

North Carolina State Report State Ratings 2014

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

Rating: Tier One (green)

Total Points: 10

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 7 Safe Harbor for Minors; 8 Victim Assistance; and 10 Vacating Convictions.

Categories Still Needed: 6 Posting of a Hotline and 9 Civil Remedy.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 14-43.10. Definitions

(a) Definitions. -- The following definitions apply in this Article:

(1) Coercion. -- The term includes all of the following:

- a. Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person.
- b. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule.
- c. Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person.
- d. Providing a controlled substance, as defined by G.S. 90-87, to a person.

(2) Deception. -- The term includes all of the following:

- a. Creating or confirming another's impression of an existing fact or past event that is false and which the accused knows or believes to be false.
- b. Maintaining the status or condition of a person arising from a pledge by that person of his or her personal services as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or preventing a person from acquiring information pertinent to the disposition of such debt.



- c. Promising benefits or the performance of services that the accused does not intend to deliver or perform or knows will not be delivered or performed.
- (3) Involuntary servitude. -- The term includes the following:
 - a. The performance of labor, whether or not for compensation, or whether or not for the satisfaction of a debt; and
 - b. By deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation.
- (4) Minor. -- A person who is less than 18 years of age.
- (5) Sexual servitude. -- The term includes the following:
 - a. Any sexual activity as defined in G.S. 14-190.13 for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
 - b. Any sexual activity as defined in G.S. 14-190.13 that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years

§ 14-43.11. Human trafficking

- (a) A person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person with the intent that the other person be held in involuntary servitude or sexual servitude.
- (b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.
- (c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.
- (d) A person who is not a legal resident of North Carolina, and would consequently be ineligible for State public benefits or services, shall be eligible for the public benefits and services of any State agency if the person is otherwise eligible for the public benefit and is a victim of an offense charged under this section. Eligibility for public benefits and services shall terminate at such time as the victim's eligibility to remain in the United States is terminated under federal law.

§ 14-43.13. Sexual servitude

- (a) A person commits the offense of sexual servitude when that person knowingly subjects or maintains another in sexual servitude.
- (b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.
- (c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

Category 2: Labor Trafficking Statute

§ 14-43.12. Involuntary servitude.

- (a) A person commits the offense of involuntary servitude when that person knowingly and willfully holds another in involuntary servitude.



(b) A person who violates this section is guilty of a Class F felony if the victim of the offense is an adult. A person who violates this section is guilty of a Class C felony if the victim of the offense is a minor.

(c) Each violation of this section constitutes a separate offense and shall not merge with any other offense. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this section.

(d) Nothing in this section shall be construed to affect the laws governing the relationship between an unemancipated minor and his or her parents or legal guardian.

(e) If any person reports a violation of this section, which violation arises out of any contract for labor, to any party to the contract, the party shall immediately report the violation to the sheriff of the county in which the violation is alleged to have occurred for appropriate action. A person violating this subsection shall be guilty of a Class 1 misdemeanor. (1983, ch. 746, s. 1; 1993, c. 539, ss. 23, 1146; 1994, Ex. Sess., c. 24, s. 14(c); 2006-247, s. 20(b).)

Category 3(a): Asset Forfeiture

§ 14-2.3. Forfeiture of gain acquired through criminal activity.

(a) Except as is otherwise provided in Article 3 of Chapter 31A, in the case of any violation of Article 13A of Chapter 14, or a general statute constituting a felony other than a nonwillful homicide, any money or other property or interest in property acquired thereby shall be forfeited to the State of North Carolina, including any profits, gain, remuneration, or compensation directly or indirectly collected by or accruing to any offender.

(b) An action to recover such property shall be brought by either a District Attorney or the Attorney General pursuant to G.S. 1-532. The action must be brought within three years from the date of the conviction for the offense.

(c) Nothing in this section shall be construed to require forfeiture of any money or property recovered by law-enforcement officers pursuant to the investigation of an offense when the money or property is readily identifiable by the owner or guardian of the property or is traceable to him.

Category 3(b): Investigative Tools

§ 75D-3. Definitions.

(c) (1) "Racketeering activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts which would be chargeable by indictment if such act or acts were accompanied by the necessary mens rea or criminal intent under the following laws of this State:

a. Article 5 of Chapter 90 of the General Statutes of North Carolina relating to controlled substances and counterfeit controlled substances;

b. Chapter 14 of the General Statutes of North Carolina except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. Sections 14-78.1, 14-82, 14-86, 14-145, 14-146, 14-147, 14-177, 14-178, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-202, 14-247, 14-248, 14-313 thereof.

c. Any conduct involved in a "money laundering" activity; and

(2) "Racketeering activity" also includes the description in Title 18, United States Code, Section 1961(1).



Category 4(a): Training for Law Enforcement

§ 15.3A.(a) Establishment. – There is established in the Department of Justice the North Carolina Human Trafficking Commission.

Section 15.3A.(c) Powers. – The Commission shall have the following powers:

(3) To contribute to efforts to inform and educate law enforcement personnel, social services providers, and the general public about human trafficking so that human traffickers can be prosecuted and victim-survivors can receive appropriate services.

Category 4(b): Human Trafficking Task Force

§ 114-70. North Carolina Human Trafficking Commission

(a) Establishment.--There is established in the Department of Justice the North Carolina Human Trafficking Commission. For purposes of this section, “Commission” means the North Carolina Human Trafficking Commission.

(b) Membership.--The Commission shall consist of 12 members as follows:

(1) The President Pro Tempore of the Senate shall appoint one representative from each of the following:

- a. The public at large.
- b. A county sheriff's office.
- c. A city or town police department.
- d. Legal Aid of North Carolina.

(2) The Speaker of the House of Representatives shall appoint one representative from each of the following:

- a. The public at large.
- b. North Carolina Coalition Against Human Trafficking.
- c. A faith-based shelter or benefits organization providing services to victims of human trafficking.
- d. A district attorney.

(3) The Governor shall appoint one representative from each of the following:

- a. The Department of Labor.
- b. The Department of Justice.
- c. The Department of Public Safety.
- d. A health care representative.

(c) Powers.--The Commission shall have the following powers:

(1) To apply for and receive, on behalf of the State, funding from federal, public or private initiatives, grant programs, or donors that will assist in examining and countering the problem of human trafficking in North Carolina.

(2) To commission, fund, and facilitate quantitative and qualitative research to explore the specific ways human trafficking is occurring in North Carolina and the links to international and domestic human trafficking, and to assist in creating measurement, assessment, and accountability mechanisms.

(3) To contribute to efforts to inform and educate law enforcement personnel, social services providers, and the general public about human trafficking so that human traffickers can be prosecuted and victim-survivors can receive appropriate services.

(4) To suggest new policies, procedures, or legislation to further the work of eradicating human trafficking and to provide assistance and review with new policies, procedures, and legislation.

(5) To assist in developing regional response teams or other coordinated efforts to counter human trafficking at the level of law enforcement, legal services, social services,



and nonprofits.

(6) To identify gaps in law enforcement or service provision and recommend solutions to those gaps.

(7) To consider whether human trafficking should be added to the list of criminal convictions that require registration under the sex offender and public protection registration program.

(d) Terms and Chair.--Members shall serve two-year terms, with no prohibition against being reappointed. Any individual appointed to serve on the Commission shall serve until his or her successor is appointed and qualified. The chair shall be appointed biennially by the Governor from among the membership of the Commission.

(e) Meetings.--The chair shall convene the Commission. Meetings shall be held as often as necessary, but not less than four times a year.

(f) A majority of the members of the Commission shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Commission shall be necessary for action to be taken by the Commission.

(g) Vacancies.--A vacancy on the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(h) Removal.--The Commission may remove a member for misfeasance, malfeasance, nonfeasance, or neglect of duty.

(i) Compensation.--Commission members shall receive no per diem for their services but shall be entitled to receive travel allowances in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as appropriate.

(j) Staffing.--The Department of Justice shall be responsible for staffing the Commission.

(k) Funding.--From funds available to the Department of Justice, the Attorney General shall allocate monies to fund the work of the Commission.

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

Yes. See § 14-43.10(5).

Category 6: Posting of a Human Trafficking Hotline

None.

Category 7: Safe Harbor

§ 14-204. Prostitution.

(b)(8)(c) Deferred prosecution for minors. - Notwithstanding G.S. 15a-1341(a1), prosecution of any 16- or 17-year-old minor charged with a misdemeanor under this section, who has not previously been convicted of or placed on probation for violation of this section, shall be deferred pursuant to article 82 of chapter 15a of the general statutes with no conditions other than supervision, nonsecure custody, and treatment. Any 16- or 17-year-old minor charged with a second or subsequent misdemeanor offense under this section may be considered for deferred prosecution.

(b)(8)(d) Pursuant to the provisions of G.S. 7b-301, a law enforcement officer who takes any minor into custody under this section shall immediately report an allegation of a violation of



G.S. 14-43.11 and G.S. 14-43.13 to the director of the department of social services in the county where the minor resides or is found, as appropriate, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to G.S. 7b-301 and G.S. 7b-302. Pending investigation by the department of social services, the minor shall be retained in nonsecure custody or placed in specialized housing if available in the jurisdiction.

Category 8: Victim Assistance

Yes. See § 14-43.11(d).

§ 15C-10. Assistance for program applicants

(a) The Attorney General shall designate agencies of North Carolina and nonprofit organizations that provide counseling and shelter services to victims of domestic violence, sexual offense, stalking, or human trafficking to assist individuals applying to be program participants. Any assistance and counseling rendered by the Office of the Attorney General or its designee to applicants shall in no way be construed as legal advice.

(b) The Attorney General, upon receiving notification pursuant to G.S. 15A-832(h), shall, within 96 hours of receiving the notification, issue the victim a letter of certification of eligibility or other relevant document entitling the person to have access to State benefits and services.

§ 14-43.20. Mandatory restitution; victim services; forfeiture

(a) Definition.--For purposes of this section, a "victim" is a person subjected to the practices set forth in G.S. 14-43.11, 14-43.12, or 14-43.13.

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

(c) Trafficking Victim Services.--Subject to the availability of funds, the Department of Health and Human Services may provide or fund emergency services and assistance to individuals who are victims of one or more offenses under G.S. 14-43.11, 14-43.12, or 14-43.13.

(d) Certification.--The Attorney General, a district attorney, or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this Article for a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 has begun and the individual who is a likely victim of one of those crimes is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims who are under 18 years of age. This certification shall be made available to the victim and the victim's designated legal representative.

(e) A person who commits a violation of G.S. 14-43.11, 14-43.12, or 14-43.13 is subject to the property forfeiture provisions set forth in G.S. 14-2.3.



§ 15A-832. Responsibilities of the district attorney's office

(h) When a person is a victim of a human trafficking offense and is entitled to benefits and services pursuant to G.S. 14-43.11(d), the district attorney's office shall so notify the Office of the Attorney General and Legal Aid of North Carolina, Inc., in addition to providing services under this Article.

§ 15A-831. Responsibilities of law enforcement agency

(a) As soon as practicable but within 72 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

- (1) The availability of medical services, if needed.
 - (2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.
 - (3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.
 - (4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.
 - (5) Information about an accused's opportunity for pretrial release.
 - (6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.
 - (7) The informational sheet described in G.S. 50B-3(c1), if there was a personal relationship, as defined in G.S. 50B-1(b), with the accused.
- (b) As soon as practicable but within 72 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. As soon as practicable but within 72 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

(c) As soon as practicable but within 72 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the defendant's name and the victim's name, address, date of birth, social security number, race, sex, and telephone number, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(d) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency on the status of the accused during the pretrial process. If the victim elects to receive further notices during the pretrial process, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.

Category 9: Civil Remedy

None.



Category 10: Vacating Convictions

§ 15A-1416.1. Motion by the defendant to vacate prostitution conviction for sex trafficking victim.

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

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

- (1) Certified records of federal or State court proceedings which demonstrate that the defendant was a victim of a person charged with an offense under G.S. 14-43.11, G.S. 14-43.13, or under 22 U.S.C. Chapter 78.
- (2) Certified records of "approval notices" or "enforcement certifications" generated from federal immigration proceedings available to such victims.
- (3) A sworn statement from a trained professional staff of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the defendant has sought assistance in addressing the trauma associated with being trafficked.

(c) If the court grants a motion under this section, the court must vacate the conviction and may take such additional action as is appropriate in the circumstances."

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