

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

2016 ANALYSIS AND RECOMMENDATIONS GEORGIA

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

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

Legal Analysis¹:

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

Paralleling federal law, Georgia's human trafficking law does not require a showing of force, fraud, or coercion of minors under 18 to qualify as sex trafficking. Under Ga. Code Ann. § 16-5-46(c)² (Trafficking of persons for labor or sexual servitude), trafficking occurs when one "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." Ga. Code Ann. § 16-5-46(c). Pursuant to Ga. Code Ann. § 16-5-46(a)(8), "Sexual servitude" is defined as "any sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any individual, which conduct is induced or obtained:

¹ This report includes legislation enacted as of August 1, 2016.

² The text of Ga. Code Ann. § 16-5-46 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 770 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

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

If committed against a minor under 18, human trafficking is a felony punishable by imprisonment for 10–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2). If, however, the minor was “coerced or deceived into being trafficked,” the crime is punishable by imprisonment for 25–50 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2).

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

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

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

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

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

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

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

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

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

3. Under Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), “A person having or exercising control over the use of any place or conveyance which would offer seclusion or shelter for the practice of prostitution commits the offense of keeping a place of prostitution when he knowingly grants or permits the use of such place for the purpose of prostitution.” When the victim is 16 or 17, the crime is punishable by imprisonment for 5–20 years, a fine of \$2,500–\$10,000, or both. Ga. Code Ann. § 16-6-13(b)(1). If the victim is under the age of 16, the perpetrator is guilty of a felony

punishable by imprisonment for 10-30 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-6-13(b)(2).

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

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

....

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

....

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

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

....

This crime is a felony punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(gf)(1). However, no fine will be imposed “if the person so convicted is a member of the immediate family of the victim.” Ga. Code Ann. § 16-12-100(gf)(1).³ The law does not apply to “Any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct.” Ga. Code Ann. § 16-12-100(d)(3). The crime is classified as a misdemeanor if the minor depicted is at least 14, the image was created with the minor's consent, the

³ In addition, those convicted of sexual offenses face heightened penalties under Ga. Code Ann. § 17-10-6.2 (“Sexual offense” defined; split sentence; deviation from mandatory minimum sentence). Under subsection (a), “sexual offense” is defined to include, “(6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, unless subject to the provisions of subsection (c) of Code Section 16-6-5” and “(10) Sexual exploitation of children, as defined in Code Section 16-12-100.” Under subsection (b), subject to exceptions in subsection (c), “notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to the offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory imprisonment, an additional probated sentence of at least one year.” Subsection (c)(1) states,

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

(A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;

(B) The defendant did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;

(C) The court has not found evidence of a relevant similar transaction;

(D) The victim did not suffer any intentional physical harm during the commission of the offense;

(E) The offense did not involve the transportation of the victim; and

(F) The victim was not physically restrained during the commission of the offense.

defendant was 18 years old or younger when it was created, and the image was not distributed with intent to harass or annoy or for commercial purposes. Ga. Code Ann. § 16-12-100(gf)(3).

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

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

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

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

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

3. Ga. Code Ann. § 16-6-5(a) (Enticing a child for indecent purposes) states, “A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent

acts.”⁴ This crime is punishable by imprisonment for 10–30 years. Ga. Code Ann. § 16-6-5(b). Subsection (c), however, provides that “[i]f the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.” Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).

4. Ga. Code Ann. § 16-12-100.2(c)(1) (Computer or electronic pornography and child exploitation prevention) is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000, except as provided in Ga. Code Ann. § 16-12-100.2(c)(3), (4). Ga. Code Ann. § 16-12-100.2(c)(2). Ga. Code Ann. § 16-12-100.2(c)(1) states,

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

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

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

....

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

Ga. Code Ann. § 16-12-100.2(d)(1) (Computer or electronic pornography and child exploitation prevention) also makes it a crime to “intentionally or willfully . . . utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, or another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in

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

Code Section 16-6-2,⁵ relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.”

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

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

Georgia’s core prostitution law, Ga. Code Ann. § 16-6-9 (Prostitution), and related commercial sexual statute, Ga. Code Ann. § 16-6-16 (Masturbation for hire), do not refer to the human trafficking law to provide additional protection and identification mechanisms for minor sex trafficking victims. Georgia does, however, provide an affirmative defense to victims of certain sexual crimes, including child sex trafficking victims. Pursuant to Ga. Code Ann. § 16-3-6(b)(1), (2), “[a] person shall not be guilty of a sexual crime if the conduct upon which the alleged criminal liability is based was committed by an accused who was: (1) Less than 18 years of age at the time of the conduct such person was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46; or (2) Acting under coercion or deception while the accused was being trafficked for sexual servitude in violation of subsection (c) of Code Section 16-5-46.” Under Ga. Code Ann. § 16-3-6(a)(4), “Sexual crime” is defined as “prostitution, sodomy, solicitation of sodomy, or masturbation for hire as such offenses are proscribed in Chapter 6 of Title 16.”

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

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

- (a) It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.
- (b) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.
- (c) It shall be unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section. A person violates this subsection when:
 - (1) He or she together with one or more persons conspires to violate any of the provisions of subsection (a) or (b) of this Code section and any one or more of such persons commits any overt act to effect the object of the conspiracy; or
 - (2) He or she endeavors to violate any of the provisions of subsection (a) or (b) of this Code section and commits any overt act to effect the object of the endeavor.

“Racketeering activity” is defined in Ga. Code Ann. § 16-14-3 (Definitions) to include prostitution, keeping a place of prostitution, pimping, pandering, and pandering by compulsion, and trafficking of

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

persons for labor or sexual servitude. Ga. Code Ann. § 16-14-3(5)(A)(xi), (xxx). Under Ga. Code Ann. § 16-14-3(4)(A), “Pattern of racketeering activity” is defined as including

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

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

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

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

Additionally, if the perpetrator was found guilty of the racketeering statute, which includes Ga. Code Ann. § 16-5-46⁶ (Trafficking in persons for labor or sexual servitude), § 16-6-11 (Pimping), and § 16-6-12 (Pandering), a victim may seek civil remedies pursuant to Ga. Code Ann. § 16-14-6. Furthermore, Ga. Code Ann. § 16-14-6(c) (Available civil remedies) states,

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

⁶ See *supra* note 2.

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 of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*
 - 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
 - 2.5 *Using the Internet 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 pornography carries penalties as high as similar federal offenses.*
 - 2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*
-

Legal Analysis:

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a minor.*

Ga. Code Ann. § 16-5-46⁷ (Trafficking of persons for labor or sexual servitude) applies to buyers of commercial sex acts with minors following federal precedent through the term “obtain.”⁸ Pursuant to Ga. Code Ann § 16-5-46(c), “A person commits the offence of trafficking a person from sexual servitude when that person knowingly subjects another person to or maintains another person in sexual servitude or knowingly . . . obtains by any means another person for the purpose of sexual servitude.” Under Ga. Code Ann. § 16-5-46(a)(8), “Sexual servitude” is defined as “any sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any individual, which conduct is induced or obtained . . . (B) From an individual who is under the age of 18 years; (C) From an

⁷ See *supra* note 2.

⁸ 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.

individual whom the accused believes to be under the age of 18 years”⁹ The language, “obtained . . . from an individual whom the accused believes to be under the age of 18 years,” further indicates that the law can be applied to buyer conduct.

Furthermore, pursuant to Ga. Code Ann. § 42-8-60(j)(3),¹⁰ special provisions for first time offenders in Georgia do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sex trafficking or sexual exploitation of a minor, including the possession, production, or dissemination of child pornography pursuant to Ga. Code Ann. § 16-2-100.2.

- 2.1.1 Recommendation: Amend Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude) to mirror the federal law’s language under the Justice for Victims of Sex Trafficking Act by adding the terms “patronize” and “solicit” to the list of prohibited conduct under Ga. Code Ann. § 16-5-46.¹¹

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

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

2.3 *Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*

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

⁹ See *supra* Component 1.1 for full definition of “sexual servitude.”

¹⁰ The text of Ga. Code Ann. § 42-8-60 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 367 during the 2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

¹¹ 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 (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).

¹² See *Fluker v. State*, 282 S.E.2d 112, 115 (Ga. 1981) (concerning an earlier version of the statute) (In *Fluker*, two appellants faced charges of pandering for “soliciting a named female to perform an act of prostitution.” The appellants unsuccessfully challenged this statute’s applicability to buyers of commercial sex, and the court stated, “Even if the primary emphasis of the present pandering statute is . . . upon the recruitment of females into the practice of prostitution, the fact remains, as we have pointed out, that the statute’s wording renders one guilty of pandering when he solicits a female to commit an act of prostitution, either for himself or another.”)

¹³ See *supra* Component 1.2 for sexual offenses which may apply to buyers of commercial sex acts with minors.

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

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

Under Ga. Code Ann. § 16-5-46(f)(2)¹⁴ (Trafficking of persons for labor or sexual servitude), if committed against a minor under 18, trafficking is a felony punishable by imprisonment for 10–20 years and a fine not to exceed \$100,000. If, however, the minor was “coerced or deceived into being trafficked,” the crime is punishable by imprisonment for 25–50 years and a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-5-46(f)(2).

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

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

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

....

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

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

Enticing a minor under 16 for indecent purposes, under Ga. Code Ann. § 16-6-5, is punishable by imprisonment for 10–30 years. Ga. Code Ann. § 16-6-5(b). If the victim is 14 or 15 years old and the accused is 18 or younger and no more than 4 years older than the victim, the crime is a misdemeanor. Ga. Code Ann. § 16-6-5(c). Misdemeanors could be punishable by up to 12 months in jail, a fine not to exceed \$1,000, or both or up to 12 months confinement in a detention or diversion center. Ga. Code Ann. § 17-10-3(a)(1), (2).

Additionally, although the following laws do not expressly deal with commercial transactions, offenders could face penalties under the sexual offense laws of Ga. Code Ann. § 16-6-3 (Statutory rape) and Ga.

¹⁴ See *supra* note 2.

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

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)¹⁵ 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 offense¹⁶ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,¹⁷ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.¹⁸

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

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

It shall be unlawful for any person intentionally or willfully to utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, or another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person

¹⁵ Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

¹⁶ 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).

¹⁷ 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).

¹⁸ 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).

to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2,¹⁹ relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

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

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

Under the state human trafficking statute, a mistake of age defense is impermissible for buyers of commercial sex acts with any person under eighteen years of age. Ga. Code Ann. § 16-5-46(d)²⁰ (Trafficking of persons for labor or sexual servitude) states, “[t]he age of consent for sexual activity or the accused’s lack of knowledge of the age . . . of the individual being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.”

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

Case law clarifies that knowledge of a victim’s age is not a necessary element of either statutory rape or child molestation and states in dicta that “[w]ith regard to statutory rape . . . the defendant’s knowledge of the age of the female is not an essential element of the crime . . . and therefore it is no defense that the accused reasonably believed that the prosecutrix was of the age of consent.”²¹

2.6.1 Recommendation: Enact a provision that explicitly states that mistake of age is not a defense to Ga. Code Ann. § 16-6-12 (Pandering).

¹⁹ See *supra* note 5.

²⁰ See *supra* note 2.

²¹ Haywood v. State, 642 S.E.2d 203, 204 (Ga. Ct. App. 2007) (quoting Tant v. State, 281 S.E.2d 357 (Ga. Ct. App. 2007)) (alteration in the original). Haywood further states,

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

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

Ga. Code Ann. § 16-5-46(c)²² (Trafficking of persons for labor or sexual servitude) imposes the same penalty for all offenses involving a minor under 18. Under Ga. Code Ann. § 16-5-46(f)(2) (Trafficking of persons for labor or sexual servitude), if committed against a minor under 18, trafficking is a felony punishable by imprisonment for 10–20 years and a fine not to exceed \$100,000. If, however, the minor was “coerced or deceived into being trafficked,” the crime is punishable by imprisonment for 25–50 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2).

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

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

Under Ga. Code Ann. § 15-21-208(a) (Payment and disposition of fines and forfeitures), in every case in which any court in this state imposes a fine, which will be construed to include costs, for trafficking a person for sexual servitude in violation of Ga. Code Ann. § 16-5-46²³ (Trafficking of persons for labor or sexual servitude) or any violation of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), § 16-6-12 (Pandering), § 16-6-14 (Pandering by compulsion), § 16-6-15 (Solicitation of sodomy), § 16-6-16 (Masturbation for hire), or § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), an additional penalty of \$2,500 will be imposed if the defendant was 18 years or older at the time of the offense.

Under Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude), those who purchase sex with a minor under 18 may be subject to a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2). In addition, Ga. Code Ann. § 16-5-46(g) states,

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

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

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

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

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

²² See *supra* note 2.

²³ See *supra* note 2.

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

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

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

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

2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*

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

. . . .

- (A) The minor depicted was at least 14 years of age at the time the visual medium was created;
- (B) The visual medium was created with the permission of the minor depicted; and
- (C) The defendant was 18 years of age or younger at the time of the offense and:
 - (i) The defendant’s violation of such paragraphs did not involve the distribution of such visual medium to another person; or
 - (ii) In the court’s discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant’s violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of:
 - (I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose.”

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

Additionally, pursuant to Ga. Code Ann. § 42-8-60(j)(3),²⁴ special provisions for first time offenders in Georgia do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses under Ga. Code Ann. § 16-2-100.2 (Sexual exploitation of children; reporting violation; forfeiture; penalties), including for the possession, production, or dissemination of child pornography.

However, a person who, in “good faith” mistakenly possesses child pornography and subsequently reports the possession to law enforcement within 72 hours will be protected from prosecution for crimes falling under Ga. Code Ann. § 16-12-100(b)(8)²⁵ (Sexual exploitation of children; reporting violation; forfeiture; penalties).

In comparison to the aforementioned state penalties, a federal conviction for possession of child pornography²⁶ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁷ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²⁸

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

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

²⁴ See *supra* note 10.

²⁵ The text of Ga. Code Ann. § 16-3-22.1 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 905 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

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

²⁷ 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).

²⁸ 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).

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

....

(iii) Criminal sexual conduct toward a minor;

(iv) Solicitation of a minor to engage in sexual conduct;

....

(viii) Creating, publishing, selling, distributing, or possessing any material depicting a minor or a portion of a minor’s body engaged in sexually explicit conduct;

(ix) Transmitting, making, selling, buying, or disseminating by means of a computer any descriptive or identifying information regarding a child for the purpose of offering or soliciting sexual conduct of or with a child or the visual depicting of such conduct;

(x) Conspiracy to transport, ship, receive, or distribute visual depictions of minors engaged in sexually explicit conduct; or

(xi) Any conduct which, by its nature, is a sexual offense against a victim who is a minor.

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

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

....

(iv) Rape in violation of Code Section 16-6-1;²⁹

(v) Sodomy in violation of Code Section 16-6-2;³⁰

(vi) Aggravated sodomy in violation of Code Section 16-6-2;

(vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;

(viii) Child molestation in violation of Code Section 16-6-4;

(ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;

(x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

....

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

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

....

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

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

....

(iii) Trafficking a person for sexual servitude in violation of Code Section § 16-5-46;

(iv) Rape in violation of Code Section 16-6-1;³¹

²⁹ A rape occurs whenever the victim is a female under 10 years old. Ga. Code Ann. § 16-6-1(a)(2).

³⁰ See *supra* note 5.

³¹ See *supra* note 29.

- (v) Sodomy in violation of Code Section 16-6-2;³²
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
-
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
-
- (xvii) Computer pornography and child exploitation prevention in violation of Code Section 16-12-100.2;
-
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

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

Furthermore, under Ga. Code Ann. § 42-8-60,³³ special provisions for first time offenders in Georgia relating to exoneration of guilt and discharge do not apply to the Georgia’s registration requirements under the state sexual offender registry.

³² See *supra* note 5.

³³ See *supra* note 10.

Legal Components:

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*
- 3.3 *Using the Internet 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 termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control.*

Legal Analysis:

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

Trafficking a child under the age of 18 is punishable by imprisonment for 10–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2)³⁴ (Trafficking of persons for labor or sexual servitude). If the trafficker used “coercion or deception” in trafficking the minor, the penalty is life imprisonment or imprisonment for 25–50 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-5-46(f)(2). Additionally, under subsection (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.”

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

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

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

Violating subsection (c) is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).³⁵

Under Ga. Code Ann. § 16-12-100(b)(3) (Sexual exploitation of children), “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other

³⁴ See *supra* note 2.

³⁵ See *supra* Component 2.9, for discussion of the limitations of these penalties.

person to engage in any sexually explicit conduct for the purpose of any performance.” This offense is a felony punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(f)(1). In addition, those convicted of sexual offenses face heightened penalties under Ga. Code Ann. § 17-10-6.2. Under subsection (a), “sexual offense” is defined to include, “(6) Enticing a child for indecent purposes, as defined in Code Section 16-6-5, unless subject to the provisions of subsection (c) of Code Section 16-6-5” and “(10) Sexual exploitation of children, as defined in Code Section 16-12-100.” Under subsection (b), subject to exceptions in subsection (c), “notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to the offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory imprisonment, an additional probated sentence of at least one year.” Subsection (c) states,

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

(A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;

(B) The defendant did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;

(C) The court has not found evidence of a relevant similar transaction;

(D) The victim did not suffer any intentional physical harm during the commission of the offense;

(E) The offense did not involve the transportation of the victim; and

(F) The victim was not physically restrained during the commission of the offense.

(2) If the court deviates in sentencing pursuant to this subsection, the judge shall issue a written order setting forth the judge’s reasons. Any such order shall be appealable by the defendant pursuant to Code Section 5-6-34, or by the State of Georgia pursuant to Code Section 5-7-1, unless the sentence imposed was pursuant to an agreement by the prosecuting attorney and the defendant.

Furthermore, pursuant to Ga. Code Ann. § 42-8-60(j)(3)³⁶, special provisions for first time offenders do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sex trafficking or sexual exploitation of a minor.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA) for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense³⁷ against a minor. 18 U.S.C. § 3559(e)(1).

³⁶ See *supra* note 10.

³⁷ See *supra* note 16.

3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*

Under Ga. Code Ann. § 16-12-100(b)(3), “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.” Subsection (b)(1) states, “It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.” These offenses are punishable by imprisonment for 5-20 years, a fine not to exceed \$100,000, or both. Ga. Code Ann. § 16-12-100(gf)(1).³⁸ These offenses are also subject to the provisions of Ga. Code Ann. § 17-10-6.2.

Ga. Code Ann. § 16-12-80(a) (Distributing obscene material; obscene material defined; penalty),³⁹ states in part,

A person commits the offense of distributing obscene material when he sells, lends, rents, leases, gives, advertises, publishes, exhibits, or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so

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

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

In comparison, if the victim is under the age of 14, a conviction under the TVPA⁴⁰ 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),

³⁸ See *supra* Component 2.9 for a discussion of the limitations of these penalties.

³⁹ But see *This That & the Other Gift & Tobacco, Inc. v. Cobb County*, 285 F.3d 1319, 1324 (11th Cir. 2002) (holding that the part of Ga. Code Ann. § 16-12-80 that bans all advertising of sexual devices violates the First Amendment).

⁴⁰ See *supra* note 15.

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 offense⁴¹ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of child pornography⁴² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁴

Furthermore, pursuant to Ga. Code Ann. § 42-8-60(j)(3),⁴⁵ special provisions for first time offenders do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for offenses related to the possession, production, or dissemination of child pornography.

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

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

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

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

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).⁴⁶

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

⁴¹ See *supra* note 16.

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

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

⁴⁴ 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).

⁴⁵ See *supra* note 10.

⁴⁶ See *supra* Component 2.9 for discussion of the limitations of these penalties.

It shall be unlawful for any person intentionally or willfully to utilize a computer wireless service or Internet service, including, but not limited to, a local bulletin board service, Internet chat room, e-mail, instant messaging service, or other electronic device, to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child, or another person believed by such person to be a child, any person having custody or control of a child, or another person believed by such person to have custody or control of a child to commit any illegal act by, with, or against a child as described in Code Section 16-6-2,⁴⁷ relating to the offense of sodomy or aggravated sodomy; Code Section 16-6-4, relating to the offense of child molestation or aggravated child molestation; Code Section 16-6-5, relating to the offense of enticing a child for indecent purposes; or Code Section 16-6-8, relating to the offense of public indecency, or to engage in any conduct that by its nature is an unlawful sexual offense against a child.

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

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

Under Ga. Code Ann. § 15-21-208(a) (Payment and disposition of fines and forfeitures), in every case in which any court in this state imposes a fine, which will be construed to include costs, for trafficking a person for sexual servitude in violation of Ga. Code Ann. § 16-5-46⁴⁸ (Trafficking of persons for labor or sexual servitude) or any violation of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), § 16-6-12 (Pandering), § 16-6-14 (Pandering by compulsion), § 16-6-15 (Solicitation of sodomy), § 16-6-16 (Masturbation for hire), or § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), an additional penalty of \$2,500 will be imposed if the defendant was 18 years or older at the time of the offense.

A person convicted of trafficking under Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude), when the victim is under 18, could face a fine up to \$100,000. Ga. Code Ann. § 16-5-46(f)(2). In addition, Ga. Code Ann. § 16-5-46(g) states,

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

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

In addition, under Ga. Code Ann. § 16-6-13.3(b) a perpetrator must forfeit “[a]ny property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of Code Section 16-6-11 [Pimping] and any proceeds . . .” Ga. Code Ann. § 16-6-13.2(b) (Civil forfeiture of motor vehicle)

⁴⁷ See *supra* note 5.

⁴⁸ See *supra* note 2.

further provides, “Any motor vehicle used when the offense involved the pimping of a person to perform an act of prostitution, by a person to facilitate a violation of Code Section 16-6-10 [Keeping a place of prostitution], 16-6-11 [Pimping], 16-6-12 [Pandering], or 16-6-14 [Pandering by compulsion] is declared to be contraband and no person shall have a property right in it.”

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

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

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

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

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

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

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

. . . .

- (iv) Solicitation of a minor to engage in sexual conduct;
- (v) Use of a minor in a sexual performance;
- (vi) Solicitation of a minor to practice prostitution;
- (vii) Use of a minor to engage in any sexually explicit conduct to produce any visual medium depicting such conduct;
- (viii) Creating, publishing, selling, distributing, or possessing any material depicting a minor or a

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

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

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

....

- (iv) Rape in violation of Code Section 16-6-1;⁴⁹
- (v) Sodomy in violation of Code Section 16-6-2;⁵⁰
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;
- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

....

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

....

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

....

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

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

....

- (iii) Trafficking a person for sexual servitude in violation of Code Section § 16-5-46;
- (iv) Rape in violation of Code Section 16-6-1;⁵¹
- (v) Sodomy in violation of Code Section 16-6-2;⁵²
- (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted of the offense is 21 years of age or older;
- (viii) Child molestation in violation of Code Section 16-6-4;

⁴⁹ See *supra* note 29.

⁵⁰ See *supra* note 5.

⁵¹ See *supra* note 29.

⁵² See *supra* note 5.

- (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the person was convicted of a misdemeanor offense;
- (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
-
- (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
-
- (xvii) Computer pornography and child exploitation in violation of Code Section 16-12-100.2;
-
- (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a minor or an attempt to commit a sexual offense against a victim who is a minor.

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

Furthermore, under Ga. Code Ann. § 42-8-60⁵³, special provisions for first time offenders in Georgia relating to exoneration of guilt and discharge do not apply to the Georgia’s registration requirements under the state sexual offender registry.

3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control.*

Georgia does not specifically list the types of violent felonies that could cause the removal of a child from a parent. Ga. Code Ann. § 15-11-310(a) (Grounds for determining termination of parental rights) states in part:

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

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

“Aggravated circumstances” includes circumstances in which a parent has “(C) Subjected a child or his or her sibling to torture, chronic abuse, sexual abuse, or sexual exploitation” Ga. Code Ann. § 15-11-2⁵⁴ (Definitions). It also includes circumstances in which the parent has “(G) Caused his child to be conceived as a result of having nonconsensual sexual intercourse with the mother of his child or when the mother is less than 10 years of age.”

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

⁵³ See *supra* note 10.

⁵⁴ The text of Ga. Code Ann. § 15-11-2 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 331 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

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

. . . .

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

. . . .

Legal Components:

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

Legal Analysis:

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*

Georgia's core sex trafficking statute, Ga. Code Ann. § 16-5-46(c)⁵⁵ (Trafficking of persons for labor or sexual servitude) does not expressly apply to facilitators of trafficking. Under Ga. Code Ann. § 16-5-46(c), trafficking for sexual servitude occurs when a person "knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude." This language could reach some facilitators, but does not include terms such as "benefiting," "assisting," or "aiding," which are terms more explicitly applicable to facilitators.

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

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

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

1. Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution) could apply to facilitators and specifically criminalizes "exercising control over the use of any place or conveyance which would offer seclusion or shelter for the practice of prostitution . . . when [the perpetrator] knowingly grants or permits the use of such place for the purpose of prostitution." Similarly, pursuant to Ga. Code Ann. § 44-7-18(b) (Effect of leases for purposes of prostitution or assignation), leases entered into for the purposes of prostitution "shall be void."
2. Ga. Code Ann. § 16-6-11 (Pimping). Although not specific to minors, the offense of pimping, as defined in Ga. Code Ann. § 16-6-11, includes when a person,
 -
 - (3) Directs or transports another person to a place when he or she knows or should know that the direction or transportation is for the purpose of prostitution;

⁵⁵ See *supra* note 2.

....

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

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

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

....

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

This crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).⁵⁶

Additionally, pursuant to Ga. Code Ann. § 42-8-60(j)(3),⁵⁷ special provisions for first time offenders in Georgia do not apply to those who have been found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sex trafficking or sexual exploitation of a minor.

Where a facilitator is also engaged in criminal gang activity, extra penalties may apply. It is an offense “for any person employed by or associated with a criminal street gang to conduct or participate in criminal gang activity through the commission of any offense enumerated in paragraph (1) of Code Section 16-15-3.” Ga. Code Ann. § 16-15-4(a).⁵⁸ In addition to any other penalty provided by law, Any violation of this provision is punishable by imprisonment for 5–15 years, a fine of \$10,000–\$15,000, or both. Ga. Code Ann. § 16-15-4(k)(1). Additionally, Ga. Code Ann. § 16-15-5(b) provides “[a]ny property

⁵⁶ See *supra* Component 2.9 for circumstances that will limit these penalties.

⁵⁷ See *supra* note 10.

⁵⁸ See discussion *supra* in Component 1.2.

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

In addition to criminal penalties, Georgia has also enacted mandatory posting requirements for businesses likely to be used in the course of human trafficking.⁵⁹ Such business must post a standard sign in prominent locations informing trafficking victims about available services. Failure to post such notice is punishable by a fine of not more than \$500.00 and “[u]pon a second or subsequent conviction, the owner shall be guilty of a high and aggravated misdemeanor and shall be punished by a fine not to exceed \$5,000.00.” Ga. Code Ann. § 16-5-47(d).

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

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

Under Ga. Code Ann. § 15-21-208(a) (Payment and disposition of fines and forfeitures), in every case in which any court in this state imposes a fine, which will be construed to include costs, for trafficking a person for sexual servitude in violation of Ga. Code Ann. § 16-5-46⁶⁰ (Trafficking of persons for labor or sexual servitude) or any violation of Ga. Code Ann. § 16-6-10 (Keeping a place of prostitution), § 16-6-11 (Pimping), § 16-6-12 (Pandering), § 16-6-14 (Pandering by compulsion), § 16-6-15 (Solicitation of sodomy), § 16-6-16 (Masturbation for hire), or § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), an additional penalty of \$2,500 will be imposed if the defendant was 18 years or older at the time of the offense.

A person convicted of trafficking under Ga. Code Ann. § 16-5-46 (Trafficking of persons for labor or sexual servitude), when the victim is under 18, could face a fine up to \$100,000. Ga. Code Ann. § 16-5-46(f)(2). In addition, Ga. Code Ann. § 16-5-46(g) states,

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

Facilitators prosecuted under Ga. Code Ann. § 16-6-11 (Pimping) face asset forfeiture. Under Ga. Code Ann. § 16-6-13.3 (Civil forfeiture of proceeds and property), “[a]ny property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of Code Section 16-6-11 [Pimping] and any proceeds are declared to be contraband and no person shall have a property right in them.” Ga. Code Ann. § 16-6-13.3(b). Additionally, Ga. Code Ann. § 16-6-13.2(b) (Civil forfeiture of

⁵⁹ Ga. Code Ann. § 16-5-47(b) provides that the businesses subject to the mandatory posting provision are: Adult entertainment establishments Bars; Primary airports; Passenger rail or light rail stations; Bus stations; Truck stops; Emergency rooms within general acute care hospitals; Urgent care centers; Farm labor contractors and day haulers; Privately operated job recruitment centers; Safety rest areas located along interstate highways in this state; Hotels; and Businesses and establishments that offer massage or bodywork services by a person who is not a massage therapist.

⁶⁰ See *supra* note 2.

motor vehicle) further provides, “Any motor vehicle used when the offense involved the pimping of a person to perform an act of prostitution, by a person to facilitate a violation of Code Section 16-6-10 [Keeping a place of prostitution], 16-6-11 [Pimping], 16-6-12 [Pandering], or 16-6-14 [Pandering by compulsion] is declared to be contraband and no person shall have a property right in it.”

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

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

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

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

4.3 Promoting and selling child sex tourism is illegal.

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

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

4.4 Promoting and selling child pornography is illegal.

Pursuant to Ga. Code Ann. § 16-12-100 (Sexual exploitation of children; reporting violation; forfeiture; penalties), promoting and selling pornography depicting children under 18 is illegal. Ga. Code Ann. § 16-12-100. Specifically, “It is unlawful for any person knowingly to . . . promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct.” Ga. Code Ann. § 16-12-100(b)(5). Similarly, it is also a crime to “advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor’s body engaged in any sexually explicit conduct can be found or purchased.” Ga. Code Ann. § 16-12-100(b)(6). This crime is punishable by imprisonment for 5–20 years and a fine not to exceed \$100,000. Ga. Code Ann. § 16-12-100(gf)(1).

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

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

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

The crime is punishable by imprisonment for 1–20 years and a fine not to exceed \$10,000. Ga. Code Ann. § 16-12-100.2(c)(2).⁶¹ Additionally, for persons found guilty, entered a plea of guilty, or entered a plea of nolo contendere for the offenses of sexual exploitation of a minor, including for the possession, production, or dissemination of child pornography under Ga. Code Ann. § 16-2-100.2, the special provisions for first time offenders do not apply. Ga. Code Ann. § 42-8-60(j)(3).⁶²

⁶¹ See *supra* Component 2.9 for circumstances that will limit these penalties.

⁶² See *supra* note 10.

Legal Components:

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based upon the willingness of a minor under 18 to engage in the commercial sex act.*
- 5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*
- 5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*
- 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC).*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Legal Analysis:

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*

Under Georgia’s core human trafficking statute, Ga. Code Ann. § 16-5-46(c)⁶³ (Trafficking of persons for labor or sexual servitude), all commercially sexually exploited children are identifiable as sex trafficking victims.

Ga. Code Ann. § 16-5-46(c)⁶⁴ (Trafficking of persons for labor or sexual servitude) does not require a showing of force, fraud or coercion for minors under 18 to be identified as a sex trafficking victim.⁶⁵ Additionally, the core sex trafficking statute is buyer-applicable through the language “obtains”; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking.⁶⁶ Ga. Code Ann. § 16-5-46(c). Finally, the offense of human trafficking under Ga. Code Ann. § 16-5-46, does not require that a trafficker or controlling be identified to establish the crime of sex trafficking.⁶⁷ Consequently, Georgia’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the child without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Ga. Code Ann. § 16-5-46(c).

⁶³ See *supra* note 2.

⁶⁴ See *supra* note 2.

⁶⁵ See *supra* Component 1.1.

⁶⁶ See *supra* discussion of buyer applicability in Component 2.1.

⁶⁷ See *supra* Component 1.1.

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

Under Ga. Code Ann. § 16-5-46(d)⁶⁸ (Trafficking of persons for labor or sexual servitude), “The age of consent for sexual activity . . . of the individual being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.” However, this does not fully prohibit a defendant from asserting a defense based on the minor victim’s willingness to engage in the commercial sex act.

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

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁶⁹

Georgia’s prostitution statute reads broadly and does not exclude the prosecution of minors for prostitution. The prostitution statute states, “A person commits the offense of prostitution when he or she performs or offers or consents to perform a sexual act, including but not limited to sexual intercourse or sodomy, for money or other items of value.” Ga. Code Ann. § 16-6-9 (Prostitution). The offense is punishable as a misdemeanor. Ga. Code Ann. § 16-6-13(a) (Penalties for violating Code Sections 16-6-9 through 16-6-12). Similarly, Ga. Code Ann. § 16-6-16 (Masturbation for hire) has no age distinctions and applies regardless of age. Ga. Code Ann. § 16-6-16. While juvenile victims may assert an affirmative defense to prostitution-related charges under Ga. Code Ann. § 16-3-6(b)⁷⁰ (Affirmative defenses to certain sexual crimes), this defense does not eliminate criminal liability for prostitution offenses for minors.

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

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

Juvenile sex trafficking victims in Georgia face a range of responses with varying access to services. Depending on how the minor is identified, a juvenile sex trafficking victim may be treated as a dependent child, a child in need of services, or a delinquent child; identification as a dependent child or a child in need of services provides a likely, non-punitive avenue to specialized services.

Child Identified as Dependent

I. Initial custody

Pursuant to Ga. Code Ann. § 15-11-133(a) (Removal of child from the home; protective custody), a child may be removed from the home pursuant to a court order, or “[b]y a law enforcement officer or duly

⁶⁸ See *supra* note 2.

⁶⁹ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁷⁰ Ga. Code Ann. § 16-3-6(b) (Affirmative defenses to certain sexual crimes) states,

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

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

authorized officer of the court if a child is in imminent danger of abuse or neglect if he or she remains in the home.” Finding that a child victim of commercial sexual exploitation and sex trafficking is “abused” for purposes of Georgia’s child protection statute, Ga. Code Ann. § 49-5-40⁷¹ (Definitions; confidentiality of records; restricted access to records) and mandatory child abuse reporting statute, Ga. Code Ann. § 19-7-5(b)(4), the child will likely receive the protection and services of child welfare as a “dependent” child.

a. Placement

An abused or neglected child may be placed “with a relative of such child's parent, guardian, or legal custodian, in foster care, or in emergency foster care.” Ga. Code Ann. § 15-11-130 (Emergency care and supervision of child without court order; immunity).

Moreover, Georgia law specifically states that “[n]o child alleged to be or adjudicated as a dependent child shall be detained in any jail, adult lockup, or adult detention facility, nor shall a child be detained in a secure residential facility or nonsecure residential facility unless a child is also alleged to have committed a delinquent act or adjudicated to be a delinquent child.” Ga. Code Ann. § 15-11-135 (Placement in eligible foster care).

II. Process following initial custody

Pursuant to Ga. Code Ann. § 15-11-133 (Removal of child from the home; protective custody),

....

(b) Upon removing a child from his or her home, a law enforcement officer or duly authorized officer of the court shall:

- (1) Immediately deliver such child to a medical facility if such child is believed to suffer from a serious physical condition or illness which requires prompt treatment, and, upon delivery, shall promptly contact DFCS;
- (2) Bring such child immediately before the juvenile court or promptly contact a juvenile court intake officer; and
- (3) Promptly give notice to the court and such child's parents, guardian, or legal custodian that such child is in protective custody, together with a statement of the reasons for taking such child into protective custody.

....

(f) A juvenile court intake officer shall immediately determine if a child should be released, remain in protective custody, or be brought before the court upon being contacted by a law enforcement officer, duly authorized officer of the court, or DFCS that a child has been taken into protective custody.

To determine whether a child should be removed from the home, the intake officer is required to make certain findings. Specifically, under Ga. Code Ann. § 15-11-134 (Required findings justifying removal from the home), the officer must find that remaining in the home, “would be contrary to his or her welfare.”

III. Placement process pending adjudication/investigation

A child that is alleged to be dependent may be placed temporarily in foster care. However, pursuant to Ga. Code Ann. § 15-11-135(a) (Placement in eligible foster care),

A child taken into custody shall not be placed in foster care prior to the hearing on a petition for dependency unless:

⁷¹ See *supra* note 77.

- (1) Foster care is required to protect the child;
- (2) The child has no parent, guardian, or legal custodian or other person able to provide supervision and care and return him or her to the court when required; or
- (3) An order for the child's foster care has been made by the court.

Further, Ga. Code Ann. § 15-11-135(c) (Placement in eligible foster care) allows for a child to be placed in foster care only in the following locations:

- (1) A licensed or approved foster home or a home approved by the court which may be a public or private home;
- (2) The home of the child's noncustodial parent;
- (3) The home of a relative;
- (4) The home of fictive kin;
- (5) A facility operated by a licensed child welfare agency⁷²; or
- (6) A licensed shelter care facility approved by the court.

Additionally, pursuant to subsection (b), no child, "alleged to be or adjudicated as a dependent child shall be detained in any jail, adult lockup, or adult detention facility . . . secure residential facility or nonsecure residential facility."

Moreover, Georgia law specifically states that "[u]nless a child found to be deprived is found also to be delinquent, such child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children." Ga. Code Ann. § 15-11-55(b).

IV. Adjudication or referral to alternate process

Ga. Code Ann. § 15-11-181 (Adjudication hearing) requires that the court schedule an adjudication hearing. If the child was held in foster care, the adjudication must, "be scheduled for no later than ten days after the filing of the petition alleging dependency." Ga. Code Ann. § 15-11-181(a). Further, "[i]f the alleged dependent child is not in foster care, the adjudication hearing shall be held no later than 60 days after the filing of the petition alleging dependency." Ga. Code Ann. § 15-11-181(a).

If the court does not find that the child is dependent, the child must be discharged from foster care. Ga. Code Ann. Ga. Code Ann. § 15-11-181(d). However, if the child is found to be dependent, the court must make a further finding of whether, "such dependency is the result of substance abuse by such child's parent, guardian, or legal custodian." Ga. Code Ann. § 15-11-181(f). Additionally, the court must hold a disposition hearing, if the child is found to be dependent. Ga. Code Ann. § 15-11-181(g).

V. Outcomes

Pursuant to Ga. Code Ann. § 15-11-212⁷³, (Disposition of dependent child), the court may order any of the following as possible dispositions:

- (1) Permit such child to remain with his or her parent, guardian, or legal custodian subject to conditions and limitations as the court prescribes, including supervision as directed by the court

⁷² Pursuant to Ga. Code Ann. § 49-5-12.3, "child welfare agency" is defined as, "any child-caring institution, child-placing agency, children's transition care center, or maternity home." The text of Ga. Code Ann. § 49-5-12.3 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 905 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

⁷³ The text of Ga. Code Ann. § 15-11-212 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 887 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

for the protection of such child;

(2) Grant or transfer temporary legal custody to any of these persons or entities:

(A) Any individual, including a biological parent, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for such child, provide that priority for placement is given to an adult who is a relative or fictive kin;

(B) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for such child;

(C) Any public agency authorized by law to receive and provide care for such child; provided, however, that for the purpose of this Code section, the term "public agency" shall not include DJJ

Additionally, the court may order that the child or guardian(s) participate in counseling. Ga. Code Ann. § 15-11-212(a)(4). However, if the court finds that "preventive or reunification efforts have not been reasonable but that further efforts could not permit a child adjudicated as a dependent child to safely remain at home, the court may nevertheless authorize or continue the removal of such child." Ga. Code Ann. § 15-11-212(g).

Pursuant to Ga. Code Ann. § 15-11-212(f), if the court finds that the dependency is as a result of the substance abuse of the child's guardian, the court may not allow for the child's custody to be transferred back to the child's parent or guardian until, "such parent, guardian, or legal custodian undergoes substance abuse treatment and random substance abuse screenings and those screenings remain negative for a period of no less than six consecutive months."

Child Identified as In Need of Services

Under Ga. Code Ann. § 15-11-2(11), a "Child in need of services" means:

(A) A child adjudicated to be in need of care, guidance, counseling, structure, supervision, treatment, or rehabilitation and who is adjudicated to be:

(i) Subject to compulsory school attendance and who is habitually and without good and sufficient cause truant, as such term is defined in Code Section 15-11-381, from school;

(ii) Habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable or places himself or herself or others in unsafe circumstances;

(iii) A runaway, as such term is defined in Code Section 15-11-381;

(iv) A child who has committed an offense applicable only to a child;

(v) A child who wanders or loiters about the streets of any city or in or about any highway or any public place between the hours of 12:00 Midnight and 5:00 A.M.;

(vi) A child who disobeys the terms of supervision contained in a court order which has been directed to such child who has been adjudicated a child in need of services; or

(vii) A child who patronizes any bar where alcoholic beverages are being sold, unaccompanied by his or her parent, guardian, or legal custodian, or who possesses alcoholic beverages; or

(B) A child who has committed a delinquent act and is adjudicated to be in need of supervision but not in need of treatment or rehabilitation.

I. Initial custody

a. Authority for initial custody

Pursuant to Ga. Code Ann. § 15-11-410(a) (Taking a child into temporary custody), a child may be taken into custody

- (1) Pursuant to a court order; or
- (2) By a law enforcement officer when there are reasonable grounds to believe that a child has run away from his or her parent, guardian, or legal custodian or the circumstances are such as to endanger a child's health or welfare unless immediate action is taken.

b. Placement

As set out in Ga. Code Ann. § § 15-11-412 (Temporary detention; place of custody),

(a) A child alleged to be a child in need of services may be held in a secure residential facility or nonsecure residential facility until a continued custody hearing is held, provided that a detention assessment has been administered and such child is not held in a secure residential facility or nonsecure residential facility for more than 24 hours and any of the following apply:

- (1) It is alleged that such child is a runaway;
- (2) It is alleged that such child is habitually disobedient of the reasonable and lawful commands of his or her parent, guardian, or legal custodian and is ungovernable; or
- (3) Such child has previously failed to appear at a scheduled hearing.

....

(c) In no case shall a child alleged to be or adjudicated as a child in need of services in custody be detained in a jail, adult lock-up, or other adult detention facility.

II. Process following initial custody

Initially, the person exercising custody over a child, which may include a law enforcement officer, may not hold the child for a period exceeding 12 hours. Ga. Code Ann. § 15-11-411 (Temporary custody; time limitations). During that period of time, “the court shall be notified and shall place such child in the least restrictive placement consistent with such child's needs for protection or control” Ga. Code Ann. § 15-11-411(c).

If the child is placed in a “secured residential facility or nonsecure residential facility” a continued custody hearing must be held within 72 hours. Ga. Code Ann. § 15-11-413(a) (Continued custody hearing). Additionally, pursuant to subsection (b),

If a child alleged to be a child in need of services is not being held in a secure residential facility or nonsecure residential facility and has not been released to the custody of such child's parent, guardian, or legal custodian, a hearing shall be held within 72 hours, excluding weekends and holidays, after such child is placed in foster care.

The standard required to continue a child in care is dictated by Ga. Code Ann. § 15-11-415(a) (Detention decision; finding), which states that

Restraints on the freedom of a child prior to adjudication shall be imposed only when there is probable cause to believe that a child committed the act of which he or she is accused, there is clear and convincing evidence that such child's freedom should be restrained, that no less restrictive alternatives will suffice, and:

- (1) Such child's detention or care is required to reduce the likelihood that he or she may inflict serious bodily harm on others during the interim period;
- (2) Such child's detention is necessary to secure his or her presence in court to protect the jurisdiction and processes of the court.

Ga. Code Ann. § 15-11-415(f) states that services may still be provided in lieu of removal until the adjudication hearing is held if it is deemed appropriate.

III. Placement process pending adjudication/investigation

At the continued custody hearing, the court may either release the child to a parent or guardian or may place the child “in the least restrictive placement consistent with such child's need for protection and control” § 15-11-414 (Continued custody hearing; findings).

IV. Adjudication or referral to alternate process

Pursuant to Ga. Code Ann. § 15-11-415(b) (Detention decision; finding), if a child was not taken into custody pending adjudication, the adjudication hearing must be held within 60 days after the filing of the petition. If the child was held in temporary custody pending adjudication, the adjudication hearing must be held within 10 days of the petition being filed. Ga. Code Ann. § 15-11-415(c).

This timeline is further addressed in Ga. Code Ann. § 15-11-441 (Adjudication hearing), which states in part,

[T]he adjudication hearing shall be scheduled to be held no later than ten days after the filing of the petition seeking an adjudication that such child is a child in need of services. If such child is not in continued custody, the adjudication hearing shall be scheduled to be held no later than 60 days after the filing of such petition.

Ga. Code Ann. § 15-11-441 goes on to further state, “[a]n adjudication hearing for a child alleged to be a child in need of services shall be conducted in accordance with Title 24[] . . . [and] [a]t the conclusion of the adjudication hearing, the court shall determine whether such child is a child in need of services.” Ga. Code Ann. § 15-11-441(b), (c).

The disposition of the case is not required to be heard immediately after the adjudication hearing. In fact, pursuant to Ga. Code Ann. § 15-11-442(a) (Disposition hearing; time limitations; disposition of a child in need of services), “If the court finds that a child is a child in need of services, a final disposition hearing shall be held and completed within 30 days of the conclusion of the adjudication hearing if the final disposition hearing is not held in conjunction with such adjudication hearing.”

V. Outcomes

Pursuant to Ga. Code Ann. § 15-11-442(b) (Disposition hearing; time limitations; disposition of a child in need of services),

The court shall order the least restrictive and most appropriate disposition. Such disposition may include:

- (1) Permitting such child to remain with his or her caregiver without limitations or conditions;
- (2) Permitting such child to remain with his or her caregiver subject to such limitations and conditions as the court may prescribe;
- (3) Placing such child on probation or unsupervised probation on such terms and conditions as deemed in the best interests of such child and the public. An order granting probation to a child in need of services may be revoked on the ground that the terms and conditions of the probation have not been observed;
- (4) Requiring that such child perform community service in a manner prescribed by the court and under the supervision of an individual designated by the court;
-
- (7) Requiring such child to attend structured after-school or evening programs or other court approved programs as well as requiring supervision of such child during the time of the day in which he or she most often used to perform the acts complained of in the petition alleging that such child is a child in need of services;

- (8) Any order authorized for the disposition of a dependent child;
- (9) Any order authorized for the disposition of a delinquent child except that a child in need of services shall not be placed in a secure residential facility or nonsecure residential facility nor shall such facility accept such child

Child Identified as Delinquent

A child is a “delinquent child” if the child “has committed a delinquent act and is in need of treatment or rehabilitation.” Ga. Code Ann. § 15-11-2(20). Pursuant to Ga. Code Ann. § 15-11-2(19), a “delinquent act” is,

- (A) An act committed by a child designated a crime by the laws of this state, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the act is not an offense applicable only to a child or a juvenile traffic offense;
- (B) The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudicated to have committed a delinquent act; or
- (C) Failing to appear as required by a citation issued for an act that would be a crime if committed by an adult.

I. Initial custody

a. Authority for initial custody

If a child commits an act of prostitution, the child could be considered a delinquent. If the sexually exploited minor is alleged to be delinquent, the child may be detained, pursuant to Ga. Code Ann. § 15-11-9 (Authority to issue arrest warrants), which allows for a juvenile judge, “to issue a warrant for the arrest of any child for an offense committed against the laws of this state, based either on personal knowledge or the information of others given under oath.”

Additionally, pursuant to Ga. Code Ann. § 15-11-500 (Order to take child into immediate custody), a judge may issue a summons for the child to be taken immediately into custody by a law enforcement officer,

If it appears from a filed affidavit or from sworn testimony before the court that the conduct, condition, or surroundings of an alleged delinquent child are endangering such child's health or welfare or those of others or that such child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons

A child may also be taken into custody, pursuant to Ga. Code Ann. § 15-11-501(a) (Taking child into custody; notice to custodian; notification of prosecuting attorney), in the following circumstances:

- (1) Pursuant to an order of the court under this article, including an order to a DJJ employee to apprehend:
 - (A) When he or she has escaped from an institution or facility operated by DJJ; or
 - (B) When he or she has been placed under supervision and has violated its conditions;
- (2) Pursuant to the laws of arrest; or
- (3) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that a child has committed a delinquent act.

b. Placement

Pursuant to Ga. Code Ann. § 15-11-504(a) (Place of detention; data on child detained),

An alleged delinquent child may be detained only in:

- (1) A licensed foster home;
- (2) A home approved by the court which may be a public or private home;
- (3) The home of such child's noncustodial parent or of a relative;
- (4) A facility operated by a licensed child welfare agency; or
- (5) A secure residential facility or nonsecure residential facility.

Additionally, under Ga. Code Ann. § 15-11-505⁷⁴ (Use of detention assessments to determine if detention is warranted), “If an alleged delinquent child is brought before the court, delivered to a secure residential facility or nonsecure residential facility or foster care facility designated by the court, or otherwise taken into custody, the juvenile court intake officer shall immediately administer a detention assessment and determine if such child should be detained, taking into account subsection (b) of this Code section. Such child shall be released unless it appears that his or her detention is warranted.

II. Process following initial custody

When a child in need of services is taken into custody, the person taking that child into custody may only maintain custody over the child for 12 hours. Ga. Code Ann. § 15-11-47(e)(1).

A detention hearing must be heard if a child is detained pending a delinquency adjudication. Ga. Code Ann. § 15-11-472 (Delinquency case time limitations). Pursuant to subsection (a), a detention hearing is required to be held either

- (1) Two business days after an alleged delinquent child is placed in preadjudication custody if he or she is taken into custody without an arrest warrant; or
- (2) Five business days after an alleged delinquent child is placed in preadjudication custody if he or she is taken into custody pursuant to an arrest warrant.

After the detention hearing, a petition must be filed to begin the delinquency proceedings. Ga. Code Ann. § 15-11-472(c). If the child is released from custody pending adjudication, the petition must be filed “within 30 days of the filing of the complaint or within 30 days after such child is released from preadjudication custody.” Ga. Code Ann. § 15-11-472(c)(1). However, if the child is continued in custody pending the hearing, the petition must be filed within 72 hours. Ga. Code Ann. § 15-11-472(d)(1).

Additionally, pursuant to Ga. Code Ann. § 15-11-472(f), “A child who is released from detention but subject to conditions of release shall not be considered to be in detention for purposes of calculating time frames”

III. Placement process pending adjudication/investigation

Pursuant to Ga. Code Ann. § 15-11-504(a) (Place of detention; data on child detained),

An alleged delinquent child may be detained only in:

- (1) A licensed foster home;
- (2) A home approved by the court which may be a public or private home;
- (3) The home of such child's noncustodial parent or of a relative;

⁷⁴ The text of Ga. Code Ann. § 15-11-505(a) cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 367 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

- (4) A facility operated by a licensed child welfare agency; or
 - (5) A secure residential facility or nonsecure residential facility.
- Pursuant to Ga. Code Ann. § 15-11-506 (Detention hearing; time limitations),

- (a) A detention hearing shall be held to determine whether preadjudication custody of an alleged delinquent child is required. If such hearing is not held within the time specified, such child shall be released from detention or foster care.
- (b) If an alleged delinquent child is detained and is not released from preadjudication custody, a detention hearing shall be held promptly and not later than:
 - (1) Two days after such child is placed in preadjudication custody if such child is taken into custody without an arrest warrant; or
 - (2) Five days after such child is placed in preadjudication custody if such child is taken into custody pursuant to an arrest warrant.

IV. Adjudication or referral to alternate process

Once the petition is filed, the adjudication hearing must be held within 60 days if the child is not in custody, and within 10 days if the child is in custody. Ga. Code Ann. §§ 15-11-472(c)(4) and (d)(3). The adjudication hearing is required to be held without a jury, pursuant to Ga. Code Ann. § 15-11-582(a) (Adjudication hearing; time limitations; findings). Additionally, pursuant to Ga. Code Ann. § 15-11-582(b)(4), the hearing must be conducted “[i]n language understandable to the child subject to the delinquency petition and participants, to the fullest extent practicable.”

A juvenile sex trafficking victim may be able to avoid being adjudicated delinquent by asserting an affirmative defense under Ga. Code Ann. § 16-3-6(b) (Affirmative defenses to certain sexual crimes) which states,

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

Ga. Code Ann. § 15-11-582(e) dictates that if the child is found to be delinquent as a result of the adjudication, “the court may proceed immediately or at a postponed hearing to make disposition of the case.”

As an alternative to a delinquency adjudication, a petition for informal adjustment may be filed. Ga. Code Ann. § 15-11-515 (Informal adjustment; circumstances; admissions; exceptions). In order for informal adjustment to be implemented, the following must apply:

- (1) The admitted facts bring the case within the jurisdiction of the court;
- (2) Counsel and advice without an adjudication would be in the best interests of the public and a child, taking into account at least the following factors:
 - (A) The nature of the alleged offense;
 - (B) The age and individual circumstances of such child;
 - (C) Such child's prior record, if any;
 - (D) Recommendations for informal adjustment made by the complainant or the victim; and
 - (E) Services to meet such child's needs and problems may be unavailable within the formal court system or may be provided more effectively by alternative community programs; and
- (3) A child and his or her parent, guardian, or legal custodian consent with knowledge that consent is not obligatory.

- 5.4.1 Recommendation: Enact a mandatory protective response for juvenile sex trafficking victims that provides an avenue to specialized services outside detention.

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*⁷⁵

Commercial sexual exploitation and child sex trafficking are both identified as types of child abuse under Georgia's child protection statute, Ga. Code Ann. § 49-5-40⁷⁶ (Definitions; confidentiality of records; restricted access to records) and mandatory child abuse reporting statute, Ga. Code Ann. § 19-7-5(b)(4). Pursuant to Ga. Code Ann. § 49-5-40(a)(3)⁷⁷ (Definitions; confidentiality of records; restricted access to records), the offense of "child abuse" includes,

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

Furthermore, under Ga. Code Ann. § 49-5-40(a)(10),⁷⁸ "sexual abuse" is defined as, "[A]n individual's employing, using, persuading, inducing, enticing, or coercing any child who is not that individual's spouse to engage in any act which involves:

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

"Sexual exploitation" is defined as by Ga. Code Ann. § 49-5-40(a)(11),⁷⁹ includes, "Conduct by any individual who allows, permits, encourages, or requires any child to engage in:

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

Additionally, for purposes of mandatory reporting, "child abuse" under Ga. Code Ann. § 19-7-5(b)(4)⁸⁰ (Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report) means:

⁷⁵ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁷⁶ See *supra* note 77.

⁷⁷ The text of Ga. Code Ann. § 49-5-40(a) cited here and elsewhere in this report includes amendments made by the enactment of House Bill 725 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

⁷⁸ See *supra* note 77.

⁷⁹ See *supra* note 77.

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

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

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

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

Georgia’s narrow definitions of “legal custodian” under Ga. Code Ann. § 49-5-3(12) (Children and Youth Services; definitions) and “caregiver” under Ga. Code Ann. § 49-5-3(3) (Child and youth services) would likely be a barrier for a minor victim of sex trafficking to receive child welfare protection and services, as both embody traditional notions of legal care and custody. However, pursuant to Georgia’s child protection statute, Ga. Code Ann. § 49-5-180(2)⁸¹ (Central child abuse registry; definitions), the definition of “alleged child abuser” includes, “an individual named in an abuse investigation report as having committed a substantial case”; thus, this definition would be sufficiently broad as to provide a gateway for services and protection for child victims.

Furthermore, the definitions of “sexual abuse” and “sexual exploitation” under Georgia’s code related to domestic relations and child abuse reporting expand who is a perpetrator for purposes of child abuse identification. Ga. Code Ann. § 19-7-5(4)(E)⁸² and Ga. Code Ann. § 19-7-5(11)⁸³ respectively, do not include a requirement as to classification of the perpetrator for a child to be identified as sexually abused or exploited. Instead, Ga. Code Ann. § 19-7-5(4)(E) defines “child abuse” to include “[s]exual exploitation of a child.” “Sexual exploitation” is further defined under Ga. Code § 19-7-5(11) as “conduct by a person who allows, permits, encourages, or requires a child to engage in: (A) Prostitution, as defined in Code Section 16-6-9; or (b) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.” Finding that the “parent or caretaker” requirement included for other forms of abuse was expressly removed for the offense of

⁸⁰ The text of Ga. Code Ann. § 19-7-5 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 905 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

⁸¹ The text of Ga. Code Ann. § 49-5-180 cited here and elsewhere in this report includes amendments made by House Bill 905 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

⁸² See *supra* note 81.

⁸³ See *supra* note 81.

“sexual exploitation of a child” under the definition of child abuse pursuant to Ga. Code Ann. § 19-7-5(4), there is likely no barrier to a child receiving child welfare services as a result of being identified as abused or sexually exploited.

Therefore, it is likely that pursuant to the definitions of “alleged child abuser,” “child abuse,” and “sexual exploitation,” any reported case of child abuse or sexual exploitation would allow child welfare agencies to provide services and protections to minor victims of sexual exploitation and trafficking.⁸⁴

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

For the purposes of crime victims’ compensation funds, “crime” includes a violation of Ga. Code Ann. § 16-5-46⁸⁵ (Trafficking in persons for labor or sexual servitude). Ga. Code Ann. § 17-15-2(3)(A). Pursuant to Ga. Code Ann. § 17-15-7(a)(1), a person “eligible for awards pursuant to this chapter” is defined as someone who endures at least one of the following:

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

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

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

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

⁸⁴ See *supra* Component 5.5. for discussion on identifying victims of trafficking and CSEC offense as “abused” for purposes of accessing child welfare services and protections.

⁸⁵ See *supra* note 2.

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

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

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

....

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

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

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

Certain victim-friendly criminal justice procedures exist in Georgia.

Under Ga. Code Ann. § 16-5-46(e)⁸⁶ (Trafficking in persons for labor or sexual servitude), “[t]he sexual history or history of commercial sexual activity of a person alleged to have been trafficked or such person’s connection by blood or marriage to an accused in the case or to anyone involved in such person’s trafficking shall be excluded from evidence if the court finds at a hearing outside the presence of the jury that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.”

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

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

⁸⁶ See *supra* note 2.

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

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

For children ten years of age and younger that are victims of the crimes of Ga. Code Ann. § 16-5-70 (Cruelty to children), § 16-6-1 (Rape), § 16-6-4 (Child molestation; aggravated child molestation), or § 16-6-5 (Sexual assault by persons with supervisory or disciplinary authority), the court can order that their testimony “be taken outside the courtroom and shown in the courtroom by means of a two-way closed circuit television.” Ga. Code Ann. § 17-8-55(a). However, such “[a]n order may be granted in such cases only if: (1) The testimony is taken during the criminal trial proceeding for such violation; and (2) The judge determines that testimony by the child victim in the courtroom will result in the child’s suffering serious emotional distress such that the child cannot reasonably communicate.” Ga. Code Ann. § 17-8-55(a).

Additionally, each county in Georgia is required to have a written child abuse protocol which deals with victims of child abuse and exploitation. Ga. Code Ann. § 19-15-2⁸⁷ (Child abuse protocol committee; written child abuse protocol; training of members; written sexual abuse and exploitation protocol). Georgia’s written child abuse protocol also focuses on the anonymity of the victim under Ga. Code Ann. § 15-11-16. It states, “(c) On appeal, the anonymity of a child, and where appropriate, a victim or witness who is under the age of 18 years, shall be preserved by appropriate use of a child's, victim's, or witness's initials as appropriate.”

5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*

Georgia allows delinquency adjudications for victims of sex trafficking and sexual exploitation to be vacated or modified. Under Ga. Code Ann. § 15-11-32 (Modification or vacation of orders), a court order may be set aside if:

-
- (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

⁸⁷ The text of Ga. Code Ann. § 19-15-2 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 905 during the 2015-2016 General Assembly of the Georgia Legislature (effective July 1, 2016).

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.

. . . .

In addition to its trafficking-specific provisions, Georgia has some general expungement provisions for juveniles. While Georgia does not have automatic expungement, the Georgia Code provides for the sealing of records of delinquent children upon application to the court and a hearing. Ga. Code Ann. §15-11-79.2(b). Pursuant to Ga. Code Ann. § 15-11-79.2(b) (Sealing of records), in order to seal the records the court must find that:

- (1) Two years have elapsed since the final discharge of the person;
- (2) Since the final discharge of the person he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude or adjudicated a delinquent or unruly child and no proceeding is pending against the person seeking conviction or adjudication; and
- (3) The person has been rehabilitated.

Furthermore, under subsection (a), “Upon dismissal of a petition or complaint alleging delinquency or unruliness, or, in a case handled through informal adjustment, following completion of the informal adjustment, the court shall order the sealing of the files and records in the case, including those specified in Code Sections 15-11-82 and 15-11-83.”

Also, Ga. Code Ann. § 15-11-83(e) (When child shall be fingerprinted or photographed), which protects fingerprints and photographs of children, states,

Upon application of the child, fingerprints and photographs of a child shall be removed from the file and destroyed if a petition alleging delinquency is not filed or the proceedings are dismissed after either a petition is filed or the case is transferred to the juvenile court as provided in Code Section 15-11-30.4 [Transfer of criminal or quasi-criminal proceeding to juvenile court] or the child is adjudicated not to be a delinquent child. The court shall notify the deputy director of the Georgia Crime Information Center when fingerprints and photographs are destroyed pursuant to this subsection, and the Georgia Bureau of Investigation shall treat such records in the same manner as criminal history record information restricted pursuant to Code Section 35-3-37 [Inspection of records; correction] [Inspection of criminal records; purging, modifying, of supplementing of records].⁸⁸

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

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

⁸⁸ Ga. Code Ann. § 15-11-83.

act as defined in Code Section 16-2-20.”⁸⁹ Ga. Code Ann. § 17-14-2(9). Under Ga. Code Ann. § 16-2-20, “[a] person is concerned in the commission of a crime only if he,” among other things, “[i]ntentionally aids or abets in the commission of the crime.” § Ga. Code Ann. § 16-2-20(b)(3). This provision could potentially inhibit domestic minor sex trafficking victims from recovering funds if courts view the victims as aiders or abettors in the crime.

While “childhood sexual abuse” is defined to include human trafficking and CSEC offenses under Ga. Code Ann. § 9-3-33.1 (Actions for childhood sexual abuse) for purposes of establishing the statute of limitations for commencing civil actions, Georgia has not established civil remedies specific to harm caused by human trafficking victimization.

5.10.1 Recommendation: Enact a statutory cause of action that allows child sex trafficking victims to bring civil claims against their exploiters for damages caused by sex trafficking.

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

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

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

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

⁸⁹ Ga. Code Ann. § 16-2-20 (When a person is a party to a crime) states,

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

finding required under this subparagraph shall be made within six months of the filing of the civil action.⁹⁰

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

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

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

⁹⁰ Ga. Code Ann. § 9-3-33.1(d) (Limitations for actions for childhood sexual abuse) states,

(1) For a period of two years following July 1, 2015, plaintiffs of any age who were time barred from filing a civil action for injuries resulting from childhood sexual abuse due to the expiration of the statute of limitations in effect on June 30, 2015, shall be permitted to file such actions against the individual alleged to have committed such abuse before July 1, 2017, thereby reviving those civil actions which had lapsed or technically expired under the law in effect on June 30, 2015.

(2) The revival of a claim as provided in paragraph (d)(1) of this subsection shall not apply to:

- (a) Any claim that has been litigated to finality on the merits in a court of competent jurisdiction prior to July 1, 2015. Termination of a prior civil action on the basis of the expiration of the statute of limitations shall not constitute a claim that has been litigated to finality on the merits;
- (b) Any written settlement agreement which has been entered into between a plaintiff and defendant when the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed such agreement; and
- (c) Any claim against an entity, as such term is defined in §subsection (c) of this Code section. 9-3-33.1(c)

(3) This subsection shall be repealed effective July 1, 2017.

Legal Components:

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*
 - 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
 - 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*
 - 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
 - 6.5 *Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*
 - 6.6 *Law enforcement are mandated to promptly report missing and recovered children.*
-

Legal Analysis:

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

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

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

- (1) Methods for identifying, combating, and reporting incidents where a person has been trafficked for labor or sexual servitude, as such terms are defined in Code Section 16-5-46 [Trafficking of persons for labor or sexual servitude];
- (2) Methods for providing proper detention facilities or alternatives to detention facilities for persons who have been trafficked for labor or sexual servitude . . . including providing information on therapeutic facilities for such persons; and
- (3) Methods for assisting persons who have been trafficked for labor or sexual servitude . . . including providing information on social service organizations available to assist such person.

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

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

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

Pursuant to Ga. Code Ann. § 16-11-66(a) (Interception of wire, oral, or electronic communication by party thereto; consent requirements for recording and divulging conversations to which child under 18 years is a party; parental exception), single party consent to audiotaping is allowable. Specifically,

“Nothing in Code Section 16-11-62 [Eavesdropping, surveillance, or intercepting communication which invades privacy of another; divulging private message] shall prohibit a person from intercepting a wire, oral, or electronic communication where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.” Ga. Code Ann. § 16-11-66(a).

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

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

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

6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*

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

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

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

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

Ga. Code Ann. § 16-5-46(k)⁹¹ (Trafficking of persons for labor or sexual servitude), Georgia’s core sex trafficking law, expressly prohibits a defendant from raising a defense as to the use of a law enforcement decoy posing as a minor in furtherance of an investigation for the commercial sexual exploitation of minor. Under Ga. Code Ann. § 16-5-46(k),

⁹¹ See *supra* note 2.

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

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

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

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

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

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

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

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

Lastly, provisions allow for the discovery of electronic documents under Ga. Code Ann. § 35-3-4.3. Specifically, Ga. Code Ann. § 35-3-4.3(a) states,

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

6.6 Law enforcement are mandated to promptly report missing and recovered children.

Georgia has a Missing Children Information Center, which collects and disseminates information on missing children. Ga. Code Ann. § 35-3-81. Pursuant to Ga. Code Ann. § 35-1-8(a)(2), (3) (Acquisition, collection, classification, and preservation of information assisting in identifying deceased persons and locating missing persons), every law enforcement agency has a duty to do the following:

- (2) Acquire, collect, classify, and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry for

such a person to the parent, legal guardian, or next of kin of that person and the agency shall acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin;

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

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

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

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

© January 23, 2012 Shared Hope International, American Center for Law and Justice. All rights reserved.

© November 29, 2012 Shared Hope International. All rights reserved.

© November 7, 2013 Shared Hope International. All rights reserved.

© November 6, 2014 Shared Hope International. All rights reserved.

© November 11, 2015 Shared Hope International. All rights reserved.

© November 17, 2016 Shared Hope International. All rights reserved.