



# Child Sex Trafficking: Enhancing Georgia's Response

# 2023

## Protecting Victims

In 2015, Georgia became a leader in the fight against the trafficking of children by passing the Safe Harbor/Rachel's Act and committing to ending the criminalization of child victims.



Under Georgia's 2015 Safe Harbor Act/Rachel's Law, the General Assembly found that:

- Arresting, prosecuting, and incarcerating victimized children serves to retraumatize children
- Sexually exploited children are the victims of crime and should be treated as victims
- Sexually exploited children deserve protection

## Decriminalization of Victims

Despite Georgia's commitment to the protection of survivors of child sex trafficking, victims continue to be arrested and prosecuted for acts committed while under the control of traffickers. Certain legislation proposed to increase penalties for violations of criminal gang and other offenses will inadvertently further the criminalization of victims, diverting them from protection, healing, and recovery.



### Trafficking Victims

Over 90% of survivors of trafficking have been charged with a crime in connection with their trafficking.



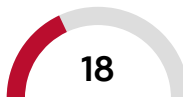
### Safe Harbor Laws

Thirty-four states have Safe Harbor laws that prevent victims of child sex trafficking from prosecution for prostitution-based crimes.



### Related to Victimization

Over 50% of survivors believe that their arrests were directly related to their trafficking experience.



### Protections for Victims

Only 18 states have protections in place for child trafficking victims that committed crimes because of their exploitation.

\*\*\*The Wilbanks Child Endangerment and Sexual Exploitation (CEASE) Clinic is the first of its kind in the nation, representing survivors of child sexual abuse, exploitation, and trafficking in civil lawsuits, juvenile court dependency proceedings, and post-conviction relief matters. The clinic not only provides direct representation to survivors, but also serves as a legal, teaching, and resource center for survivors and advocates. As part of the University of Georgia, the Wilbanks CEASE Clinic does not endorse or oppose any specific legislation, and are not endorsing or opposing any legislation that may be related to the information provided herein. The CEASE Clinic does not endorse any suggested legislation or statutory language contained in this Brief. The CEASE Clinic does not engage in any lobbying, and are not engaged in any lobbying related to any legislation, including any legislation related to the information provided in this Brief. The following information is the result of legal and social science research and an analysis of relevant laws and state trends related to the decriminalization of child victims of trafficking. The following information does not constitute any beliefs, opinions, or endorsements by the CEASE Clinic, the University of Georgia, or the faculty and students involved in drafting this Brief.



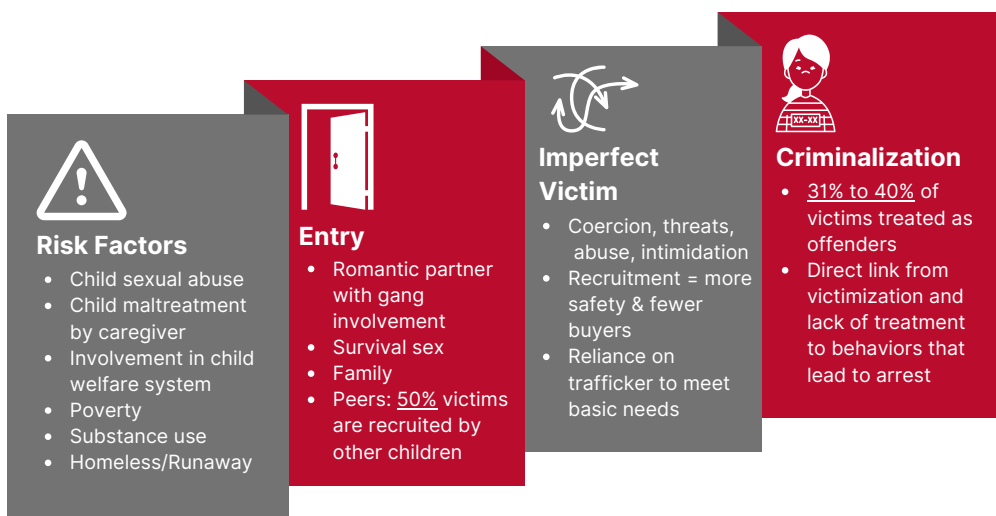
# Child Sex Trafficking, Gangs, and the Path from Victim to Criminalization

## Improving Identification of Victims

Common misunderstandings about the realities of child sex trafficking prevent the identification of victims, resulting in many survivors being treated more like criminals than victims. Popular media depictions, such as in the movie "Taken," depict victims being kidnapped, abused, and held in captivity while they are sold and exploited by their traffickers. However, victims of domestic minor sex trafficking are typically recruited by romantic partners, family members, and often, other children.

### From Victim to Criminal

The need to identify children at-risk and those already victimized early in the process is critical to decreasing the arrest, prosecution, and incarceration of victims.



## Child Sex Trafficking and Gangs

Child victims are commonly trafficked by romantic partners who may be involved with criminal street gangs. Gangs increasingly use domestic minor sex trafficking for financial gain in addition to other criminal enterprises, such as selling drugs or firearms. Traffickers then use their victims to carry out gang activities.



### Relationship then Victimization

Victims perceive their traffickers as romantic partners *before* their partners recruit them into trafficking. Then traffickers use the romantic relationship to manipulate their victims and exert control.

“ Torie considered him her boyfriend and said he didn't make her do it, but she did it to help with gas money and to buy shoes. ”



### Victimization then Criminalization

Victims may be forced to engage in gang-related criminal activities, opening themselves up to prosecution for a variety of offenses.

“ Melissa said he is part of a gang in [the city], he is violent, and she is afraid if she gives [more] information, he will hurt her and/or her family. ”

# Unintended Consequences: Criminalizing Victims



Georgia ranks **27th** in the nation in protecting survivors of child sex trafficking.

- No requirement for screening of at-risk youth who are involved in the child welfare and/or juvenile justice systems
- Child victims may be charged with status crimes, misdemeanors, and non-violent felonies committed as a result of their victimization
- No mechanism for access to services absent court involvement

| Current Law   | Proposed Legislation  |
|---|---|
| <p>Child victims can be prosecuted as adults, even when related to their victimization:</p> <ul style="list-style-type: none"> <li>• 13 to 17 years alleged to have committed one of the "<u>seven deadlies</u>"</li> <li>• <u>15 and older</u> if the offense is a felony</li> <li>• 13-14 years if punishment of act for adult would be loss of life or life imprisonment, or if they committed aggravated battery resulting in serious bodily injury</li> <li>• No affirmative defense or exception where act related to victimization</li> </ul> <p>Child victims can be prosecuted as adults for pimping, pandering, and criminal gang activity, including recruitment, even when related to their victimization:</p> <ul style="list-style-type: none"> <li>• <u>Victims may recruit other minors</u> and participate in "criminal gang activity," including <u>recruitment of other children</u> as a result of their own victimization</li> <li>• Violation of <u>criminal gang activity</u> statute would be a felony</li> <li>• Victims may engage in <u>pimping</u> or <u>pandering</u> as a result of their own victimization</li> <li>• Second offense of pimping or pandering would be a felony</li> </ul> <p>No exception, diversion, deferment, or affirmative defense for victimization</p> <p>Prosecutorial discretion not to prosecute is dependent on identification of victims</p> | <p>Street Gang Terrorism and Prevention Act, <u>SB 44</u>:</p> <ul style="list-style-type: none"> <li>• Child victim of trafficking could be subject to a mandatory minimum of 10 years imprisonment, and up to 20 years for recruiting another child</li> <li>• Sentence would be consecutive to any other sentence imposed and which could also be related to their victimization (e.g. drug-related offenses, robbery, escape from custody, possession of a weapon)</li> <li>• In addition to recruitment activity, victims are also often forced, coerced, or intimidated into engaging in other illegal acts by their traffickers, such as drug-related offenses, possession of firearms, robbery, or theft</li> <li>• No affirmative defense or exception where acts are related to victimization</li> </ul> <p>Pimping and Pandering, <u>SB 36</u>:</p> <ul style="list-style-type: none"> <li>• First offense would be a felony, allowing for victims to be prosecuted as adults</li> <li>• First offense would require minimum of one year and up to 10 years imprisonment</li> <li>• Child victims who commit acts of pimping or pandering of another child would face a mandatory minimum sentence of 10 years and up to 30 years imprisonment, plus a fine up to \$100,000</li> </ul> <p>No exception, diversion, deferment, or affirmative defense for victimization</p> |

# Moving Away From Criminalization and Towards Protection

## Decriminalizing Victims

Provisions could be added to Georgia law to divert child victims of trafficking away from prosecution in favor of services as recommended by the state's victim assistance organization, currently Children's Advocacy Centers of Georgia's [CSEC Response Team](#).

No person under the age of 18 who is suspected to be a victim of an offense of trafficking pursuant to Code Section 16-5-46 shall be prosecuted for unlawful acts committed as a direct result of being trafficked or exploited, including, but not limited to acts pursuant to Code Sections 16-6-9 through 16-6-13 and Code Section 16-15-4. Any child under the age of 18 suspected to be a victim of trafficking or exploitation shall be referred to a victim assistance organization pursuant Code Section 15-11-130.1.

(Modeled after [LSA-R.S. § 14:46.3 \(E\)](#))

1. A court may defer adjudication proceedings under this Section until the child's 18th birthday and require a child to participate in services as recommended by a victim service organization pursuant to [Code Section 15-11-130.1](#):

- a. if the child is suspected or confirmed by the victim service organization as a victim of Trafficking pursuant to Code Section 16-5-46; and
- b. is alleged to have engaged in conduct that constitutes an offense under this Code Section.

2. Following a child's completion of the recommended services, the court shall dismiss the case with prejudice at the time the child presents satisfactory evidence that the child successfully completed services.

(Modeled after [TX Fam. Code § 54.0326](#))

## Diversion and Deferralment

Proposed legislation such as SB 44 and SB 36 could include language that would divert victims from prosecution, allowing instead for the provision of services. Such additions to existing proposals could require that the state's designated victim services organization assess whether the victim is a suspected or confirmed victim, and/or that the alleged offense was committed under reasonable apprehension of serious harm to the victim or someone they know.

1. No person shall be prosecuted for an offense in this section if that person:

- a. Is a child under the age of 18;
- b. Is suspected or confirmed by a victim service organization as described in Code Section 15-11-130.1 as a victim of Trafficking pursuant to Code Section 16-5-46; and
- c. Committed the offense under a reasonable apprehension created by a person that, if the defendant did not commit the act, the person would inflict serious harm on the defendant, a member of the defendant's family, or a close associate.

(Modeled after [Miss Code Ann. §97-3-54.1 \(5\)](#))

No person shall be prosecuted for an offense in this section if that person::

1. Is a child under the age of 18; and
2. Is suspected or confirmed by a victim service organization as described in Code Section 15-11-130.1 as a victim of Trafficking pursuant to Code Section 16-5-46 pursuant to 16-12-100.

(Modeled after [LSA-R.S. § 14:46.3 \(E\)](#))

