

## 2019 ANALYSIS AND RECOMMENDATIONS

### NORTH CAROLINA

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

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##### **Legal Components:**

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

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

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

North Carolina criminalizes child sex trafficking without requiring use of force, fraud, or coercion when the victim is a minor. Pursuant to N.C. Gen. Stat. § 14-43.11(a) (Human trafficking),

A person commits the offense of human trafficking when that person

- (i) knowingly or in reckless disregard of the consequences of the action recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude or
- (ii) willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude.

N.C. Gen. Stat. § 14-43.13(a)<sup>2</sup> (Sexual servitude) separately criminalizes “knowingly or in reckless disregard of the consequences of the action subject[ing], maintain[ing], or obtain[ing] another for purposes of sexual

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<sup>1</sup> This report includes legislation enacted as of August 1, 2019.

servitude.” Pursuant to N.C. Gen. Stat. § 14-43.10(a)(5) (Definitions), “sexual servitude” is defined to include the following:

- a. Any sexual activity as defined in G.S. 14-190.13<sup>3</sup> [Definitions for certain offenses concerning minors] for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
- b. Any sexual activity as defined in G.S. 14-190.13 that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

If the victim is a minor, a violation of N.C. Gen. Stat. § 14-43.11 is a Class B2 felony, which carries a presumptive sentence of 125–157 months imprisonment.<sup>4</sup> N.C. Gen. Stat. §§ 14-43.11(b), 15A-1340.17(c).<sup>5</sup> If the victim is a minor, a violation of N.C. Gen. Stat. § 14-43.13 is a Class C felony, which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-43.13(b), 15A-1340.17(c).

In cases in which a parent or guardian engages in the exploitation of his or her child, N.C. Gen. Stat. § 14-43.14 (Unlawful sale, surrender, or purchase of a minor) makes it a crime when such person,

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<sup>2</sup> The text of N.C. Gen. Stat. § 14-43.13 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective December 1, 2019).

<sup>3</sup> “Sexual activity” is defined in N.C. Gen. Stat. § 14-190.13(5) as

Any of the following acts:

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

<sup>4</sup> The sentences of imprisonment provided throughout this report are based on the assumption that the defendant has no prior felony or misdemeanor convictions and that there are no aggravating or mitigating factors. A defendant with prior felony or misdemeanor convictions may be subject to a greater minimum sentence of imprisonment pursuant to N.C. Gen. Stat. §§ 15A-1340.14, 15A-1340.21. The presence of aggravating factors, such as where the “defendant involved a person under the age of 16 in the commission of the crime,” “the offense is a violation of . . . [human trafficking and sexual servitude] . . . and involved multiple victims”, or “the offense is a violation of . . . [human trafficking and sexual servitude] . . . and the victim suffered serious injury as result of the offense”, at least in felony convictions, may subject the defendant to an increased minimum sentence of imprisonment, while the presence of mitigating factors may decrease the sentencing range applicable to a defendant. N.C. Gen. Stat. §§ 15A-1340.16(d)(13), (19a), (19b), (e).

<sup>5</sup> Pursuant to N.C. Gen. Stat. § 15A-1340.17(f), “[u]nless provided otherwise in a statute establishing a punishment for a specific crime, for offenders sentenced for a Class B1 through E felony that is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus 60 additional months.”

acting with willful or reckless disregard for the life or safety of a minor, participates in any of the following: the acceptance, solicitation, offer, payment, or transfer of any compensation, in money, property, or other thing of value, at any time, by any person in connection with the unlawful acquisition or transfer of the physical custody of a minor, except as ordered by the court.<sup>6</sup>

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

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

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

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

1. N.C. Gen. Stat. § 14-205.1(a) (Solicitation of prostitution) states in part that “any person who solicits another for the purpose of prostitution is guilty of a Class 1 misdemeanor for a first offense and a Class H felony for a second subsequent offense.” Additionally, “Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony.” N.C. Gen. Stat. § 14-205.1(a). N.C. Gen. Stat. § 14-203(5) (Definitions) defines “prostitution” as

The performance of, offer of, or agreement to perform vaginal intercourse, any sexual act<sup>7</sup> as defined in G.S. 14-27.20, or any sexual contact<sup>8</sup> as defined in G.S. 14-27.1, for the purpose of sexual arousal or gratification for any money or other consideration.

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

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<sup>6</sup> N.C. Gen. Stat. § 14-43.14(a) further provides, “This section does not apply to actions that are ordered by a court, authorized by statute, or otherwise lawful.”

<sup>7</sup> N.C. Gen. Stat. § 14-27.20(4) (Definitions) defines “sexual act” to include “cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body. It is an affirmative defense that the penetration was for accepted medical purposes.”

<sup>8</sup> N.C. Gen. Stat. § 14-27.20(5) (Definitions) defines “sexual contact” to mean

- (a) Touching the sexual organ, anus, breast, groin, or buttocks of any person.
- (b) A person touching another person with their own sexual organ, anus, breast, groin, or buttocks.
- (c) A person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.

imprisonment and a Class G felony is punishable by a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.17(c).

2. N.C. Gen. Stat. § 14-205.2(a) (Patronizing a prostitute) provides,

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

(1) Engages in vaginal intercourse, any sexual act<sup>9</sup> as defined in G.S. 14-27.1, or any sexual contact<sup>10</sup> as defined in G.S. 14-27.1, for the purpose of sexual arousal or gratification with a prostitute.

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

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

3. N.C. Gen. Stat. § 14-205.3(b) (Promoting prostitution) states,

Any person who willfully performs any of the following acts commits the offense of promoting prostitution of a minor or person who has a mental disability:

(1) Advances prostitution as defined in G.S. 14-203,<sup>11</sup> where a minor or person who has a severe or profound mental disability engaged in prostitution, or any person engaged in prostitution in the place of prostitution is a minor or has a severe or profound mental disability at the time of the offense.

(2) Profits from prostitution by any means where the prostitute is a minor or has a severe or profound mental disability at the time of the offense.

(3) Confines a minor or a person who has a severe or profound mental disability against the person's will by the infliction or threat of imminent infliction of great bodily harm, permanent disability, or disfigurement or by administering to the minor or person who has a severe or profound mental disability, without the person's consent or by threat or deception and for

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<sup>9</sup> See *supra* note 7.

<sup>10</sup> See *supra* note 8.

<sup>11</sup> N.C. Gen. Stat. § 14-203(1) (Definitions) defines “advancing prostitution” to include the following:

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

1. Soliciting another for the purpose of prostitution.

2. Arranging or offering to arrange a meeting of persons for the purpose of prostitution.

3. Directing another to a place knowing the direction is for the purpose of prostitution.

4. Using the Internet, including any social media Web site, to solicit another for the purpose of prostitution.

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

1. Knowingly granting or permitting the use of the place for the purpose of prostitution.

2. Granting or permitting the use of the place under circumstances from which the person should reasonably know that the place is used or is to be used for purposes of prostitution.

3. Permitting the continued use of the place after becoming aware of facts or circumstances from which the person should know that the place is being used for the purpose of prostitution.

other than medical purposes, any alcoholic intoxicant or a drug as defined in Article 5 of Chapter 90 of the General Statutes (North Carolina Controlled Substances Act) and does any of the following:

- a. Compels the minor or person who has a severe or profound mental disability to engage in prostitution.
- b. Arranges a situation in which the minor or person who has a severe or profound mental disability may practice prostitution.
- c. Profits from prostitution by the minor or person who has a severe or profound mental disability.

....

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

4. N.C. Gen. Stat. § 14-190.16(a) (First degree sexual exploitation of a minor) makes it an offense if a person, while “knowing the character or content of the material or performance,”
  - (1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
  - (2) Permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
  - (3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
  - (4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

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

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

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

6. N.C. Gen. Stat. § 14-190.17A (Third degree sexual exploitation of a minor) criminalizes a person for the offense of third degree sexual exploitation of a minor,
  - (a) If, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.
  - (b) In a prosecution under this section, the trier of fact may infer that a participant in sexual activity with whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.

A violation of N.C. Gen. Stat. § 14-190.17A is a Class H felony.

7. N.C. Gen. Stat. § 14-190.6 (Employing or permitting minor to assist in offense under Article) makes it a crime if any person 18 or older “intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article [Offenses against Public Morality and Decency] and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 [Obscene literature and exhibitions] . . . .”<sup>12</sup> A violation of N.C. Gen. Stat. § 14-190.6 is a Class I felony, which carries a presumptive sentence of 4–6 months imprisonment. N.C. Gen. Stat. §§ 14-190.6, 15A-1340.17(c).

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

1. N.C. Gen. Stat. § 14-39(a) (Kidnapping) states in part,

Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

. . . .

- (5) Trafficking another person with the intent that the other person be held in involuntary servitude or sexual servitude in violation of G.S. 14-43.11 [Human trafficking].
- (6) Subjecting or maintaining such other person for sexual servitude in violation of G.S. 14-43.13 [Sexual servitude].

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

2. N.C. Gen. Stat. § 14-27.21(a)(3) (First-degree forcible rape) states,

A person is guilty of first-degree forcible rape if the person engages in vaginal intercourse with another person by force or against the will of the other person and does any of the following:

. . . .

- (3) The person commits the offense aided and abetted by one or more other persons.

First degree forcible rape is a Class B1 felony, which carries a presumptive sentence of 144 months to life imprisonment without parole.

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<sup>12</sup> Material is “obscene” if all of the following apply: “(1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and (2) The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and (3) The material lacks serious literary, artistic, political, or scientific value; and (4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.” N.C. Gen. Stat. § 14-190.1(b).

3. N.C. Gen. Stat. § 14-27.24 (First-degree statutory rape) criminalizes the rape of a child under 13 years of age, making such an offense a Class B1 felony. N.C. Gen. Stat. § 14-27.24(a) states,

A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.

4. N.C. Gen. Stat. § 14-27.25(a) (Statutory rape of a person who is 15 years of age or younger) states,

A person is guilty of a Class B1 felony if the defendant engages in vaginal intercourse with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person.

5. N.C. Gen. Stat. § 14-27.26(a)(3) (First-degree forcible sexual offense) is a Class B1 felony when,

[A] person engages in a sexual act with another person by force or against the will of the other person, and does any of the following:

- ....  
(3) The person commits the offense aided or abetted by one or more other persons.

6. N.C. Gen. Stat. § 14-27.27 (Second-degree forcible sexual offense) states,

(a) A person is guilty of second degree forcible sexual offense if the person engages in a sexual act with another person:

- (1) By force and against the will of the other person; or

....

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

7. N.C. Gen. Stat. § 14-27.28 (Statutory sexual offense with a child by an adult) states,

(a) A person is guilty of statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

....  
(d) The offense under N.C. Gen. Stat. § 14-27.29 (First-degree statutory sexual offense) is a lesser included offense in this section.

8. N.C. Gen. Stat. § 14-27.30 (Statutory sexual offense with a person who is 15 years of age or younger) states,

(a) A defendant is guilty of a Class B1 felony if the defendant engages in a sexual act with another person who is 15 years of age or younger and the defendant is at least 12 years old and at least six years older than the person, except when the defendant is lawfully married to the person.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, a defendant is guilty of a Class C felony if the defendant engages in a sexual act with another person who is 15 years of age or younger and the defendant is at least 12 years old and more than four but less than six years older than the person, except when the defendant is lawfully married to the person.

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

A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders,

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

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

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

N.C. Gen. Stat. § 14-204(c) (Prostitution) and § 14-205.1 (Solicitation of prostitution) reference N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude), thereby acknowledging 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.*

North Carolina’s RICO statute<sup>13</sup> provides solely civil remedies and does not impose criminal liability or financial penalties on criminal enterprises that engage in domestic minor sex trafficking. The offense of continuing criminal enterprise under N.C. Gen. Stat. § 14-7.20 (Continuing criminal enterprise), however, does impose criminal penalties on such enterprises. N.C. Gen. Stat. § 14-7.20 provides,

(a) Except as otherwise provided in subsection (a1) of this section, any person who engages in a continuing criminal enterprise shall be punished as a Class H felon and in addition shall be subject to the forfeiture prescribed in subsection (b) of this section.

. . . .

(b) Any person who is convicted under subsection (a) or (a)(1) of this section of engaging in a continuing criminal enterprise shall forfeit to the State of North Carolina:

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

(c) For purposes of this section, a person is engaged in a continuing criminal enterprise if:

- (1) The person violates any provision of this Chapter, the punishment of which is a felony; and
- (2) The violation is a part of a continuing series of violations of this Chapter:
  - a. Which are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position, or any other position of management; and
  - b. From which the person obtains substantial income or resources.

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<sup>13</sup> North Carolina’s Racketeer Influenced and Corrupt Organizations Act (RICO Act) is codified under N.C. General Statutes Chapter 75D. N.C. Gen. Stat. § 75D-4 prohibits engaging in racketeering activity or a pattern thereof and any direct or indirect participation or direction of an enterprise (defined by § 75D-3(a) as ranging from a single person to legally organized entities and informal entities) engaging in such activities. The definition of racketeering activity includes all CSEC and trafficking offenses. See § 75D-3(b)–(c).

All CSEC and trafficking offenses are felonies under Chapter 14 (Criminal Law) of the N.C. General Statutes. Because felonies are included as felonies under this definition of criminal enterprises, acts of commercial sexual exploitation qualify as predicate crimes for prosecution of some criminal enterprises involved in domestic minor sex trafficking under N.C. Gen. Stat. § 14-7.20. Thus, for organizations of five or more persons, the organizers or managers may be criminally prosecuted and subject to forfeiture under this criminal statute as well as civil forfeiture procedures under the RICO Act. Unfortunately, this precludes prosecution of smaller organizations and non-management participants of the enterprise.

**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 child sexual abuse material (CSAM) 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.*

North Carolina’s sexual servitude law can apply to buyers of sex with minors following federal precedent through the term “obtains.”<sup>14</sup> N.C. Gen. Stat. § 14-43.13(a)<sup>15</sup> (Sexual servitude) criminalizes “knowingly or in reckless disregard to the consequences of the action subject[ing], maintain[ing], or obtain[ing] another for purposes of sexual servitude.” N.C. Gen. Stat. § 14-43.10(a)(5) (Definitions) defines “sexual servitude” as

- a. Any sexual activity as defined in G.S. 14-190.13 [Definitions for certain offenses concerning minors] for which anything of value is directly or indirectly given, promised to, or received by any person,

<sup>14</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.

<sup>15</sup> See *supra* note 2.

which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or  
b. Any sexual activity as defined in G.S. 14-190.13 that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

The act of “knowingly or in reckless disregard of the consequences of the action . . . obtain[ing]” a minor for purposes of “sexual activity”<sup>16</sup> for which “anything of value” was given, promised, or received by any individual captures the crime of buying commercial sex with a minor.

North Carolina’s human trafficking law can also apply to buyers following federal precedent though the term “obtains.” N.C. Gen. Stat. § 14-43.11(a) (Human trafficking) states in part,

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

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

CSEC laws separately criminalize buying sex with a minor. N.C. Gen. Stat. § 14-205.1(a) (Solicitation of prostitution) states,

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

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

N.C. Gen. Stat. § 14-205.2(a) (Patronizing a prostitute) states,

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

- (1) Engages in vaginal intercourse, any sexual act as defined in G.S. 14-27.20<sup>17</sup>, or any sexual contact as defined in G.S. 14-27.20,<sup>18</sup> for the purpose of sexual arousal or gratification with a prostitute.
- (2) Enters or remains in a place of prostitution with intent to engage in vaginal intercourse, any sexual act as defined in G.S. 14-27.20, or any sexual contact as defined in G.S. 14-27.20,

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<sup>16</sup> See *supra* note 3.

<sup>17</sup> See *supra* note 7 for the definition of “sexual act.”

<sup>18</sup> See *supra* note 8 for the definition of “sexual contact.”

for the purpose of sexual arousal or gratification.

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

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

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

(1) Advances prostitution<sup>19</sup> as defined in G.S. 14-203.

....

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

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

....

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

....

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

....

Generally, a violation of N.C. Gen. Stat. § 14-205.3(a) is a Class F felony, which is punishable by a presumptive sentence of 13–16 months imprisonment. However, a violation of N.C. Gen. Stat. § 14-205.3(b)(1) or (2) is a Class D felony, which is punishable by 20–25 months imprisonment, and a violation of N.C. Gen. Stat. § 14-205.3(b)(3) is a Class C felony, which carries a sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-205.3(c), (d), 15A-1340.17(c).

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

North Carolina differentiates between soliciting sex acts with a minor and soliciting sex acts with an adult by enhancing the penalty when a minor victim is involved. Under N.C. Gen. Stat. § 14-205.1(a) (Solicitation of prostitution), “Any person 18 years of age or older who willfully solicits a minor for the purpose of prostitution is guilty of a Class G felony.” A Class G felony carries a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.17(c). In contrast, soliciting a person over 18 for prostitution is a Class 1 misdemeanor and is punishable by 1–45 days imprisonment. N.C. Gen. Stat. §§ 14-205.1, 15A-1340.23(c)(2).

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

Buyers of commercial sex acts with minors convicted under N.C. Gen. Stat. § 14-43.11 (Human trafficking), a Class B2 felony when the victim is a minor, are subject to a presumptive sentence of 125–157 months imprisonment. N.C. Gen. Stat. §§ 14-43.11(b), 15A-1340.17(c). A conviction under N.C. Gen. Stat. § 14-43.13

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<sup>19</sup> See *supra* note 11 for the definition of “advances prostitution.”

(Sexual servitude) is a Class C felony punishable by a presumptive sentence of 58–73 months when the victim is a minor. N.C. Gen. Stat. §§ 14-43.13(b), 15A-1340.17(c).

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

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>20</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>21</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>22</sup>

*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.*

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

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

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<sup>20</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>21</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>22</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).

or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act . . . .

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

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

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

The buyer-applicable CSEC offense under N.C. Gen. Stat. § 14-205.1 (Solicitation of prostitution), however, does not expressly prohibit a mistake of age defense.

2.6.1 Recommendation: Amend N.C. Gen. Stat. § 14-205.1 (Solicitation of prostitution) to expressly prohibit a defendant from asserting a defense based on mistake as to the age of the minor victim.

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

North Carolina’s trafficking law, N.C. Gen. Stat. § 14-43.11 (Human trafficking), does not stagger penalties based on a minor’s age and provides a sufficiently high penalty. A violation of N.C. Gen. Stat. § 14-43.11 is a Class B2 felony punishable by a presumptive sentence of 125–157 months imprisonment if the victim is a minor. N.C. Gen. Stat. §§ 14-43.11(b), 15A-1340.17(c).

Similarly, North Carolina’s sexual servitude and buyer-applicable CSEC laws do not stagger penalties based on a minor’s age; however, penalties for violating these offenses are not sufficiently high. A violation of N.C. Gen. Stat. § 14-43.13 (Sexual servitude) is a Class C felony punishable by a presumptive sentence of 58–73 months imprisonment if the victim is a minor. N.C. Gen. Stat. §§ 14-43.13(b), 15A-1340.17(c). Further, a violation of N.C. Gen. Stat. § 14-205.2 (Patronizing a prostitute) is a Class F felony punishable by a presumptive sentence of 13–16 months imprisonment if the victim is a minor, while a violation of N.C. Gen. Stat. § 14-205.1 (Solicitation of prostitution) is a Class G felony punishable by a presumptive sentence of 10–13 months imprisonment if the victim is a minor. N.C. Gen. Stat. §§ 14-205.2(c), 14-205.1, 15A-1340.17(c).

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

Buyers of sex with minors could be subject to several types of financial penalties, including fines, forfeiture, and restitution. Buyers of sex with minors convicted of criminal charges may be ordered to pay a fine. Pursuant to N.C. Gen. Stat. § 15A-1361 (Authorized fines and penalties), “A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law.”<sup>23</sup>

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<sup>23</sup> Pursuant to N.C. Gen. Stat. § 15A-1340.17(b) (Punishment limits for each class of offense and prior record level), “Any judgment that includes a sentence of imprisonment may also include a fine . . . . Unless otherwise provided, the amount of the fine is in the discretion of the court.”

In addition, buyers are subject to mandatory, criminal asset forfeiture. Pursuant to N.C. Gen. Stat. § 14-2.3 (Forfeiture of gain acquired through criminal activity), “Except as is otherwise provided in Article 3 of Chapter 31A [Willful and unlawful killing of decedent], in the case of any violation of Article 13A [North Carolina street gang suppression act] of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.” Further, N.C. Gen. Stat. § 14-43.20 (Mandatory restitution; victim services; forfeiture) specifically provides that “A person who commits a violation of G.S. 14-43.11 [Human trafficking] . . . or 14-43.13 [Sexual servitude] is subject to the property forfeiture provisions set forth in G.S. 14-2.3.” N.C. Gen. Stat. § 14-43.20(e).

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

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.

....

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

....

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

....

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

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

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

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

Buyers are subject to payment of mandatory restitution. N.C. Gen. Stat. § 14-43.20(b) provides,

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services and any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from an offense committed under G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude].

Buyers also could be ordered to pay restitution to the domestic minor sex trafficking victim, as the court is required to consider a potential order of restitution at sentencing. Pursuant to N.C. Gen. Stat. § 15A-1340.34(a) (Restitution generally), “When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term ‘victim’ means a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.” Subsection (b) states in part, “If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.”<sup>24</sup> Under subsection (c), “When subsection (b) of this section does not apply, the court may, in addition to any other penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.”

## 2.9 *Buying and possessing child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*

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

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

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<sup>24</sup> The remainder of subsection (b) states, “If the defendant is placed on probation or post-release supervision, any restitution ordered under this subsection shall be a condition of probation as provided in G.S. 15A-1343(d) or a condition of post-release supervision as provided in G.S. 148-57.1.”

In comparison, a federal conviction for possession of CSAM<sup>25</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>26</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>27</sup>

2.9.1 Recommendation: Raise penalties for buying and possessing CSAM to reflect the seriousness of the offenses.

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

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

a. A final conviction for an offense against a minor,<sup>28</sup> a sexually violent offense, or an attempt to commit any of those offenses . . . .

. . . .

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

N.C. Gen. Stat. § 14-208.6(5) defines “sexually violent offense” as

a violation of former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger where the defendant is at least six years older), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense),

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<sup>25</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>26</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>27</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>28</sup> The term “offense against a minor” is defined in N.C. Gen. Stat. § 14-208.6(1m) (Definitions) as “any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor’s parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor’s parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.”

G.S. 14-27.30(a) statutory sexual offense with a person who is 15 years of age or younger where the defendant is at least six years older), G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), . . . G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), . . . G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), . . . G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), . . . G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or has a mental disability), G.S. 14-205.3(b) (promoting prostitution of a minor or person who has a mental disability) . . . .

**Legal Components:**

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing child sexual abuse material (CSAM) 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.*

Penalties for trafficking a child are comparable to federal penalties. If convicted under N.C. Gen. Stat. § 14-43.11 (Human trafficking), traffickers face a Class B2 felony, which carries a presumptive sentence of 125–157 months imprisonment, when the victim is a minor. N.C. Gen. Stat. §§ 14-43.11(b), 15A-1340.17(c). Traffickers also could be prosecuted under N.C. Gen. Stat. § 14-43.13 (Sexual servitude), a Class C felony when the victim is a minor, which carries a presumptive sentence of 58–73 months imprisonment. N.C. Gen. Stat. §§ 14-43.13(b), 15A-1340.17(c).

Traffickers may be convicted under N.C. Gen. Stat. § 14-205.3 (Promoting prostitution), which is a class C or D felony punishable by a presumptive sentence of 58–73 months imprisonment or a presumptive sentence of 20–25 months imprisonment, respectively. N.C. Gen. Stat. §§ 14-205.3(c), (d), 15A-1340.17(c).

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

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

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA) for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§

1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>29</sup> against a minor. 18 U.S.C. § 3599(e)(1).

### 3.2 *Creating and distributing child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*

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

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

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

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C.

§§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense against a minor. 18 U.S.C. § 3599(e)(1). Additionally, a federal conviction for distribution of CSAM<sup>30</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>31</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>32</sup>

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<sup>29</sup> See *supra* note 20.

<sup>30</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>31</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years 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>32</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).

3.2.1 Recommendation: Amend N.C. Gen. Stat. § 14-190.16 (First degree sexual exploitation of a minor) and § 14-190.17 (Second degree sexual exploitation of a minor) to provide penalties that reflect the seriousness of the offense.

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.*

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

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

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

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

Traffickers are subject to forfeiture, restitution, and also may be required to pay financial penalties and fines for violations of North Carolina’s laws. Traffickers convicted of criminal charges may be ordered to pay a fine. Pursuant to N.C. Gen. Stat. § 15A-1361 (Authorized fines and penalties), “A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law.”<sup>33</sup>

Traffickers are subject to mandatory, criminal asset forfeiture following a felony conviction. “A person who commits a violation of G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary Servitude] or 14-43.13 [Sexual servitude] is subject to the property forfeiture provisions set forth in G.S. 14-2.3 [Forfeiture of gain acquired through criminal activity].” N.C. Gen. Stat. § 14-43.20(e) (Mandatory restitution; victim services; forfeiture). Pursuant to N.C. Gen. Stat. § 14-2.3 (Forfeiture of gain acquired through criminal activity), “Except as is otherwise provided in Article 3 of Chapter 31A [Willful and unlawful killing of decedent], in the case of any violation of Article 13A [North Carolina street gang suppression act] of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.” No specific seizure procedure is authorized. The property shall be forfeited directly to the state. N.C. Gen. Stat. § 14-2.3.

Traffickers are subject to mandatory restitution in North Carolina. N.C. Gen. Stat. § 14-43.20(b) provides,

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<sup>33</sup> Pursuant to N.C. Gen. Stat. § 15A-1340.17(b) (Punishment limits for each class of offense and prior record level), “Any judgment that includes a sentence of imprisonment may also include a fine . . . . Unless otherwise provided, the amount of the fine is in the discretion of the court.”

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services and any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from an offense committed under G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude].

Additionally, traffickers convicted under N.C. Gen. Stat. § 14-205.3 (Promoting prostitution) could be ordered to pay restitution to the domestic minor sex trafficking victim, as the court is required to consider restitution at sentencing. Pursuant to N.C. Gen. Stat. § 15A-1340.34(a) (Restitution generally), “When sentencing a defendant convicted of a criminal offense, the court shall determine whether the defendant shall be ordered to make restitution to any victim of the offense in question. For purposes of this Article, the term ‘victim’ means a person directly and proximately harmed as a result of the defendant’s commission of the criminal offense.” Subsection (b) states, “If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim’s estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.” N.C. Gen. Stat. § 15A-834 (Restitution), which is in Article 46, states, “A victim has the right to receive restitution as ordered by the court pursuant to Article 81C of Chapter 15A of the General Statutes.”

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

- A person against whom there is probable cause to believe one of the following crimes was committed:
- a. A Class A, B1, B2, C, D, or E felony.<sup>34</sup>
  - b. A Class F felony if it is a violation of one of the following: . . . 14-43.11 [Human trafficking, where the victim is not a minor]; 14-190.17 [Second degree sexual exploitation of a minor] . . . .
  - c. . . .
  - d. . . .
  - e. A Class I felony if it is a violation of . . . 14-190.17A [Third degree sexual exploitation of a minor].
  - f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
  - g. . . .

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

Traffickers face financial penalties under both civil nuisance laws and the civil RICO statute. Both real and personal property may be declared a nuisance. Under N.C. Gen. Stat. § 19-1.3(3) (Personal property as a

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<sup>34</sup> *E.g.*, N.C. Gen. Stat. § 14-43.11 (Human trafficking) (Class B2 felony if victim is a minor); § 14-43.13 (Sexual servitude) (Class C felony if the victim is a minor); § 14-190.16 (First degree sexual exploitation of a minor) (Class C felony); § 14-190.17 (Second degree sexual exploitation of a minor) (Class E felony); § 14-27.2 (First-degree rape) (Class B1 felony); § 14-27.23 (Statutory rape of a child by an adult) (Class B1 felony); § 14-27.26 (First-degree forcible sexual offense) (Class B1 felony); and § 14-27.25 (Statutory rape of a person who is 15 years of age or younger) (Class B1 felony).

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

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

(a) No person shall:

- (1) Engage in a pattern of racketeering activity<sup>35</sup> or, through a pattern of racketeering activities or through proceeds derived therefrom, acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money; or
- (2) Conduct or participate in, directly or indirectly, any enterprise through a pattern of racketeering activity whether indirectly, or employed by or associated with such enterprise; or
- (3) Conspire with another or attempt to violate any of the provisions of subdivision (1) or (2) of this subsection.

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

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

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

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

- (1) Ordering any defendant to divest himself of any interest in any enterprise, real property, or personal property including property held by the entirety. Where property is held by the entirety and

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<sup>35</sup> “Pattern of racketeering activity” is defined as “engaging in at least two incidents of racketeering activity that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated and unrelated incidents, provided at least one of such incidents occurred after October 1, 1986, and that at least one other of such incidents occurred within a four-year period of time of the other, excluding any periods of imprisonment, after the commission of a prior incident of racketeering activity.” N.C. Gen. Stat. § 75D-3(b).

one of the spouses is an innocent person as defined in G.S. 75D-5(i), upon entry of a final judgment of forfeiture of entirety property, the judgment operates, to convert the entirety to a tenancy in common, and only the one-half undivided interest of the offending spouse shall be forfeited according to the provisions of this Chapter;

....

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

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

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

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

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

Persons convicted of trafficking, sexual servitude, and CSEC offenses must register as sex offenders under Article 27A (Sex Offender and Public Protection Registration Programs) of Chapter 14 (Criminal Law) of the North Carolina General Statutes. N.C. Gen. Stat. §§ 14-208.6(4), (5), 14-208.7. Pursuant to N.C. Gen. Stat. § 14-208.7(a), “A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides.”

A “reportable conviction” is defined by N.C. Gen. Stat. § 14-208.6(4) (Definitions) as

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

....

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

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

a violation of former G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.21 (first-degree forcible rape), G.S. 14-27.22 (second-degree forcible rape), G.S. 14-27.23 (statutory rape of a child by an adult), G.S. 14-27.24 (first-degree statutory rape), G.S. 14-27.25(a) (statutory rape of a person who is 15 years of age or younger where the defendant is at least six years older), G.S. 14-27.26 (first-degree forcible sexual offense), G.S. 14-27.27 (second-degree forcible sexual offense), G.S. 14-27.28 (statutory sexual offense with a child by an adult), G.S. 14-27.29 (first-degree statutory sexual offense), G.S. 14-27.30(a) statutory sexual offense with a person who is 15 years of age or younger where the defendant is at least six years older), G.S. 14-27.31 (sexual activity by a substitute parent or custodian), G.S. 14-27.32 (sexual activity with a student), G.S. 14-27.33 (sexual battery), G.S. 14-43.11 (human trafficking) if (i) the offense is committed against a minor who is less than 18 years of age or (ii) the offense is committed against any person with the intent that they be held in sexual servitude, G.S. 14-

43.13 (subjecting or maintaining a person for sexual servitude), . . . G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), . . . G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), . . . G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), . . . G.S. 14-205.2(c) or (d) (patronizing a prostitute who is a minor or has a mental disability), G.S. 14-205.3(b) (promoting prostitution of a minor or a person who has a mental disability)  
. . . .

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

3.6 *Laws relating to 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.*

A conviction under N.C. Gen. Stat. § 14-43.11 (Human trafficking) or § 14-43.13 (Sexual servitude) can serve as grounds for terminating parental rights under N.C. Gen. Stat. § 7B-1111(a) (Grounds for terminating parental rights). Pursuant to N.C. Gen. Stat. § 7B-1111(a)(1), a parent-trafficker’s parental rights could be terminated if the parent has abused or neglected the child, within the meanings of “abused juvenile” and “neglected juvenile.” Under N.C. Gen. Stat. § 7B-101(1) (Definitions),

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

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

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

. . . .

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14; . . . incest, as provided in G.S. 14-178; preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile’s severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

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

This term includes any juvenile less than 18 years of age who is a victim or is alleged to be a victim of an offense under G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude], regardless of the relationship between the victim and the perpetrator.

Under N.C. Gen. Stat. § 7B-101(15), a child is considered a “neglected juvenile” when the child

does not receive proper care, supervision, or discipline from the juvenile’s parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile’s welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2 [Prohibit unlawful transfer of custody of minor child]; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

Additionally, a parent-trafficker’s parental rights could be terminated if “[t]he parent has been convicted of a sexually related offense under Chapter 14 of the General Statutes that resulted in the conception of the juvenile.” N.C. Gen. Stat. § 7B-1111(a)(11).

**Legal Components:**

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

Under N.C. Gen. Stat. § 14-43.11, (Human trafficking),

A person commits the offense of human trafficking when that person

- (i) knowingly or in reckless disregard of the consequences of the action recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude or
- (ii) willfully or in reckless disregard of the consequences of the action causes a minor to be held in involuntary servitude or sexual servitude.

While this applies to some facilitators, it does not apply to those who knowingly benefit from trafficking. N.C. Gen. Stat. § 14-43.13(a)<sup>36</sup> (Sexual servitude) also does not apply to those who knowingly benefit since it only applies to an individual who “knowingly or in reckless disregard of the consequences of the action subjects, maintains, or obtains another for purposes of sexual servitude.”

However, facilitators could be held culpable under N.C. Gen. Stat. § 14-205.3(a) (Promoting prostitution), which states,

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

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

“Advance prostitution” is defined in N.C. Gen. Stat. § 14-203(1) (Definition of terms)<sup>37</sup> to include:

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

<sup>36</sup> See *supra* note 2.

<sup>37</sup> See *supra* note 11.

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

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

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

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

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

Facilitators convicted of criminal charges may be ordered to pay a fine. Pursuant to N.C. Gen. Stat. § 15A-1361 (Authorized fines and penalties), “A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law.”<sup>38</sup>

Facilitators are subject to mandatory, criminal asset forfeiture. “A person who commits a violation of G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary Servitude] or 14-43.13 [Sexual servitude] is subject to the property forfeiture provisions set forth in G.S. 14-2.3 [Forfeiture of gain acquired through criminal activity].” N.C. Gen. Stat. § 14-43.20(e) (Mandatory restitution; victim services; forfeiture). Pursuant to N.C. Gen. Stat. § 14-2.3 (Forfeiture of gain acquired through criminal activity), “Except as is otherwise provided in Article 3 of Chapter 31A [Willful and unlawful killing of decedent], in the case of any violation of Article 13A [North Carolina street gang suppression act] of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.” There is no specified procedure in the statute. The property is forfeited directly to the state. N.C. Gen. Stat. § 14-2.3.

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

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

Some facilitators are subject to mandatory restitution in North Carolina. N.C. Gen. Stat. § 14-43.20(b) provides,

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<sup>38</sup> Pursuant to N.C. Gen. Stat. § 15A-1340.17(b) (Punishment limits for each class of offense and prior record level), “Any judgment that includes a sentence of imprisonment may also include a fine . . . . Unless otherwise provided, the amount of the fine is in the discretion of the court.”

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services and any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from an offense committed under G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude].

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

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

- A person against whom there is probable cause to believe one of the following crimes was committed:
- a. A Class A, B1, B2, C, D, or E felony.<sup>39</sup>
  - b. A Class F felony if it is a violation of one of the following: . . . 14-43.11 [Human trafficking, where the victim is not a minor]; 14-190.17 [Second degree sexual exploitation of a minor] . . . .
  - c. . . .
  - d. . . .
  - e. A Class I felony if it is a violation of . . . 14-190.17A [Third degree sexual exploitation of a minor].
  - f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
  - g. . . .

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

Facilitators may also be subject to civil financial penalties under the civil nuisance laws and civil RICO statute. To the extent that a facilitator engages in activity or owns property that is deemed a nuisance under N.C. Gen. Stat. § 19-1(a) (What are nuisances under this Chapter) and N.C. Gen. Stat. § 19-1.3(3) (Personal property as a nuisance; knowledge of nuisance), the facilitator could be required to forfeit assets. Under N.C. Gen. Stat. § 19-1(a), “The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation [or] prostitution . . . shall constitute a nuisance. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.”

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<sup>39</sup> See *supra* note 34.

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

Facilitators may also be liable under the North Carolina Racketeer Influenced and Corrupt Organizations Act (RICO), N.C. Gen. Stat. Chap. 75D, if they engage in a “pattern of racketeering activity.”<sup>40</sup> Pursuant to N.C. Gen. Stat. § 75D-3(c) (Definitions), racketeering activity includes all offenses under Chapter 14 [Criminal Law], unless they are specifically excluded. Qualifying Chapter 14 offenses include N.C. Gen. Stat. § 14-39 (Kidnapping), § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.6 (Employing or permitting minor to assist in offense under Article), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), § 14-7.20 (Continuing criminal enterprise), and § 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act).

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

(a) No person shall:

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

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

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

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

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

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<sup>40</sup> See *supra* note 35.

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

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

N.C. Gen. Stat. § 14-208.1(b)<sup>41</sup> (Promoting travel for unlawful sexual conduct) prohibits promoting and selling child sex tourism; it states,

A person commits the offense of promoting travel for unlawful sexual conduct if the person sells or offers to sell travel services<sup>42</sup> that the person knows to include travel for the purpose of committing any of the following offenses in this State or for the purpose of engaging in conduct that would constitute any one of the following offenses if occurring within this State:

- (1) An offense under Article 7B of Chapter 14 [Rape and other sex offenses] of the General Statutes.
- (2) Any of the following offenses involving the sexual exploitation of a minor:
  - a. G.S. 14-190.16 [First degree sexual exploitation of a minor].
  - b. G.S. 14-190.17 [Second degree sexual exploitation of a minor].
  - c. G.S. 14-190.17A [Third degree sexual exploitation of a minor].
- (3) Any of the following offenses involving indecent liberties with a minor:
  - a. G.S. 14-202.1 [Taking indecent liberties with children].
  - b. G.S. 14-202.4 [Taking indecent liberties with a student].
- (4) Any of the following prostitution offenses:
  - a. G.S. 14-204 [Prostitution].
  - b. G.S. 14-205.1 [Solicitation of prostitution].
  - c. G.S. 14-205.2 [Patronizing a prostitute].
  - d. G.S. 14-205.3 [Promoting prostitution].

Promoting travel for unlawful sexual conduct is a Class G felony, which is punishable by a presumptive sentence of 10–13 months imprisonment. N.C. Gen. Stat. §§ 14-208.1(c), 15A-1340.17(c).

#### 4.4 *Promoting and selling child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*

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

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<sup>41</sup> The text of N.C. Gen. Stat. § 14-208.1 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective December 1, 2019).

<sup>42</sup> N.C. Gen. Stat. § 14-208.1(a) defines “travel services” as “transportation by air, sea, or ground; hotel or other lodging accommodations; package tours, or the provision of vouchers or coupons to be redeemed for future travel; or accommodations for a fee, commission, or other valuable consideration.”

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

- 4.4.1 Recommendation: Amend N.C. Gen. Stat. § 14-190.16 (First degree sexual exploitation of a minor) and § 14-190.17 (Second degree sexual exploitation of a minor) to provide penalties that reflect the seriousness of the offense.

**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 on 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>43</sup>

Pursuant to North Carolina’s core sex trafficking statute, all commercially sexually exploited children are recognized as sex trafficking victims. Under N.C. Gen. Stat. § 14-43.11(a) (Human trafficking), when the victim is a minor, means of force, fraud, or coercion are not required.<sup>44</sup> In addition, both N.C. Gen. Stat. § 14-43.11(a) and § 14-43.13 (Sexual servitude) apply to buyers; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking.<sup>45</sup> Finally, the offense of human trafficking under N.C. Gen. Stat. § 14-43.11(a) does not require that a trafficker or controlling third party be identified. Resultantly, North Carolina’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 youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. N.C. Gen. Stat. § 14-43.11.

- 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.*

North Carolina specifically prohibits a defendant from raising a minor’s willingness to engage in the commercial sex act as a defense under each of N.C. Gen. Stat. § 14-43.11 (Human trafficking), § 14-43.12

<sup>43</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 buyer conduct in core sex trafficking offense regardless of whether victim is under control of a third party and explaining negative impact on victims and victim-identification when buyers are excluded as sex trafficking offenders).

<sup>44</sup> See *supra* Component 1.1.

<sup>45</sup> See *supra* discussion of buyer applicability in Component 2.1.

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

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>46</sup>

North Carolina law prohibits a child from facing prosecution for prostitution or solicitation of prostitution and authorizes law enforcement to take the child into temporary protective custody as an undisciplined juvenile. However, the process for taking an “undisciplined juvenile” into custody tracks more closely with custody for status offenders than protective custody afforded to an abused or neglected child. N.C. Gen. Stat. § 14-204(c) (Prostitution) provides,

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

N.C. Gen. Stat. § 14-205.1(b) (Solicitation of prostitution) also provides,

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

N.C. Gen. Stat. § 14-43.16(a) (Affirmative defense) provides trafficking victims with an affirmative defense to trafficking charges, stating, “It is an affirmative defense to a prosecution under this Article [Human trafficking] that the person charged with the offense was a victim at the time of the offense and was coerced or deceived into committing the offense as a direct result of the person’s status as a victim.”

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

**System response to child engaged in commercial sex act**

Under N.C. Gen. Stat. § 14-204(c) (Prostitution), a law enforcement officer must report an allegation of juvenile sex trafficking and sexual servitude to the department of social services (DSS) upon detaining a child engaged

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<sup>46</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

in commercial sex. The child may be taken into temporary protective custody, albeit as an undisciplined juvenile.<sup>47</sup> Specifically, N.C. Gen. Stat. § 14-204(c) states,

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

Similarly, N.C. Gen. Stat. § 14-205.1(b) (Solicitation of prostitution) states,

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

Upon referral from law enforcement, DSS shall conduct an assessment in accordance with N.C. Gen. Stat. § 7B-302(a) (Assessment by director; access to confidential information; notification of person making the report) to determine whether protective services are necessary.

## Summary

Although North Carolina law prohibits the prosecution of minors for prostitution and solicitation offenses and mandates referral of juvenile sex trafficking victims to DSS, access to specialized services is not statutorily mandated.

- 5.4.1 Recommendation: Amend North Carolina’s response for juvenile sex trafficking victims to require access to specialized services.

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<sup>47</sup> N.C. Gen. Stat. § 7B-1501(27) (Definitions) defines “undisciplined juvenile” as

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

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>48</sup>

Child victims of sex trafficking and commercial sexual exploitation are identifiable as “abused” under N.C. Gen. Stat. § 7B-101(1) (Definitions), which states,

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

....

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree forcible rape, as provided in G.S. 14-27.21; second-degree forcible rape as provided in G.S. 14-27.22; statutory rape of a child by an adult as provided in G.S. 14-27.23; first-degree statutory rape as provided in G.S. 14-27.24; first-degree forcible sex offense as provided in G.S. 14-27.26; second-degree forcible sex offense as provided in G.S. 14-27.27; statutory sexual offense with a child by an adult as provided in G.S. 14-27.28; first-degree statutory sexual offense as provided in G.S. 14-27.29; sexual activity by a substitute parent or custodian as provided in G.S. 14-27.31; sexual activity with a student as provided in G.S. 14-27.32; unlawful sale, surrender, or purchase of a minor, as provided in G.S. 14-43.14 . . . preparation of obscene photographs, slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-205.3(b); and taking indecent liberties with the juvenile, as provided in G.S. 14-202.1;

....

This term includes any juvenile less than 18 years of age who is a victim or is alleged to be a victim of an offense under G.S. 14-43.11 [Human trafficking], G.S. 14-43.12 [Involuntary servitude], or G.S. 14-43.13 [Sexual servitude], regardless of the relationship between the victim and the perpetrator.

Additionally, N.C. Gen. Stat. § 14-204(c) (Prostitution) and § 14-205.1(b) (Solicitation of prostitution) require that juvenile sex trafficking victims be “taken into temporary protective custody” and “a law enforcement officer who takes a minor into custody under this section shall immediately report an allegation of a violation of G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours . . . .”

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

[a] juvenile who does not receive proper care, supervision, or discipline from the juvenile’s parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; . . . or who lives in an environment injurious to the juvenile’s welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2 [Prohibit unlawful transfer of custody of minor child]; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

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<sup>48</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

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.*

The definitions of “custodian”<sup>49</sup> and “caretaker”<sup>50</sup> are not barriers to a sex trafficked child accessing the protection of child welfare. Pursuant to N.C. Gen. Stat. § 7B-101(1) (Definitions), the term “abused juveniles” includes “any juvenile less than 18 years of age who is a victim or is alleged to be a victim of an offense under G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude], regardless of the relationship between the victim and the perpetrator.” Accordingly, the definition of “abused juveniles” allows for child welfare intervention in non-familial trafficking cases.

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

A victim of child sex trafficking is an eligible claimant for Crime Victim’s Compensation pursuant to N.C. Gen. Stat. § 15B-2(2)(a). A “victim” is defined as “[a] person who suffers personal injury or death proximately caused by criminally injurious conduct” and a “claimant” is defined to include “a person who was convicted of a first offense under G.S. 14-204 [Prostitution] and whose participation in the offense was a result of having been a trafficking victim under G.S. 14-43.11 [Human trafficking] or G.S. 14-43.13 [Sexual servitude] or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13). N.C. Gen. Stat. § 15B-2(13), (2)(e). “Criminally injurious conduct” is defined as including “[c]onduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State.” N.C. Gen. Stat. § 15B-2(5). Since domestic minor sex trafficking encompasses “conduct that by its nature poses a substantial threat of personal injury or death,” and the applicable crimes are punishable by imprisonment, a domestic minor sex trafficking victim falls under the definition of victim for the purposes of Crime Victim’s Compensation. N.C. Gen. Stat. § 15B-2(5).

However, under N.C. Gen. Stat. § 15B-4(a) (Award of compensation), “Compensation shall only be paid for economic loss<sup>51</sup> and not for noneconomic detriment.”

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<sup>49</sup> N.C. Gen. Stat. § 7B-101(8) defines “custodian” as “The person or agency that has been awarded legal custody of a juvenile by a court.”

<sup>50</sup> N.C. Gen. Stat. § 7B-101(3) defines “caretaker” as

Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile’s health and welfare means a stepparent, foster parent, an adult member of the juvenile’s household, an adult relative entrusted with the juvenile’s care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile’s health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. “Caretaker” also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed on a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

<sup>51</sup> Pursuant to N.C. Gen. Stat. § 15B-2(10), “economic loss” is defined as “[e]conomic detriment consisting only of allowable expense, work loss, replacement services loss, and household support loss. If criminally injurious conduct causes death, economic loss includes a dependent’s economic loss and a dependent’s replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment.”

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

In addition, an award may be reduced if “[t]he victim was participating in a nontraffic misdemeanor at or about the time that the victim’s injury occurred” or the victim “engaged in contributory misconduct.” N.C. Gen. Stat. § 15B-11(b). Under subsection (b1), however, “The Commission or Director, whichever has the authority to decide a claim under G.S. 15B-10, shall exercise discretion in determining whether to deny a claim under subsection (b) of this section. In exercising discretion, the Commission or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. The Director or Commission shall deny claims upon a finding that there was contributory misconduct that is a proximate cause of becoming a victim. However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim.”

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

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

In a trial for rape or sexual offenses<sup>52</sup> or attempts to commit either, “the trial judge may, during the taking of the testimony of the prosecutrix, exclude from the courtroom all persons except the officers of the court, the defendant and those engaged in the trial of the case.” N.C. Gen. Stat. § 15-166.

Pursuant to N.C. Gen. Stat. § 8C-1, Rule 412 (Rape or sex offense cases; relevance of victim’s past behavior), the use of reputation or opinion evidence of the past sexual behavior<sup>53</sup> of a victim of rape, a sexual offense, or sexual servitude is limited, and past sexual behavior of the victim is not to be considered during the prosecution unless certain circumstances apply. N.C. Gen. Stat. § 8C-1, Rule 412(b)–(d) states in part,

- (b) Notwithstanding any other provision of law, the sexual behavior of the complainant is irrelevant to any issue in the prosecution unless such behavior:
- (1) Was between the complainant and the defendant; or
  - (2) Is evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the defendant; or
  - (3) Is evidence of a pattern of sexual behavior so distinctive and so closely resembling the defendant’s version of the alleged encounter with the complainant as to tend to prove that such

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<sup>52</sup> “Sexual offenses” are not defined for the purpose of this statute. However, presumably it applies to N.C. Chapter 14, Article 7A (Rape and other sex offenses), which does not include N.C. Gen. Stat. § 14-43.11 (Human trafficking), § 14-43.13 (Sexual servitude), § 14-190.16 (First degree sexual exploitation of a minor), § 14-190.17 (Second degree sexual exploitation of a minor), or § 14-190.17A (Third degree sexual exploitation of a minor).

<sup>53</sup> “As used in this rule, the term ‘sexual behavior’ means sexual activity of the complainant other than the sexual act which is at issue in the indictment on trial.” N.C. Gen. Stat. § 8C-1, Rule 412(a).

- complainant consented to the act or acts charged or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented; or
- (4) Is evidence of sexual behavior offered as the basis of expert psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged.
- (c) Sexual behavior otherwise admissible under this rule may not be proved by reputation or opinion.
- (d) Notwithstanding any other provision of law, unless and until the court determines that evidence of sexual behavior is relevant under subdivision (b), no reference to this behavior may be made in the presence of the jury and no evidence of this behavior may be introduced at any time during the trial of any of the following:
- (1) A charge of rape or a lesser included offense of rape.
  - (2) A charge of a sex offense or a lesser included offense of a sex offense.
  - (3) An offense being tried jointly with a charge of rape or a sex offense, or with a lesser included offense of rape or a sex offense.
  - (4) A charge of sexual servitude under G.S. 14-43.13.
- ....

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

Though not specific to the trial process, N.C. Gen. Stat. § 14-43.17(a)(1) (Victim confidentiality; penalty for unlawful disclosure) protects against the disclosure of information that could be used to identify a trafficking victim; it states, “the name, address, or other information that reasonably could be expected to lead directly to the identity of [a trafficking victim<sup>54</sup>] is confidential and shall not be considered a public record . . . ,”

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.*

North Carolina law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, juvenile records may only be expunged after a waiting period.

N.C. Gen. Stat. § 7B-3200<sup>55</sup> (Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined) provides a general avenue to juvenile record expungement once the minor turns 18. N.C. Gen. Stat. § 7B-3200 states,

- (a) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated undisciplined for expunction of all records of that adjudication.
- (b) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:

<sup>54</sup> N.C. Gen. Stat. § 14-43.10(a)(6) (Definitions) defines “victim” as “a person subjected to the practices set forth in G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude].”

<sup>55</sup> The text of N.C. Gen. Stat. § 7B-3200 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective December 1, 2019).

- (1) The offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.
- (1a) The person has been released from juvenile court jurisdiction.
- (2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

The requirements set forth in subdivision (2) of this subsection shall not apply to a person whose participation in the offense was a result of having been a victim of human trafficking as defined in G.S. 14-43.10 or a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act, 22 U.S.C. § 7102. Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult shall not be expunged.

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North Carolina law also contains several trafficking-specific provisions. Pursuant to N.C. Gen. Stat. § 15A-1415(b)(10)<sup>56</sup> (Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time), a victim of human trafficking may seek to have a conviction vacated if:

The defendant was convicted of a nonviolent offense as defined in G.S. 15A-145.9 [Expunctions of certain offenses committed by human trafficking victims];<sup>57</sup> the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.

<sup>56</sup> The text of N.C. Gen. Stat. § 15A-1415 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective December 1, 2019).

<sup>57</sup> N.C. Gen. Stat. § 15A-145.9(a) defines “nonviolent offense” to include “any misdemeanor or felony except the following:

- a. A Class A through G felony.
- b. An offense that includes assault as an essential element of the offense.
- c. An offense requiring registration pursuant to Article 27A of Chapter 14 [Sex offender and public protection registration programs] of the General Statutes, whether or not the person is currently required to register.
- d. Any of the following sex-related or stalking offenses: G.S. 14-27.25(b) [Statutory rape of person who is 15 years of age or younger], 14-27.30(b) [Statutory sexual offense with a person who is 15 years of age or younger], 14-190.8 [Dissemination to minors under the age of 13 years], 14-190.9 [Indecent exposure], 14-202 [Secretly peeping into room occupied by another person], 14-208.11A [Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances], 14-208.18 [Sex offender unlawfully on premises], 14-277.3A [Stalking], or 14-321.1 [Prohibit baby sitting service by sex offender or in the home of a sex offender].
- e. An offense under G.S. 14-12.12(b) [Placing burning or flaming cross on property of another or on public street or highway or on any public place], 14-12.13 [Placing exhibit with intention of intimidating, etc., another], or 14-12.14 [Placing exhibit while wearing mask, hood, or other disguise], or any offense for which punishment was determined pursuant to G.S. 14-3(c) [Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity].
- f. An offense under G.S. 14-401.16 [Contaminate food or drink to render one mentally incapacitated or physically helpless].
- g. A traffic offense.
- h. Any offense that is an attempt to commit an offense described in sub-subdivisions a. through g. of this subdivision.

The petition must be made in accordance with N.C. Gen. Stat. § 15A-1416.1<sup>58</sup> (Motion by the defendant to vacate a nonviolent offense conviction for human trafficking victim), which states,

- (a) A motion for appropriate relief seeking to vacate a conviction for a nonviolent offense based on the grounds set out in G.S. 15A-1415(b)(10) shall be filed in the court where the conviction occurred. The motion may be filed at any time following the entry of a verdict or finding of guilty . . . .
- (b) The court may grant the motion if, in the discretion of the court, the defendant has demonstrated, by the preponderance of the evidence, that the violation was a direct result of the defendant having been a victim of human trafficking or sexual servitude and that the offense would not have been committed but for the defendant having been a victim of human trafficking or sexual servitude . . . .
- (c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances.
- (d) A previous or subsequent conviction shall not affect a person’s eligibility for relief under this section.

However, N.C. Gen. Stat. § 15A-1415 and § 15A-1416.1 apply specifically to “convictions,” and N.C. Gen. Stat. § 7B-2412 (Legal effect of adjudication of delinquency) states, “An adjudication that a juvenile is delinquent . . . shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship right.” Accordingly, delinquency adjudications are ineligible for vacatur under these laws.

Individuals with prostitution-related convictions may petition to have records expunged under N.C. Gen. Stat. § 15A-145.6(b)<sup>59</sup> (Expunctions for certain defendants convicted of prostitution), which states,

A person who has been convicted of a prostitution offense<sup>60</sup> may file a petition in the court of the county where the person was convicted for expunction of the prostitution offense from the person’s criminal record provided that all of the following criteria are met:

- (1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.
- (2) The person satisfies any one of the following criteria:
  - a. The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.
  - c. The person was discharged and the charge was dismissed upon completion of a conditional discharge under G.S. 14-204(b).

Victims of human trafficking may petition for expungement of records for nonviolent offenses under N.C. Gen. Stat. § 15A-145.9(b)<sup>61</sup> (Expunctions of certain offenses committed by human trafficking victims),

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<sup>58</sup> The text of N.C. Gen. Stat. § 15A-1416.1 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective December 1, 2019).

<sup>59</sup> The text of N.C. Gen. Stat. § 15A-145.6 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective December 1, 2019).

<sup>60</sup> “Prostitution offense” is defined as “[a] conviction for (i) violation of G.S. 14-204 [Prostitution] [Repealed] or (ii) engaging in prostitution in violation of G.S.14-204(7) for an offense that occurred prior to October 1, 2013.”

which states, “A person who has been convicted of a nonviolent offense may file a petition in the court of the county where the person was convicted for expunction of the nonviolent offense from the person’s criminal record if the court finds that the person was coerced or deceived into committing the offense as a direct result of having been a trafficking victim.”

As with the vacatur law, however, N.C. Gen. Stat. § 15A-145.6(b) and § 15A-145.9(b) apply specifically to “convictions,” not delinquency adjudications. In addition, prosecutors still have access to these records, which “may be used to calculate prior record level if the named person is convicted of a subsequent criminal offense.” N.C. Gen. Stat. § 15A-151.5(b) (Prosecutor access to expunged files).

- 5.9.1 Recommendation: Amend N.C. Gen. Stat. § 15A-1415(b)(10) (Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time) and § 15A-1416.1 (Motion by the defendant to vacate prostitution convictions for sex trafficking victim) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records.

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.*

Child sex trafficking victims are entitled to mandatory restitution. N.C. Gen. Stat. § 14-43.20(b) (Mandatory restitution; victim services; forfeiture) provides,

Restitution for a victim is mandatory under this Article. At a minimum, the court shall order restitution in an amount equal to the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA). In addition, the judge may order any other amount of loss identified, including the gross income or value to the defendant of the victim's labor or services and any costs reasonably certain to be incurred by or on behalf of the victim for medical care, psychological treatment, temporary housing, transportation, funeral services, and any other services designed to assist a victim recover from any injuries or loss resulting from an offense committed under G.S. 14-43.11 [Human trafficking], 14-43.12 [Involuntary servitude], or 14-43.13 [Sexual servitude].

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

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

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

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<sup>61</sup> The text of N.C. Gen. Stat. § 15A-145.9 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective December 1, 2019).

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

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

Regarding civil actions, N.C. Gen. Stat. § 14-43.18(a)<sup>63</sup> (Civil cause of action; damages and attorneys’ fees; limitation) allows a trafficking victim to “bring a civil action against a person who violates this Article [Human trafficking] or a person who knowingly benefits financially or by receiving anything of value from participation in a venture which that person knew or should have known violates this Article.”<sup>64</sup>

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

<sup>62</sup> See *supra* note 34.

<sup>63</sup> The text of N.C. Gen. Stat. § 14-43.18 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 198 during the 2019–2020 Session of the North Carolina Legislature (effective July 1, 2019).

<sup>64</sup> Pursuant to N.C. Gen. Stat. § 14-43.18(b), (c), the following forms of relief are available:

- (b) Relief and Damages. – The victim may seek and the court may award any or all of the following types of relief:
  - (1) An injunction to enjoin continued violation of this Article.
  - (2) Compensatory damages, which includes the following:
    - a. The greater of (i) the gross income or value to the defendant of the victim’s labor, or (ii) value of the victim’s labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA).
    - b. Any costs reasonably incurred by the victim for medical care, psychological treatment, temporary housing, transportation, and any other services designed to assist a victim in recovering from any injuries or loss resulting from a violation of this Article.
  - (3) General damages for noneconomic losses.
- (c) Attorneys’ Fees. – The court may award to the plaintiff and assess against the defendant the reasonable costs and expenses, including attorneys’ fees, of the plaintiff in bringing an action pursuant to this section. If the court determines that the plaintiff’s action is frivolous, it may award to the defendant and assess against the plaintiff the reasonable costs and expenses, including attorneys’ fees, of the defendant in defending the action brought pursuant to this section.

which the offender was convicted,” subject to a three year statute of limitations. N.C. Gen. Stat. §§ 15B-30(1), 15B-34(a).

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

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

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

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

North Carolina does not have any statute of limitations for felony prosecutions,<sup>65</sup> and trafficking victims are afforded a lengthened statute of limitations for civil actions. Regarding civil actions, N.C. Gen. Stat. § 14-43.18(d), (e)<sup>66</sup> (Civil cause of action; damages and attorneys’ fees; limitation) states,

(d) Stay Pending Criminal Action. – Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the plaintiff is the victim. The term “criminal action” includes investigation and prosecution and is pending until final adjudication in the trial court.

(e) Statute of Limitations. – No action may be maintained under subsection (a) of this section unless it is commenced no later than either of the following:

- (1) Ten years after the cause of action arose.
- (2) Ten years after the victim reaches 18 years of age if the victim was a minor at the time of the alleged offense.

N.C. Gen. Stat. § 1-52 (Three years) establishes a 3 year limitation period for the following actions: “(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated . . . . (19) For assault, battery, or false imprisonment.” However, subsection (16) states,

Unless otherwise provided by law, for personal injury or physical damage to claimant’s property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Except as provided in G.S. 130A-26.3, no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

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<sup>65</sup> State v. Hardin, 75 N.C. Ct. App. 1973 (“In North Carolina, there is no statute of limitations barring the prosecution of a felony.”)

<sup>66</sup> See *supra* note 63.

Pursuant to N.C. Gen. Stat. § 1-56 (All other actions, 10 years), “An action for relief not otherwise limited by this subchapter may not be commenced more than 10 years after the cause of action has accrued.”

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

Notwithstanding any other provision of law, if a defendant is convicted of a criminal offense and is ordered by the court to pay restitution or restitution is imposed as a condition of probation, special probation, work release, or parole, then all applicable statutes of limitation and statutes of repose, except as established herein, are tolled for the period set forth in this subsection for purposes of any civil action brought by an aggrieved party against that defendant for damages arising out of the offense for which the defendant was convicted. Any statute of limitation or repose applicable in the civil action shall be tolled from the time of entry of the court order

- (1) Requiring that restitution be made,
- (2) Making restitution a condition of probation or special probation, or
- (3) Recommending that restitution be made a condition of work release or parole,

and until the defendant has paid in full the amount of restitution ordered or imposed. Except as provided in G.S. 15B-34, an action to recover damages arising out of the criminal offense shall not be commenced more than 10 years from the last act of the defendant giving rise to the cause of action.

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

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

**Legal Components:**

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking 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.*

Law enforcement training on human trafficking is authorized in North Carolina. Pursuant to 2007 Sess. Laws 547, sec. 11,<sup>67</sup> North Carolina law directs the North Carolina Justice Academy to

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

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

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

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

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

<sup>67</sup> This provision is listed in the editor’s notes to N.C. Gen. Stat. § 14-43.11, but does not appear to be codified in the North Carolina General Statutes. However, the North Carolina Justice Academy does appear to offer web-based training courses on human trafficking. North Carolina Justice Academy Online, Course Catalog, [http://ncja.ncdoj.gov/Course-Offerings-\(A-Z\).aspx#E-H](http://ncja.ncdoj.gov/Course-Offerings-(A-Z).aspx#E-H), (last visited July 28, 2016).

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

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

Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of Title 18 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

(1) Any felony offense against a minor, including any violation of G.S. 14-27.31 (Sexual activity by a substitute parent or custodian), G.S. 14-27.32 (Sexual activity with a student), G.S. 14-41 (Abduction of children), G.S. 14-43.11 (Human trafficking), G.S. 14-43.12 (Involuntary servitude), G.S. 14-43.13 (Sexual servitude), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), or G.S. 14-202.1 (Taking indecent liberties with children), G.S. 14-205.2(c) or (d) (Patronizing a prostitute who is a minor or has a mental disability), or G.S. 14-205.3(b) (Promoting prostitution of a minor or person who has a mental disability).

In addition, “Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of Title 18 of the United States Code, when the interception may provide, or has provided, evidence of any offense that involves the commission of, or any conspiracy to commit, murder, kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses.” N.C. Gen. Stat. § 15A-290(b).

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

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

- (a) an emergency situation exists that involves—
  - (i) immediate danger of death or serious physical injury to any person,
  - (ii) conspiratorial activities threatening the national security interest, or
  - (iii) conspiratorial activities characteristic of organized crime,

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

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

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate

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

6.4 *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.*

North Carolina’s human trafficking and CSEC laws do not expressly prohibit a defense based on the use of a law enforcement decoy posing as a minor during reverse sting operations, which are the most likely situations in which a defendant would try to assert such a defense. However, N.C. Gen. Stat. § 14-202.3(a) (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), a non-CSEC offense, uses the phrase “believes to be a child,” indicating that decoys can be used in investigating that crime.

6.4.1 Recommendation: Amend N.C. Gen. Stat. § 14-43.11 (Human trafficking) and § 14-43.13 (Sexual servitude) to specifically prohibit a defense based on the use of a law enforcement decoy posing as a minor to investigate the buying and selling of commercial sex acts with a minor.

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

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

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

Therefore, the statutory language, “believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant,” appears to allow for the use of the Internet to investigate domestic minor sex trafficking cases in this statute. N.C. Gen. Stat. § 14-202.3.<sup>68</sup>

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

Failure to report the disappearance of a child is a crime in North Carolina. Pursuant to N.C. Gen. Stat. § 14-318.5(b), (c) (Failure to report the disappearance of a child to law enforcement; immunity of person reporting in good faith),

(b) A parent or any other person providing care to or supervision of a child<sup>69</sup> who

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<sup>68</sup> In *State v. Morse*, 671 S.E. 2d 538 (N.C. Ct. App. 2009), the defendant unsuccessfully attempted to assert an entrapment defense when the defendant chatted via the Internet with a person he believed to be a 14-year-old girl and initiated conversation about engaging in sexual activity with the person he believed to be 14 when in fact the “girl” was a law enforcement officer. *Id.* at 539–41.

knowingly or wantonly fails to report the disappearance of a child<sup>70</sup> to law enforcement is in violation of this subsection.

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

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

North Carolina has established the North Carolina Center for Missing Persons to serve as a “central repository for information regarding missing persons and missing children, with special emphasis on missing children.” N.C. Gen. Stat. § 143B-1010. N.C. Gen. Stat. § 143B-1015(a) requires that upon receiving a missing persons report, a law enforcement agency shall,

immediately make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, immediately inform all of its on-duty law-enforcement officers of the missing person report, initiate a statewide broadcast to all appropriate law-enforcement agencies to be on the lookout for the individual, and transmit a copy of the report to the Center [North Carolina Center for Missing Persons].

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

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

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<sup>69</sup> “Child” is defined for purposes of this subsection as “any person who is less than 16 years of age.” N.C. Gen. Stat. § 14-318.5(a)(1).

<sup>70</sup> “Disappearance of a child” is defined as “When the parent or other person providing supervision of a child does not know the location of the child and has not had contact with the child for a 24-hour period.” N.C. Gen. Stat. § 14-318.5(a)(2).

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