

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION . NATIONAL CHANGE.

## GEORGIA REPORT CARD 2012

*Georgia has a comprehensive human trafficking law and commercial sexual exploitation of children (CSEC) laws that can be used to combat demand. However, traffickers are not required to register as sex offenders, creating vulnerability for at-risk children and insufficient protective laws may fail child victims of sex trafficking.*

FINAL SCORE

80

FINAL GRADE

B



10

10

23.5

25

14

15

4.5

10

20

27.5

8

15

### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Georgia's human trafficking law includes sexual servitude of minors and does not require force, fraud, or coercion when minors are used in commercial sex acts. The state also has various CSEC crimes including pimping, pandering, keeping a place of prostitution, sexual exploitation of children, and solicitation of sodomy. The CSEC statutes do not reference the human trafficking law to ensure identification of victims, but an affirmative defense to prostitution-related offenses does refer to the human trafficking law. The state racketeering law specifically includes trafficking and several CSEC offenses as racketeering activity, enabling its use as a tool against buyers, traffickers and facilitators in certain cases.

### CRIMINAL PROVISIONS ADDRESSING DEMAND

The state human trafficking law could be applied to buyers through the word "obtain," following federal precedent and no defense of mistake of age of the minor may be raised in the prosecution. The pandering law can apply to buyers of commercial sex with minors, and differentiates between buying sex with adults versus minors, providing substantial penalties for buying sex with minors of all ages. Additionally, a buyer of sex with minors may face mandatory civil asset forfeiture, including vehicle forfeiture, for pandering and discretionary civil asset forfeiture for possession child pornography. The court must consider an order of restitution to the victim. A mistake of age defense is not expressly prohibited for pandering. The statute on computer or electronic pornography or child exploitation provides a means of prosecuting buyers who use the Internet to solicit minors for illegal sex acts, which may include trafficking offenses. The crimes of human trafficking and pandering do not require registration.

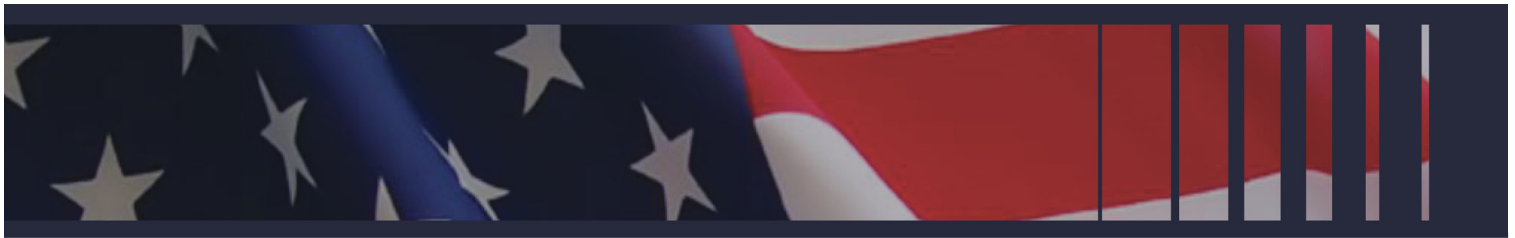
#### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine (and/or)	Asset Forfeiture (available)
Pandering a victim under 16 (§ 16-6-12)	Felony	10-30 years	Max. \$100,000	●
Pandering a victim 16 or 17 (§ 16-6-12)	Felony	5-20 years	\$2,500-\$10,000	●
Possessing and purchasing child pornography (§ 16-12-100(b)(8))	Felony	5-20 years	Max. \$100,000	●

*All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.*

### CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers face substantial penalties for trafficking a minor, including a fine not to exceed \$100,000 and/or 10–20 years imprisonment, increased to 25–50 years imprisonment when coercion is used. No mistake of age defense may be raised by the trafficker. The CSEC crimes of pimping, pandering and keeping a place of prostitution, when the victim is 16 or 17, are punishable by a fine up to \$100,000 and/or 5–20 years imprisonment, increased when the victim is under 16 to 10–30 years. Traffickers who employ a minor to engage in sexual conduct for use in a visual depiction commit sexual exploitation of children and face 5–20 years imprisonment and a fine up to \$100,000. Distributing child pornography is a misdemeanor of a high and aggravated nature punishable by a fine up to \$5,000 and/or up to 12 months imprisonment. A trafficker faces mandatory civil asset forfeiture for convictions of human trafficking, child pornography crimes, and pimping, but not for other CSEC crimes. The court must consider ordering a convicted trafficker to pay restitution to the victim. The statute on computer or electronic pornography or child exploitation provides a means of prosecuting traffickers who use the Internet to solicit minors for illegal sex acts. Traffickers convicted of crimes related to child pornography—but not for crimes related to sex trafficking, pimping, or pandering—are required to register as sex offenders. In determining whether to terminate parental rights, the court may consider conviction and imprisonment that negatively affects the parent-child relationship, but CSEC and trafficking convictions are not specifically provided as grounds for terminating parental rights.



## PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Victims of domestic minor sex trafficking are vulnerable due to gaps in the law. CSEC laws are silent on the permissibility of a defense based on consent of the minor to the commercial sex act making it possible that a victim may have to prove a lack of consent; however, a defense based on age of consent is specifically prohibited in a prosecution for trafficking. Prostitution offenses are not limited in application to adults and do not identify a juvenile involved in prostitution as a victim of sex trafficking, but trafficking victims have an affirmative defense that sexual crimes they committed during their victimization were a result of coercion or deception while being trafficked. A CSEC victim may be considered a delinquent child, deprived child, status offender, or unruly child and receive various responses ranging from a juvenile justice response to a child protective response. For purposes of child welfare intervention, the definition of abuse includes sexual exploitation through prostitution and child pornography, but not human trafficking. The definition of custodian is limited to persons with legal custody of the child, making it unlikely that child protective services could intervene in a case of a non-familial trafficking. For the purpose of crime victims' compensation, trafficking victims are specifically included in the definition of victim and exceptions to the time limits on reporting crimes or filing claims exist for trafficking victims. Victim-friendly criminal justice procedures include a "rape shield" law that applies to trafficking victims to reduce the trauma of cross-examination for testifying victims. Georgia allows juvenile criminal records to be sealed two years after discharge unless the minor has been convicted of a felony, adjudicated a delinquent, or convicted of a misdemeanor of moral turpitude; therefore, a CSEC victim with an ongoing record of prostitution would be prevented from accessing this remedy. Restitution is mandatory in any criminal sentencing; however, civil remedies are only available to CSEC victims if the offenders are also guilty of racketeering. Prosecutions for sex trafficking and some sex offenses may be commenced at any time; otherwise a seven year statute of limitations applies to felonies committed against children. Civil actions for childhood sexual abuse, which includes pandering, must be commenced by the time the victim reaches 23.

## CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Georgia law provides for the development of training materials on human trafficking, but does not require law enforcement to participate in this training. The state law allows single party consent to audiotaping, but law enforcement must obtain a judicial order for recording conversations with a child under 18. Wiretapping is allowed for sex trafficking if consistent with federal law, which lists the relevant CSEC crimes in 18 U.S.C. § 2516, including sex trafficking of children. No law expressly authorizes the use of a decoy in the investigation of prostitution or sex trafficking cases, but law enforcement may utilize the Internet to investigate domestic minor sex trafficking relying on the crime of computer or electronic pornography and child exploitation prevention. Law enforcement must report missing children, but are not required to report recovered children.

## CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law does not include the crime of benefitting from or assisting and aiding human trafficking—terms most applicable to facilitators. Certain CSEC and prostitution-related crimes, including pimping and keeping a place of prostitution, apply to actions of facilitators. The CSEC crimes of pimping and keeping a place of prostitution are felonies punishable by 10–30 years imprisonment and/ or a fine not to exceed \$100,000 when the victim is under 16, enhanced to 5–20 years and/or up to \$100,000 when the victim is 16 or 17. Promoting or selling child pornography is punishable by 5–20 years imprisonment and a fine up to \$100,000. Facilitators are subject to mandatory civil asset forfeiture if convicted of human trafficking, child pornography offenses, or pimping. Additionally, a court must consider ordering restitution to the victim. No laws in Georgia address sex tourism.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: [www.sharedhope.org](http://www.sharedhope.org).

