.

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

Single party consent to audiotaping is allowed in North Carolina. Under N.C. Gen. Stat. §15A-287(a) (Interception and disclosure of wire, oral, or electronic communications prohibited), the use of audiotaping and other methods of intercepting an oral communication is only prohibited if occurring “without the consent of at least one party to the communication.”

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

⁶⁴ This provision is listed in the editor’s notes to N.C. Gen. Stat. § 14-43.11, but does not appear to be codified in the North Carolina General Statutes. However the North Carolina Justice Academy does appear to offer web-based training courses on human trafficking. North Carolina Justice Academy Online, Course Catalog, <http://ncdoj.learn.com/learncenter.asp?id=178409&sessionid=3-E162BACE-AB3D-4118-94B5-E138E07B9CB2&page=4> (last visited September 16, 2011).

Pursuant to N.C. Gen. Stat. §15A-290(c)(1) (Offenses for which orders for electronic surveillance may be granted),

(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

(1) Any felony offense against a minor, including any violation of G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-190.18 (Promoting prostitution of a minor), G.S. 14-190.19 (Participating in prostitution of a minor), or G.S. 14-202.1 (Taking indecent liberties with children).

Because violations of both N.C. Gen. Stat. § 14-43.11(b) (Human trafficking) and § 14-43.13(b) (Sexual servitude) are Class C felonies where the victim is a minor, N.C. Gen. Stat. § 15A-290 (Offenses for which orders for electronic surveillance may be granted) could be used to authorize the use of wiretapping in a domestic minor sex trafficking investigation.

In addition, “Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any offense that involves the commission of, or any conspiracy to commit, murder, kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses.” N.C. Gen. Stat. §15A-290(b).

If an emergency situation exists, N.C. Gen. Stat. § 15A-291(b) (Application for electronic surveillance order; judicial review panel) provides in part, “A judicial review panel is hereby authorized to grant orders valid throughout the State for the interception of wire, oral, or electronic communications. Applications for such orders may be made by the Attorney General or the Attorney General’s designee. The Attorney General or the Attorney General’s designee in applying for such orders, and a judicial review panel in granting such orders, shall comply with all procedural requirements of section 2518 of Chapter 119 of the United States Code. The Attorney General or the Attorney General’s designee may make emergency applications as provided by section 2518 of Chapter 119 of the United States Code.” Pursuant to 18 U.S.C. § 2518(7),

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists that involves—

- (i) immediate danger of death or serious physical injury to any person,
- (ii) conspiratorial activities threatening the national security interest, or
- (iii) conspiratorial activities characteristic of organized crime,

that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has

occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

- 6.3.1 Recommendation: Amend N.C. Gen. Stat. §15A-290(c)(1) (Offenses for which orders for electronic surveillance may be granted) to specifically include N.C. Gen. Stat. § 14-43.11(a) (Human trafficking) and § 14-43.13(a) (Sexual servitude) as offenses for which law enforcement may obtain an order for electronic surveillance.

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.*

There is no specific statutory authority for law enforcement to use a decoy in investigating domestic minor sex trafficking. However, while not specifically related to CSEC, N.C. Gen. Stat. § 14-202.3(a) (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) uses the term, “defendant believes to be a child,” indicating that decoys can be used in investigating that crime.

“Entrapment” would not be a defense to purchasing sex with a minor in most cases. Specifically, “[t]he defense of entrapment consists of two elements: (1) acts of persuasion, trickery or fraud carried out by law enforcement officers or their agents to induce a defendant to commit a crime, (2) when the criminal design originated in the minds of the government officials, rather than with the innocent defendant, such that the crime is the product of the creative activity of the law enforcement authorities.”⁶⁵ Therefore, it is possible that a decoy could be used if the officers do not make the crime a product of their own activity or induce the defendant to commit the crime.

- 6.4.1 Recommendation: Amend N.C. Gen. Stat. § 14-43.11(a) (Human trafficking) and § 14-43.13(a) (Sexual servitude) to specifically allow law enforcement to investigate these offenses by using decoys.

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

While not specifically related to the commercial sexual exploitation of a child, N.C. Gen. Stat. § 14-202.3(a) (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) criminalizes the use of a computer by a person at least 16 who

knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least five years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. . . .

⁶⁵ *State v. Morse*, 671 S.E. 2d 538, 542 (N.C. Ct. App. 2009) (quoting *State v. Walker*, 246 S.E.2d 748, 749–50 (N.C. 1978)) (alteration in the original).

Therefore, the statutory language, “believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant,” appears to allow for the use of the Internet to investigate domestic minor sex trafficking cases in this statute. N.C. Gen. Stat. § 14-202.3.⁶⁶

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

North Carolina has established the North Carolina Center for Missing Persons to serve as a “central repository for information regarding missing persons and missing children, with special emphasis on missing children.” N.C. Gen. Stat. § 143B-1010. Upon receiving a missing persons report, a law enforcement agency shall “immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center [North Carolina Center for Missing Persons].” N.C. Gen. Stat. §143B-1015.

North Carolina laws directs the AMBER Alert System to “make every effort to disseminate information” on missing children if the missing child is 17 or younger, not voluntarily missing or a runaway, if the child is believed to have been abducted by an unknown person other than the child’s parent and to be in danger, and the abducted is reported to law enforcement. N.C. Gen. Stat. §143B-1021 (North Carolina AMBER Alert System established).

N.C. Gen. Stat, § 143B-1017 (Duty of individuals to notify Center and law-enforcement agency when missing person has been located) requires “[a]ny parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing individual who submits a missing person report to a law-enforcement agency or to the Center” to immediately report finding the missing child to the law enforcement agency and the North Carolina Center for Missing Persons. “The Center shall confirm the deletion of the individual’s records from the FBI/NCIC’s missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law-enforcement agency having jurisdiction of the records.” N.C. Gen. Stat, § 143B-1017.

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⁶⁶ In *State v. Morse*, 671 S.E. 2d 538 (N.C. Ct. App. 2009), the defendant unsuccessfully attempted to assert an entrapment defense when the defendant chatted via the Internet with a person he believed to be a 14-year-old girl and initiated conversation about engaging in sexual activity with the person he believed to be 14 when in fact the “girl” was a law enforcement officer. *Id.* at 539–41.