

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2013 ANALYSIS AND RECOMMENDATIONS NORTH CAROLINA

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

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#### *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 *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.*

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

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

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)<sup>2</sup> (Human trafficking),

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<sup>1</sup> Unless otherwise specified, all references to North Carolina statutes were taken from the General Statutes of North Carolina (LEXIS through 2012 Reg. Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 113-18, approved 7/12/13). This report includes legislation enacted as of August 1, 2013.

<sup>2</sup> The text of N.C. Gen. Stat. § 14-43.11 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

A person commits the offense of human trafficking when that person

- (i) knowingly or in reckless disregard of the consequences of the action 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 or
- (ii) willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude.

N.C. Gen. Stat. § 14-43.13(a)<sup>3</sup> (Sexual servitude) separately criminalizes “knowingly or in reckless disregard of the consequences of the action 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:

- a. Any sexual activity as defined in G.S. 14-190.13<sup>4</sup> [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.

A violation of N.C. Gen. Stat. § 14-43.11 (Human trafficking), when the victim is an adult, is a Class F felony and carries a presumptive sentence of 13–16 months imprisonment. A violation of N.C. Gen. Stat. § 14-43.13 (Sexual servitude), when the victim is an adult, is a Class D felony and carries a presumptive sentence of 20–25 months imprisonment. If the victim of either N.C. Gen. Stat. § 14-43.11 or § 14-43.13 is a minor, the crime is a Class C felony and carries a presumptive sentence of 58–73 months imprisonment.<sup>5</sup> N.C. Gen. Stat. §§ 14-43.11(b), 14-43.13(b), 15A-1340.17(c).<sup>6</sup>

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<sup>3</sup> The text of N.C. Gen. Stat. § 14-43.13 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>4</sup> “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.

<sup>5</sup> 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,” “the offense is a violation of...[human trafficking and sexual servitude]...and involved multiple victims”, or “the offense is a violation of ...[human trafficking and sexual servitude]...and the victim suffered serious injury as result of the offense”, at least in felony convictions, may subject the defendant to an increased minimum sentence of imprisonment, while the

Also contained in Article 10A (Human trafficking), N.C. Gen. Stat. § 14-43.14 (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.<sup>7</sup>

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,

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. § 14-205.1<sup>8</sup> (Solicitation of prostitution) states that “any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second subsequent offense.” Additionally, “any person 18 years of age or older who willfully solicits a

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presence of mitigating factors may decrease the sentencing range applicable to a defendant. N.C. Gen. Stat. §§ 15A-1340.16(d)(13), (19a), (19b), (e).

<sup>6</sup> Pursuant to N.C. Gen. Stat. § 15A-1340.17(f), “[u]nless 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.”

The text of N.C. Gen. Stat. § 15A-1340.17 included here and elsewhere in this report includes amendments made by the passage of House Bill 92 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective July 26, 2013).

<sup>7</sup> 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.”

<sup>8</sup> The text of N.C. Gen. Stat. § 14-205.1 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

minor for the purpose of prostitution is guilty of a Class G felony.” N.C. Gen. Stat. § 14-203(5)<sup>1</sup> (Definitions) defines “prostitution” as

The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act<sup>9</sup> as defined in G.S. 14–27.1, or any sexual contact<sup>10</sup> as defined in G.S. 14–27.1, for the purpose of sexual arousal or gratification for any money or other consideration.

A Class 1 misdemeanor is punishable by 1–45 days imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.23(c)(2). A Class H felony is punishable by a presumptive sentence of 5–6 months imprisonment and a Class G felony is punishable by a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.17(c).

2. N.C. Gen. Stat. §14-205.2<sup>11</sup> (Patronizing a prostitute) provides that

(a) Any person who willfully performs any of the following acts with a person not his or her spouse commits the offense of patronizing a prostitute:

(1) Engages in vaginal intercourse, any sexual act<sup>12</sup> as defined in G.S. 14–27.1, or any sexual contact<sup>13</sup> as defined in G.S. 14–27.1, for the purpose of sexual arousal or gratification with a prostitute.

(2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S.14–27.1, or any sexual contact as defined in G.S. 14–27.1, for the purpose of sexual arousal or gratification.

A violation of N.C. Gen. Stat. § 14-205.2 is a Class F felony “if the defendant is 18 years of age or older and the prostitute is a minor.” A Class F felony is punishable by a presumptive sentence of 13–16 months imprisonment. N.C. Gen. Stat. §§ 14-205.2, 15A-1340.17(c).

3. N.C. Gen. Stat. §14-205.3<sup>14</sup> (Promoting prostitution) states that

(b) Any person who willfully performs any of the following acts commits the offense of promoting prostitution of a minor or mentally disabled person:

(1) Advances prostitution as defined in G.S. 14–203,<sup>15</sup> where a minor or severely or profoundly mentally disabled person engaged in prostitution, or any person engaged in

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<sup>9</sup> N.C. Gen. Stat. § 14-27.1(4) (Definitions) defines “sexual act” to include “cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided that it shall be an affirmative defense that the penetration was for accepted medical purposes.”

<sup>10</sup> N.C. Gen. Stat. § 14-27.1(5) (Definitions) defines “sexual contact” to mean

(i) touching the sexual organ, anus, breast, groin, or buttocks of any person,

(ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or

(iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.

<sup>11</sup> The text of N.C. Gen. Stat. § 14-205.2 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>12</sup> See *supra* note 9.

<sup>13</sup> See *supra* note 10.

<sup>14</sup> The text of N.C. Gen. Stat. § 14-205.3 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

prostitution in the place of prostitution is a minor or is severely or profoundly mentally disabled at the time of the offense.

(2) Profits from prostitution by any means where the prostitute is a minor or is severely or profoundly mentally disabled at the time of the offense.

(3) Confines a minor or a severely or profoundly mentally disabled person against the person's will by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or by administering to the minor or severely or profoundly mentally disabled person, without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and does any of the following:

- a. Compels the minor or severely or profoundly mentally disabled person to engage in prostitution.
- b. Arranges a situation in which the minor or severely or profoundly mentally disabled person may practice prostitution.
- c. Profits from prostitution by the minor or severely or profoundly mentally disabled person.

Generally, a violation of N.C. Gen. Stat. §14-205.3(b)(1) or (2) is a class D felony which is punishable by a presumptive sentence of 20–25 months imprisonment. However, a violation of N.C. Gen. Stat. §14-205.2(b)(3) is a Class C felony and carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-205.3(c), (d), 15A-1340.17(c).

4. 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,”

(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

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<sup>15</sup> N.C. Gen. Stat. § 14-203(1) (Definitions) defines “advancing prostitution” to include

a. Soliciting for a prostitute by performing any of the following acts when acting as other than a prostitute or a patron of a prostitute:

1. Soliciting another for the purpose of prostitution.
2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.
3. Directing another to a place knowing the direction is for the purpose of prostitution.
4. Using the Internet, including any social media Web site, to solicit another for the purpose of prostitution.

b. Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting as other than a prostitute or a patron of a prostitute:

1. Knowingly granting or permitting the use of the place for the purpose of prostitution.
2. Granting or permitting the use of the place under circumstances from which the person should reasonably know that the place is used or is to be used for purposes of prostitution.
3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person

should know that the place is being used for the purpose of prostitution.

The text of N.C. Gen. Stat. § 14-203 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

- (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).

- 5. 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).

- 6. 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] . . . .”<sup>16</sup> 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:
    - . . . .
    - (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].

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<sup>16</sup> 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).

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).<sup>17</sup>

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<sup>17</sup> 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 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

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).
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 Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

N.C. Gen. Stat. § 14-204(c) (Prostitution) references both N.C. Gen. Stat. § 14-43.11 (Human trafficking) and N.C. Gen. Stat. § 14-43.13<sup>18</sup> (Sexual servitude) to make minors immune from prosecution and direct the minor to social services. However, N.C. Gen. Stat. § 14-205.1<sup>19</sup> (Solicitation of prostitution), §14-205.2<sup>20</sup> (Patronizing a prostitute), and § 14-205.3<sup>21</sup> (Promoting prostitution) do not refer to the human trafficking or sexual servitude statutes or otherwise 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 statute<sup>22</sup> 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

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age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.”

<sup>18</sup> See *supra* note 3.

<sup>19</sup> See *supra* note 8.

<sup>20</sup> See *supra* note 11.

<sup>21</sup> See *supra* note 14.

<sup>22</sup> 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

continuing criminal enterprise under N.C. Gen. Stat. § 14-7.20, however, does impose criminal penalties on such enterprises. N.C. Gen. Stat. § 14-7.20 provides,

- (a) Except as otherwise provided in subsection (a1) of this section, 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.
- (a1) Any person who engages in a continuing criminal enterprise where the felony violation required by subdivision (c)(1) of this section is a violation of G.S. 14-10.1 shall be punished as a Class D 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) or (a)(1) 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) of the N.C. General Statutes. Because felonies are included as felonies under this definition of criminal enterprises, acts of commercial sexual exploitation qualify as predicate crimes for prosecution of some criminal enterprises involved in domestic minor sex trafficking under N.C. Gen. Stat. § 14-7.20. 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.

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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.*

A buyer of commercial sex with a minor could be prosecuted under N.C. Gen. Stat. § 14-43.13<sup>23</sup> (Sexual servitude). N.C. Gen. Stat. § 14-43.13 (Sexual servitude) separately criminalizes “knowingly or in reckless disregard to the consequences of the action 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 or in reckless disregard to the consequences of the action subjecting a person who is a minor to “sexual activity”<sup>24</sup> 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).

<sup>23</sup> See *supra* note 3.

<sup>24</sup> See *supra* note 4.

North Carolina’s human trafficking law can also apply to buyers of sex with minors following federal precedent though the term “obtain.” N.C. Gen. Stat. § 14-43.11(a)<sup>25</sup> (Human trafficking), states in part,

- A person commits the offense of human trafficking when that person
- (i) knowingly or in reckless disregard of the consequences of the action. . . . obtains<sup>26</sup> by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude or
  - (ii) willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude.

The offense of unlawful sale, surrender, or purchase of a minor under N.C. Gen. Stat. § 14-43.14 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.

## 2.2 *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. § 14-205.1<sup>27</sup> (Solicitation of prostitution) states,

Except as otherwise provided in this section, any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense. Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony. . . . Punishment under this section may include participation in a program devised for the education and prevention of sexual exploitation, where available.

A Class 1 misdemeanor is punishable by 1-45 days imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.23(c)(2). A Class H felony is punishable by a presumptive sentence of 5-6 months imprisonment and a Class G felony is punishable by a presumptive sentence of 10-13 months imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.17(c).

N.C. Gen. Stat. § 14-205.2<sup>28</sup> (Patronizing a prostitute) states,

- (a) Any person who willfully performs any of the following acts with a person not his or her

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<sup>25</sup> See *supra* note 2.

<sup>26</sup> See *United States v. Jungers*, 702 F.3d 1066 (8<sup>th</sup> Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers when it reversed a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers. *United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011). Holding that the conduct of buyers who obtain a child for commercial sex can violate 18 U.S.C. § 1591(a)(1), the Eighth Circuit illustrated through hypothetical buyer scenarios that, under certain circumstances, most of the terms in the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) could apply to buyers. While other terms may apply to buyers’ conduct under state law as well, the analysis here focuses on the term “obtains” which is most likely to apply in the majority of buyer cases.

<sup>27</sup> See *supra* note 8.

<sup>28</sup> See *supra* note 11.

spouse commits the offense of patronizing a prostitute:

- (1) Engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.1<sup>29</sup>, or any sexual contact as defined in G.S. 14-27.1,<sup>30</sup> for the purpose of sexual arousal or gratification with a prostitute.
- (2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.1, or any sexual contact as defined in G.S. 14-27.1, for the purpose of sexual arousal or gratification.

A violation of N.C. Gen. Stat. §14-205.2 is a Class F felony “if the defendant is 18 years of age or older and the prostitute is a minor.” A Class F felony is punishable by a presumptive sentence of 13–16 months imprisonment. N.C. Gen. Stat. §§ 14-205.2, 15A-1340.17(c).

Additionally, a buyer may be convicted, under limited circumstances, under N.C. Gen. Stat. § 14-205.3 (Promoting prostitution) which states that

(a) Any person who willfully performs any of the following acts commits promoting prostitution:

- (1) Advances prostitution<sup>31</sup> as defined in G.S. 14-203.

....

(b) Any person who willfully performs any of the following acts commits the offense of promoting prostitution of a minor . . . :

- (1) Advances prostitution as defined in G.S. 14-203, where a minor . . . engaged in prostitution, or any person engaged in prostitution in the place of prostitution is a minor

....

- (3) Confines a minor . . . against the person's will by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or by administering to the minor . . . without the person's consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and does any of the following:

....

- b. Arranges a situation in which the minor may . . . practice prostitution.

....

Generally, a violation of N.C. Gen. Stat. §14-205.3(a) is a class D felony which is punishable by a presumptive sentence of 20-25 months imprisonment. However, a violation of N.C. Gen. Stat. §14-205.2(b)(1) or (2) is a Class C felony which carries a sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-205.3(c), (d), 15A-1340.17(c).

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<sup>29</sup> See *supra* note 9 for the definition of “sexual act.”

<sup>30</sup> See *supra* note 10 for the definition of “sexual contact.”

<sup>31</sup> See *supra* note 15 for the definition of “advances prostitution.”

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. Under a conviction for N.C. Gen. Stat. § 14-43.11(a)<sup>32</sup> (Human trafficking), the buyer will face a Class F felony when the victim of the offense is an adult and a Class C felony when the victim of the offense is a minor. A Class F felony is punishable by a presumptive sentence of 13-16 months imprisonment and a Class C felony is punishable by a presumptive sentence of 58-73 months imprisonment. N.C. Gen. Stat. §§ 14-43.11(b), 15A-1340.17(c).

N.C. Gen. Stat. §14-205.1<sup>33</sup> (Solicitation of prostitution) enhances the penalty for a person over 18 years of age who solicits a minor for prostitution. “Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony.” A Class G felony carries a presumptive sentence of 10-13 months imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.17(c). In contrast, soliciting a person over 18 for prostitution is a Class 1 misdemeanor and is punishable by 1-45 days imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.23(c)(2).

A buyer in violation of N.C. Gen. Stat. § 14-205.2<sup>34</sup> (Patronizing a prostitute) is subject to a Class F felony “if the defendant is 18 years of age or older and the prostitute is a minor.” A Class F felony is punishable by a presumptive sentence of 13-16 months imprisonment. N.C. Gen. Stat. §§ 14-205.2(c), 15A-1340.17(c). A violation of N.C. Gen. Stat. § 14-205.2 when the defendant patronizes a prostitute over 18 years of age is a Class A1 misdemeanor and is punishable by 1-60 days imprisonment. N.C. Gen. Stat. §§ 14-205.2(a), 15A-1340.17(b).

Additionally, N.C. Gen. Stat. § 14-205.3<sup>35</sup> (Promoting prostitution) specifically criminalizes a person who willfully “advances prostitution”<sup>36</sup> of a minor or confines a minor against the person’s will and “arranges a situation in which the minor . . . may practice prostitution.” N.C. Gen. Stat. § 14-205.3(b)(1), (b)(3)(b). Generally, a violation of N.C. Gen. Stat. §14-205.3(b)(1) or (2) is a class D felony which is punishable by a presumptive sentence of 20-25 months imprisonment. However, a violation of N.C. Gen. Stat. § 14-205.2(b)(3) is a Class C felony and carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-205.3(c), (d), 15A-1340.17(c). In contrast, a violation of N.C. Gen. Stat. § 14-205.2(a) involving an adult is a Class F felony punishable by a presumptive sentence of 13-16 months imprisonment. N.C. Gen. Stat. §§ 14-205.2(a), 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).

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<sup>32</sup> See *supra* note 2.

<sup>33</sup> See *supra* note 8.

<sup>34</sup> See *supra* note 11.

<sup>35</sup> See *supra* note 14.

<sup>36</sup> See *supra* note 15 for definition of “advances prostitution.”

Buyers of commercial sex acts with minors convicted under N.C. Gen. Stat. § 14-43.11<sup>37</sup> (Human trafficking) or under N.C. Gen. Stat. § 14-43.13<sup>38</sup> (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).

Several CSEC laws can be used to prosecute a buyer involved in the commission of an offense against a minor. N.C. Gen. Stat. § 14-205.1<sup>39</sup> (Solicitation of prostitution) is a Class G felony and carries a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.17(c). Additionally, N.C. Gen. Stat. § 14-205.2<sup>40</sup> (Patronizing a prostitute) imposes a Class F felony on a buyer which is punishable by a presumptive sentence of 13–16 months imprisonment. N.C. Gen. Stat. §§ 14-205.2(c), 15A-1340.17(c). Under some circumstances, a buyer may be convicted of N.C. Gen. Stat. § 14-205.3 (Promoting prostitution) and sentenced to a Class D or C felony which is punishable by a presumptive sentence of 20–25 months imprisonment or 58–73 months imprisonment, respectively. N.C. Gen. Stat. §§ 14-205.3(b)(1), (3), 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),

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<sup>37</sup> See *supra* note 2.

<sup>38</sup> See *supra* note 3.

<sup>39</sup> See *supra* note 8.

<sup>40</sup> See *supra* note 11.

3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>41</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>42</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>43</sup>

2.4.1 Recommendation: Raise the penalty for violations of N.C. Gen. Stat. § 14-43.13 (Sexual servitude), § 14-205.1 (Solicitation of prostitution), § 14-205.2 (Patronizing prostitution), and § 14-205.3 (Promoting prostitution) to align with the penalties provided under federal law.

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

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<sup>41</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>42</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>43</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or 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).

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

N.C. Gen. Stat. § 14-43.11<sup>44</sup> (Human trafficking) and § 14-43.13<sup>45</sup> (Sexual servitude) expressly prohibit mistake of age defenses to defendants in a prosecution under those statutes. N.C. Gen. Stat. § 14-43.11(c1) and § 43.13(b1) state in relevant part, “[m]istake of age is not a defense to prosecution under this section.”

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).<sup>46</sup>

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<sup>47</sup> (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,<sup>48</sup> 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. . .” with “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 ordered to pay a fine as provided by law.”<sup>49</sup> 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. 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

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<sup>44</sup> See *supra* note 2.

<sup>45</sup> See *supra* note 3.

<sup>46</sup> Additionally, N.C. Gen. Stat. § 14-190.16 (First degree sexual exploitation of a minor) contain language prohibiting an age mistake defense. N.C. Gen. Stat. §14-190.16(c).

<sup>47</sup> See *supra* note 2.

<sup>48</sup> See *supra* note 3.

<sup>49</sup> 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.”

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.” Further, N.C. Gen. Stat. § 14-43.20<sup>50</sup> (Mandatory restitution; victim services; forfeiture) specifically provides that “a person who commits a violation of G.S. 14-43.11 [Human trafficking] . . . or 14-43.13 [Sexual servitude] is subject to the property forfeiture provisions set forth in G.S. 14-2.3.” N.C. Gen. Stat. § 14-43.20(e).

Buyers may also face forfeiture under nuisance laws. Pursuant to N.C. Gen. Stat. § 19-1<sup>51</sup> (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. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.

....

(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.

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<sup>50</sup> The text of N.C. Gen. Stat. § 14-43.20 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>51</sup> The text of N.C. Gen. Stat. § 19-1 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 264 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective July 3, 2013).

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 may be subject to payment of mandatory restitution. N.C. Gen. Stat. § 14-43.20 (Mandatory restitution; victim services; forfeiture) defines “victim” as a “person subject to the practices set forth in G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude].” N.C. Gen. Stat. § 14-43.20(b) provides that

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services.

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.”<sup>52</sup> 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

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<sup>52</sup> 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.”

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 pornography<sup>53</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>54</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>55</sup>

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)<sup>56</sup> 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

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<sup>53</sup> 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).

<sup>54</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>55</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>56</sup> The text of N.C. Gen. Stat. § 14-208.6 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 122 and Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective July 3, 2013).

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. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, 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. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) . . . G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person),

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 registration under the sex offender and public protection registration program.”<sup>57</sup>

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<sup>57</sup> 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<sup>58</sup> (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<sup>59</sup> (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 convicted under N.C. Gen. Stat. § 14-205.3 (Promoting prostitution), which is a class C or D felony punishable by a a presumptive sentence of 58-73 months imprisonment or a presumptive sentence of 20-25 months imprisonment, respectively. N.C. Gen. Stat. §§ 14-205.3(c), (d), 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).

<sup>58</sup> See *supra* note 2.

<sup>59</sup> See *supra* note 3.

Traffickers convicted under N.C. Gen. Stat. § 14-43.14 (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).

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) for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>60</sup> 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 offense against a minor. Additionally, a federal conviction for distribution of child pornography<sup>61</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>62</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>63</sup>

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<sup>60</sup> See *supra* note 41.

<sup>61</sup> 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).

<sup>62</sup> 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

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.”<sup>64</sup>

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

<sup>63</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>64</sup> 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

Traffickers are subject to mandatory, criminal asset forfeiture following a felony conviction. “A person who commits a violation of G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary Servitude] or 14-43.13 [Sexual servitude] is subject to the property forfeiture provisions set forth in G.S. 14-2.3 [Forfeiture of gain acquired through criminal activity].” N.C. Gen. Stat. § 14-43.20(e). 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.” No specific seizure procedure is authorized. The property shall be forfeited directly to the state. N.C. Gen. Stat. §14-2.3.

Traffickers are subject to mandatory restitution in North Carolina. “Victim” is defined in N.C. Gen. Stat. § 14-43.20(e)<sup>65</sup> (Mandatory restitution victim services; forfeiture) as “a person subjected to the practices set forth in G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary Servitude] or 14-43.13 [Sexual servitude].” N.C. Gen. Stat. § 14-43.20(b) provides,

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services.

Additionally, traffickers convicted under N.C. Gen. Stat. § 14-205.3<sup>66</sup> (Promoting prostitution) 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.<sup>67</sup>
  - 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]; . . .

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“[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).

<sup>65</sup> See *supra* note 50.

<sup>66</sup> See *supra* note 14.

<sup>67</sup> See *supra* note 84.

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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.

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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 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. 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), 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<sup>68</sup> 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.

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<sup>68</sup> “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).

(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.

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).

3.4.1 Recommendation: Amend North Carolina’s CSEC laws to include mandatory fines and restitution and to clarify that a person who commits a CSEC offense is subject to the property forfeiture provisions in N.C. Gen. Stat. § 14-2.3 (Forfeiture of gain acquired through criminal activity).

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

Persons convicted of trafficking, sexual servitude and CSEC offenses must 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),<sup>69</sup> 14-208.7. Pursuant to N.C. Gen. Stat. §

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<sup>69</sup> See *supra* note 56.

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) 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. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, 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. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act) . . . G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or a mentally disabled person), G.S. 14-205.3(b) (promoting prostitution of a minor or a mentally disabled person), . . .

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).

### 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<sup>70</sup> (Human trafficking) or § 14-43.13<sup>71</sup> (Sexual servitude) can serve as grounds for terminating parental rights under N.C. Gen. Stat. § 7B-1111(a)<sup>72</sup> (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

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<sup>70</sup> See *supra* note 2.

<sup>71</sup> See *supra* note 3.

<sup>72</sup> The text of N.C. Gen. Stat. § 7B-1111 included here and elsewhere in this report includes amendments made by the passage of House Bill 350 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

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<sup>73</sup> (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). Under N.C. Gen. Stat. § 7B-101(1)<sup>74</sup> (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. 14-205.3(b); 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;
  - f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile; or
  - g. Commits or allows to be committed an offense under G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), or G.S. 14-43.13 (Sexual servitude) against the child.

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

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<sup>73</sup> The text of N.C. Gen. Stat. § 7B-101 included here and elsewhere in this report includes amendments made by the passage of House Bill 350 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>74</sup> The text of N.C. Gen. Stat. § 7B-101 included here and elsewhere in this report includes amendments made by the passage of House Bill 350 and Senate Bill 683 during the first session of the 2013 North Carolina Legislature.

or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.”

**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,<sup>75</sup> (Human trafficking),

A person commits the offense of human trafficking when that person

- (i) knowingly or in reckless disregard of the consequences of the action 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 or
- (ii) willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude.

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)<sup>76</sup> (Sexual servitude) also does not apply to those who knowingly benefit, since it only covers an individual who “knowingly or in reckless disregard to the consequences of the action subjects or maintains another in sexual servitude.”

However, facilitators could be held culpable under N.C. Gen. Stat. § 14-205.3<sup>77</sup> (Promoting prostitution) which states,

Any person who willfully performs any of the following acts commits promoting prostitution:

- (1) Advances prostitution as defined in G.S. 14-203 [Definition of terms].
- (2) Profits from prostitution by doing any of the following:
  - a. Compelling a person to become a prostitute.
  - b. Receiving a portion of the earnings from a prostitute for arranging or offering to arrange a situation in which the person may practice prostitution.
  - c. Any means other than those described in sub-subdivisions a. and b. of this subdivision, including from a person who patronizes a prostitute.

“Advance prostitution” is defined in N.C. Gen. Stat. § 14-203(1) (Definition of terms)<sup>78</sup> to include

<sup>75</sup> See *supra* note 2.

<sup>76</sup> See *supra* note 3.

<sup>77</sup> See *supra* note 14.

<sup>78</sup> See *supra* note 15.

a. Soliciting for a prostitute by performing any of the following acts when acting as other than a prostitute or a patron of a prostitute:

1. Soliciting another for the purpose of prostitution.
2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.
3. Directing another to a place knowing the direction is for the purpose of prostitution.
4. Using the Internet, including any social media Web site, to solicit another for the purpose of prostitution.

b. Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting as other than a prostitute or a patron of a prostitute:

1. Knowingly granting or permitting the use of the place for the purpose of prostitution.
2. Granting or permitting the use of the place under circumstances from which the person should reasonably know that the place is used or is to be used for purposes of prostitution.
3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person should know that the place is being used for the purpose of prostitution.

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.”<sup>79</sup>

Facilitators are subject to mandatory, criminal asset forfeiture. “A person who commits a violation of G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary Servitude] or 14-43.13 [Sexual servitude] is subject to the property forfeiture provisions set forth in G.S. 14-2.3 [Forfeiture of gain acquired through criminal activity].” N.C. Gen. Stat. § 14-43.20(e). 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.” 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

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<sup>79</sup> 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).

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.

Some facilitators are subject to mandatory restitution in North Carolina. "Victim" is defined in N.C. Gen. Stat. § 14-43.20(e)<sup>80</sup> (Mandatory restitution victim services; forfeiture) as "a person subjected to the practices set forth in G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary Servitude] or 14-43.13 [Sexual servitude]." N.C. Gen. Stat. § 14-43.20(b) provides that

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services.

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.<sup>81</sup>
  - 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]; . . . .
  - c. . . .
  - d. . . .
  - 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.
  - g. . . .

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<sup>80</sup> See *supra* note 50.

<sup>81</sup> 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).

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. Stat. § 19-1(a)<sup>82</sup> (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. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.”

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.”<sup>83</sup> 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), § 14-7.20 (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.

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<sup>82</sup> See *supra* note 51.

<sup>83</sup> See *supra* note 68.

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.

#### 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.<sup>84</sup>
  - 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]; . . .
  - . . . .
  - e. A Class I felony if it is a violation of . . . 14-190.17A [Third degree sexual exploitation of a minor].

<sup>84</sup> See *supra* note 81.

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).<sup>85</sup> "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).

However, a "claimant" under the Crime Victim's Compensation Act includes victims of domestic minor sex trafficking. N.C. Gen. Stat. § 15B-2(2) (Definitions) states,

2) Claimant. – Any of the following persons who claims an award of compensation under this Article:

- a. A victim;
- b. A dependent of a deceased victim;
- c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;
- d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in sub-subdivision c. of this subdivision;
- e. A person who was convicted of a first offense under G.S. 14-204 [Prostitution] and whose participation in the offense was a result of having been a trafficking victim under G.S. 14-43.11 [Human trafficking] or G.S. 14-43.13 [Sexual servitude] or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct, except as provided in sub-subdivision e. of this subdivision.

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.

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

North Carolina specifically prohibits a defendant from raising consent of the minor as a defense under each of N.C. Gen. Stat. § 14-43.11<sup>86</sup> (Human trafficking), § 14-43.12 (Involuntary servitude), and § 14-43.13<sup>87</sup> (Sexual

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<sup>85</sup> The text of N.C. Gen. Stat. § 15B-2 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>86</sup> See *supra* note 2.

servitude), stating that “consent of a minor is not a defense to prosecution under this section.” N.C. Gen. Stat. §§ 14-43.11(c1), § 14-43.12(c1), § 14-43.13(b1).

Additionally, N.C. Gen. Stat. § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), is applicable to domestic minor sex trafficking victims and specifies that “consent is not a defense to a charge under this section.” N.C. Gen. Stat. § 14-202.3(a).

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

N.C. Gen. Stat. § 14-204 (Prostitution) makes children under 18 immune from prosecution for prostitution and provides that,

(c) Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301<sup>88</sup> [Duty to report abuse, neglect, dependency, or death due to maltreatment], a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 [Human trafficking] and G.S. 14-43.13 [Sexual servitude] to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 [Duty to report abuse, neglect, dependency, or death due to maltreatment] and G.S. 7B-302 [Assessment by director].

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.*

**Child Identified as Abused/Neglected**

Under N.C. Gen. Stat. § 7B-101(1)<sup>89</sup> (Definitions),

(1) Abused juveniles.—Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker<sup>90</sup>:

- 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

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<sup>87</sup> See *supra* note 3.

<sup>88</sup> The text of N.C. Gen. Stat. § 7B-301 included here and elsewhere in this report includes amendments made by the passage of House Bill 149 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>89</sup> See *supra* note 74.

<sup>90</sup> Pursuant to N.C. Gen. Stat. § 7B-101, a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under N.C. Gen. Stat. § 7B-101, the definition of “caregiver” under N.C. Gen. Stat. § 7B-101(8) is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

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. 14-205.3(b); 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;

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

g. Commits or allows to be committed an offense under G.S. 14-43.11 [Human trafficking], G.S. 14-43.12 [Involuntary servitude], or G.S. 14-43.13 [Sexual servitude] against the child.

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

[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.

## *I. Initial Custody*

### *a. Authority for initial custody*

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.” This assessment process can also be triggered when a child is alleged to have engaged in prostitution, pursuant to N.C. Gen. Stat. § 14-204.<sup>91</sup>

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,

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<sup>91</sup> See *supra* section 5.3.

(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.

The court may issue an order to take the child into custody, pursuant to N.C. Gen. Stat. § 7B-502 (Authority to issue custody orders; delegation), and “that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B-503 when custody of the juvenile is necessary.”

Additionally, 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.”

#### b. Placement

When an order is issued for nonsecure custody, N.C. Gen. Stat. § 7B-505<sup>92</sup> (Placement while in 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.

Pursuant to N.C. Gen. Stat. § 7B-503(Criteria for nonsecure custody), non-secure custody may be considered in the following circumstances:

- (1) The juvenile has been abandoned.
- (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.
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.

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<sup>92</sup> The text of N.C. Gen. Stat. § 7B-505 included here and elsewhere in this report includes amendments made by the passage of House Bill 350 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

(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.

## *II. Process Following Initial Custody*

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-506(a)<sup>93</sup> (Hearing to determine need for continued nonsecure custody), a hearing must be held within 7 days of a child being placed in nonsecure custody. If, however, the child has been taken into custody pursuant to N.C. Gen. Stat. § 7B-506, "a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered. . . ." Additionally, N.C. Gen. Stat. § 7B-506(e) requires that if the child is ordered to remain in custody, another hearing must be held, "within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays when the courthouse is closed for transactions, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days."

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

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<sup>93</sup> The text of N.C. Gen. Stat. § 7B-506 included here and elsewhere in this report includes amendments made by the passage of House Bill 350 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

- ....
- (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.

### *III. Placement Process Pending Adjudication/Investigation*

When an order is issued for nonsecure custody, N.C. Gen. Stat. § 7B-505<sup>94</sup> (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.

Pursuant to N.C. Gen. Stat. § 7B-503(Criteria for nonsecure custody), non-secure custody may be considered in the following circumstances:

- (1) The juvenile has been abandoned.
- (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.
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment.
- (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.

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<sup>94</sup> See *supra* note 96.

#### IV. *Adjudication*

Under N.C. Gen. Stat. § 7B-807 (Adjudication), at the adjudication hearing will be heard, and

....  
[a] record of specific stipulated adjudicatory facts shall be made by either reducing the facts to a writing, signed by each party stipulating to them and submitted to the court; or by reading the facts into the record, followed by an oral statement of agreement from each party stipulating to them. If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice, and if the juvenile is in nonsecure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker.

#### V. *Outcomes*

Pursuant to N.C. Gen. Stat. § 7B-901<sup>95</sup> (Dispositional hearing), “[t]he dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing.”

Several outcomes are possible at the dispositional hearing. Pursuant to N.C. Gen. Stat. § 7B-903(a) (Dispositional alternatives for abused, neglected, or dependent juvenile),

- (1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.
- (2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:
  - a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or
  - b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
  - c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence. . . the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court . . . If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

Additionally, the court may order the child be placed in the home of a relative. N.C. Gen. Stat. § 7B-903(a).

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<sup>95</sup> The text of N.C. Gen. Stat. § 7B-901 included here and elsewhere in this report includes amendments made by the passage of House Bill 350 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

Under N.C. Gen. Stat. § 7B-903(b),

When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior against people, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual.

### **Child Identified as Undisciplined**

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.

#### *I. Initial Custody*

- a. Authority for initial custody

Under N.C. Gen. Stat. § 7B-1900(2) (Taking a juvenile into temporary custody), “A juvenile may be taken into temporary custody without a court order . . . [b]y a law enforcement officer or a juvenile court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.”

Additionally, a minor suspected of engaging in prostitution will be taken into custody as an undisciplined juvenile pursuant to N.C. Gen. Stat. § 14-204 (Prostitution) which states,

- (c) Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301<sup>96</sup> [Duty to report abuse, neglect, dependency, or death due to maltreatment], a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 [Human trafficking] and G.S. 14-43.13 [Sexual servitude] to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 [Duty to report abuse, neglect, dependency, or death due to maltreatment] and G.S. 7B-302 [Assessment by director].

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<sup>96</sup> The text of N.C. Gen. Stat. § 7B-301 included here and elsewhere in this report includes amendments made by the passage of House Bill 149 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

b. Placement

Pursuant to N.C. Gen. Stat. § 7B-1905(a) (Place of secure or nonsecure custody), a child may be placed in nonsecure custody in the following locations:

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

N.C. Gen. Stat. § 7B-1903 (Criteria for secure or nonsecure custody) lays out the considerations when deciding whether a child should be placed in nonsecure custody, which include

- (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, but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.

Secured custody should be considered if the following exists, pursuant to N.C. Gen. Stat. § 7B-1905(b):

....

(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.

*II. Process Following Initial Custody*

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

- (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. . . .

Timing of the hearing is established by N.C. Gen. Stat. § 7B-1901(b), which states that a child may not be held for more than 12 hours without a hearing or court order, unless the date of custody falls on a weekend or holiday. In that case, the child may not be held for more than 24 hours..

Additionally, under to N.C. Gen. Stat. § 7B-1906(a) (Secure or nonsecure custody hearings), if a child is held pursuant to a secure custody order, the child is entitled to a hearing within 5 days. If a child is held under a nonsecure order, the child is entitled to a hearing within 7 days. N.C. Gen. Stat. § 7B-1906(a).

Further, pursuant to N.C. Gen. Stat. § 7B-1906(b),

As long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays when the courthouse is closed for transactions, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days.

### *III. Placement Process Pending Adjudication/Investigation*

Pursuant to N.C. Gen. Stat. § 7B-1905(a) (Place of secure or nonsecure custody), a child may be placed in nonsecure custody in the following locations:

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

N.C. Gen. Stat. § 7B-1903 (Criteria for secure or nonsecure custody) lays out the considerations when deciding whether a child should be placed in nonsecure custody, which include

- (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, but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.

Secured custody should be considered if the following exists, pursuant to N.C. Gen. Stat. § 7B-1905(b):

. . . .

- (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.

#### *IV. Adjudication or Referral to Alternate Process*

An adjudication hearing must, “be held within a reasonable time.” N.C. Gen. Stat § 7B-2403 (Adjudicatory hearing). At the adjudication hearing, if the court finds that the allegation are proven, the court must issue a written order; if the court finds the allegations are not proven, the court must dismiss the petition. N.C. Gen. Stat. § 7B-2411 (Adjudication)

#### *V. Outcomes*

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).

#### **Child Identified as Delinquent**

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. However, N.C. Gen. Stat. § 14-204 (Prostitution) makes children under 18 immune from prosecution for prostitution. With regard to the defendant’s age, N.C. Gen. Stat. § 14-204 (Prostitution) states,

(c) Immunity From Prosecution for Minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302.

#### **Child Tried as an Adult**

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.

However, N.C. Gen. Stat. § 14-204 (Prostitution) makes children under 18 immune from prosecution for prostitution. With regard to the defendant's age, N.C. Gen. Stat. § 14-204 (Prostitution) states,

(c) Immunity From Prosecution for Minors. – Notwithstanding any other provision of this section, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is a minor, that person shall be immune from prosecution under this section and instead shall be taken into temporary protective custody as an undisciplined juvenile pursuant to Article 19 of Chapter 7B of the General Statutes. Pursuant to the provisions of G.S. 7B-301, a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7B-301 and G.S. 7B-302.

5.4.1 Recommendation: Establish specialized services and housing that are available to all victims of domestic minor sex trafficking, regardless of how they are initially identified.

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)<sup>97</sup> (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

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<sup>97</sup> See *supra* note 74.

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. 14-205.3(b); 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;

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

g. Commits or allows to be committed an offense under G.S. 14-43.11 [Human trafficking], G.S. 14-43.12 [Involuntary servitude], or G.S. 14-43.13 [Sexual servitude] against the child.

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

[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]<sup>98</sup> 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.*

N.C. Gen. Stat. § 7B-101(8)<sup>99</sup> (Definitions) defines “custodian” as “[t]he person or agency that has been awarded legal custody of a juvenile by a court.” N.C. Gen. Stat. § 7B-101(8).

5.6.1 Recommendation: Clarify that child protection laws reach traffickers by amending the definition of “custodian” to include a person who has physical custody or control over a child.

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).<sup>100</sup> A “victim” is defined as “[a] person who suffers personal injury or death proximately caused by criminally injurious conduct” and a “claimant” is defined to include “a person who was

<sup>98</sup> 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).

<sup>99</sup> See *supra* note 74.

<sup>100</sup> See *supra* note 85.

convicted of a first offense under G.S. 14-204 [Prostitution] and whose participation in the offense was a result of having been a trafficking victim under G.S. 14-43.11 [Human trafficking] or G.S. 14-43.13 [Sexual servitude] or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13). N.C. Gen. Stat. § 15B-2(13), (2)(e). “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 loss<sup>101</sup> 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 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.”

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.

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<sup>101</sup> 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.”

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<sup>102</sup> or attempts to commit either, “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 behavior<sup>103</sup> 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
  - (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.

....

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.

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<sup>102</sup> “Sexual offenses” are 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), § 14-190.16 (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).

<sup>103</sup> “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).

- 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), § 14-205.1 (Solicitation of prostitution), § 14-205.2 (Patronizing a prostitute), § 14-205.3 (Promoting prostitution) and § 14-43.13 (Sexual servitude) 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.*

Victims of human trafficking may file a petition to have their record expunged of prostitution convictions. Pursuant to N.C. Gen. Stat. § 15A-145.6(b)<sup>104</sup> (Expunctions for certain defendants convicted of prostitution) a person who has been convicted of a prostitution offense<sup>105</sup> may file a petition for expunction of the offense in the court the person was convicted provided that

- (1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.
- (2) The person satisfies any one of the following criteria:
  - a. The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).
  - b. The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.

Pursuant to N.C. Gen. Stat. § 15A-145.6(f) (Expunctions for certain defendants convicted of prostitution), the court shall order the criminal record of the victim be expunged if the court finds all of the following after a hearing:

- (1) The criteria set out in subsection (b) of this section are satisfied.
- (2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, since the date of conviction of the prostitution offense in question.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction, other than an expunction for a prostitution offense.

Additionally, N.C. Gen. Stat. § 15A-1415(b) (Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time) states that a victim convicted of prostitution may assert a motion for relief within 10 days after entry of judgment when,

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<sup>104</sup> The text of N.C. Gen. Stat. § 15A-145.6 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>105</sup> “Prostitution offense” is defined as “[a] conviction for (i) violation of G.S. 14-204 [Prostitution] [Repealed] or (ii) engaging in prostitution in violation of G.S.14-204(7) for an offense that occurred prior to October 1, 2013.”

The defendant was convicted of a first offense of prostitution under G.S. 14–204, and the court did not discharge the defendant and dismiss the charge pursuant to G.S. 14–204(b); the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14–43.11, sexual servitude under G.S. 14–43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.

Finally, N.C. Gen. Stat. § 15A-1416.1<sup>106</sup> (Motion by the defendant to vacate prostitution convictions for sex trafficking victim) states that

(a) A motion for appropriate relief seeking to vacate a conviction for prostitution based on the grounds set out in G.S. 15A–1415(b)(10) shall be filed in the court where the conviction occurred. The motion may be filed at any time following the entry of a verdict or finding of guilty under G.S. 14–204 [Prostitution]. Any motion for appropriate relief filed under this section shall state why the facts giving rise to this motion were not presented to the trial court and shall be made with due diligence after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such offenses, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion or for other reasons consistent with the purpose of this section. Reasonable notice of the motion shall be served upon the State.

(b) The court may grant the motion if, in the discretion of the court, the violation was a result of the defendant having been a victim of human trafficking or sexual servitude. Evidence of such may include any of the following documents listed in subdivisions (1) through (3) of this subsection; alternatively, the court may consider such other evidence as it deems of sufficient credibility and probative value in determining whether the defendant is a trafficking victim:

(1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14–43.11 [Human trafficking], G.S. 14–43.13 [Sexual servitude], or under 22 U.S.C. Chapter 78 [Trafficking victims protection act].

(2) Certified records of “approval notices” or “enforcement certifications” generated from federal immigration proceedings available to such victims.

(3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.

Additionally, 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.

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<sup>106</sup> The text of N.C. Gen. Stat. § 15A-1416.1 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

(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.

....

*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.*

Domestic minor sex trafficking victims are entitled to mandatory restitution. N.C. Gen. Stat. § 14-43.20(a) (Mandatory restitution; victim services; forfeiture) defines “victim” as a “person subject to the practices set forth in G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude].” N.C. Gen. Stat. § 14-43.20(b) provides that

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services.

Additionally, a court must consider restitution following any 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.<sup>107</sup>

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]; . . .

....

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.

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<sup>107</sup> See *supra* note 84.

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.”

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.<sup>108</sup> 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

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<sup>108</sup> State v. Hardin, 75 (N.C. Ct. App. 1973) (“In North Carolina, there is no statute of limitations barring the prosecution of a felony.”)

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 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 or authorized.*
- 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 or authorized.*

Law enforcement training on human trafficking is authorized in North Carolina. Pursuant to 2007 Sess. Laws 547, sec. 11,<sup>109</sup> 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: Enact a law mandating or authorizing training on human trafficking and domestic minor sex trafficking for State and local law enforcement officers.
- 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

<sup>109</sup> 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 Sept. 16, 2011).

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.*

Pursuant to N.C. Gen. Stat. §15A-290(c)(1)<sup>110</sup> (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. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), or G.S. 14-202.1 (Taking indecent liberties with children), G.S. 14-205.2(c) or (d) (Patronizing a prostitute who is a minor or a mentally disabled person), or G.S. 14-205.3(b) (Promoting prostitution of a minor or a mentally disabled person).

Violations of both N.C. Gen. Stat. § 14-43.11(b)<sup>111</sup> (Human trafficking) and N.C. Gen. Stat. § 14-43.13(b)<sup>112</sup> (Sexual servitude) are Class C felonies under N.C. Gen. Stat. § 15A-290 (Offenses for which orders for electronic surveillance may be granted) which authorize law enforcement to obtain an order for electronic surveillance 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

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<sup>110</sup> The text of N.C. Gen. Stat. § 15A-290 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 683 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective October 1, 2013).

<sup>111</sup> See *supra* note 2.

<sup>112</sup> See *supra* note 3.

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.

*6.4 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.”<sup>113</sup> 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

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<sup>113</sup> *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).

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. . . .

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.<sup>114</sup>

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

Failure to report the disappearance of a child is a crime in North Carolina. N.C. Gen. Stat. § 14-318.5<sup>115</sup> (Failure to report the disappearance of a child to law enforcement; immunity of person reporting in good faith) establishes that

(b) A parent or any other person providing care to or supervision of a child<sup>116</sup> who knowingly or wantonly fails to report the disappearance of a child<sup>117</sup> to law enforcement is in violation of this subsection.

(c) Any person who reasonably suspects the disappearance of a child and who reasonably suspects that the child may be in danger shall report those suspicions to law enforcement within a reasonable time.

A violation of N.C. Gen. Stat. § 14-318.5(b) is a Class I felony and carries a presumptive sentence of 4–6 months imprisonment. A violation of N.C. Gen. Stat. § 14-318.5(c) is a Class 1 misdemeanor and punishable by 1–45 days imprisonment. N.C. Gen. Stat. §§ 14-318.5(b), (c), § 15A-1340.17(c), § 15A-1340.23(c)(2).

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. N.C. Gen. Stat. §143B-1015 requires that 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

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<sup>114</sup> 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.

<sup>115</sup> The text of N.C. Gen. Stat. § 14-318.5 included here and elsewhere in this report includes amendments made by the passage of House Bill 149 during the first session of the 2013 North Carolina Legislature. 2013-2014 Leg., 2d Reg. Sess. (N.C. 2013) (effective December 1, 2013).

<sup>116</sup> “Child” is defined for purposes of this subsection as “any person who is less than 16 years of age.” N.C. Gen. Stat. § 14-318.5(a)(1).

<sup>117</sup> “Disappearance of a child” is defined as “When the parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period. N.C. Gen. Stat. § 14-318.5(a)(2).

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].

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 known or suspected to be abducted by the child’s parent, unless the child’s life is believed to be in danger of injury or death, not voluntarily missing or a runaway, if the child is believed to have been abducted or to be in danger, and the abduction is reported to and investigated by 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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