

## 2018 ANALYSIS AND RECOMMENDATIONS

### GEORGIA

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

##### *Legal Components:*

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

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

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

Paralleling federal law, Georgia's human trafficking law does not require a showing of force, fraud, or coercion of minors under 18 to qualify as sex trafficking. Under Ga. Code Ann. § 16-5-46(c)<sup>2</sup> (Trafficking of persons for labor or sexual servitude),

A person commits the offense of trafficking an individual for sexual servitude when that person knowingly:

- (1) Subjects an individual to or maintains an individual in sexual servitude;
- (2) Recruits, entices, harbors, transports, provides, or obtains by any means an individual for the purpose of sexual servitude; or
- (3) Solicits or patronizes by any means an individual to perform sexually explicit conduct on behalf of such person when such individual is the subject of sexual servitude.

<sup>1</sup> This report includes legislation enacted as of August 1, 2018.

<sup>2</sup> The text of Ga. Code Ann. § 16-5-46 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 732 during the 2018 General Assembly of the Georgia Legislature (effective July 1, 2018).

Pursuant to Ga. Code Ann. § 16-5-46(a)(8), “Sexual servitude” is defined as “any sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any individual, which conduct is induced or obtained:

- (A) By coercion or deception;
- (B) From an individual who is under the age of 18 years;
- (C) From an individual whom the accused believes to be under the age of 18 years;

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A violation of Ga. Code Ann. § 16-5-46(c)(1), (2) is a felony punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-5-46(f)(3). If, however, a minor victim was “coerced or deceived into such violation,” Ga. Code Ann. § 16-5-46(c)(1), (2) is punishable by imprisonment for 25–50 years or life. Ga. Code Ann. § 16-5-46(f)(4).

A violation of Ga. Code Ann. § 16-5-46(c)(3) is a felony punishable by imprisonment for 5–20 years if the victim was 16 years of age or older. Ga. Code Ann. § 16-5-46(f)(5). If the victim was under 16 years of age, Ga. Code Ann. § 16-5-46(c)(3) is punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-5-46(f)(5).

*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.*

Under Georgia state law, CSEC offenses are separate and distinct from general sexual offenses. The following laws make CSEC a crime in Georgia:

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

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

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

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

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

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

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

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

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

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

....

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

....

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

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

....

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

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<sup>3</sup> Ga. Code Ann. § 16-12-100 further provides, “[a]ny person punished as provided in this paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2 [“Sexual offense” defined; split sentence; deviation from mandatory minimum sentence].”

Ga. Code Ann. § 17-10-6.2(a) defines “sexual offense” to include “(6) Enticing a child for indecent purposes, in violation of Code Section 16-6-5, unless subject to the provisions of subsection (c) of Code Section 16-6-5” and “(10) Sexual exploitation of children, in violation of Code Section 16-12-100, unless subject to the provisions of paragraph (2) or (3) of subsection (f) of Code Section 16-12-100.”

Under Ga. Code Ann. § 17-10-6.2(b), subject to exceptions in subsection (c),

notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to such sexual offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the court. Any such sentence shall include, in addition to the mandatory term of imprisonment, an additional probated sentence of at least one year . . . . No person convicted of a sexual offense shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42 or any other provision of Georgia law relating to the sentencing of first offenders.

member of the immediate family of the victim.” Ga. Code Ann. § 16-12-100(f)(1). The law does not apply to “Any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct.” Ga. Code Ann. § 16-12-100(d)(3). The crime is classified as a misdemeanor if the minor depicted is at least 14, the image was created with the minor’s consent, the defendant was 18 years old or younger when it was created, and the image was not distributed with intent to harass or annoy or for commercial purposes. Ga. Code Ann. § 16-12-100(f)(3).

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

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

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

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

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Ga. Code Ann. § 17-10-6.2(c)(1) states,

In the court’s discretion, the court may deviate from the mandatory minimum sentence as set forth in subsection (b) of this Code section, or any portion thereof, when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum or provided that:

- (A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;
- (B) The defendant did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;
- (C) The court has not found evidence of a relevant similar transaction;
- (D) The victim did not suffer any intentional physical harm during the commission of the offense;
- (E) The offense did not involve the transportation of the victim; and
- (F) The victim was not physically restrained during the commission of the offense.

Upon a first conviction, this crime is punishable by imprisonment for 5–20 years, and “the Department of Corrections shall provide counseling to such defendant.” Ga. Code Ann. § 16-6-4(b)(1). A second or subsequent offense is punishable by imprisonment for 10–30 years or life imprisonment. Ga. Code Ann. § 16-6-4(b)(1). If the victim is 14 or 15 and the perpetrator is 18 or under and not more than 4 years older than the victim, the crime is a misdemeanor. Ga. Code Ann. § 16-6-4(b)(2). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2). Additionally, the crime is aggravated child molestation if the child is physically injured or if the crime involves sodomy. Ga. Code Ann. § 16-6-4(c). If the charge is based on an act that involves sodomy, the victim is “at least 13 but less than 16,” and the perpetrator is 18 or under and no more than 4 years older than the victim, the charge is a misdemeanor. Ga. Code Ann. § 16-6-4(d)(2). Otherwise, aggravated child molestation is punishable by life imprisonment or a split sentence including minimum imprisonment of 25 years and probation for life. Ga. Code Ann. § 17-10-6.1(b)(2), 16-6-4(d)(1). However, subsection (e) states, “In the court's discretion, the judge may depart from the mandatory minimum sentence specified in this Code section for a person who is convicted of a serious violent felony when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum.” Ga. Code Ann. § 17-10-6.1(e)

3. Ga. Code Ann. § 16-6-5(a) (Enticing a child for indecent purposes) states, “A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.”<sup>4</sup> This crime is punishable by imprisonment for 10–30 years. Ga. Code Ann. § 16-6-5(b). Subsection (c), however, provides that “[i]f the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.” Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).
4. Ga. Code Ann. § 16-12-100.2(c)(1) (Computer or electronic pornography and child exploitation prevention) is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000, except as provided in Ga. Code Ann. § 16-12-100.2(c)(3), (4). Ga. Code Ann. § 16-12-100.2(c)(2). Ga. Code Ann. § 16-12-100.2(c)(1) states,

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

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

However, Ga. Code Ann. § 16-12-100.2(c)(1) is only punishable as a misdemeanor when,

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



- ....
- (A) At the time of the offense, any identifiable child visually depicted was at least 14 years of age when the visual depiction was created;
  - (B) The visual depiction was created with the permission of such child;
  - (C) The defendant possessed the visual depiction with the permission of such child; and
  - (D) The defendant was 18 years of age or younger at the time of the offense and:
    - (i) The defendant did not distribute the visual depiction to another person; or
    - (ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation involved the distribution of such visual depiction to another person but such distribution was not for the purpose of:
      - (I) Harassing, intimidating, or embarrassing the minor depicted; or
      - (II) For any commercial purpose.
- (4) The prohibition contained in paragraph (1) of this subsection shall not apply to any person who creates or possesses a visual depiction of only himself or herself.

Ga. Code Ann. § 16-12-100.2(d)(1) (Computer or electronic pornography and child exploitation prevention) also makes it a crime to “intentionally or willfully . . . utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, or another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2,<sup>5</sup> relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.”

This felony is punishable by imprisonment for 1–20 years and a fine not to exceed \$25,000, “provided, however, that if at the time of the offense the victim was at least 14 years of age and the defendant was 18 years of age or younger, then the defendant shall be guilty of a misdemeanor. Ga. Code Ann. § 16-12-100.2(d)(2).

*1.3 Prostitution statutes refer to the sex trafficking statute to acknowledge the intersection of prostitution with trafficking victimization.*

Georgia’s core prostitution law, Ga. Code Ann. § 16-6-9 (Prostitution), and related commercial sexual statute, Ga. Code Ann. § 16-6-16 (Masturbation for hire), do not refer to the human trafficking law. Georgia does, however, provide an affirmative defense to victims of certain sexual crimes, including child sex trafficking victims. Pursuant to Ga. Code Ann. § 16-3-6(b)(1), (2),

A person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed by an accused who was: (1) Less than 18 years of age at the time of the conduct such person was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46; or (2) Acting under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.

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<sup>5</sup> The Georgia Supreme Court concluded in *Powell v. State* that “O.C.G.A. § 16-6-2, insofar as it criminalizes the performance of private, unforced, non-commercial acts of sexual intimacy between persons legally able to consent, ‘manifestly infringes upon a constitutional provision’ which guarantees to the citizens of Georgia the right of privacy.” 510 S.E. 2d 18, 26 (Ga. 1998) (quoting *Miller v. State*, 472 S.E.2d 74, 78 (Ga. 1996).

Under Ga. Code Ann. § 16-3-6(a)(4), “Sexual crime” is defined as “prostitution, sodomy, solicitation of sodomy, or masturbation for hire as such offenses are proscribed in Chapter 6 of Title 16.”

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

Ga. Code Ann. § 16-14-4(a), (b) (Prohibited activities) states,

(a) It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.

(b) It shall be

unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

(c) It shall be unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section. A person violates this subsection when:

(1) He or she together with one or more persons conspires to violate any of the provisions of subsection (a) or (b) of this Code section and any one or more of such persons commits any overt act to effect the object of the conspiracy; or

(2) He or she endeavors to violate any of the provisions of subsection (a) or (b) of this Code section and commits any overt act to effect the object of the endeavor.

“Racketeering activity” is defined in Ga. Code Ann. § 16-14-3 (Definitions) to include prostitution, keeping a place of prostitution, pimping, pandering, pandering by compulsion, and trafficking of persons for labor or sexual servitude. Ga. Code Ann. § 16-14-3(5)(A)(xi), (xxx). Under Ga. Code Ann. § 16-14-3(4)(A), “Pattern of racketeering activity” is defined as including

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

Racketeering is a felony punishable by imprisonment for 5–20 years, “a fine that does not exceed the greater of \$25,000.00 or three times the amount of any pecuniary value gained by him or her from such violation,” or both. Ga. Code Ann. § 16-14-5(a), (b). Asset forfeiture exists for racketeering crimes, and Ga. Code Ann. § 16-14-7(a) (Forfeiture proceedings) states in part, “All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering activity shall be subject to forfeiture to the state. The Attorney General shall be specifically authorized to commence any civil forfeiture proceeding under this chapter in matters arising under Code Section 45-15-10.” Ga. Code Ann. § 16-14-7(b) further states, “Any property subject to forfeiture pursuant to subsection (a) of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them and shall be forfeited in accordance with the procedure set forth in Chapter 16 of Title 9.”

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

In addition to any other penalty provided by law, any violation of Ga. Code Ann. § 16-15-4(a) is punishable by imprisonment for 5–15 years, a fine of \$10,000–\$15,000, or both. Ga. Code Ann. § 16-5-4(k)(1). Additionally, “[a]ny property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this chapter; and proceeds . . . declared to be contraband” is subject to forfeiture. Ga. Code Ann. § 16-15-5(b).

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

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



***Legal Components:***

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a minor.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*
- 2.3 *Solicitation laws differentiate between soliciting sex acts with an adult and soliciting 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 or electronic communications 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 images of child sexual exploitation carries penalties as high as similar federal offenses.*
- 2.10 *Convicted buyers of commercial sex acts with minors 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 minor.*

Ga. Code Ann. § 16-5-46(c)(3)<sup>6</sup> (Trafficking of persons for labor or sexual servitude) holds buyers liable for “soliciting” or “patronizing” a minor to engage in a commercial sex act, stating, “[a] person commits the offense of trafficking an individual for sexual servitude when that person knowingly . . . [s]olicits or patronizes by any means an individual to perform sexually explicit conduct on behalf of such person when such individual is the subject of sexual servitude.” Additionally, Ga. Code Ann. § 16-5-46(c)(2) applies to buyers of commercial sex acts with minors following federal precedent through the term “obtains.”<sup>7</sup> Pursuant to Ga. Code Ann § 16-5-46(c), “[a] person commits the offense of trafficking an individual for sexual servitude when that person knowingly . . . obtains by any means an individual for the purpose of sexual servitude.”

<sup>6</sup> See *supra* note 2.

<sup>7</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing 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)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

Ga. Code Ann. § 16-5-46(a)(8) defines “sexual servitude” as “any sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any individual, which conduct is induced or obtained:

- (A) By coercion or deception;
- (B) From an individual who is under the age of 18 years;
- (C) From an individual whom the accused believes to be under the age of 18 years;

...

The language, “obtained . . . from an individual whom the accused believes to be under the age of 18 years,” further indicates that the law can be applied to buyer conduct.

Further, pursuant to Ga. Code Ann. § 42-8-60(j)(3) (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge), special provisions for first time offenders in Georgia do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sex trafficking or sexual exploitation of a minor, including the possession, production, or dissemination of images of child sexual exploitation (ICSE) pursuant to Ga. Code Ann. § 16-12-100.2.

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

Ga. Code Ann. § 16-6-12 (Pandering) may be applied to buyers of sex with minors.<sup>8</sup> The law states, “A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.” A heightened penalty applies when the victim is a minor. Ga. Code Ann. § 16-6-13(b) (Penalties for violating Code Sections 16-6-9 through 16-6-12).<sup>9</sup>

## 2.3 *Solicitation laws differentiate between soliciting sex acts with an adult and soliciting sex acts with a minor under 18.*

Ga. Code Ann. § 16-6-12 (Pandering), the applicable statute for solicitation of prostitution, states, “A person commits the offense of pandering when he or she solicits a person to perform an act of prostitution in his or her own behalf or in behalf of a third person or when he or she knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.” Ga. Code Ann. § 16-6-12 (Pandering) distinguishes between soliciting sex with an adult and soliciting sex with a minor because Ga. Code Ann. § 16-6-13 (Penalties for violating Code Sections 16-6-9 through 16-6-12) provides heightened penalties for this crime when a minor is the subject of the solicitation. When the victim is 16 or 17, the crime is punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the victim is under the age of 16, the perpetrator is guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

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<sup>8</sup> See *Fluker v. State*, 282 S.E.2d 112, 115 (Ga. 1981) (concerning an earlier version of the statute) (In *Fluker*, two appellants faced charges of pandering for “soliciting a named female to perform an act of prostitution.” The appellants unsuccessfully challenged this statute’s applicability to buyers of commercial sex, and the court stated, “Even if the primary emphasis of the present pandering statute is . . . upon the recruitment of females into the practice of prostitution, the fact remains, as we have pointed out, that the statute’s wording renders one guilty of pandering when he solicits a female to commit an act of prostitution, either for himself or another.”)

<sup>9</sup> See *supra* Component 1.2 for sexual offenses which may apply to buyers of commercial sex acts with minors.

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

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

A violation of Ga. Code Ann. § 16-5-46(c)(1), (2) (Trafficking of persons for labor or sexual servitude) is a felony punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-5-46(f)(3). If, however, a minor victim was “coerced or deceived into such violation,” Ga. Code Ann. § 16-5-46(c)(1), (2) is punishable by imprisonment for 25–50 years or life. Ga. Code Ann. § 16-5-46(f)(4).

A violation of Ga. Code Ann. § 16-5-46(c)(3) is a felony punishable by imprisonment for 5–20 years if the victim was 16 years of age or older. Ga. Code Ann. § 16-5-46(f)(5).<sup>10</sup> If the victim was under 16 years of age, Ga. Code Ann. § 16-5-46(c)(3) is punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-5-46(f)(5).

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

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

However, Ga. Code Ann. § 16-12-100.2(c)(1) is punishable as a misdemeanor if,

....

- (A) At the time of the offense, any identifiable child visually depicted was at least 14 years of age when the visual depiction was created;
- (B) The visual depiction was created with the permission of such child;
- (C) The defendant possessed the visual depiction with the permission of such child; and
- (D) The defendant was 18 years of age or younger at the time of the offense and:
  - (i) The defendant did not distribute the visual depiction to another person; or
  - (ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation involved the distribution of such visual depiction to another person but such distribution was not for the purpose of:
    - (I) Harassing, intimidating, or embarrassing the minor depicted; or
    - (II) For any commercial purpose.
- (4) The prohibition contained in paragraph (1) of this subsection shall not apply to any person who creates or possesses a visual depiction of only himself or herself.

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

Enticing a minor under 16 for indecent purposes, under Ga. Code Ann. § 16-6-5, is punishable by imprisonment for 10–30 years. Ga. Code Ann. § 16-6-5(b). If the victim is 14 or 15 years old and the accused is 18 or younger and no more than 4 years older than the victim, the crime is a misdemeanor. Ga.

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<sup>10</sup> See *supra* note 2.

Code Ann. § 16-6-5(c). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).

Additionally, although the following laws do not expressly deal with commercial transactions, offenders could face penalties under the sexual offense laws of Ga. Code Ann. § 16-6-3 (Statutory rape) and Ga. Code Ann. § 16-6-4 (Child molestation), which both involve sexual acts with minors. If the victim is 14 or 15 and the perpetrator is less than 18 and no more than 4 years older than the victim, the crime of statutory rape is a misdemeanor. Ga. Code Ann. § 16-6-3(c). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2). If the offender is under 21, statutory rape is punishable by imprisonment for 1–20 years. Ga. Code Ann. § 16-6-3(b). If the offender is 21 or older, the crime is punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-6-3(b). Child molestation is generally punishable by imprisonment for 5–20 years. Ga. Code Ann. § 16-6-4(b)(1). If, however, the victim is 14 or 15, and the offender is less than 18 and no more than 4 years older than the victim, the crime of child molestation is only a misdemeanor. Ga. Code Ann. § 16-6-4(b)(2).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>11</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment however, if the buyer has a prior conviction for a federal sex offense<sup>12</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>13</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>14</sup>

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<sup>11</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>12</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>13</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>14</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(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.); *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).

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

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

It shall be unlawful for any person intentionally or willfully to utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, or another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2,<sup>15</sup> relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$25,000. Ga. Code Ann. § 16-12-100.2(d)(2). If, however, “the victim was at least 14 years of age and the defendant was 18 years of age or younger, then the defendant shall be guilty of a misdemeanor.” Ga. Code Ann. § 16-12-100.2(d)(2). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).

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

Under the state human trafficking statute, a mistake of age defense is impermissible for buyers of commercial sex acts with any person under eighteen years of age. Ga. Code Ann. § 16-5-46(d) (Trafficking of persons for labor or sexual servitude) states, “[t]he age of consent for sexual activity or the accused’s lack of knowledge of the age . . . of the individual being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.”

For heightened penalties that apply to pandering, the law does not explicitly prohibit the mistake of age defense. Ga. Code Ann. § 16-6-12 (Pandering). Therefore, it is possible, albeit unlikely, that buyers could use a mistake of age defense.

Case law clarifies that knowledge of a victim’s age is not a necessary element of either statutory rape or child molestation and states in dicta that “[w]ith regard to statutory rape . . . the defendant’s knowledge of the age of the female is not an essential element of the crime . . . and therefore it is no defense that the accused reasonably believed that the prosecutrix was of the age of consent.”<sup>16</sup>

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<sup>15</sup> See *supra* note 5.

<sup>16</sup> *Haywood v. State*, 642 S.E.2d 203, 204 (Ga. Ct. App. 2007) (quoting *Tant v. State*, 281 S.E.2d 357 (Ga. Ct. App. 2007)) (alteration in the original). *Haywood* further states,

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



2.6.1 Recommendation: Enact a provision that explicitly prohibits a mistake of age defense under Ga. Code Ann. § 16-6-12 (Pandering).

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

Georgia's buyer-applicable trafficking and CSEC offenses stagger penalties based on a minor's age, but penalties are sufficiently high even when the victim is an older minor. A violation of Ga. Code Ann. § 16-5-46(c)(1), (2) (Trafficking of persons for labor or sexual servitude) is a felony punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-5-46(f)(3). A violation of Ga. Code Ann. § 16-5-46(c)(3) is a felony punishable by imprisonment for 5–20 years if the victim was 16 years of age or older. Ga. Code Ann. § 16-5-46(f)(5).<sup>17</sup> If the victim was under 16 years of age, Ga. Code Ann. § 16-5-46(c)(3) is punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-5-46(f)(5).

Ga. Code Ann. § 16-6-13 (Penalties for violating Code Sections 16-6-9 through 16-6-12) sets the penalty for violations of Ga. Code Ann. § 16-6-12 (Pandering) and staggers penalties based on the victim's age. If the victim is 16 or 17, the buyer will be guilty of a felony punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both; if the victim is under 16, the buyer will be guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(1), (2).

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

Under Ga. Code Ann. § 15-21-208(a) (Payment and disposition of fines and forfeitures), in every case in which any court in this state imposes a fine, which will be construed to include costs, for trafficking a person for sexual servitude in violation of Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) or any violation of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), § 16-6-12 (Pandering), § 16-6-14 (Pandering by compulsion), § 16-6-15 (Solicitation of sodomy), § 16-6-16 (Masturbation for hire), or § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), an additional penalty of \$2,500 will be imposed if the defendant was 18 years or older at the time of the offense.

Pursuant to Ga. Code Ann. § 16-6-13(b)(1) (Penalties for violating Code Sections 16-6-9 through 16-6-12), a person convicted of Ga. Code Ann. § 16-6-12 (Pandering) when the minor involved is 16 or 17, may face a fine between \$2,500 and \$10,000. If the minor involved is under 16, the punishment may involve a fine not to exceed \$100,000. Ga. Code Ann. § 16-6-13(b)(2).

In addition to fines, buyers may also face asset forfeiture. Under Ga. Code Ann. § 16-5-46(g),

(1) As used in this subsection, the terms 'civil forfeiture proceedings,' 'proceeds,' and 'property' shall have the same meanings as set forth in Code Section 9-16-2.

(2) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.

(3) Any property subject to forfeiture pursuant to paragraph (2) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

(4) The Attorney General shall be specifically authorized to commence civil forfeiture proceedings under this Code section.

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<sup>17</sup> See *supra* note 2.

Additionally, for violating Ga. Code Ann. § 16-12-100(b)(8) (Sexual exploitation of children; reporting violation; forfeiture; penalties) by possessing images of child sexual exploitation (ICSE), a buyer will be subject to asset forfeiture pursuant to Ga. Code Ann. § 16-12-100(e), which states,

- (1) As used in this subsection, the terms ‘proceeds’ and ‘property’ shall have the same meaning as set forth in Code Section 9-16-2.
- (2) Any property which is, directly or indirectly, used or intended to be used in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.
- (3) Any property subject to forfeiture pursuant to paragraph (2) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

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

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

## 2.9 *Buying and possessing images of child sexual exploitation carries penalties as high as similar federal offenses.*

Under Ga. Code Ann. § 16-12-100(b)(8) (Sexual exploitation of children; reporting violation; forfeiture; penalties), “It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” Additionally, “It is unlawful for any person knowingly to . . . purchase . . . any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct can be found or purchased.” Ga. Code Ann. § 16-12-100(b)(6). A person who violates this statute is guilty of a felony, which is punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(f)(1).<sup>18</sup> However, under Ga. Code Ann. § 16-12-100(f)(3), the creation of images of child sexual exploitation (ICSE) is a misdemeanor if:

- (A) The minor depicted was at least 14 years of age at the time the visual medium was created;

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<sup>18</sup> Ga. Code Ann. § 16-12-100 further provides, “[a]ny person punished as provided in this paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2 [“Sexual offense” defined; split sentence; deviation from mandatory minimum sentence].” *See supra* note 3 for discussion of Ga. Code Ann. § 17-10-6.2.

(B) The visual medium was created with the permission of the minor depicted; a(C) The defendant was 18 years of age or younger at the time of the offense and:

- (i) The defendant's violation of such paragraphs did not involve the distribution of such visual medium to another person; or
- (ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of:
  - (I) Harassing, intimidating, or embarrassing the minor depicted; or
  - (II) For any commercial purpose.

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

Additionally, pursuant to Ga. Code Ann. § 42-8-60(j)(3) (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge), special provisions for first time offenders in Georgia do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses under Ga. Code Ann. § 16-12-100.2 (Sexual exploitation of children; reporting violation; forfeiture; penalties), including for the possession, production, or dissemination of ICSE.

However, a person who, in “good faith” mistakenly possesses ICSE and subsequently reports the possession to law enforcement within 72 hours will be protected from prosecution for crimes falling under Ga. Code Ann. § 16-12-100(b)(8) (Sexual exploitation of children; reporting violation; forfeiture; penalties).

In comparison to the aforementioned state penalties, a federal conviction for possession of ICSE<sup>19</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>20</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>21</sup>

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

Under Ga. Code Ann. § 42-1-12(e) (State sexual offender registry), registration is required for, among others, individuals, “convicted on or after July 1, 1996, of a criminal offense against a victim who is a

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<sup>19</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4)(A) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>20</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>21</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).

minor;” and those “convicted on or after July 1, 1996, of a dangerous sexual offense.” Ga. Code Ann. § 42-1-12(a)(9)(B) states in part,

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

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

Likewise, pursuant to Ga. Code Ann. § 42-1-12(a)(10)(B), (B.1), (B.2), which governs registration requirements for “dangerous sexual offense[s],”

(B) “Dangerous sexual offense” with respect to convictions occurring between July 1, 2006, and June 30, 2015, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- . . . .
- (iv) Rape in violation of Code Section 16-6-1;<sup>22</sup>
- (v) Sodomy in violation of Code Section 16-6-2;<sup>23</sup>
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- . . . .
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100 . . . ;
- (xvii) Computer pornography and child exploitation prevention in violation of Code Section 16-12-100.2;
- . . . .
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.1) “Dangerous sexual offense” with respect to convictions occurring between July 1, 2015, and June 30, 2017, means any criminal offense, or the attempt to commit any criminal offenses, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

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<sup>22</sup> A rape occurs whenever the victim is a female under 10 years old. Ga. Code Ann. § 16-6-1(a)(2).

<sup>23</sup> See *supra* note 5.

- ....
- (iii) Trafficking a person for sexual servitude in violation of Code Section § 16-5-46;
- (iv) Rape in violation of Code Section 16-6-1;
- (v) Sodomy in violation of Code Section 16-6-2;
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

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

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

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

(B.2) “Dangerous sexual offense” with respect to convictions occurring after June 30, 2017, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- ....
- (iii) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;
- (iv) Rape in violation of Code Section 16-6-1;
- (v) Sodomy in violation of Code Section 16-6-2;
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

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

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

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

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

Furthermore, under Ga. Code Ann. § 42-8-60 (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge), special provisions for first time offenders in Georgia relating to exoneration of guilt and discharge do not apply to the Georgia’s registration requirements under the state sexual offender registry.



***Legal Components:***

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing images of child sexual exploitation carries penalties as high as similar federal offenses.*
- 3.3 *Using the Internet or electronic communications 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 parental custody and termination of parental rights include sex trafficking or commercial sexual exploitation of children (CSEC) offenses as grounds for sole custody or termination in order to prevent traffickers from exploiting their parental rights as a form of control.*

***Legal Analysis:***

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

A violation of Ga. Code Ann. § 16-5-46(c)(1), (2) (Trafficking of persons for labor or sexual servitude) is a felony punishable by imprisonment for 10–20 years. Ga. Code Ann. § 16-5-46(f)(3). If, however, a minor victim was “coerced or deceived into such violation,” Ga. Code Ann. § 16-5-46(c)(1), (2) is punishable by imprisonment for 25–50 years or life. Ga. Code Ann. § 16-5-46(f)(4). Additionally, subsection (g) states, “All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Code section shall be subject to forfeiture to the state.”

A trafficker convicted of keeping a place of prostitution pursuant to Ga. Code Ann. § 16-6-10, pimping pursuant to Ga. Code Ann. § 16-6-11, or pandering pursuant to Ga. Code Ann. § 16-6-12 is guilty of a misdemeanor of a high and aggravated nature. Ga. Code Ann. § 16-6-13(a) (Penalties for violating Code Sections 16-6-9 through 16-6-12). Penalties, however, are heightened if the victim is under 18. Ga. Code Ann. § 16-6-13(b). If a person is convicted of any of the above offenses and the victim is 16 or 17, the trafficker is guilty of a felony punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the minor is under 16, the trafficker is guilty of a felony punishable by imprisonment for 10–30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

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

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

Violating subsection (c) is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).<sup>24</sup>

Under Ga. Code Ann. § 16-12-100(b)(3) (Sexual exploitation of children), “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.” This offense is a felony punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(f)(1).<sup>25</sup>

Furthermore, pursuant to Ga. Code Ann. § 42-8-60(j)(3) (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge), special provisions for first time offenders do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sex trafficking or sexual exploitation of a minor.

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>26</sup> against a minor. 18 U.S.C. § 3559(e)(1).

### 3.2 *Creating and distributing images of child sexual exploitation carries penalties as high as similar federal offenses.*

Under Ga. Code Ann. § 16-12-100(b)(3), “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.” Subsection (b)(1) states, “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.” These offenses are punishable by imprisonment for 5–20 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-12-100(f)(1).<sup>27</sup>

Ga. Code Ann. § 16-12-80(a) (Distributing obscene material; obscene material defined; penalty),<sup>28</sup> states in part,

A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene

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<sup>24</sup> See *supra* Component 2.9 for discussion of the limitations of these penalties.

<sup>25</sup> Ga. Code Ann. § 16-12-100 further provides, “[a]ny person punished as provided in this paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2 [“Sexual offense” defined; split sentence; deviation from mandatory minimum sentence].” See *supra* note 3 for discussion of Ga. Code Ann. § 17-10-6.2.

<sup>26</sup> See *supra* note 12.

<sup>27</sup> Ga. Code Ann. § 16-12-100 further provides, “[a]ny person punished as provided in this paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2 [“Sexual offense” defined; split sentence; deviation from mandatory minimum sentence].” See *supra* note 3 for discussion of Ga. Code Ann. § 17-10-6.2.

<sup>28</sup> *But see* This That & the Other Gift & Tobacco, Inc. v. Cobb County, 285 F.3d 1319, 1324 (11th Cir. 2002) (holding that the part of Ga. Code Ann. § 16-12-80 that bans all advertising of sexual devices violates the First Amendment).

material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so . . . .

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

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

In comparison, if the victim is under the age of 14, a conviction under the TVPA<sup>29</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17 a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment however, if the trafficker has a prior conviction for a federal sex offense<sup>30</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of images of child sexual exploitation (ICSE)<sup>31</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>32</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>33</sup>

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<sup>29</sup> See *supra* note 11.

<sup>30</sup> See *supra* note 12.

<sup>31</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3)(B), (4)(A) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>32</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) or (a)(3) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided 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>33</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).

Furthermore, pursuant to Ga. Code Ann. § 42-8-60(j)(3) (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge), special provisions for first time offenders do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for offenses related to the possession, production, or dissemination of images of child sexual exploitation.

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

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

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

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

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).<sup>34</sup>

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

It shall be unlawful for any person intentionally or willfully to utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, or another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2,<sup>35</sup> relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

This crime is a felony punishable by imprisonment for 1–20 years and a fine not to exceed \$25,000. Ga. Code Ann. § 16-12-100.2(d)(2). However, if the victim was at least 14 years of age and the perpetrator was “18 years of age or younger, then the defendant shall be guilty of a misdemeanor.” Ga. Code Ann. § 16-12-100.2(d)(2).

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<sup>34</sup> See *supra* Component 2.9 for discussion of the limitations of these penalties.

<sup>35</sup> See *supra* note 5.

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

Under Ga. Code Ann. § 15-21-208(a) (Payment and disposition of fines and forfeitures), in every case in which any court in this state imposes a fine, which will be construed to include costs, for trafficking a person for sexual servitude in violation of Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) or any violation of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), § 16-6-12 (Pandering), § 16-6-14 (Pandering by compulsion), § 16-6-15 (Solicitation of sodomy), § 16-6-16 (Masturbation for hire), or § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), an additional penalty of \$2,500 will be imposed if the defendant was 18 years or older at the time of the offense.

If convicted of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), or § 16-6-12 (Pandering)—and the victim is between 16 and 18—the offender could be subject to a fine between \$2,500 and \$10,000. Ga. Code Ann. § 16-6-13(b)(1) (Penalties for violating Code Sections 16-6-9 through 16-6-12). If the victim is under 16, the trafficker could be subject to a fine not to exceed \$100,000. Ga. Code Ann. § 16-6-13(b)(2).

In addition to fines, traffickers may also be subject to asset forfeiture. Under Ga. Code Ann. § 16-5-46(g),

- (1) As used in this subsection, the terms ‘civil forfeiture proceedings,’ ‘proceeds,’ and ‘property’ shall have the same meanings as set forth in Code Section 9-16-2.
- (2) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.
- (3) Any property subject to forfeiture pursuant to paragraph (2) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.
- (4) The Attorney General shall be specifically authorized to commence civil forfeiture proceedings under this Code section.

Further, Ga. Code Ann. § 16-6-13.3(b) (Civil forfeiture of proceeds and property) requires a perpetrator to forfeit “[a]ny property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of Code Section 16-6-11 [Pimping] and any proceeds . . .” Ga. Code Ann. § 16-6-13.2(b) further provides, “Any motor vehicle used when the offense involved the pimping of a person to perform an act of prostitution, by a person to facilitate a violation of Code Section 16-6-10 [Keeping a place of prostitution], 16-6-11 [Pimping], 16-6-12 [Pandering], or 16-6-14 [Pandering by compulsion] is declared to be contraband and no person shall have a property right in it.”

An individual convicted of Ga. Code Ann. § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), which includes using a minor in a sexually explicit performance or visual depiction, faces forfeiture under Ga. Code Ann. § 16-12-100(e), which states,

- (1) As used in this subsection, the terms ‘proceeds’ and ‘property’ shall have the same meaning as set forth in Code Section 9-16-2.
- (2) Any property which is, directly or indirectly, used or intended to be used in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.
- (3) Any property subject to forfeiture pursuant to paragraph (2) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

Finally, a trafficker may be subject to restitution orders. Ga. Code Ann. § 17-14-3 (Restitution to victim; restitution as condition of probation) states, “. . . [I]n addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the



amount of restitution due any victim, and order an offender to make full restitution to such victim.” Consideration of restitution is mandatory, although the “nature and amount of restitution” is dependent upon considerations outlined in Ga. Code Ann. § 17-14-10(a) (Considerations for determining nature and amount of restitution; restitution deemed part of financial resources of victim) including:

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

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

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

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

.....

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

Likewise, pursuant to Ga. Code Ann. § 42-1-12(a)(10)(B), (B.1), (B.2), which governs registration requirements for “dangerous sexual offense[s],”

(B) “Dangerous sexual offense” with respect to convictions occurring ~~after June 30, 2006~~ between July 1, 2006, and June 30, 2015, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this paragraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

.....

- (iv) Rape in violation of Code Section 16-6-1;<sup>36</sup>
- (v) Sodomy in violation of Code Section 16-6-2;<sup>37</sup>
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- ....
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- ....
- (xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;
- ....
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.1) “Dangerous sexual offense” with respect to convictions occurring between July 1, 2015, and June 30, 2017, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

- ....
- (iii) Trafficking a person for sexual servitude in violation of Code Section § 16-5-46;
- (iv) Rape in violation of Code Section 16-6-1;<sup>38</sup>
- (v) Sodomy in violation of Code Section 16-6-2;<sup>39</sup>
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- ....
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- ....
- (xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;
- ....
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

(B.2) “Dangerous sexual offense” with respect to convictions occurring after June 30, 2017, means any criminal offense, or the attempt to commit any criminal offense, under Title 16 as specified in this subparagraph or any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of the following offenses:

....

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<sup>36</sup> See *supra* note 22.

<sup>37</sup> See *supra* note 5.

<sup>38</sup> See *supra* note 22.

<sup>39</sup> See *supra* note 5.

- (iii) Trafficking an individual for sexual servitude in violation of Code Section 16-5-46;
- (iv) Rape in violation of Code Section 16-6-1;
- (v) Sodomy in violation of Code Section 16-6-2;
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- ....
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- ....
- (xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;
- ....
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

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

Furthermore, under Ga. Code Ann. § 42-8-60 (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge), special provisions for first time offenders in Georgia relating to exoneration of guilt and discharge do not apply to the Georgia’s registration requirements under the state sexual offender registry.

3.6 *Laws relating to parental custody and termination of parental rights include sex trafficking or commercial sexual exploitation of children (CSEC) offenses as grounds for sole custody or termination in order to prevent traffickers from exploiting their parental rights as a form of control.*

Although Georgia law does not specifically list the offenses that constitute grounds for terminating parental rights, trafficking and certain CSEC offenses will be included based on the definitions of “sexual abuse” and “sexual exploitation.”<sup>40</sup> Ga. Code Ann. § 15-11-310(a)<sup>41</sup> (Grounds for determining termination of parental rights) states in part:

In considering the termination of parental rights, the court shall first determine whether one of the following statutory grounds for termination of parental rights has been met:

- ....
- (2) The parent has subjected his or her child to aggravated circumstances;
- ....
- (5) A child is a dependent child due to lack of proper parental care or control by his or her parent, reasonable efforts to remedy the circumstances have been unsuccessful or were not required, such cause of dependency is likely to continue or will not likely be remedied in the reasonably foreseeable future, and:

<sup>40</sup> See *infra* Component 5.5 for discussion regarding the definitions of “sexual abuse” and “sexual exploitation.”

<sup>41</sup> The text of Ga. Code Ann. § 15-11-310 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 131 during the 2018 General Assembly of the Georgia Legislature (effective July 1, 2018).

(A) Returning such child to his or her parent is likely to cause physically, mental, moral, or emotional harm to such child or threaten the physical safety or well-being of such child; or

(B) Continuation of the parent and child relationship will cause or is likely to cause serious physical, mental, moral, or emotional harm to such child.

“Aggravated circumstances” includes circumstances in which a parent has “(C) Subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation . . .” Ga. Code Ann. § 15-11-2 (Definitions). It also includes circumstances in which the parent has “(G) Caused his child to be conceived as a result of having nonconsensual sexual intercourse with the mother of his child or when the mother is less than 10 years of age.”

Additionally, Ga. Code Ann. § 15-11-310(a) (Determination of whether child is without proper parental care and control) states:

In determining whether a child is without proper parental care and control, the court shall consider, without being limited to, the following:

.....

(4) Egregious conduct or evidence of past egregious conduct of a physically, emotionally, or sexually cruel or abusive nature by such parent toward his or her child or toward another child of such parent;

.....

**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 images of child sexual exploitation carries penalties as high as similar federal offenses.*

**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.*

Georgia’s core sex trafficking statute, Ga. Code Ann. § 16-5-46(c)<sup>42</sup> (Trafficking of persons for labor or sexual servitude), does not expressly apply to facilitators who assist, enable, or financially benefit from trafficking. Under Ga. Code Ann. § 16-5-46(c),

A person commits the offense of trafficking an individual for sexual servitude when that person knowingly:

- (1) Subjects an individual to or maintains an individual in sexual servitude;
- (2) Recruits, entices, harbors, transports, provides, or obtains by any means an individual for the purpose of sexual servitude; or
- (3) Solicits or patronizes by any means an individual to perform sexually explicit conduct on behalf of such person when such individual is the subject of sexual servitude.

Although this language could reach some facilitators, the law does not include terms such as “benefiting,” “assisting,” or “aiding,” which are terms more explicitly applicable to facilitators.

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

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

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

- 1. Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution) could apply to facilitators and specifically criminalizes “exercising control over the use of any place or conveyance which would offer seclusion or shelter for the practice of prostitution . . . when [the perpetrator] knowingly grants or permits the use of such place for the purpose of prostitution.” Similarly, pursuant to Ga. Code Ann. § 44-7-18(b)

<sup>42</sup> See *supra* note 2.



(Effect of leases for purposes of prostitution or assignation), leases entered into for the purposes of prostitution “shall be void.”

2. Ga. Code Ann. § 16-6-11 (Pimping). Although not specific to minors, the offense of pimping, as defined in Ga. Code Ann. § 16-6-11, includes when a person,

.....  
(3) Directs or transports another person to a place when he or she knows or should know that the direction or transportation is for the purpose of prostitution;

.....  
(5) Aids or abets, counsels, or commands another in the commission of prostitution or aids or assists in prostitution where the proceeds or profits derived therefrom are to be divided on a pro rata basis.

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

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

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

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).<sup>43</sup>

Additionally, pursuant to Ga. Code Ann. § 42-8-60(j)(3) (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge), special provisions for first time offenders in Georgia do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sex trafficking or sexual exploitation of a minor.

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<sup>43</sup> See *supra* Component 2.9 for circumstances that will limit these penalties.

Where a facilitator is also engaged in criminal gang activity, extra penalties may apply. It is an offense “for any person employed by or associated with a criminal street gang to conduct or participate in criminal gang activity through the commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.” Ga. Code Ann. § 16-15-4(a).<sup>44</sup> In addition to any other penalty provided by law, a violation of this provision is punishable by imprisonment for 5–15 years, a fine of \$10,000–\$15,000, or both. Ga. Code Ann. § 16-5-4(k)(1). Additionally, Ga. Code Ann. § 16-15-5(b) provides “[a]ny property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this chapter, and proceeds are declared to be contraband and no person shall have a property right in them.”

In addition to criminal penalties, Georgia has also enacted mandatory posting requirements for businesses likely to be used in the course of human trafficking.<sup>45</sup> Such business must post a standard sign in prominent locations informing trafficking victims about available services. Failure to post such notice is punishable by a fine of not more than \$500.00 and “[u]pon a second or subsequent conviction, the owner shall be guilty of a high and aggravated misdemeanor and shall be punished by a fine not to exceed \$5,000.00.” Ga. Code Ann. § 16-5-47(d)(1) (Posting model notice with human trafficking hotline information in businesses and on Internet; termination).

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

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

Under Ga. Code Ann. § 15-21-208(a) (Payment and disposition of fines and forfeitures), in every case in which any court in this state imposes a fine, which will be construed to include costs, for trafficking a person for sexual servitude in violation of Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) or any violation of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), § 16-6-12 (Pandering), § 16-6-14 (Pandering by compulsion), § 16-6-15 (Solicitation of sodomy), § 16-6-16 (Masturbation for hire), or § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), an additional penalty of \$2,500 will be imposed if the defendant was 18 years or older at the time of the offense.

In addition to fines, facilitators may also face asset forfeiture under Ga. Code Ann. § 16-5-46(g), which states,

(1) As used in this subsection, the terms ‘civil forfeiture proceedings,’ ‘proceeds,’ and ‘property’ shall have the same meanings as set forth in Code Section 9-16-2.

(2) Any property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.

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<sup>44</sup> See discussion *supra* in Component 1.2.

<sup>45</sup> Under Ga. Code Ann. § 16-5-47(b), businesses subject to the mandatory posting provision include:

- (1) Adult entertainment establishments;
- (2) Bars;
- (3) Primary airports;
- (4) Passenger rail or light rail stations;
- (5) Bus stations;
- (6) Truck stops;
- (7) Emergency rooms within general acute care hospitals;
- (8) Urgent care centers;
- (9) Farm labor contractors and day haulers;
- (10) Privately operated job recruitment centers;
- (11) Safety rest areas located along interstate highways in this state;
- (12) Hotels;
- (13) Businesses and establishments that offer massage or bodywork services by a person who is not a massage therapist;
- and (14) Government buildings . . . .

(3) Any property subject to forfeiture pursuant to paragraph (2) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

(4) The Attorney General shall be specifically authorized to commence civil forfeiture proceedings under this Code section.

Facilitators prosecuted under Ga. Code Ann. § 16-6-11 (Pimping) may also face asset forfeiture. Under Ga. Code Ann. § 16-6-13.3 (Civil forfeiture of proceeds and property), “[a]ny property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of Code Section 16-6-11 [Pimping] and any proceeds are declared to be contraband and no person shall have a property right in them.” Ga. Code Ann. § 16-6-13.3(b). Additionally, Ga. Code Ann. § 16-6-13.2(b) (Civil forfeiture of motor vehicle) provides, “Any motor vehicle used when the offense involved the pimping of a person to perform an act of prostitution, by a person to facilitate a violation of Code Section 16-6-10 [Keeping a place of prostitution], 16-6-11 [Pimping], 16-6-12 [Pandering], or 16-6-14 [Pandering by compulsion] is declared to be contraband and no person shall have a property right in it.”

Additional forfeiture exists for those facilitators involved in using a minor for a sexual performance or visual depiction of sexually explicit conduct in violation of Ga. Code Ann. § 16-12-100 (Sexual exploitation of children). Ga. Code Ann. § 16-12-100(e)(1) states,

(1) As used in this subsection, the terms ‘proceeds’ and ‘property’ shall have the same meaning as set forth in Code Section 9-16-2.

(2) Any property which is, directly or indirectly, used or intended to be used in any manner to facilitate a violation of this Code section and any proceeds are declared to be contraband and no person shall have a property right in them.

(3) Any property subject to forfeiture pursuant to paragraph (2) of this subsection shall be forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

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

(1) The financial resources and other assets of the offender or person ordered to pay restitution including whether any of the assets are jointly controlled;

(2) The earnings and other income of the offender or person ordered to pay restitution;

(3) Any financial obligations of the offender or person ordered to pay restitution, including obligations to dependents;

(4) The amount of damages;

(5) The goal of restitution to the victim and the goal of rehabilitation of the offender;

(6) Any restitution previously made;

(7) The period of time during which the restitution order will be in effect; and

(8) Other factors which the ordering authority deems to be appropriate.

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

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

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

#### 4.4 *Promoting and selling images of child sexual exploitation carries penalties as high as similar federal offenses.*

Ga. Code Ann. § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties) criminalizes the promotion and sale of images of child sexual exploitation (ICSE). Specifically, “It is unlawful for any person knowingly to . . . promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” Ga. Code Ann. § 16-12-100(b)(5). Similarly, it is also a crime to “advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct can be found or purchased.” Ga. Code Ann. § 16-12-100(b)(6). This crime is punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(f)(1).<sup>46</sup>

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

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

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

The crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).<sup>47</sup> Additionally, for persons found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sexual exploitation of a minor, including for the possession, production, or dissemination of ICSE under Ga. Code Ann. § 16-12-100.2, the special provisions for first time offenders do not apply. Ga. Code Ann. § 42-8-60(j)(3) (Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge).

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<sup>46</sup> Ga. Code Ann. § 16-12-100 further provides, “[a]ny person punished as provided in this paragraph shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2 [“Sexual offense” defined; split sentence; deviation from mandatory minimum sentence].” *See supra* note 3 for discussion of Ga. Code Ann. § 17-10-6.2.

<sup>47</sup> *See supra* Component 2.9 for circumstances that will limit these penalties.

**Legal Components:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based upon the willingness of a minor under 18 to engage in the commercial sex act.*
- 5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*
- 5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*
- 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC).*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.*
- 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 to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

**Legal Analysis:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*<sup>48</sup>

Under Georgia’s core human trafficking statute, Ga. Code Ann. § 16-5-46(c)<sup>49</sup> (Trafficking of persons for labor or sexual servitude), all commercially sexually exploited children are identifiable as sex trafficking victims. Ga. Code Ann. § 16-5-46(c) (Trafficking of persons for labor or sexual servitude) does not require a showing of force, fraud, or coercion for minors under 18 to be identified as sex trafficking victims.<sup>50</sup> Additionally, the core sex trafficking statute is buyer-applicable through the language “solicits,” “patronizes,” and “obtains”; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking.<sup>51</sup> Ga. Code Ann. § 16-5-46(c). Finally, the offense of human trafficking under Ga. Code Ann. § 16-5-46 does not require that a trafficker or controlling be identified.<sup>52</sup> Consequently, Georgia’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the child without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Ga. Code Ann. § 16-5-46(c).

<sup>48</sup> See generally **SHARED HOPE INTERNATIONAL**, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>49</sup> See *supra* note 2.

<sup>50</sup> See *supra* Component 1.1.

<sup>51</sup> See *supra* discussion of buyer applicability in Component 2.1.

<sup>52</sup> See *supra* Component 1.1.



5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor under 18 to engage in the commercial sex act.*

Under Ga. Code Ann. § 16-5-46(d) (Trafficking of persons for labor or sexual servitude), “[t]he age of consent for sexual activity . . . of the individual being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.” However, this does not fully prohibit a defendant from asserting a defense based on the minor victim’s willingness to engage in the commercial sex act.

- 5.2.1 Recommendation: Amend Ga. Code Ann. § 16-5-46(d) (Trafficking of persons for labor or sexual servitude) to expressly prohibit a defendant from asserting a defense based on the minor victim’s willingness to engage in the commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>53</sup>

Georgia law does not prohibit the criminalization of minors for prostitution offenses. The prostitution statute states, “A person commits the offense of prostitution when he or she performs or offers or consents to perform a sexual act, including but not limited to sexual intercourse or sodomy, for money or other items of value.” Ga. Code Ann. § 16-6-9 (Prostitution). The offense is punishable as a misdemeanor. Ga. Code Ann. § 16-6-13(a)(2) (Penalties for violating Code Sections 16-6-9 through 16-6-12). Similarly, Ga. Code Ann. § 16-6-16 (Masturbation for hire) has no age distinctions and applies regardless of age. Ga. Code Ann. § 16-6-16. While juvenile victims may assert an affirmative defense to prostitution-related charges under Ga. Code Ann. § 16-3-6(b)<sup>54</sup> (Affirmative defenses to certain sexual crimes), this defense does not eliminate criminal liability for prostitution offenses for minors.

- 5.3.1 Recommendation: Amend Ga. Code Ann. § 16-6-9 (Prostitution) and § 16-6-16 (Masturbation for hire) to ensure that all minors are protected from criminalization for prostitution offenses.<sup>55</sup>

5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*

Georgia law does not provide juvenile sex trafficking victims with a statutory avenue to services that are responsive to the unique trauma and harms associated with trafficking victimization. Further, state law does not provide a mandatory mechanism to prevent delinquency adjudications for offenses committed pursuant to the victimization.

- 5.4.1 Recommendation: Enact a protective response for juvenile sex trafficking victims that provides an avenue to specialized services and a mandatory mechanism to prevent delinquency adjudications.

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<sup>53</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>54</sup> Ga. Code Ann. § 16-3-6(b) (Affirmative defenses to certain sexual crimes) states,

A person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed by an accused who was:

- (1) Less than 18 years of age at the time of the conduct such person was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46; or
- (2) Acting under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.

<sup>55</sup> See generally SHARED HOPE INTERNATIONAL, “Seeking Justice: Legal approaches to eliminate criminal liability for child sex trafficking victims” (2018), [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (discussing need to eliminate a minor’s criminal liability for prostitution and other offenses committed pursuant to trafficking victimization and to establish a statutory avenue to specialized services).

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>56</sup>

Child sex trafficking and commercial sexual exploitation are identified as types of child abuse under Georgia's child protection statute, Ga. Code Ann. § 49-5-40 (Definitions; confidentiality of records; restricted access to records), and Georgia's mandatory child abuse reporting statute, Ga. Code Ann. § 19-7-5(b)(4) (Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report).

Pursuant to Ga. Code Ann. § 49-5-40(a)(3), "child abuse" includes,

- (A) Physical injury or death inflicted upon a child by a parent, guardian, legal custodian, or caretaker thereof by other than accidental means; provide, however, that physical forms of discipline may be used as long as there is no physical injury to the child;
- (B) Neglect or exploitation of a child by a parent, guardian, legal custodian, or caretaker thereof;
- (C) Sexual abuse of a child;
- (D) Sexual exploitation of a child; or
- (E) Emotional abuse of a child.

Further, Ga. Code Ann. § 49-5-40(a)(10) defines "sexual abuse" as, "an individual's employing, using, persuading, inducing, enticing, or coercing any child who is not that individual's spouse to engage in any act which involves:

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between individuals of the same or opposite sex;
- .....
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any individual's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual exploitation," as defined by Ga. Code Ann. § 49-5-40(a)(11), includes "[c]onduct by any individual who allows, permits, encourages, or requires any child to engage in:

- (A) Trafficking of persons for labor or sexual servitude, in violation of Code Section 16-5-46;
- (B) Prostitution in violation of Code Section 16-6-9;
- (C) Obscene depiction of a minor, in violation of Code Section 16-11-40.1;
- (D) Nude or sexually explicit electronic transmission, in violation of Code Section 16-11-90; or
- (E) Sexually explicit conduct for the purpose of producing any visual of print medium depicting such conduct, in violation of Code Section 16-12-100;

For purposes of mandatory reporting, "child abuse" under Ga. Code Ann. § 19-7-5(b)(4) means:

- (A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;
- (B) Neglect or exploitation of a child by a parent or caretaker thereof;
- (C) Endangering a child;
- (D) Sexual abuse of a child; or

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<sup>56</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

(E) Sexual exploitation of a child.

Further, Ga. Code Ann. § 19-7-5(b)(10)(J) defines “sexual abuse” as “a person’s employing, using persuading, inducing, or coercing any minor who is not such person’s spouse to engage in any act which involves . . . [a]ny act described by subsection (c) of Code Section 16-5-46 [Trafficking in persons for labor or sexual servitude].”

Lastly, within the title on “Courts” and the Chapter on “Juvenile Code”, Ga. Code Ann. § 15-11-2 also includes “sexual abuse or sexual exploitation” as abuse. Ga. Code Ann. § 15-11-2(2)(C). “Sexual exploitation” is defined as “conduct by a caregiver or other person responsible for the care of a child who allows, permits, encourages, or requires a child to engage in: (A) Prostitution, in violation of Code Section 16-6-9; or (B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, in violation of Code Section 16-12-100.” Ga. Code Ann. § 15-11-2(70). Further, the law also defines “aggravated circumstances” to include instances in which a parent “[s]ubjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation.” Ga. Code Ann. § 15-11-2(5)(C).

Finding that the definition of “child abuse” under Georgia’s child protection statute, mandatory reporting laws, and Juvenile Code encompasses acts of child sex trafficking and commercial sexual exploitation, a minor victim of either would be identified as abused.

5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*

Georgia’s narrow definitions of “legal custodian” under Ga. Code Ann. § 49-5-3(12) (Children and Youth Services; definitions) and “caregiver” under Ga. Code Ann. § 49-5-3(3) (Child and youth services) would likely be a barrier for a child sex trafficking victim to receive child welfare protection and services, as both embody traditional notions of legal care and custody. However, pursuant to Georgia’s child protection statute, Ga. Code Ann. § 49-5-180(2) (Central child abuse registry; definitions), the definition of “alleged child abuser” includes “an individual named in an abuse investigation report as having committed a substantial case”; thus, this definition would be sufficiently broad as to provide a gateway for services and protection for child victims.

Furthermore, the definitions of “sexual abuse” and “sexual exploitation” under Georgia’s code related to domestic relations and child abuse reporting expand who is considered a perpetrator for purposes of child abuse identification. In defining “sexual abuse” and “sexual exploitation,” Ga. Code Ann. § 19-7-5(b)(10), (11) does not include a caregiver barrier; instead, these forms of abuse may be committed by “any person.” Therefore, the definitions of “alleged child abuser,” “sexual abuse,” and “sexual exploitation” would allow child welfare agencies to provide services and protections to minor victims of sexual exploitation and trafficking regardless of the child’s relationship to the perpetrator of the abuse.<sup>57</sup>

5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC).*

For the purposes of crime victims’ compensation funds, “crime” includes a violation of Ga. Code Ann. § 16-5-46 (Trafficking in persons for labor or sexual servitude). Ga. Code Ann. § 17-15-2(3)(A). Pursuant

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<sup>57</sup> See *supra* Component 5.5. for discussion on identifying victims of trafficking and CSEC offense as “abused” for purposes of accessing child welfare services and protections.

to Ga. Code Ann. § 17-15-7(a)(1), a person “eligible for awards pursuant to this chapter” is defined as someone who endures at least one of the following:

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

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

Some crime victims may become ineligible or face reduced awards if they are considered accomplices to the crime, though human trafficking victims are specifically excluded from this ineligibility provision. Ga. Code Ann. § 17-15-7(e).

Even if victims are able to access the victims’ compensation funds, a claim for compensation “shall be filed by a victim not later than three years after the occurrence of the crime upon which such claim is based . . . provided, however, that if such victim was a minor at the time of the commission of the crime, he or she shall have until three years after his or her eighteenth birthday to file such claim; and provided, further, that upon good cause shown, the board may extend the time for filing a claim.” Ga. Code Ann. § 17-15-5(b)(1).

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

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

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

. . . .

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

5.7.1 Recommendation: Enact a law that expressly allows minor victims of sex trafficking and commercial sexual exploitation an extended time to file a claim for victim's compensation.

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

Several victim-friendly criminal justice procedures exist in Georgia.

Under Ga. Code Ann. § 16-5-46(e) (Trafficking in persons for labor or sexual servitude), “[t]he sexual history or history of commercial sexual activity of a person alleged to have been trafficked or such person’s connection by blood or marriage to an accused in the case or to anyone involved in such person’s trafficking shall be excluded from evidence if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.”

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

Additionally, under Ga. Code Ann. § 24-8-820 (Testimony as to child’s description of sexual contact or physical abuse),

A statement made by a child younger than 16 years of age describing any act of sexual contact or physical abuse performed with or on such child by another or with or on another in the presence of such child shall be admissible in evidence by the testimony of the person to whom made if the proponent of such statement provides notice to the adverse party prior to trial of the intention to use such out-of-court statement and such child testifies at the trial, unless the adverse party forfeits or waives such child's testimony as provided in this title, and, at the time of the testimony regarding the out-of-court statements, the person to whom the child made such statement is subject to cross-examination regarding the out-of-court statements.

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

For children ten years of age and younger that are victims of the crimes of Ga. Code Ann. § 16-5-70 (Cruelty to children), § 16-6-1 (Rape), § 16-6-4 (Child molestation; aggravated child molestation), or §



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

Additionally, each county in Georgia is required to have a written child abuse protocol which deals with victims of child abuse and exploitation. Ga. Code Ann. § 19-15-2 (Child abuse protocol committee; written child abuse protocol; training of members; written sexual abuse and exploitation protocol). Georgia’s written child abuse protocol also focuses on the anonymity of the victim under Ga. Code Ann. § 15-11-16. It states, “(c) On appeal, the anonymity of a child, and where appropriate, a victim or witness who is under the age of 18 years, shall be preserved by appropriate use of a child's, victim's, or witness's initials as appropriate.”

5.9 *Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.*

Georgia law allows child sex trafficking victims to petition for both expungement and vacatur without a waiting period; however, victims must follow a separate process to accomplish each, and the laws apply only to adjudications for sexual crimes. Under Ga. Code Ann. § 15-11-32 (Modification or vacation of orders; retroactive application),

- ....
- (d) An order of adjudication of delinquency by a court may be modified or vacated if the child was adjudicated for a delinquent act for a sexual crime as defined in Code Section 16-3-6 [Affirmative defenses to certain sexual crimes] and such crime resulted from the child being:
    - (1) Trafficked for sexual servitude in violation of Code Section 16-5-46; or
    - (2) A victim of sexual exploitation as defined in Code Section 49-5-40.
  - (e) Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this Code section. Such petition shall set forth in clear and concise language the grounds upon which the relief is requested.
  - (f) After a petition seeking relief under this Code section is filed, the court shall fix a time for hearing and shall cause notice to be served on the parties to the proceeding or those affected by the relief sought. After the hearing, the court shall deny or grant relief as the evidence warrants.
- ....

Pursuant to Ga. Code Ann. § 16-3-6, “‘Sexual crime’ means prostitution, sodomy, solicitation of sodomy, or masturbation for hire . . . .” Accordingly, a child sex trafficking victim may petition to vacate an adjudication for prostitution, but not for other offenses related to the minor’s victimization.

A separate process allows for these records to be sealed. Specifically, Ga. Code Ann. § 15-11-701(c) (Sealing of files and records; hearings; limitations on disclosure; identity of victim) states,

On application of a person who has been adjudicated for a delinquent act or on the court’s own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding, including those specified in Code Sections 15-11-702 [Children’s fingerprints, photographs, and names] and 15-11-708 [Separation of juvenile and adult records for law enforcement; inspection; limited fingerprint access], if the court finds that the child was adjudicated for a delinquent act for a sexual crime as defined in Code Section 16-3-6 and such crime resulted from the child being: (1) Trafficked for sexual

servitude in violation of Code Section 16-5-46; or (2) A victim of sexual exploitation as defined in Code Section 49-5-40.

Pursuant to Ga. Code Ann. § 15-11-701(e), a sealed record “shall be treated as if it had never occurred. All index references shall be deleted and the person, the court, the law enforcement officers, and the departments shall properly reply that no record exists pertaining to the person upon inquiry in any matter.” Further, sealed records may be inspected upon court order only by the subject of the record, persons named in the order, or criminal justice officials. Ga. Code Ann. § 15-11-701(e).

In addition to these trafficking-specific provisions, records related to an adjudication for a non-sexual crime may be sealed under Ga. Code Ann. § 15-11-701(b), which states,

On application of a person who has been adjudicated for committing a delinquent act or as a child in need of services or on the court’s own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding if the court finds that:

- (1) Two years have elapsed since the final discharge of the person;
- (2) Since the final discharge of the person he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated for committing a delinquent act or as a child in need of services and not proceeding seeking conviction or adjudication is pending against the person; and
- (3) The person has been rehabilitated.

5.9.1 Recommendation: Amend Ga. Code Ann. § 15-11-32 (Modification or vacation of orders; retroactive application) and § 15-11-701(c) (Sealing of files and records; hearings; limitations on disclosure; identity of victim) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for other offenses related to trafficking victimization.

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

Under Ga. Code Ann. § 17-14-3(a) (Requirement of restitution by offender as condition of relief generally), “[I]n addition to any other penalty imposed by law, a judge of any court of competent jurisdiction shall, in sentencing an offender, make a finding as to the amount of restitution due any victim, and order an offender to make full restitution to such victim.” Also, pursuant to Ga. Code Ann. § 17-14-9 (Amount of restitution), “The amount of restitution ordered shall not exceed the victim’s damages.” Ga. Code Ann. § 17-14-9. This award, however, will reduce the amount payable to the victim from the Crime Victims Compensation Board. Ga. Code Ann. § 17-14-6(c). Similarly, it sets off the amount a victim is eligible to recover in civil proceedings. Ga. Code Ann. § 17-14-11. Notably, the definition of “victim” for the article on “restitution” excludes “any person who is concerned in the commission of such unlawful act as defined in Code Section 16-2-20.”<sup>58</sup> Ga. Code Ann. § 17-14-2(9). Under Ga. Code Ann. § 16-2-20, “[a] person is concerned in the commission of a crime only if he,” among other things, “[i]ntentionally

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<sup>58</sup> Ga. Code Ann. § 16-2-20 (When a person is a party to a crime) states,

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

aids or abets in the commission of the crime.” § Ga. Code Ann. § 16-2-20(b)(3). This provision could potentially inhibit domestic minor sex trafficking victims from recovering funds if courts view the victims as aiders or abettors in the crime.

Ga. Code Ann. § 9-3-33.1 (Actions for childhood sexual abuse) establishes civil remedies specific to harm caused by human trafficking victimization based on the definition of “childhood sexual abuse,” which is defined to include human trafficking and CSEC offenses.

*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 to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Under Ga. Code Ann. § 17-3-2.1(b) (Limitation on prosecution of certain offenses involving a victim under 16 years of age), “[f]or crimes committed on or after July 1, 2012, if the victim of: (1) Trafficking a person for sexual servitude, as defined in Code Section 16-5-46 . . . (5) Child molestation or aggravated child molestation, as defined in Code Section 16-6-4; (6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5 . . . a prosecution may be commenced at any time.” For other felonies committed against victims under the age of 18, the prosecution must “commence[] within seven years after the commission of the crime.” Ga. Code Ann. § 17-3-1(c) (Generally).

Additionally, pursuant to Ga. Code Ann. § 9-3-33.1(b)(2) (Limitations for actions for childhood sexual abuse), the statute of limitation for the commencement of civil action has been lengthened for victims of child sexual abuse. Ga. Code Ann. § 9-3-33.1(b)(2) states,

- (A) Notwithstanding Code Section 9-3-33, any civil action for recovery of damages suffered as a result of childhood sexual abuse committed on or after July 1, 2015, shall be commenced:
  - (i) On or before the date the plaintiff attains the age of 23 years; or
  - (ii) Within two years from the date that the plaintiff knew or had reason to know of such abuse and that such abuse resulted in injury to the plaintiff as established by competent medical or psychological evidence.
- (B) When a plaintiff's civil action is filed after the plaintiff attains the age of 23 years but within two years from the date that the plaintiff knew or had reason to know of such abuse and that such abuse resulted in injury to the plaintiff, the court shall determine from admissible evidence in a pretrial finding when the discovery of the alleged childhood sexual abuse occurred. The pretrial finding required under this subparagraph shall be made within six months of the filing of the civil action.<sup>59</sup>

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<sup>59</sup> Ga. Code Ann. § 9-3-33.1(d) (Limitations for actions for childhood sexual abuse) states,

- (1) For a period of two years following July 1, 2015, plaintiffs of any age who were time barred from filing a civil action for injuries resulting from childhood sexual abuse due to the expiration of the statute of limitations in effect on June 30, 2015, shall be permitted to file such actions against the individual alleged to have committed such abuse before July 1, 2017, thereby reviving those civil actions which had lapsed or technically expired under the law in effect on June 30, 2015.
- (2) The revival of a claim as provided in paragraph (d)(1) of this subsection shall not apply to:
  - (a) Any claim that has been litigated to finality on the merits in a court of competent jurisdiction prior to July 1, 2015. Termination of a prior civil action on the basis of the expiration of the statute of limitations shall not constitute a claim that has been litigated to finality on the merits;
  - (b) Any written settlement agreement which has been entered into between a plaintiff and defendant when the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed such agreement; and
  - (c) Any claim against an entity, as such term is defined in § subsection (c) of this Code section. 9-3-33.1(c)
- (3) This subsection shall be repealed effective July 1, 2017.

Ga. Code Ann. § 9-3-33.1(b)(1) states,

As used in this subsection, the term “childhood sexual abuse” means any act committed by the defendant against the plaintiff which occurred when the plaintiff was under 18 years of age and which would be in violation of:

- (A) Trafficking a person for sexual servitude, as prohibited in Code Section 16-5-46;
- (B) Rape, as prohibited in Code Section 16-6-1;
- (C) Statutory rape, as prohibited in Code Section 16-6-3, if the defendant was 21 years of age or older at the time of the act;
- (D) Aggravated sodomy, as prohibited in Code Section 16-6-2;
- (E) Child molestation or aggravated child molestation, as prohibited in Code Section 16-6-4, unless the violation would be subject to punishment as provided in paragraph (2) of subsection (b) of Code Section 16-6-4 or paragraph (2) of subsection (d) of Code Section 16-6-4;
- (F) Enticing a child for indecent purposes, as prohibited in Code Section 16-6-5, unless the violation would be subject to punishment as provided in subsection (c) of Code Section 16-6-5;
- (G) Incest, as prohibited in Code Section 16-6-22;
- (H) Aggravated sexual battery, as prohibited in Code Section 16-6-22.2; or
- (I) Part 2 of Article 3 of Chapter 12 of Title 16.

**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 and commercial sexual exploitation of children (CSEC).*
- 6.4 *Using a law enforcement decoy to investigate buying or selling commercial sex is not a defense to soliciting, purchasing, or selling sex with a minor.*
- 6.5 *Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *State law requires reporting of missing children and located missing children.*

**Legal Analysis:**

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

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

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

(1) Methods for identifying, combating, and reporting incidents where a person has been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46 [Trafficking of persons for labor or sexual servitude];

(2) Methods for providing proper detention facilities or alternatives to detention facilities for persons who have been trafficked for labor or sexual servitude . . . including providing information on therapeutic facilities for such persons; and

(3) Methods for assisting persons who have been trafficked for labor or sexual servitude . . . including providing information on social service organizations available to assist such person.

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

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

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



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

Notably however, certain protections apply for obtaining telephone and electronic communication of a minor under 18 in which case law enforcement must obtain a judicial order. Ga. Code Ann. § 16-11-66(b). Specifically, Ga. Code Ann. § 16-11-66(b) states in part,

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

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

### 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking and commercial sexual exploitation of children (CSEC).*

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

Upon written application, under oath, of the district attorney having jurisdiction over prosecution of the crime under investigation or the Attorney General made before a judge of superior court having jurisdiction over the crime under investigation, such court may issue an investigation warrant permitting the use of a device for the surveillance of a person or place to the extent the same is consistent with and subject to the terms, conditions, and procedures provided for by 18 U.S.C. Chapter 119. Such warrant shall have state-wide application and interception of communications shall be permitted in any location in this state.

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

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

Ga. Code Ann. § 16-5-46(k) (Trafficking of persons for labor or sexual servitude), Georgia's core sex trafficking law, expressly prohibits a defendant from asserting a defense based on the use of a law enforcement decoy posing as a minor during the investigation. Under Ga. Code Ann. § 16-5-46(k),

The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this Code section shall not constitute a defense to prosecution under this Code section; provided, however, that Code Section 16-3-25 [Entrapment] may still provide an absolute defense.

Additionally, several prostitution-related offenses likely prevent the defense from being raised, as the mere act of "solicitation" is criminalized, without an included specificity as to whom the actor is prohibited from soliciting. Thus, the act of soliciting a law enforcement whom the offender believes to be a minor violates both Ga. Code Ann. § 16-6-12 (Pandering) and § 16-6-15 (Solicitation of sodomy); offenses under these statutes include the solicitation for both the acts of pandering and sodomy, respectively. Ga. Code Ann. § 16-6-11(1)–(2) (Pimping) also provides criminal penalties when a person,

- (a) Offers or agrees to procure a prostitute for another;
- (b) Offers or agrees to arrange of meeting for the purpose of prostitution.

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

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

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

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

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

Lastly, provisions allow for the discovery of electronic documents under Ga. Code Ann. § 35-3-4.3 (Subpoena power for investigations of violations involving trafficking of person for labor or sexual servitude). Specifically, Ga. Code Ann. § 35-3-4.3(a) states,

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

6.6 *State law requires reporting of missing children and located missing children.*

Georgia has a Missing Children Information Center, which collects and disseminates information on missing children. Ga. Code Ann. § 35-3-81 (Establishment, development, maintenance, and operation of

center; staff). Pursuant to Ga. Code Ann. § 35-1-8(a)(2), (3) (Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons), every law enforcement agency has a duty to do the following:

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

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

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

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

- 6.6.1 Recommendation: Amend Ga. Code Ann. § 35-3-84 (Sending information to center) to require law enforcement to also report when a missing child has been located.

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