

## Georgia State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

**Rating:** Tier One (green)

**Total Points:** 8

**Credited Categories:** 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; and 8 Victim Assistance.

**Categories Still Needed:** 4(b) Human Trafficking Task Force; 7 Safe Harbor for Minors; 9 Civil Remedy; and 10 Vacating Convictions.

**Category By Category Break-Down:**

### Category 1: Sex Trafficking Statute

#### § 16-5-46. Trafficking of persons for labor or sexual servitude

(a) As used in this Code section, the term:

(1) “Coercion” means:

(A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;

(B) Exposing or threatening to expose any fact or information or disseminating or threatening to disseminate any fact or information that would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;

(C) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person;

(D) Providing a controlled substance, as such term is defined by Code Section 16-13-21, to such person for the purpose of compelling such person to engage in labor or sexual servitude against his or her will; or

(E) Causing or threatening to cause financial harm to any person or using financial control over any person;

(2) “Deception” means:

(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and



nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt; or

(C) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

(3) "Labor servitude" means work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception.

(4) "Performance" shall have the same meaning as set forth in Code Section 16-12-100.

(5) "Sexually explicit conduct" shall have the same meaning as set forth in Code Section 16-12-100.

(6) "Sexual servitude" means:

(A) Any sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any 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 sexually explicit conduct or performance involving sexually explicit conduct which 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.

(b) A person commits the offense of trafficking a person for labor servitude when that person knowingly subjects another person to or maintains another person in labor servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of labor servitude.

(c) A person commits the offense of trafficking a person for sexual servitude when that person knowingly subjects another person to or maintains another person in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude.

(d) The age of consent for sexual activity or the accused's lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.

(e) The sexual history or history of commercial sexual activity of a person alleged to have been trafficked or such person's connection by blood or marriage to an accused in the case or to anyone involved in such person's trafficking shall be excluded from evidence if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

(f)

(1) Except as provided in paragraph (2) of this subsection, any accused who commits the offense of trafficking a person for labor or sexual servitude shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years, a fine not to exceed \$100,000.00, or both.

(2) Any accused who commits the offense of trafficking a person for labor or sexual servitude against a person who is under the age of 18 years shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than ten nor more than 20 years, a fine not to exceed \$100,000.00, or both; provided, however, that if the offense is committed against a person under 18 years of age and such person under the age of 18 years was coerced or deceived into being trafficked for labor or sexual servitude, the accused shall be guilty of a felony, and upon conviction thereof, shall be



punished by imprisonment for not less than 25 nor more than 50 years or life ` imprisonment, a fine not to exceed \$100,000.00, or both.

### **Category 2: Labor Trafficking Statute**

Yes. See § 16-5-46(c).

### **Category 3(a): Asset Forfeiture**

#### **§ 16-5-46. Trafficking of persons for labor or sexual servitude**

(g) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this Code section shall be subject to forfeiture to the state. Forfeiture shall be had by the same procedure set forth in Code Section 16-14-7.

Prosecuting attorneys and the Attorney General may commence forfeiture proceedings under this Code section.

#### **§ 16-6-13.3. Proceeds from pimping; forfeiture; distribution**

(a) Any proceeds or money which is used, intended for use, used in any manner to facilitate, or derived from a violation of Code Section 16-6-11, wherein any of the persons involved in performing an act of prostitution is under the age of 18, is contraband and forfeited to the state and no person shall have a property interest in it. Such proceeds or money may be seized or detained in the same manner as provided in Code Section 16-13-49 and shall not be subject to replevin, conveyance, sequestration, or attachment.

(b) Within 60 days of the date of the seizure of proceeds or money pursuant to this Code section, the district attorney shall initiate forfeiture or other proceedings as provided in Code Section 16-13-49. An owner or interest holder, as defined by subsection (a) of Code Section 16-13-49, may establish as a defense to the forfeiture of proceeds or money which is subject to forfeiture under this Code section the applicable provisions of subsection (e) or (f) of Code Section.

### **Category 3(b): Investigative Tools**

#### **§ 16-14-3 - Definitions**

(9)(A) "Racketeering activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit any crime which is chargeable by indictment under the following laws of this state:

(xxix) Any conduct defined as "racketeering activity" under 18 U.S.C. Section 1961 (1)(A), (B), (C), and (D).

### **Category 4(a): Training for Law Enforcement**

#### **§ 35-1-16. Training law enforcement officers investigating crimes involving trafficking persons for labor or sexual servitude**

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

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

(2) Methods for providing proper detention facilities or alternatives to detention facilities for persons who have been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46, including providing information on therapeutic facilities for such



persons; and

(3) Methods for assisting persons who have been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46, including providing information on social service organizations available to assist such person.

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

#### **Category 4(b): Human Trafficking Task Force**

None. Repealed on January 1, 2013.

#### **Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors**

Yes. See 16-5-46(a)(6).

#### **Category 6: Posting of a Human Trafficking Hotline**

#### **§ 16-5-47. Posting model notice with human trafficking hotline information in businesses and on Internet; termination**

(a) As used in this Code section, the term:

(1) "Adult entertainment establishment" means any place of business or commercial establishment wherein:

(A) The entertainment or activity therein consists of nude or substantially nude persons dancing with or without music or engaged in movements of a sexual nature or movements simulating sexual intercourse, oral copulation, sodomy, or masturbation;

(B) The patron directly or indirectly is charged a fee or required to make a purchase in order to view entertainment or activity which consists of persons exhibiting or modeling lingerie or similar undergarments; or

(C) The patron directly or indirectly is charged a fee to engage in personal contact by employees, devices, or equipment, or by personnel provided by the establishment. Such term shall include, but shall not be limited to, bathhouses, lingerie modeling studios, and related or similar activities. Such term shall not include businesses or commercial establishments which have as their sole purpose the improvement of health and physical fitness through special equipment and facilities, rather than entertainment.

(2) "Agricultural products" means raising, growing, harvesting, or storing of crops; feeding, breeding, or managing livestock, equine, or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, Christmas trees, fowl, equine, or animals; or the production of aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products.

(3) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(4) "Day hauler" means any person who is employed by a farm labor contractor to transport, or who for a fee transports, by motor vehicle, workers to render personal services in



connection with the production of any farm products to, for, or under the direction of a third person; provided, however, that such term shall not include a person who produces agricultural products.

(5) "Farm labor contractor" means any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons; provided, however, that such term shall not include a person who produces agricultural products.

(6) "Hotel" means any hotel, inn, or other establishment which offers overnight accommodations to the public for hire.

(7) "Massage therapist" means a person licensed pursuant to Chapter 24A of Title 43.

(8) "Primary airport" shall have the same meaning as set forth in 49 U.S.C. Section 47102(16).

(9) "Substantially nude" means dressed in a manner so as to display any portion of the female breast below the top of the areola or displaying any portion of any person's pubic hair, anus, cleft of the buttocks, vulva, or genitals.

(10) "Truck stop" means a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and lawful overnight truck parking.

(b) Effective September 15, 2013, the following businesses and other establishments shall post the notice described in subsection (c) of this Code section, or a substantially similar notice, in English, Spanish, and any other language deemed appropriate by the director of the Georgia Bureau of Investigation, in each public restroom for the business or establishment and either in a conspicuous place near the public entrance of the business or establishment or in another conspicuous location in clear view of the public and employees where similar notices are customarily posted:

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

(c) On or before August 1, 2013, the Georgia Bureau of Investigation shall develop a model notice that complies with the requirements of this subsection and make the model notice available for download on its Internet website. Such notice shall be at least 8 1/2 inches by 11 inches in size, printed in a 16 point font in English, Spanish, and any other language deemed appropriate by the director of the Georgia Bureau of Investigation, and state the following:

"Are you or someone you know being sold for sex or made/forced to work for little or no pay and cannot leave? Call the National Human Trafficking Resource Center at 1-888-373-7888



for help. All victims of slavery and human trafficking have rights and are protected by international, federal, and state law.

The hotline is:

- (1) Anonymous and confidential;
- (2) Available 24 hours a day, seven days a week;
- (3) Able to provide help, referral to services, training, and general information;
- (4) Accessible in 170 languages;
- (5) Operated by a nonprofit, nongovernmental organization; and
- (6) Toll free."

(d) A law enforcement officer shall notify, in writing, any business or establishment that has failed to comply with this Code section that it has failed to comply with the requirements of this Code section and if it does not correct the violation within 30 days from the date of receipt of the notice, the owner of such business or establishment shall be charged with a violation of this Code section and upon conviction shall be guilty of the misdemeanor offense of failure to post the National Human Trafficking Resource Center hotline number and may be punished by a fine of not more than \$500.00; but the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against an owner for conviction thereof. Upon a second or subsequent conviction, the owner shall be guilty of a high and aggravated misdemeanor and shall be punished by a fine not to exceed \$5,000.00. The notice required by this subsection may be hand delivered to the noncomplying business or establishment or mailed to it at the address of such business or establishment.

(e) This Code section shall be repealed in its entirety on January 1, 2019, unless extended by an Act of the General Assembly.

### **Category 7: Safe Harbor**

None.

### **Category 8: Victim Assistance**

#### **§ 17-17-6. Information to be made available to victim upon initial contact by law enforcement and court personnel**

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

- (1) The possibility of pretrial release of the accused, the victim's rights and role in the stages of the criminal justice process, and the means by which additional information about these stages can be obtained;
- (2) The availability of victim compensation and, if the victim has been trafficked for labor or sexual servitude as defined in Code Section 16-5-46, compensation available through the federal government pursuant to 22 U.S.C. Section 7105; and
- (3) The availability of community based victim service programs.

(b) The Criminal Justice Coordinating Council is designated as the coordinating entity between various law enforcement agencies, the courts, and social service delivery agencies. The Criminal Justice Coordinating Council shall develop and disseminate written information upon which law enforcement personnel may rely in disseminating the information required by this chapter.

### **Category 9: Civil Remedy**





None.

### **Category 10: Vacating Convictions**

\* Recognition for efforts, but no credit awarded.

#### **§ 15-11-32. Modification or vacation of orders; retroactive application**

(a) An order of the court shall be set aside if:

- (1) It appears that it was obtained by fraud or mistake sufficient therefor in a civil action;
- (2) The court lacked jurisdiction over a necessary party or the subject matter; or
- (3) Newly discovered evidence so requires.

(b) An order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interests of a child except an order of dismissal following a contested adjudicatory hearing.

(c) Except as otherwise provided in Code Section 15-11-602, an order committing a child to DJJ may only be modified after such child has been transferred to DJJ custody upon motion of DJJ.

(d) An order of adjudication of delinquency by a court may be modified or vacated if the child was adjudicated for a delinquent act for a sexual crime as defined in Code Section 16-3-6 and such crime resulted from the child being:

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

(e) Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in a child may petition the court for the relief provided in this Code section. Such petition shall set forth in clear and concise language the grounds upon which the relief is requested.

(f) After a petition seeking relief under this Code section is filed, the court shall fix a time for hearing and shall cause notice to be served on the parties to the proceeding or those affected by the relief sought. After the hearing, the court shall deny or grant relief as the evidence warrants.

(g) This Code section is intended to be retroactive and shall apply to any child who is under the jurisdiction of the court at the time of a hearing, regardless of the date of the original delinquency order.

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If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at [policy@polarisproject.org](mailto:policy@polarisproject.org).