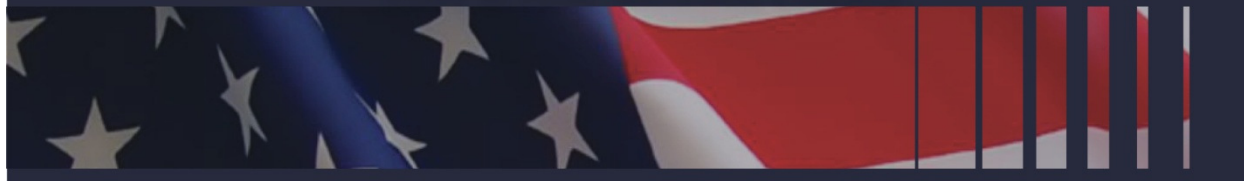


PROTECTED INNOCENCE INITIATIVE

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Nevada State Facts

1. Nevada law requires the proof of force, fraud and coercion for all cases of human trafficking and does not include sex trafficking of minors a specific form of trafficking.
2. In December 2010, Reno police rescued a 14 and 15-year-old from Sacramento, CA who were being prostituted on the streets of Reno. Their pimp was arrested on charges of sex trafficking.¹
3. At any given time, approximately half of the girls at Clark County's juvenile detention facility are there on prostitution-related offenses.²
4. Since 2003, more than 1,000 children involved in prostitution have been rescued in Las Vegas. Authorities rescued 155 children in 2009.³
5. The human trafficking law is ineffective against buyers, leaving prosecutors to rely on local CSEC laws. Although the solicitation for prostitution statute establishes a felony for buying sex with a minor, a convicted buyer may be given probation as a sentence.
6. Individuals convicted of trafficking a minor for prostitution or pornography are subject to fines, imprisonment, and asset forfeiture. They may also be required to pay restitution to victims, register as sex offenders or subject to charges of racketeering and money laundering.
7. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking, leaving minor victims vulnerable to being arrested and charged with the delinquency of prostitution with no protective provisions statutorily mandated.

¹ <http://www.kolotv.com/>

² <http://www.lasvegassun.com/news/2010/mar/22/what-should-clark-county-do-teenage-prostitutes/>

³ <http://www.lasvegassun.com/news/2010/nov/08/51-arrested-las-vegas-area-part-national-prostitut/>

PROTECTED INNOCENCE INITIATIVE

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NEVADA REPORT CARD

Nevada's human trafficking law, called involuntary servitude, does not expressly include sex trafficking and requires force, fraud, or coercion for all victims. Limited prosecution options and weak penalties fail to deter demand and few protective provisions exist for children exploited through commercial sex acts.

FINAL SCORE

58

FINAL GRADE

F



2.5

7.5

13

25

13.5

15

6.5

10

12.5

27.5

10

15

CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Nevada law requires “forced labor or services” for all cases of human trafficking and does not include sex trafficking of minors as a specific form of trafficking. The state commercial sexual exploitation of children (CSEC) laws include: soliciting prostitution from a minor under 18, pandering of a minor, employing or exhibiting minor in certain immoral activities, and unlawful use of a minor in producing pornography or as subject of sexual portrayal in performance. These laws do not refer to the human trafficking law or identify a victim as a sex trafficking victim.

CRIMINAL PROVISIONS ADDRESSING DEMAND

The absence of sex trafficking as a form of human trafficking in the law coupled with the lack of language directing application of the law to buyers of commercial sex with minors makes application to buyers unlikely. CSEC laws include the crime of buying sex with a minor. The solicitation for prostitution statute establishes a felony for buying sex with a minor but a convicted buyer may be given probation as a sentence. A potential exists for avoiding the felony charge of soliciting sex with a minor due to the lack of a prohibition on a mistake of age defense, an assertion of which would require proof of knowledge of age. The statute penalizing communications with a child with the intent to persuade or lure the child to engage in sexual conduct might apply to buyers using the Internet to contact victims. Buyers may be ordered to pay restitution, and victims of child pornography have a civil cause of action against buyers. Convictions for child pornography require sex offender registration, and buyers convicted of offenses involving a sexual act may be required to register, except in cases where the sexual act is with a minor over 12 who is not more than four years younger than the offender.

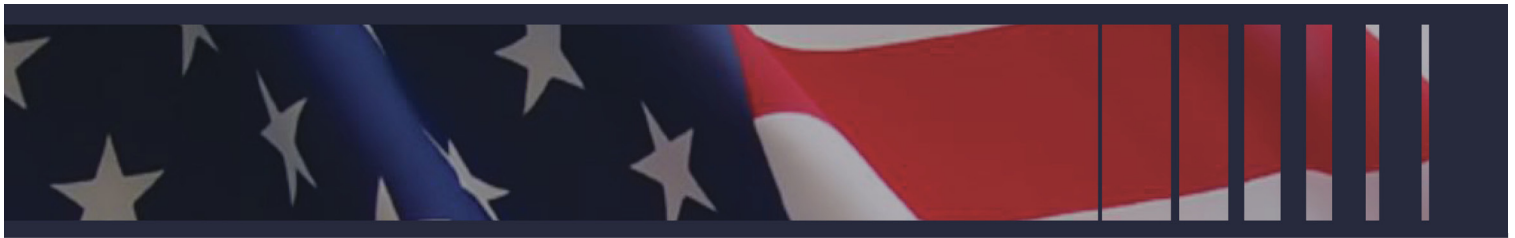
DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Solicitation for prostitution of a minor (§201.354(3))	Category E felony	1–4 years (can be suspended in favor of probation)	Max. \$5,000	○
Offer or agree to engage in act of prostitution (§ 207.030(1))	Misdemeanor	Max. 6 months	Max. \$1,000	○
Possessing child pornography – child under 16 (§ 200.730)	Category B felony	1–6 years	Max. \$5,000	●
Using the Internet with intent to view child pornography – child under 16 (§ 200.727)	Category C felony	1–5 years	Max. \$10,000	●

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.

CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers convicted of human trafficking, which would also apply to sex trafficking, may be sentenced to 5–20 years imprisonment (or 1–15 years for recruiting) and a possible fine up to \$50,000, and could be in violation of racketeering and money laundering laws. Convictions for pandering carry a 1–10 year sentence and possible fines up to \$100,000 if the victim is 14–17 or up to \$500,000 if the victim is under 14. Using a minor in pornography carries up to a life sentence and a possible fine up to \$100,000. Traffickers are subject to asset forfeiture. A trafficker may be ordered to pay victim restitution, and victims of child pornography offenses under 16 may bring a civil claim against a trafficker. The statute on communicating with a child with the intent to persuade or lure the child to engage in sexual conduct provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. Traffickers convicted of CSEC and child pornography offenses must register for crimes against a child and as sex offenders, and those convicted of a crime involving a sexual act may be required to register, except when the victim is over 12 and not more than 4 years younger than the offender. A conviction for human trafficking is grounds for terminating parental rights.



PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Domestic minor sex trafficking victims are vulnerable due to gaps in Nevada’s laws. The definition of a victim for crime victim’s compensation expressly includes only victims of pornography, not other forms of commercial sexual exploitation of children. Involuntary servitude and CSEC offenses do not prohibit a defendant from asserting a defense that the minor consented to the commercial sex acts. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking, leaving open the possibility of a victim being arrested and charged with the delinquency of prostitution with no protective provisions statutorily mandated. The definition of abuse or neglect includes sexual exploitation through prostitution or pornography, but child protective services is limited from responding in a case of a trafficker controlled child unless the trafficker is an adult “continually or regularly found in the same household as the child.” Only victims suffering a physical injury and those exploited through production of pornography are eligible for state crime victims’ compensation, and they may be adversely affected by requirements to file a claim within one year (or before turning 21 if a victim of child pornography) and to report the crime within five days of when a report could have reasonably been made unless “the interests of justice so require;” furthermore, they may have their claim reduced or denied due to contributory misconduct. Few victim-friendly criminal justice procedures exist. Testifying child sex trafficking and CSEC victims are not protected from the trauma of cross-examination by a “rape shield” law, and only children under 14 may testify through an “alternative method,” such as closed circuit television. Juvenile records are automatically sealed once the minor reaches 21 and a child may petition at an earlier time. Though not mandatory, a court may award restitution in any criminal sentence. Victims under 16 exploited through child pornography have a specific civil action against buyers, traffickers, and facilitators and the action may be filed by the later of reaching 21 or within three years of a conviction in the criminal case. Criminal statutes of limitations (three years for felonies, two years for gross misdemeanors, and one year for misdemeanors) are not extended or eliminated for child sex trafficking and CSEC crimes.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Nevada law mandates training on sexual exploitation of minors, but does not define sexual exploitation or mandate training on sex trafficking. Nevada requires both parties to consent to audiotaping over the telephone, but allows single party consent to in-person communications. Wiretapping is not expressly authorized in sex trafficking or CSEC investigations, denying a critical tool to law enforcement. No specific statutory language allows law enforcement to use a decoy in domestic minor sex trafficking investigations, although the crime of luring a child under 16 for sexual acts may use a decoy because the offender need only to have believed the child to be under 16, foreclosing the argument that the intended victims was not in fact a child. Similarly, law enforcement may utilize the Internet to investigate cases where the offender believes the law enforcement officer is under 16. Reporting missing and exploited children and recovered children is required by law.

CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law includes the crime of benefitting from participation in human trafficking, a felony punishable by 1–15 years imprisonment and a possible fine up to \$50,000. Given the lack of sex trafficking in the human trafficking law, CSEC laws that include offenses of facilitation may be more applicable. Facilitators may be guilty of pandering, punishable by 1–10 years imprisonment and fines up to \$100,000 if the victim is 14–17 and up to \$500,000 if the victim is under 14. Promoting a sexual performance by a minor is a felony punishable by a possible fine not to exceed \$100,000 and imprisonment up to life with parole eligibility only after 10 years if the victim is under 14, and 5 years if the victim is 14–17. Advertising or distributing child pornography is a felony punishable by 1–15 years imprisonment and/or a fine up to \$15,000. Facilitators’ criminal activities may also lead to racketeering and money laundering prosecutions. Convicted facilitators of CSEC and child pornography offenses are subject to asset forfeiture action. Though not mandatory, a court could order a facilitator to pay restitution, and a facilitator could face a civil cause of action for violations related to child pornography offenses. No laws in Nevada address sex tourism.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.aspx.



PROTECTED INNOCENCE INITIATIVE

STATE ACTION. NATIONAL CHANGE.

ANALYSIS AND RECOMMENDATIONS NEVADA

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 *CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

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.*

Nevada does not have a separate sex trafficking statute, does not address the sex trafficking of minors, and requires “forced labor or services” for all cases of human trafficking.

Nev. Rev. Stat. Ann. § 200.463(1) (Involuntary servitude; penalties)² states,

- A person who knowingly subjects, or attempts to subject, another person to forced labor or services by:
- (a) Causing or threatening to cause physical harm to any person;
 - (b) Physically restraining or threatening to physically restrain any person;
 - (c) Abusing or threatening to abuse the law or legal process;

** This document has not been fully reviewed and approved by ACLJ.*

¹ Unless otherwise specified, all references to statutes were taken from the Nevada Revised Statutes Annotated (LEXIS through the 26th (2010) Special Sess.) and all federal statutes were taken from United States Code (LEXIS current through PL 112-54, approved 11/12/11).

² Nevada’s statutes entitled “Trafficking in Persons,” Nev. Rev. Stat. Ann. § 200.467 (Trafficking in persons for financial gain; penalties) and Nev. Rev. Stat. Ann. § 200.468 (Trafficking in persons for illegal purposes; penalty) deal with human smuggling and the transportation of individuals into Nevada who “do[] not have the legal right to enter or remain in the United States.”

- (d) Knowingly 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 the person;
- (e) Extortion; or
- (f) Causing or threatening to cause financial harm to any person, is guilty of holding a person in involuntary servitude.

A violation is a category B felony. Nev. Rev. Stat. Ann. § 200.463(2). If a person suffers “substantial bodily harm while held in involuntary servitude or in attempted escape or escape therefrom,” a violation of Nev. Rev. Stat. Ann. § 200.463 is punishable by imprisonment for 7–20 years and a possible fine not to exceed \$50,000. Nev. Rev. Stat. Ann. § 200.463(2)(a). If the victim does not suffer “substantial bodily harm,” a violation is punishable by imprisonment for 5–20 years and a possible fine not to exceed \$50,000. Nev. Rev. Stat. Ann. § 200.463(2)(b).

Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), through its reference to “involuntary servitude,” also requires a showing of “forced labor or services” for minor victims. A violation is a class B felony if a person knowingly

1. Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that the person will be held in involuntary servitude; or
2. Benefits, financially or by receiving anything of value from participating in a violation of NRS 200.463.

A violation of Nev. Rev. Stat. Ann. § 200.464 is a category B felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$50,000. Nev. Rev. Stat. Ann. § 200.464.

Nevada does not define “labor and services,” and does not clearly address sex trafficking.³

- 1.1.1 Recommendation: Enact a sex trafficking statute that establishes the crime of domestic minor sex trafficking and does not require proof of forced labor or services for minors under 18. The law should expressly identify children who are commercially sexually exploited as domestic minor sex trafficking victims.⁴

- 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.*

The following laws criminalize CSEC in Nevada:

1. Pursuant to Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), it is a crime to “engage in prostitution or solicitation therefor, except in a licensed house of prostitution.”⁵ Nev. Rev. Stat. Ann. § 201.354(1). If a child under 18 is solicited, a violation is a

³ The preamble of Assembly Bill 383, which amended Nev. Rev. Stat. Ann. § 200.464, states that “victims of trafficking in persons are often subjected to force, fraud or coercion for the purpose of subjecting the victims to sexual exploitation, prostitution, providing other forms of sexual entertainment or forced labor” 2007 Nev. Stat. 316. Therefore, it appears the legislature may have contemplated that “services” could include commercial sex acts, but the language of this section as enacted by the legislature does not clearly apply to sex trafficking of minors.

⁴ Subsequent recommendations in this report referring to the state human trafficking law(s) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

⁵ The state allows counties to control the licensing of houses of prostitution if the county population is less than 700,000. Pursuant to Nev. Rev. Stat. Ann. § 244.345(8) (Dancing halls, escort services, entertainment by referral services and gambling games or devices; limitation on licensing of houses of prostitution), “In a county whose population is 700,000 or more, the

category E felony punishable by imprisonment for 1–4 years. Nev. Rev. Stat. Ann. §§ 201.354(3), 201.295(2), 193.130(2)(e). The court may suspend the sentence and sentence an offender to probation instead.⁶ Nev. Rev. Stat. Ann. § 193.130(2)(e). The court may also impose a fine not to exceed \$5,000. Nev. Rev. Stat. Ann. § 193.130(2)(e).

2. Nev. Rev. Stat. Ann. § 201.300(1) (Pandering: Definitions; penalties; exception) states that a person is guilty of pandering when the person commits one of the following acts:

- (a) Induces, persuades, encourages, inveigles, entices or compels a person to become a prostitute or to continue to engage in prostitution;
- (b) By threats, violence or by any device or scheme, causes, induces, persuades, encourages, takes,

license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.” The text of Nev. Rev. Stat. Ann. 244.345 included here and elsewhere in this report includes amendments made by the passage of Assembly Bill 545 during Nevada’s 76th Regular Session. 2011 Nev. ALS 253 (effective July 1, 2011). Prior to the passage of Assembly Bill 545, Nev. Rev. Stat. Ann. § 244.345 only allowed counties with a population less than 400,000 to control the licensing of houses of prostitution. 2001 Nev. Stat. 255.⁶ Pursuant to Nev. Rev. Stat. Ann. § 176A.100(1)(b) (Authority and discretion of court to suspend sentence and grant probation; persons eligible; factors considered; intensive supervision; submission of report of presentence investigation),

1. Except as otherwise provided in this section and NRS 176A.110; and 176A.120, if a person is found guilty in a district court upon verdict or plea of:

A category E felony, except as otherwise provided in this paragraph, the court shall suspend the execution of the sentence imposed and grant probation to the person. The court may, as it deems advisable, decide not to suspend the execution of the sentence imposed and grant probation to the person if, at the time of sentencing, it is established that the person:

- (1) Was serving a term of probation or was on parole at the time the crime was committed, whether in this State or elsewhere, for a felony conviction;
- (2) Had previously had the person’s probation or parole revoked, whether in this State or elsewhere, for a felony conviction;
- (3) Had previously been assigned to a program of treatment and rehabilitation pursuant to NRS 453.580 and failed to successfully complete that program; or
- (4) Had previously been two times convicted, whether in this State or elsewhere, of a crime that under the laws of the situs of the crime or of this State would amount to a felony.

If the person denies the existence of a previous conviction, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the person. At such a hearing, the person may not challenge the validity of a previous conviction. For the purposes of this paragraph, a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.

Pursuant to Nev. Rev. Stat. Ann. § 176A.110 (Persons convicted of certain offenses required to be certified as not representing high risk to reoffend before court suspends sentence or grants probation; immunity), unless a person has undergone a psychosexual evaluation and it has been certified that the person does not have a high risk to re-offend, a court cannot grant probation to or suspend the sentence of a person convicted under

- (a) Attempted sexual assault of a person who is 16 years of age or older pursuant to NRS 200.366.
- (b) Statutory sexual seduction pursuant to NRS 200.368.
- (c) Battery with intent to commit sexual assault pursuant to NRS 200.400.
- (d) Abuse or neglect of a child pursuant to NRS 200.508.
- (e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
- (f) Incest pursuant to NRS 201.180.
- (g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.
- (h) Open or gross lewdness pursuant to NRS 201.210.
- (i) Indecent or obscene exposure pursuant to NRS 201.220.
- (j) Sexual penetration of a dead human body pursuant to NRS 201.450.
- (k) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
- (l) A violation of NRS 207.180.
- (m) An attempt to commit an offense listed in paragraphs (b) to (l), inclusive.
- (n) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

- places, harbors, inveigles or entices a person to become an inmate of a house of prostitution or assignation place, or any place where prostitution is practiced, encouraged or allowed;
- (c) By threats, violence, or by any device or scheme, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, inveigles, entices, persuades, encourages or procures a person to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of prostitution;
- (d) By promises, threats, violence, or by any device or scheme, by fraud or artifice, by duress of person or goods, or abuse of any position of confidence or authority or having legal charge, takes, places, harbors, inveigles, entices, persuades, encourages or procures a person of previous chaste character to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of sexual intercourse;
- (e) Takes or detains a person with the intent to compel the person by force, threats, menace or duress to marry him or her or any other person; or
- (f) Receives, gives or agrees to receive or give any money or thing of value for procuring or attempting to procure a person to become a prostitute or to come into this state or leave this state for the purpose of prostitution.

If a child is pandered using “physical force or the immediate threat of physical force,” a violation is a category B felony punishable by imprisonment for 2–20 years and a possible fine not to exceed \$20,000. Nev. Rev. Stat. Ann. § 201.300(2)(b)(1). If the person is guilty of pandering a child without “physical force or immediate threat of physical force,” then the crime is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2). In addition, when the victim is a minor aged 14–17, the court may also “impose a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 201.352(1)(a). If the minor is under 14, the court may choose to “impose a fine of not more than \$500,000.” Nev. Rev. Stat. Ann. § 201.352(1)(b).

3. Pursuant to Nev. Rev. Stat. Ann. § 201.330(1) (Pandering: Detaining person in brothel because of debt; penalties), a person is guilty of pandering when the person “attempts to detain another person in a disorderly house or house of prostitution because of any debt or debts the other person has contracted or is said to have contracted while living in the house” If the person panders a child using “physical force or the immediate threat of physical force,” the crime is a category B felony punishable by imprisonment for 2–20 years and a possible fine not to exceed \$20,000. Nev. Rev. Stat. Ann. § 201.330(2)(b)(1). If the person is guilty of pandering a child without “physical force or immediate threat of physical force,” the crime is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. § 201.330(2)(b)(2). In addition, when the victim is a minor aged 14–17, the court may also “impose a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 201.352(1)(a). If the minor is under 14, the court may choose to “impose a fine of not more than \$500,000.” Nev. Rev. Stat. Ann. § 201.352(1)(b).
4. Pursuant to Nev. Rev. Stat. Ann. § 201.340(1) (Pandering: Furnishing transportation; penalties), a person is guilty of pandering if the person

knowingly transports or causes to be transported, by any means of conveyance, into, through or across this state, or who aids or assists in obtaining such transportation for a person with the intent to induce, persuade, encourage, inveigle, entice or compel that person to become a prostitute or to continue to engage in prostitution

If the person panders a child using “physical force or the immediate threat of physical force,” the crime is a category B felony punishable by imprisonment for 2–20 years and a possible fine not to exceed \$20,000. Nev. Rev. Stat. Ann. § 201.340(2)(b)(1). If the person is guilty of pandering a child without “physical force or immediate threat of physical force,” then the crime is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. § 201.340(2)(b)(2). In addition, when the victim is a minor aged 14–17, the court may also “impose a fine of not more than

\$100,000.” Nev. Rev. Stat. Ann. § 201.352(1)(a). If the minor is under 14, the court may also “impose a fine of not more than \$500,000.” Nev. Rev. Stat. Ann. § 201.352(1)(b).

5. Pursuant to Nev. Rev. Stat. Ann. § 609.210 (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty), a person is guilty of a misdemeanor when the person

employs, or causes to be employed, exhibits or has in his or her custody for exhibition or employment, any minor, and every parent, relative, guardian, employer or other person having the care, custody or control of any minor, who in any way procures or consents to the employment of the minor:

...

2. In any indecent or immoral exhibition or practice;

....

A violation is punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. § 193.150(1). Alternatively, the court may sentence an offender to community service. Nev. Rev. Stat. Ann. § 193.150(2).

6. Under Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), it is a category A felony when a person “knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance” Additionally, Nev. Rev. Stat. Ann. § 200.710(2) states that it is a category A felony when a person “knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance” When the minor is 14 or older, a violation is punishable by a possible fine not to exceed \$100,000 and life imprisonment with possibility of parole beginning after the offender has served 5 five years. Nev. Rev. Stat. Ann. § 200.750(1). When the minor is under 14, violations are punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(2).

Although not specific to commercial sex offenses, the following offenses may also apply to commercial sexual exploitation of children cases:

1. Pursuant to Nev. Rev. Stat. Ann. § 200.368 (Statutory sexual seduction: Penalties), “statutory sexual seduction” is a crime. Nev. Rev. Stat. Ann. § 200.364(5), defines “statutory sexual seduction” as
 - (a) Ordinary sexual intercourse, anal intercourse, cunnilingus or fellatio committed by a person 18 years of age or older with a person under the age of 16 years; or
 - (b) Any other sexual penetration committed by a person 18 years of age or older with a person under the age of 16 years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either of the persons.

If the offender is 21 or older, Nev. Rev. Stat. Ann. § 200.368 is a category C felony punishable by imprisonment for 1–5 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. §§ 200.368(1), 193.130(2)(c). If the offender is under 21, a violation is a gross misdemeanor punishable by up to 1 year of imprisonment in the county jail, a fine not to exceed \$2,000, or both. Nev. Rev. Stat. Ann. § 200.368(2), 193.140.

2. Under Nev. Rev. Stat. Ann. § 201.195(1) (Solicitation of minor to engage in acts constituting crime against nature; penalties), a person commits a crime if the person “incites, entices or solicits a minor to engage in

acts which constitute the infamous crime against nature.”⁷ When a minor under 14 “actually engaged in such acts as a result”, the crime is a category A felony punishable by life imprisonment with eligibility for parole beginning when the offender has served 10 years. Nev. Rev. Stat. Ann. § 201.195(1)(a)(1). When a minor that is 14 or older “actually engaged in such acts as a result”, the crime is a category A felony punishable by life imprisonment with eligibility for parole beginning when the offender has served 5 years. Nev. Rev. Stat. Ann. § 201.195(1)(a)(2). If the minor did not engage in the acts solicited, a first violation is a gross misdemeanor punishable by “imprisonment in the county jail for not more than 1 year”, a fine not to exceed \$2,000, or both. Nev. Rev. Stat. Ann. §§ 201.195(b)(1), 193.140. If the minor did not engage in the acts solicited, subsequent violations are category A felonies punishable by life imprisonment with eligibility for parole beginning when the offender has served 5 years. Nev. Rev. Stat. Ann. § 201.195(b)(2).

3. Pursuant to Nev. Rev. Stat. Ann. § 201.230(1) (Lewdness with child under 14 years; penalties)

A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.

A violation is generally a category A felony punishable by a possible fine not to exceed \$10,000 and life imprisonment with eligibility for parole beginning when the offender has served 10 years. Nev. Rev. Stat. Ann. § 201.230(2). However, if the person has been convicted of “lewdness with a child pursuant to this section or any other sexual offense against a child”⁸ or a crime in another jurisdiction that could be classified as one of these crimes in Nevada, the crime is a category A felony punishable by life imprisonment without the possibility of parole. Nev. Rev. Stat. Ann. § 201.230(3).

1.3 CSEC or prostitution statutes refer to the sex trafficking statute in order to identify the commercially sexually exploited minor as a trafficking victim.

Nevada’s CSEC statutes⁹ do not refer to Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude) or Nev. Rev. Stat. Ann. § 200.464(1) (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty).

1.3.1 Recommendation: Add specific references to Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude) and Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) in the CSEC statutes to ensure that CSEC victims are properly identified as human trafficking victims.

⁷ “Infamous crime against nature” is defined as “anal intercourse, cunnilingus or fellatio between natural persons of the same sex” and “[a]ny sexual penetration, however slight, is sufficient to complete the infamous crime against nature.” Nev. Rev. Stat. Ann. § 201.195(2).

⁸ See *supra* note 3.

⁹ See *supra* Section 1.2.

Legal Components:

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under 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 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 are sufficiently high for all minors under 18 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 the buyers of commercial sex acts with a victim of domestic minor sex trafficking.*

Even if the term “forced labor or services” is read to include commercial sex acts, Nev. Rev. Stat. Ann. § 200.464(1) (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) is unlikely the statute will apply to buyers. Nev. Rev. Stat. Ann. §§ 200.463(1), 200.464(1). Pursuant to Nev. Rev. Stat. Ann. § 200.464(1), a person is guilty of a category B felony when the person “[r]ecruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that the person will be held in involuntary servitude” Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),¹⁰ have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”¹¹ a person under 18 to engage in commercial sex.¹² It is unsettled whether the courts will uphold this interpretation of the TVPA. However, it is still unlikely that Nev. Rev. Stat. Ann. 200.464(1) applies to buyers of commercial sex with minors because it requires that, to be guilty, the offender must also “intend[] or know[] that the person will be used in involuntary servitude.”¹³

- 2.1.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) to make the statute clearly apply to buyers of commercial sex acts with minors.

¹⁰ 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.).

¹¹ 18 U.S.C. § 1591(a).

¹² See, e.g., Indictment at 1, United States v. Oflyng, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

¹³ See *supra* Section 1.1 for a discussion of Nev. Rev. Stat. Ann. §200.463(1).

2.2 *Buyers of commercial sex acts with a minor can be prosecuted under CSEC laws.*¹⁴

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) criminalizes buying sex with minors under 18. Nev. Rev. Stat. Ann. § 201.354(1) states, “It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.” When the person solicited is under 18, the crime is a category E felony. Nev. Rev. Stat. Ann. § 201.354(3). As a category E felony, a violation of Nev. Rev. Stat. Ann. § 201.354 is punishable by imprisonment for 1–4 years, but the court may suspend the sentence and sentence an offender to probation.¹⁵ Nev. Rev. Stat. Ann. § 193.130(2)(e). The court may also impose a fine not to exceed \$5,000. Nev. Rev. Stat. Ann. § 193.130(2)(e).

Some sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child and do not refer to the human trafficking statute to bring these criminal offenses within the reach of human trafficking statutes, Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties) and Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty).¹⁶

- 2.2.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) to refer cases of buying sexual acts with a minor to Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties) and Nev. Rev. Stat. Ann. § 200.464(1) (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) to ensure that the victims of these offenses are properly identified as trafficking victims.

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

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception) has different penalties for the solicitation of an adult and the solicitation of a minor. If the person solicited was 18 or older, the crime is a misdemeanor. Nev. Rev. Stat. Ann. § 201.354(2). If the person solicited was under 18, the crime is a category E felony. Nev. Rev. Stat. Ann. § 201.354(3).

Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty), which states, “It is unlawful to: . . . (b) Offer or agree to engage in, engage in or aid and abet any act of prostitution,” does not differentiate penalties based on the age of the person solicited. Each violation is a misdemeanor with increased penalties based on the number of charges within the previous 3 years. Nev. Rev. Stat. Ann. § 207.030(2).

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

For a violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), when the person solicited was under 18, the crime is a category E felony. Nev. Rev. Stat. Ann. § 201.354(3). A category E felony is punishable by imprisonment for 1–4 years, but the court may suspend the sentence and sentence an offender to probation.¹⁷ Nev. Rev. Stat. Ann. § 193.130(2)(e). The court may also impose a fine not to exceed \$5,000. Nev. Rev. Stat. Ann. § 193.130(2)(e).

A violation of Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty) is a misdemeanor punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann.

¹⁴ In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to buyers of commercial sex with minors. Some counties also allow for the operation of licensed houses of prostitution. *See infra* Appendix for a list of some county and city ordinances applicable to buyers.

¹⁵ *See supra* note 6.

¹⁶ *See supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

¹⁷ *See supra* note 6.

§§ 207.030(2)(a), 193.150(1). Second violations occurring within 3 years of a first violation will result in imprisonment in the county jail between 30 days and 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b). A third or subsequent violation “occurring within 3 years after the first violation” are punishable by imprisonment in the county jail for 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(c).

In contrast, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense¹⁸ against a minor. To the extent buyers can be prosecuted under other federal CSEC laws,¹⁹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁰

2.5 *Using the Internet 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 Nevada does not have a statute specifically criminalizing using the Internet to purchase commercial sex acts, such action can fall under Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties). Pursuant to Nev. Rev. Stat. Ann. § 201.560,

1. Except as otherwise provided in subsection 3,²¹ a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:

...

(b) Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to persuade or lure the person to engage in sexual conduct.

....

4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:

(a) With the intent to engage in sexual conduct²² with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental

¹⁸ 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).

¹⁹ 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).

²⁰ 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(a)(2), (4) (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).

²¹ Nev. Rev. Stat. Ann. § 201.560(3) states, “The provisions of this section do not apply if the contact or communication is made or attempted with the intent to prevent imminent bodily, emotional or psychological harm to the child, person believed to be a child or person with mental illness.”

²² For the purpose of Nev. Rev. Stat. Ann. § 201.560, “sexual conduct” is defined by referring to Nev. Rev. Stat. § 201.520, which defines the term as “1. Ordinary sexual intercourse 2. Anal intercourse; 3. Fellatio, cunnilingus or other oral-genital

illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

....

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

The human trafficking and CSEC statutes that are applicable to buyers are silent on the availability of a defense based on age mistake.

2.6.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) to prevent a buyer from exercising a mistake of age defense.

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

The penalty for buying sex with any minor does not vary based on the age of the victim under 18. For any violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), an offender is guilty of a category E felony punishable by 1–4 years' imprisonment, but the court may suspend the sentence and sentence an offender to probation. Nev. Rev. Stat. Ann. §§ 201.354(3), 193.130(2)(e).²³ The court may also impose a fine not to exceed \$5,000. Nev. Rev. Stat. Ann. § 193.130(2)(e).

Additionally, the penalty for a conviction under Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty) does not vary based on the age of the person solicited. A violation is a misdemeanor punishable by imprisonment in the county jail not to exceed 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. §§ 207.030(2)(a), 193.150(1). A second conviction occurring within 3 years of a first conviction will result in imprisonment in the county jail between 30 days and 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b). Third and subsequent convictions “occurring within 3 years after the first violation” are punishable by imprisonment in the county jail for 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(c).

2.7.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) to set the penalty as a category B felony consistent with Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties) and Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) in recognition that a commercial sex act with a minor under 18 is sex trafficking.

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.*

When the person solicited was under 18, a violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) is a category E felony punishable by a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(3), § 193.130(2)(e). A violation of Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) is a misdemeanor punishable by a possible fine not to exceed \$1,000 for the first violation and a fine of \$250–\$1,000 for subsequent violations occurring within 3 years of the first violation. Nev. Rev. Stat. Ann. §§ 207.030(2), 193.150(1).

contact; 4. Physical contact by a person with the unclothed genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person; 5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person; 6. Masturbation or the lewd exhibition of unclothed genitals; or 7. Sado-masochistic abuse.” Nev. Rev. Stat. Ann. §§ 201.520, 201.560(6)(f).

²³ See *supra* note 6.

Additionally, a court may decide to award restitution in any case, which could cause a buyer to pay restitution. Nev. Rev. Stat. Ann. § 176.033(1)(c). Specifically, pursuant to Nev. Rev. Stat. Ann. § 176.033(1)(c) (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence), “[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense”

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

Pursuant to Nev. Rev. Stat. Ann. § 200.730 (Possession of visual representation depicting sexual conduct of person under 16 years of age unlawful; penalties), a person is guilty of a felony “who knowingly and willfully has in his or her possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal²⁴ or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct.”²⁵ A first violation is a category B felony punishable by imprisonment for 1–6 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. § 200.730(1). Second and subsequent violations are category A felonies punishable by imprisonment for 1 year to life imprisonment, with the possibility of parole, and a possible fine of \$5,000. Nev. Rev. Stat. Ann. § 200.730(2).

Additionally, pursuant to Nev. Rev. Stat. Ann. § 200.727(1) (Use of Internet to control visual representation depicting sexual conduct of person under 16 years of age; penalties),

1. Any person who, knowingly, willfully and with the specific intent to view any film, photograph or other visual presentation depicting a person under the age of 16 years engaging in or simulating sexual conduct,²⁶ uses the Internet to control such a film, photograph or other visual presentation is guilty of:
 - (a) For the first offense, a category C felony and shall be punished as provided in NRS 193.130 [Categories and punishment of felonies].
 - (b) For any subsequent offense, a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

As a category C felony, the first violation is punishable by imprisonment for 1–5 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. § 193.130(2)(c).

Additionally, asset forfeiture exists for a violation of this provision. Nev. Rev. Stat. Ann. § 200.760. Pursuant to Nev. Rev. Stat. Ann. § 200.760 (Forfeiture), “All assets derived from or relating to any violation of . . . 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive . . . are subject to forfeiture.”

Domestic minor sex trafficking victims under 16 who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result,” also have a civil cause of action against buyers. Nev. Rev. Stat. Ann. § 41.1396(1). Pursuant to Nev.

²⁴ “Sexual portrayal” is defined as “the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.” Nev. Rev. Stat. Ann. § 200.700(4)

²⁵ “Sexual conduct” is defined as “sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person’s body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.” Nev. Rev. Stat. Ann. § 200.700(3).

²⁶ Nev. Rev. Stat. Ann. § 700.727(2) states, “As used in this section, ‘sexual conduct’ means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.”

Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

1. Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct²⁷ and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:
 - (a) Promoted the film, photograph or other visual presentation;
 - (b) Possessed the film, photograph or other visual presentation; or
 - (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

In contrast, a federal conviction for possession of child pornography²⁸ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁹ Subsequent convictions, however, are punishable by imprisonment for up to 40 years and a fine not to exceed \$250,000.³⁰

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

Any person convicted of “a crime against a child”³¹ or a sex offender must register. Nev. Rev. Stat. Ann. § 179D.441(1). A “sex offender” is defined to include “a person who, after July 1, 1956, is or has been: (a) Convicted of a sexual offense listed in NRS 179D.097 [“Sexual offense” defined]” Nev. Rev. Stat. Ann. § 179D.095. Pursuant to Nev. Rev. Stat. Ann. § 179D.097(1) a “sexual offense” is defined to include the following offenses:

- (c) Statutory sexual seduction pursuant to NRS 200.368.
. . . .
- (g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

²⁷ Nev. Rev. Stat. Ann. § 41.1396(5)(b) states, “‘Sexual conduct’ means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.”

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

²⁹ 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).

³⁰ 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).

³¹ Pursuant to Nev. Rev. Stat. Ann. § 179D.0357(3) (“Crime against a child” defined) a crime against a child includes “[a]n offense involving pandering or prostitution pursuant to NRS 201.300 to 201.340 [Pandering: Definition; penalties; exception, Pandering: Placing spouse in brothel; penalties, Living from earnings of prostitute; penalty, Pandering: Detaining person in brothel because of debt; penalties, Pandering: Furnishing transportation; penalties]” if the victim was under 18 at the time of the offense.

(h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance, Promotion of sexual performance of minor unlawful, Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty, Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age, Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties] , inclusive.

(i) Incest pursuant to NRS 201.180.

(j) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

....

(m) Lewdness with a child pursuant to NRS 201.230.

....

(p) Any other offense that has an element involving a sexual act or sexual conduct with another.

....

Therefore, for a conviction under Nev. Rev. Stat. Ann. § 201.354(3) (Engaging in prostitution or solicitation for prostitution: Penalty; exception) or Nev. Rev. Stat. Ann. § 207.030(b) (Prohibited acts; penalty), a buyer could potentially be required to register as a sex offender since these are offenses that have “an element involving a sexual act or sexual conduct with another.” Nev. Rev. Stat. Ann. § 179D.097(1)(p).

However, notably, under Nev. Rev. Stat. Ann. § 179D.097(2) (“Sexual offense” defined),

2. The term does not include an offense involving consensual sexual conduct if the victim was:

(a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or

(b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Therefore, since a court may view a domestic minor sex trafficking victim as consenting to the sexual conduct, some buyers who are not more than 4 years older than the victim may not be required to register.

2.10.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 179D.097 (“Sexual offense” defined) to include Nev. Rev. Stat. Ann. § 201.354(3) (Engaging in prostitution or solicitation for prostitution: Penalty; exception) as a sexual offense for which a person convicted or pleading guilty to the crime would be required to register. Additionally, provide an exception to the consent defense in Nev. Rev. Stat. Ann. § 179D.097(2)(b) when the person involved is a domestic minor sex trafficking victim.

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 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 CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.

Legal Analysis:

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.³²

If Nev. Rev. Stat. Ann. § 200.463(1) (Involuntary servitude; penalties) is applicable to commercial sex acts through the terms “forced labor and services,” a trafficker who uses “forced labor or services” and is convicted under that provision will be guilty of a category B felony. Nev. Rev. Stat. Ann. § 200.463. If a person suffers “substantial bodily harm while held in involuntary servitude or in attempted escape or escape therefrom,” a violation of Nev. Rev. Stat. Ann. § 200.463 is punishable by imprisonment for 7–20 years and a possible fine not to exceed \$50,000. Nev. Rev. Stat. Ann. § 200.463(2)(a). If the victim does not suffer “substantial bodily harm,” a violation is punishable by imprisonment for 5–20 years and a possible fine not to exceed \$50,000. Nev. Rev. Stat. Ann. § 200.463(2)(b). Similarly, if Nev. Rev. Stat. Ann. § 200.464(1) (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) is applicable to commercial sex acts through the terms “forced labor and services,” a trafficker who is convicted under this provision will be guilty of a category B felony punishable by imprisonment for 1–15 years and a fine not to exceed \$50,000. Nev. Rev. Stat. Ann. § 200.464.

A trafficker may also be charged with various pandering offenses including the following offenses: Nev. Rev. Stat. Ann. § 201.300(1) (Pandering: Definitions; penalties; exception), Nev. Rev. Stat. Ann. § 201.330(1) (Pandering: Detaining person in brothel because of debt; penalties), and Nev. Rev. Stat. Ann. § 201.340(1) (Pandering: Furnishing transportation; Penalties). A violation of one of these offenses with “physical force or the immediate threat of physical force” against a child is a category B felony punishable by imprisonment for 2–20 years and a fine not to exceed \$20,000. Nev. Rev. Stat. Ann. §§ 201.300(2)(b)(1), 201.330(2)(b)(1), 201.340(2)(b)(1). If one of these offenses is committed without “physical force or the immediate threat of physical force,” the crime is a category B felony punishable by 1–10 years’ imprisonment and a fine not to exceed \$10,000. Nev. Rev. Stat. Ann. §§ 201.300(2)(b)(2), 201.330(2)(b)(2), 201.340(2)(b)(2). If the victim is 14–17 at the time of the offense, pursuant to Nev. Rev. Stat. Ann. § 201.352, a trafficker who violates Nev. Rev. Stat. Ann. § 201.300, § 201.330, or § 201.340 may be fined \$100,000, and if the victim is under 14, the fine raises to \$500,000.

When the minor victim is under 14 years of age, a violation of Nev. Rev. Stat. Ann. § 200.710(1)(Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance) is a Category A felony

³² See *supra* Sections 1.1, 1.2 for full discussion of the substantive provisions of the Nevada statutes listed. In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to traffickers of commercial sex with minors. Some counties also allow for the operation of licensed houses of prostitution. See *infra* Appendix for some county and city ordinances applicable to traffickers.

punishable by imprisonment for life with possibility of parole after 10 years and a fine not to exceed \$100,000. Nev. Rev. Stat. Ann. §§ 200.710(1), 200.750(2). When the minor victim is 14 years of age or older, a violation of Nev. Rev. Stat. Ann. § 200.710(1) is a Category A felony punishable by imprisonment for life, with parole eligibility after serving 5 years and a fine not to exceed \$100,000. Nev. Rev. Stat. Ann. §§ 200.710(1), 200.750(2).

Similarly, Nev. Rev. Stat. Ann. § 609.210(2) (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty) is a misdemeanor punishable by up to 6 months in prison, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. §§ 609.210, 193.150(1).

Furthermore, a trafficker could be guilty of racketeering activity. Pursuant to Nev. Rev. Stat. Ann. § 207.400(1) (Unlawful acts; penalties),

It is unlawful for a person:

- (a) Who has with criminal intent received any proceeds derived, directly or indirectly, from racketeering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of:
 - (1) Any title to or any right, interest or equity in real property; or
 - (2) Any interest in or the establishment or operation of any enterprise.³³
- (b) Through racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.
- (c) Who is employed by or associated with any enterprise to conduct or participate, directly or indirectly, in:
 - (1) The affairs of the enterprise through racketeering activity; or
 - (2) Racketeering activity through the affairs of the enterprise.
- (d) Intentionally to organize, manage, direct, supervise or finance a criminal syndicate.
- (e) Knowingly to incite or induce others to engage in violence or intimidation to promote or further the criminal objectives of the criminal syndicate.
- (f) To furnish advice, assistance or direction in the conduct, financing or management of the affairs of the criminal syndicate with the intent to promote or further the criminal objectives of the syndicate.
- (g) Intentionally to promote or further the criminal objectives of a criminal syndicate by inducing the commission of an act or the omission of an act by a public officer or employee which violates his or her official duty.
- (h) To transport property, to attempt to transport property or to provide property to another person knowing that the other person intends to use the property to further racketeering activity.
- (i) Who knows that property represents proceeds of, or is directly or indirectly derived from, any unlawful activity³⁴ to conduct or attempt to conduct any transaction involving the property:
 - (1) With the intent to further racketeering activity; or
 - (2) With the knowledge that the transaction conceals the location, source, ownership or control of the property.
- (j) To conspire to violate any of the provisions of this section.

Pursuant to Nev. Rev. Stat. Ann. § 207.390, “racketeering activity” is defined as “engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims

³³ “Enterprise” is defined as “1. Any natural person, sole proprietorship, partnership, corporation, business trust or other legal entity; and 2. Any union, association or other group of persons associated in fact although not a legal entity. The term includes illicit as well as licit enterprises and governmental as well as other entities.” Nev. Rev. Stat. Ann. § 207.380.

³⁴ “Unlawful activity” is Nev. Rev. Stat. Ann. § 207.400(3) by referring to Nev. Stat. Ann. § 207.195, which defines the term in part as “any crime related to racketeering as defined in NRS 207.360 or any offense punishable as a felony pursuant to state or federal statute.” Nev. Rev. Stat. Ann. §§ 207.400(3), 207.195(5)(c).

or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one of the incidents occurred after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.” “Crime related to racketeering” is defined as including “the commission of, attempt to commit or conspiracy to commit any of the following crimes: . . . 6. Sexual assault; . . . 11. Statutory sexual seduction . . . 29. Any violation of NRS 201.300 [Pandering: Definition; penalties; exception] or 201.360 [Placing person in house of prostitution; penalties]; . . .”

A violation of Nev. Rev. Stat. Ann. § 207.400 is a category B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$25,000. Nev. Rev. Stat. Ann. § 207.400(2). Under Nev. Rev. Stat. Ann. § 207.410 (Alternate fine for unlawful acts), a fine may be imposed not exceeding the greater of 3 times “1. Any gross pecuniary value the convicted person gained; or 2. Any gross loss the convicted person caused, including property damage and personal injury, but excluding any pain and suffering.”

A trafficker could be found guilty of money laundering under Nev. Rev. Stat. Ann. § 207.195 (Use of monetary instrument proceeding or derived from unlawful activity), which states,

1. If a monetary instrument represents the proceeds of or is directly or indirectly derived from any unlawful activity, it is unlawful for a person, having knowledge of that fact:
 - (a) To conduct or attempt to conduct a financial transaction involving the instrument:
 - (1) With the intent to further any unlawful activity;
 - (2) With the knowledge that the transaction conceals the location, source, ownership or control of the instrument; or
 - (3) With the knowledge that the transaction evades any provision of federal or state law that requires the reporting of a financial transaction.
 - (b) To transport or attempt to transport the monetary instrument:
 - (1) With the intent to further any unlawful activity;

A violation of Nev. Rev. Stat. Ann. § 207.195 is a Class D felony punishable by imprisonment for 1-4 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 207.195(3), 193.130(2)(d).

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³⁵ 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 offense³⁶ against a minor.

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

Pursuant to Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), it is a category B felony when a person “knowingly prepares,

³⁵ 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.).

³⁶ 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).

advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct³⁷. . . .” The crime is punishable by imprisonment for 1–15 years, a fine not to exceed \$15,000, or both. Nev. Rev. Stat. Ann. § 200.725.

Under Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), it is a category A felony when a person “knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance.” Additionally, under Nev. Rev. Stat. Ann. § 200.710(2), it is a category A felony when a person “knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance.”

Violations of any of these statutes subjects “[a]ll assets derived from or relating to any violation . . . to forfeiture.” Nev. Rev. Stat. Ann. § 200.760.

Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

1. Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct³⁸ and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:
 - (a) Promoted³⁹ the film, photograph or other visual presentation;
 - (b) Possessed the film, photograph or other visual presentation; or
 - (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2). In contrast, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense⁴⁰ against a minor. Additionally, a federal conviction for distribution of child pornography⁴¹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴² Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴³

³⁷ See *supra* note 25.

³⁸ See *supra* note 27.

³⁹ “Promote” means “to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.” Nev. Rev. Stat. Ann. §§ 41.1396(5)(a), 200.700(2).

⁴⁰ See *supra* note 36.

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

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

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

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

Although Nevada law does not specifically criminalize using the Internet to sell commercial sex acts, the crime can fall within Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties). Pursuant to Nev. Rev. Stat. Ann. § 201.560(1),

1. Except as otherwise provided in subsection 3,⁴⁴ a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:
 - (a) A child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from the child's home or from any location known to the child's parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:
 - (1) Without the express consent of the parent or guardian or other person legally responsible for the child; and
 - (2) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child; or
 - (b) Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to persuade or lure the person to engage in sexual conduct.

....
4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:

- (a) With the intent to engage in sexual conduct⁴⁵ with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

....

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

For a conviction under Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties) or Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), the trafficker can receive a fine not to exceed \$50,000. Nev. Rev. Stat. Ann. §§ 200.463(2), 200.464. Convictions under Nev. Rev. Stat. Ann. § 201.300 (Pandering: Definitions; penalties; exception), Nev. Rev. Stat. Ann. § 201.330 (Pandering: Detaining person in brothel because of debt; penalties), and Nev. Rev. Stat. Ann. § 201.340 (Pandering: Furnishing transportation; penalties) can lead to a possible fine not to exceed \$20,000 if "physical force or the immediate threat of physical force" was used. Nev. Rev. Stat. Ann. §§ 201.300(2)(b)(1), 201.330(2)(b)(1), 201.340(2)(b)(1). Convictions under these statutes without "physical force or the immediate threat of physical force," can result in possible fines not to exceed \$10,000. Nev. Rev. Stat. Ann. §§ 201.300(2)(b)(2), 201.330(2)(b)(2), 201.340(2)(b)(2). A conviction under Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute) is punishable by a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 201.320(1), 193.130(2)(d). If the victim is 14–17 at the time of the offense, pursuant to Nev. Rev. Stat. Ann. § 201.352 (Additional fine for pandering child and conspiring to pander child), a trafficker who is convicted of Nev. Rev. Stat. Ann. § 201.300, § 201.330, or § 201.340 may be fined \$100,000, and, if the victim is under 14, the fine raises to \$500,000. Convictions under Nev. Rev. Stat. Ann. § 207.030(b), (c) (Prohibited acts; penalty) or Nev. Rev. Stat. Ann. § 609.210 (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty) can result in fines not to exceed \$1,000. Nev. Rev. Stat. Ann. §§ 207.030,

⁴⁴ See *supra* note 21.

⁴⁵ *Supra* note 25.

609.210(2)(a), 193.150(1). Subsequent violations of Nev. Rev. Stat. Ann. § 207.030 that occur within 3 years of the first violation can result in fines of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b), (c).

For violations of Nev. Rev. Stat. Ann. § 201.300, § 201.330, and § 201.340, a trafficker of a child will be subject to asset forfeiture. Pursuant to Nev. Rev. Stat. Ann. § 201.351(1) (Forfeiture of assets derived from or relating to pandering child; temporary restraining order to preserve property subject to forfeiture; use of proceeds derived from forfeiture), “All assets derived from or relating to any violation of NRS 201.300 to 201.340, inclusive, in which the victim of the offense is a child when the offense is committed are subject to forfeiture pursuant to NRS 179.121 [Forfeiture of personal property and conveyances used in commission of crime] and a proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.121 [Forfeitures], inclusive.”

Additionally, under Nev. Rev. Stat. Ann. § 179.121(1),

1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture:

....

(d) The commission of any crime by a criminal gang, as defined in NRS 213.1263 [Board may prohibit association with members of criminal gang as condition of parole];⁴⁶ or

(e) A violation of NRS 200.463 to 200.468,⁴⁷ inclusive, 201.300 to 201.340,⁴⁸ inclusive

Additionally, pursuant to Nev. Rev. Stat. Ann. § 179.1164(1)(a) (Property subject to seizure and forfeiture; exceptions), with a few exceptions, “[a]ny proceeds attributable to the commission or attempted commission of any felony,” are subject to forfeiture. “Proceeds” is defined as “any property, or that part of an item of property, derived directly or indirectly from the commission or attempted commission of a crime.” Nev. Rev. Stat. Ann. § 179.1161. “Property” includes the following: “1. Real property or interest in real property. 2. Fixture or improvement to real property. 3. Personal property, whether tangible or intangible, or interest in personal property. 4. Conveyance, including any aircraft, vehicle or vessel. 5. Money, security or negotiable instrument. 6. Proceeds.” Nev. Rev. Stat. Ann. § 179.1162.

For a racketeering violation under Nev. Rev. Stat. Ann. § 207.400 (Unlawful acts; penalties), a trafficker can receive a possible fine not to exceed \$25,000. Nev. Rev. Stat. Ann. § 207.400(2). Alternatively, the trafficker may receive a greater fine under Nev. Rev. Stat. Ann. § 207.410 (Alternate fine for unlawful acts), which allows the court to impose a fine not exceeding the greater of 3 times “1. Any gross pecuniary value the convicted person gained; or 2. Any gross loss the convicted person caused, including property damage and personal injury, but excluding any pain and suffering.”

⁴⁶ Nev. Rev. Stat. Ann. § 213.1263 states,

1. The board may, as a condition of releasing a prisoner on parole, prohibit the prisoner from associating with the members of a criminal gang.
2. As used in this section, “criminal gang” means any combination of persons, organized formally or informally, so constructed that the organization will continue its operation even if individual members enter or leave the organization, which:

- (a) Has a common name or identifying symbol;
- (b) Has particular conduct, status and customs indicative of it; and
- (c) Has as one of its common activities engaging in criminal activity punishable as a felony.

⁴⁷ Nev. Rev. Stat. Ann. §§ 200.463 (Involuntary servitude; penalties), 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), 200.465 (Assuming rights of ownership over another person; purchase or sale of person; penalty), 200.467 (Trafficking in persons for financial gain; penalties), 200.468 (Trafficking in persons for illegal purposes; penalty).

⁴⁸ Nev. Rev. Stat. Ann. §§ 201.300 (Pandering: Definition; penalties; exception), 201.310 (Pandering: Placing spouse in brothel; penalties), 201.320 (Living from earnings of prostitute; penalty), 201.330 (Pandering: Detaining person in brothel because of debt; penalties), 201.340 (Pandering: Furnishing transportation; penalties).

Additionally, for a violation under Nev. Rev. Stat. Ann. § 207.400, the trafficker may face criminal forfeiture, and, pursuant to Nev. Rev. Stat. Ann. § 207.420 (Criminal forfeiture: Property subject to forfeiture; substitution for unreachable property),

1. If the indictment or information filed regarding a violation of NRS 207.400 alleges that real or personal property was derived from, realized through, or used or intended for use in the course of the unlawful act and the extent of that property:

(a) The jury; or

(b) If the trial is without a jury, the court,

shall upon a conviction, determine at a separate hearing the extent of the property to be forfeited. If the indictment or information does not include such an allegation, the property is not subject to criminal forfeiture.

2. The property subject to criminal forfeiture pursuant to subsection 1 includes:

(a) Any title or interest acquired or maintained by the unlawful conduct;

(b) Any proceeds derived from the unlawful conduct;

(c) Any property or contractual right which affords a source of influence over any enterprise established, operated, controlled, participated in or conducted in violation of NRS 207.400;

....

The trafficker who violates the racketeering provisions may also be subject to civil forfeiture for a violation of Nev. Rev. Stat. Ann. § 207.400. Pursuant to Nev. Rev. Stat. Ann. § 207.460 (Civil forfeiture: Property subject to forfeiture),

1. Except as otherwise provided in subsection 2, the following are subject to civil forfeiture to the state:

(a) All property, real or personal, including money used in the course of, intended for use in the course of, derived from or gained through conduct in violation of NRS 207.400;

(b) Any title or interest a person has acquired or maintained in violation of NRS 207.400; and

(c) Any property or contractual right which affords a source of influence over any enterprise established, operated, controlled, participated in or conducted in violation of NRS 207.400.

2. Upon a showing by the owner of the requisite facts, the following is not subject to forfeiture under this section:

(a) Except as otherwise provided in paragraph (b), property used without the knowledge or consent of its owner; and

(b) A means of transportation used by a person in the transaction of business as a common carrier unless it appears the owner or person in charge of the common carrier consented to or had knowledge of the violation of NRS 207.400.

Additionally, a court may decide to award restitution in any case, which could cause a trafficker to pay restitution. Nev. Rev. Stat. Ann. § 176.033(1)(c). Specifically, pursuant to Nev. Rev. Stat. Ann. § 176.033(1)(c) (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence), “If a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense”

Finally, a trafficker may face a possible fine up to \$5,000 for a violation of Nev. Rev. Stat. Ann. § 207.195 (Use of monetary instrument proceeding or derived from unlawful activity). Nev. Rev. Stat. Ann. §§ 207.195(3), 193.130(2)(d).

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

Persons convicted of a “crime against a child” and sex offenders must register. Nev. Rev. Stat. Ann. § 179D.441(1). Pursuant to Nev. Rev. Stat. Ann. § 179D.0357(3) (“Crime against a child” defined), a “crime against a child” includes “[a]n offense involving pandering or prostitution pursuant to NRS 201.300 to 201.340”⁴⁹ if the victim was under 18 at the time of the offense.

A “sex offender” is defined to include “a person who, after July 1, 1956, is or has been: (a) convicted of a sexual offense listed in NRS 179D.097 [“Sexual offense” defined]” Nev. Rev. Stat. Ann. § 179D.095(1)(a). Pursuant to Nev. Rev. Stat. Ann. § 179D.097(1), a “sexual offense” is defined to include the following offenses:

- (g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
- (h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive.
. . . .
- (j) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.
. . . .
- (o) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
- (p) Any other offense that has an element involving a sexual act or sexual conduct with another.
. . . .

However, notably, under Nev. Rev. Stat. Ann. § 179D.097(2),

- 2. The term does not include an offense involving consensual sexual conduct if the victim was:
 - (a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or
 - (b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Therefore, since a court may view a domestic minor sex trafficking victim as consenting to the sexual conduct, some buyers who are not more than 4 years older than the victim may not be required to register.

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

Pursuant to Nev. Rev. Stat. Ann. § 128.105 (Grounds for terminating parental rights: Considerations; required findings),

The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:

⁴⁹ See *supra* note 48.

1. The best interests of the child would be served by the termination of parental rights; and
2. The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the following:
 - (a) Abandonment of the child;
 - (b) Neglect of the child;
 - (c) Unfitness of the parent;
 - (d) Failure of parental adjustment;
 - (e) Risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents;
 - (f) Only token efforts by the parent or parents:
 - (1) To support or communicate with the child;
 - (2) To prevent neglect of the child;
 - (3) To avoid being an unfit parent; or
 - (4) To eliminate the risk of serious physical, mental or emotional injury to the child;
 or
 - (g) With respect to termination of the parental rights of one parent, the abandonment by that parent.

Pursuant to Nev. Rev. Stat. Ann. § 128.106 (Specific considerations in determining neglect by or unfitness of parent),

In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

-
2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.
 3. Conduct that violates any provision of NRS 200.463 [Involuntary servitude; penalties], 200.464 [Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty] or 200.465 [Assuming rights of ownership over another person; purchase or sale of person; penalty].
-
6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.
-

Nev. Rev. Stat. Ann. § 432B.393(3) provides that an agency is not required to make reasonable efforts to reunify a parent and child, if the court finds that

- (a) A parent or other primary caretaker of the child has:
 - (1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter;
 - (2) Caused the abuse or neglect of the child, or of another child of the parent or primary caretaker, which resulted in substantial bodily harm to the abused or neglected child;
 - (3) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to the home would result in an unacceptable risk to the health or welfare of the child; . . .
-

3.6.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 128.106 (Specific considerations in determining neglect by or unfitness of parent) to include the crimes of Nev. Rev. Stat. Ann. § 201.300 (Pandering: Definitions; penalties; exception), Nev. Rev. Stat. Ann. § 201.330 (Pandering:

Detaining person in brothel because of debt; penalties), Nev. Rev. Stat. Ann. § 201.340 (Pandering; furnishing transportation; penalties), and Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute) as conduct toward the child that the court shall consider in determining parental unfitness.

FRAMEWORK ISSUE 4: CRIMINAL PROVISIONS FOR FACILITATORS

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.⁵⁰*

If Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) is applicable to commercial sex acts through the terms “forced labor and services,” the actions of some facilitators are criminalized by the state under the statute, which states that a person who “knowingly . . . harbors, transports . . . by any means, another person, intending or knowing that the person will be held in involuntary servitude; or 2. Benefits, financially or by receiving anything of value, from participating in a violation of NRS 200.463 [Involuntary servitude; penalties]” commits a category B felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$50,000. Nev. Rev. Stat. Ann. § 200.464.

Several other statutes could apply to facilitators. Nev. Rev. Stat. Ann. § 201.340(1) (Pandering; Furnishing transportation; penalties) criminalizes when a person “knowingly transports or causes to be transported, by any means of conveyance, into, through or across this state, or who aids or assists in obtaining such transportation for a person with the intent to induce, persuade, encourage, inveigle, entice or compel that person to become a prostitute or to continue to engage in prostitution is guilty of pandering.” When this offense is committed against a child with “physical force or the immediate threat of physical force,” the crime is a category B felony punishable by imprisonment for 2–20 years and a fine not to exceed \$20,000. Nev. Rev. Stat. Ann. § 201.340(2)(b)(1). When no “physical force or the immediate threat of physical force” is present, the crime is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. § 201.340(2)(b)(2). If the victim is 14–17 at the time of the offense, pursuant to Nev. Rev. Stat. Ann. § 201.352, a facilitator who violates Nev. Rev. Stat. Ann. §201.340 may be fined \$100,000, and if the victim is under 14, the fine increases to \$500,000.

Furthermore, a facilitator could be guilty of racketeering under Nev. Rev. Stat. Ann. § 207.400, which is a category B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$25,000. Nev. Rev. Stat. Ann. § 207.400(2).

⁵⁰ In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to facilitators of domestic minor sex trafficking. Some counties also allow for the operation of licensed houses of prostitution. See *infra* Appendix for a list of some county and city ordinances applicable to facilitators.

Finally, a facilitator could be found guilty of money laundering under Nev. Rev. Stat. Ann. § 207.195 (Use of monetary instrument proceeding or derived from unlawful activity), which states,

1. If a monetary instrument represents the proceeds of or is directly or indirectly derived from any unlawful activity, it is unlawful for a person, having knowledge of that fact:
 - (a) To conduct or attempt to conduct a financial transaction involving the instrument:
 - (1) With the intent to further any unlawful activity;
 - (2) With the knowledge that the transaction conceals the location, source, ownership or control of the instrument; or
 - (3) With the knowledge that the transaction evades any provision of federal or state law that requires the reporting of a financial transaction.
 - (b) To transport or attempt to transport the monetary instrument:
 - (1) With the intent to further any unlawful activity;

A violation of Nev. Rev. Stat. Ann. § 207.195 is a Class D felony punishable by imprisonment 1–4 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 207.195(3), 193.130(2)(d).

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.*

For a violation of Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), the facilitator can receive a fine not exceeding \$50,000. Nev. Rev. Stat. Ann. § 200.464. Violations of Nev. Rev. Stat. Ann. § 201.340(1) (Pandering; furnishing transportation; penalties) can lead to a possible fine not to exceed \$20,000 if the facilitator used “physical force or the immediate threat of physical force.” Nev. Rev. Stat. Ann. § 201.340(2)(b)(1). Violations of these statutes without “physical force or the immediate threat of physical force” can result in possible fines not to exceed \$10,000. Nev. Rev. Stat. Ann. § 201.340(2)(b)(1). If the victim is 14–17 at the time of the offense, pursuant to Nev. Rev. Stat. Ann. § 201.352, a facilitator who violates Nev. Rev. Stat. Ann. §201.340 may be fined \$100,000, and, if the victim is under 14, the fine raises to \$500,000. Persons convicted under Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) and § 201.430 (Unlawful advertising of prostitution; penalties) can receive a fine not to exceed \$1,000. Nev. Rev. Stat. Ann. §§ 207.030(2)(a), 201.430(4)(a). Subsequent violations of Nev. Rev. Stat. Ann. § 207.030 or § 201.430 that occur within 3 years of the first violation can result in fines between \$250–\$1,000. Nev. Rev. Stat. Ann. §§ 207.030(2)(b), (c), 201.430(4)(b), (c). Lastly, a violation of Nev. Rev. Stat. Ann. § 201.390(1) (Property or principal business streets not to be rented for purposes of prostitution) can result in a fine of not more than \$500. Nev. Rev. Stat. Ann. § 201.390(2).

For violations of Nev. Rev. Stat. Ann. § 201.340, a facilitator of domestic minor sex trafficking will be subject to asset forfeiture. Pursuant to Nev. Rev. Stat. Ann. § 201.351(1) (Forfeiture of assets derived from or relating to pandering child; temporary restraining order to preserve property subject to forfeiture; use of proceeds derived from forfeiture), “All assets derived from or relating to any violation of NRS 201.300 to 201.340, inclusive, in which the victim of the offense is a child when the offense is committed are subject to forfeiture pursuant to NRS 179.121 [Forfeiture of personal property and conveyances used in commission of crime] and a proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.121, inclusive.”

Additionally, under Nev. Rev. Stat. Ann. § 179.121,

1. All personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes is subject to forfeiture:
.....

- (d) The commission of any crime by a criminal gang, as defined in NRS 213.1263 [Board may prohibit association with members of criminal gang as condition of parole];⁵¹ or
- (e) A violation of NRS 200.463 to 200.468,⁵² inclusive, 201.300 to 201.340,⁵³ . . .

Additionally, pursuant to Nev. Rev. Stat. Ann. § 179.1164(1)(a) (Property subject to seizure and forfeiture; exceptions), with a few exceptions, “[a]ny proceeds attributable to the commission or attempted commission of any felony, are subject to forfeiture.”⁵⁴

For a racketeering violation under Nev. Rev. Stat. Ann. § 207.400 (Unlawful acts; penalties), a facilitator could receive a possible fine not to exceed \$25,000. Nev. Rev. Stat. Ann. § 207.400(2). Alternatively, the facilitator may receive a greater fine under Nev. Rev. Stat. Ann. § 207.410 (Alternate fine for unlawful acts), which allows the court to impose a fine not exceeding the greater of 3 times “1. Any gross pecuniary value the convicted person gained; or 2. Any gross loss the convicted person caused, including property damage and personal injury, but excluding pain and suffering.”

Additionally, for a violation under Nev. Rev. Stat. Ann. § 207.400, the facilitator may face criminal forfeiture, and pursuant to Nev. Rev. Stat. Ann. § 207.420, (Criminal forfeiture: Property subject to forfeiture; substitution for unreachable property),

1. If the indictment or information filed regarding a violation of NRS 207.400 alleges that real or personal property was derived from, realized through, or used or intended for use in the course of the unlawful act and the extent of that property:
 - (a) The jury; or
 - (b) If the trial is without a jury, the court,shall upon a conviction, determine at a separate hearing the extent of the property to be forfeited. If the indictment or information does not include such an allegation, the property is not subject to criminal forfeiture.
2. The property subject to criminal forfeiture pursuant to subsection 1 includes:
 - (a) Any title or interest acquired or maintained by the unlawful conduct;
 - (b) Any proceeds derived from the unlawful conduct;
 - (c) Any property or contractual right which affords a source of influence over any enterprise established, operated, controlled, participated in or conducted in violation of NRS 207.400;
 -

The facilitator who violates the racketeering provisions may also be subject to civil forfeiture for a violation of Nev. Rev. Stat. Ann. § 207.400. Pursuant to Nev. Rev. Stat. Ann. § 207.460 (Civil forfeiture: Property subject to forfeiture),

1. Except as otherwise provided in subsection 2, the following are subject to civil forfeiture to the state:
 - (a) All property, real or personal, including money used in the course of, intended for use in the course of, derived from or gained through conduct in violation of NRS 207.400;
 - (b) Any title or interest a person has acquired or maintained in violation of NRS 207.400; and
 - (c) Any property or contractual right which affords a source of influence over any enterprise established, operated, controlled, participated in or conducted in violation of NRS 207.400.
2. Upon a showing by the owner of the requisite facts, the following is not subject to forfeiture under this section:
 - (a) Except as otherwise provided in paragraph (b), property used without the knowledge or consent of its owner; and

⁵¹ See *supra* note 46.

⁵² See *supra* note 47.

⁵³ See *supra* note 48.

⁵⁴ See *supra* Section 3.4 for a discussion of “proceeds.”

(b) A means of transportation used by a person in the transaction of business as a common carrier unless it appears the owner or person in charge of the common carrier consented to or had knowledge of the violation of NRS 207.400.

Additionally, a court may decide to award restitution in any case, which could cause a facilitator to pay restitution. Nev. Rev. Stat. Ann. § 176.033(1)(c). Specifically, pursuant to Nev. Rev. Stat. Ann. § 176.033(1)(c) (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence), “If a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense”

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

Nevada has no statute specifically related to 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 occurring in Nevada.

4.4 *Promoting and selling child pornography is illegal.*

Pursuant to Nev. Rev. Stat. Ann. § 200.720 (Promotion of sexual performance of minor unlawful), it is a category A felony to “knowingly promote[] a performance of a minor: 1. Where the minor engages in or simulates, or assists others to engage in or simulate, sexual conduct;⁵⁵ or 2. Where the minor is the subject of a sexual portrayal.”⁵⁶ For the purpose of this statute, “promote” means “to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.” Nev. Rev. Stat. Ann. § 200.700(2). When the minor is 14 or older, a violation is punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(1). When the minor is under 14, the crime is punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(2).

Pursuant to Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), it is a category B felony when a person “knowingly prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct” The crime is punishable by imprisonment for 1–15 years, a fine not to exceed \$15,000, or both. Nev. Rev. Stat. Ann. § 200.725. Violations of either of these statutes subjects “[a]ll assets derived from or relating to any violation . . . to forfeiture.” Nev. Rev. Stat. Ann. § 200.760.

Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

1. Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct⁵⁷ and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:
 - (a) Promoted⁵⁸ the film, photograph or other visual presentation;
 - (b) Possessed the film, photograph or other visual presentation; or

⁵⁵ See *supra* note 25.

⁵⁶ See *supra* note 24.

⁵⁷ See *supra* note 27

⁵⁸ See *supra* note 39

- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

FRAMEWORK ISSUE 5: PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Legal Components:

- 5.1 *A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims’ compensation and other victim benefits.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*
- 5.4 *Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*
- 5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or CSEC without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile arrest or criminal 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 are authorized by law for minor victims of sex trafficking or CSEC.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or 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 *A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims’ compensation and other victim benefits.*

For the purpose crime victims compensation, pursuant to Nev. Rev. Stat. Ann. § 217.070 (“Victim” defined),

“Victim” means:

1. A person who is physically injured or killed as the direct result of a criminal act;
2. A minor who was involved in the production of pornography in violation of NRS 200.710 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance], 200.720 [Promotion of sexual performance of minor unlawful], 200.725 [Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty] or 200.730 [Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; penalties];

3. A minor who was sexually abused, as “sexual abuse” is defined in NRS 432B.100;⁵⁹

....

5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*

Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties), Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), and the CSEC offenses listed in Section 1.2⁶⁰ do not refer to a defense based on consent of the minor to the commercial sex act. However, the code does not specifically prohibit a defendant from raising such a defense.

5.2.1 Recommendation: Enact a provision specifically prohibiting a defense to any sexual crime against a minor under 18 based on consent of the child to the sex act.

5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*⁶¹

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) does not exclude minors from prosecution. The statute establishes a misdemeanor “for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.” Nev. Rev. Stat. Ann. § 201.354(1). Similarly, Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) does not exclude minors from prosecution and makes it a crime to “[o]ffer or agree to engage in, engage in or aid and abet any act of prostitution.” The crime is a misdemeanor, with heightened penalties for subsequent violations committed within 3 years of the first violation. Nev. Rev. Stat. Ann. § 207.030(2).

5.3.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception) and Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) to make the law inapplicable to the minors under 18 who are patronized.

5.4 *Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*

A domestic minor sex trafficking victim may fall within several classifications in Nevada.

A “child in need of supervision” is defined as “a child who is adjudicated to be in need of supervision pursuant to the provisions of this title.”⁶² Nev. Rev. Stat. Ann. § 62A.040. Under Nev. Rev. Stat. Ann. §

⁵⁹ Pursuant to 432B.100 (“Sexual abuse” defined), “‘Sexual abuse’ includes acts upon a child constituting: . . . ; 2. Lewdness with a child under NRS 201.230; 3. Sado-masochistic abuse under NRS 201.262; 4. Sexual assault under NRS 200.366; 5. Statutory sexual seduction under NRS 200.368; 6. Open or gross lewdness under NRS 201.210;”

⁶⁰ See *supra* Section 1.2 for a full list of CSEC offenses.

⁶¹ In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to victims of domestic minor sex trafficking. See *infra* Appendix for a list of county ordinances applicable to victims.

⁶² Pursuant to Nev. Rev. Stat. § 62B.320 (Child in need of supervision) the court assumes jurisdiction over children in need of supervision as follows:

1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is alleged or adjudicated to be in need of supervision because the child:
 - (a) Is subject to compulsory school attendance and is a habitual truant from school;
 - (b) Habitually disobeys the reasonable and lawful demands of the parent or guardian of the child and is unmanageable;
 - (c) Deserts, abandons or runs away from the home or usual place of abode of the child and is in need of care or rehabilitation; or
 - (d) Uses an electronic communication device to transmit or distribute a sexual image of himself or herself to another person or to possess a sexual image in violation of section 1 of this act.

62A.380 (Use of services and facilities of agencies which provide child welfare services; duties of such agencies),⁶³

1. In carrying out the objects and purposes of this title, the juvenile court may use the services and facilities of the agency which provides child welfare services.⁶⁴

2. The agency which provides child welfare services shall determine the plans, placements and services to be provided to any child pursuant to the provisions of this title, chapter 432 of NRS [Protection of Children from Abuse and Neglect] and NRS 432B.010 to 432B.400, inclusive and sections 2 to 6, inclusive, of this act.

....

Pursuant to Nev. Rev. Stat. Ann. § 432B.330 (Circumstances under which child is or may be in need of protection),

(1) A child is in need of protection if:

(a) The child has been abandoned by a person responsible for the welfare of the child;⁶⁵

(b) The child has been subjected to abuse or neglect⁶⁶ by a person responsible for the welfare of the child;

(c) The child is in the care of a person responsible for the welfare of the child and another child has died as a result of abuse or neglect by that person;

(d) The child has been placed for care or adoption in violation of law; or

(e) The child has been delivered to a provider of emergency services pursuant to NRS 432B.630 [Delivery of newborn child to provider of emergency services].

2. A child may be in need of protection if the person responsible for the welfare of the child:

(a) Is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(b) Fails, although the person is financially able to do so or has been offered financial or other means to do so, to provide for the following needs of the child:

(1) Food, clothing or shelter necessary for the child's health or safety;

(2) Education as required by law; or

(3) Adequate medical care; or

(c) Has been responsible for the abuse or neglect of a child who has resided with that person.

....

One way a child may come to the attention of the Department of Family and Child Services as a child in need of protection is through a mandatory report pursuant to Nev. Rev. Stat. Ann. § 432B.220, which states,

2. A child who is subject to the jurisdiction of the juvenile court pursuant to this section must not be considered a delinquent child.

The text of Nev. Rev. Stat. Ann. § 62B.320 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 277 during Nevada's 76th Regular Session. 2011 Nev. Stat. 245 (effective July 1, 2011).

⁶³ The text of Nev. Rev. Stat. Ann. § 62A.380 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 371 during Nevada's 76th Regular Session. 2011 Nev. Stat. 444 (effective upon becoming law).

⁶⁴ Nev. Rev. Stat. Ann. § 62A.380(3) states,

As used in this section, "agency which provides child welfare services" means:

(a) In a county whose population is less than 100,000, the office of the Division of Child and Family Services; or

(b) In a county whose population is 100,000 or more, the agency of the county, which provides or arranges for necessary child welfare services.

⁶⁵ See *infra* Section 5.6 for definition of "person responsible for the welfare of the child."

⁶⁶ See *infra* Section 5.5 for definition of "abuse or neglect of a child."

1. Any person who is described in subsection 4 [includes certain medical, religious, and educational workers] and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall:

- (a) Except as otherwise provided in subsection 2,⁶⁷ report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and
- (b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

A trafficked child under the age of 12 may also be identified through a mandatory report of a sexual offense under Nev. Rev. Stat. Ann. § 202.882 (Duty to report violent or sexual offense against child 12 years of age or younger; penalty for failure to report; contents of report) which states,

1. Except as otherwise provided in NRS 202.885 [Limitation on prosecution or conviction for failure to report] and 202.888 [Persons exempt from duty to report], a person who knows or has reasonable cause to believe that another person has committed a violent or sexual offense against a child who is 12 years of age or younger shall:

- (a) Report the commission of the violent or sexual offense against the child to a law enforcement agency; and
- (b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the other person has committed the violent or sexual offense against the child.

A child who comes under the court's jurisdiction pursuant to Chapter 432 may be taken into custody as a child in need of protection pursuant to Nev. Rev. Stat. Ann. § 432B.390 (Placement of child in protective custody), or brought within child protective services but not into custody pursuant to Nev. Rev. Stat. Ann. § 432B.340 (Determination that child needs protection but is not in imminent danger).

If a child is in need of protection but is not in imminent danger, the child may be sent in various routes. Pursuant to Nev. Rev. Stat. Ann. § 432B.340 (Determination that child needs protection but is not in imminent danger),

1. If the agency which provides child welfare services determines that a child needs protection, but is not in imminent danger from abuse or neglect, it may:

- (a) Offer to the parents or guardian a plan for services and inform the parents or guardian that the agency has no legal authority to compel the parents or guardian to accept the plan but that it has the authority to petition the court pursuant to NRS 432B.490 [Procedure following hearing or investigation] or to refer the case to the district attorney or a law enforcement agency; or
- (b) File a petition pursuant to NRS 432B.490 and, if a child is adjudicated in need of protection, request that the child be removed from the custody of the parents or guardian or that the child remain at home with or without the supervision of the court or of any person or agency designated by the court.

2. If the parent or guardian accepts the conditions of the plan offered by the agency pursuant to paragraph (a) of subsection 1, the agency may elect not to file a petition and may arrange for

⁶⁷ Nev. Rev. Stat. 432B.220(2) states,

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

- (a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of the home for a portion of the day, the person shall make the report to a law enforcement agency.
- (b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

appropriate services, including medical care, care of the child during the day, management of the home or supervision of the child, the parents or guardian.

If immediate action is needed for a child to be taken into protective custody, several placement options exist. Pursuant to Nev. Rev. Stat. Ann. § 432B.390 (Placement of child in protective custody),⁶⁸

1. An agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services:
 - (a) May place a child in protective custody without the consent of the person responsible for the child's welfare if the agent, officer or designee has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.
-
6. A child placed in protective custody pending an investigation and a hearing held pursuant to NRS 432B.470 [Hearing required; notice] must be placed, except as otherwise provided in NRS 432B.3905 [Limitation on transfer and placement of child who is under 6 years of age; notice; reports], in the following order of priority:
 - (a) In a hospital, if the child needs hospitalization.
 - (b) With a person who is related within the fifth degree of consanguinity or a fictive kin, and who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.
 - (c) In a foster home that is licensed pursuant to chapter 424 of NRS.
 - (d) In any other licensed shelter that provides care to such children.
7. Whenever possible, a child placed pursuant to subsection 6 must be placed together with any siblings of the child. Such a child must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.
-

Upon being taken into custody pursuant to Nev. Rev. Stat. Ann. § 432B.390, a child must be given a hearing under Nev. Rev. Stat. Ann. § 432B.470(1) (Hearing required; notice) and, pursuant to Nev. Rev. Stat. Ann. § 432B.480(1)(b) (Hearing: Court required to advise parties of rights; determinations by court; order to continue custody or release child),

The court shall determine whether there is reasonable cause to believe that it would be:

- (1) Contrary to the welfare of the child for the child to reside at his or her home; or
- (2) In the best interests of the child to place the child outside of his or her home.

The court shall prepare an explicit statement of the facts upon which each of its determinations is based. If the court makes an affirmative finding regarding either subparagraph (1) or (2), the court shall issue an order keeping the child in protective custody pending a disposition by the court.

If the court opts not to place the child in protective custody, “[a]n agency [that] provides child welfare services” may conduct an investigation and file a petition. Nev. Rev. Stat. Ann. § 432B.490(1)(c). Pursuant to Nev. Rev. Stat. Ann. § 432B.530(1), “An adjudicatory hearing must be held within 30 days after the filing of the petition, unless good cause is shown or the hearing has been continued until a later date pursuant to NRS 432B.513.” Pursuant to Nev. Rev. Stat. Ann. § 432B.550 (Determination of custody of child by court; determination Of Whether Agency Which Provides Child Welfare Services Has Made Reasonable Efforts Required) provides,⁶⁹

⁶⁸ Here and elsewhere in this report that Nev. Rev. Stat. Ann. § 432B.390 is quoted or cited, the language has been updated to reflect changes made by Assembly Bill 390 passed in the 76th Regular Session. 2011 Nev. Stat. 57 (effective upon becoming law).

⁶⁹ Here and elsewhere in this report that Nev. Rev. Stat. Ann. § 432B.550 is quoted or cited, the language has been updated to reflect changes made by Assembly Bill 390 in the 76th Regular Session. 2011 Nev. Stat. 57 (effective upon becoming law).

1. If the court finds that a child is in need of protection, it may, by its order, after receipt and review of the report from the agency which provides child welfare services:
 - (a) Permit the child to remain in the temporary or permanent custody of the parents of the child or a guardian with or without supervision by the court or a person or agency designated by the court, . . .
 - (b) Place the child in the temporary or permanent custody of a relative, a fictive kin, or other person the court finds suitable to receive and care for the child with or without supervision, . . . ; or
 - (c) Place the child in the temporary custody of a public agency or institution authorized to care for children, the local juvenile probation department, the local department of juvenile services or a private agency or institution licensed by the Department of Health and Human Services or a county whose population is 100,000 or more to care for such a child.

. . . .

However, a trafficked child may be identified and taken into custody as a delinquent child or as a child in need of supervision pursuant to Nev. Rev. Stat. Ann. § 62C.010 (Grounds for taking child into custody; notification of parent or guardian of child and probation officer; release or further detention of child),⁷⁰ which states,

Except as otherwise provided in this title and NRS 484C.160 [Implied consent to evidentiary test; exemption from blood test; choice of test; when blood test may be required; when other tests may be used; reasonable force authorized to obtain test in certain circumstances; notification of parent or guardian of minor directed to submit to test]:

1. A peace officer or probation officer may take into custody any child:
 - (a) Who the officer has probable cause to believe is violating or has violated any state or local law, ordinance, or rule or regulation having the force of law; or
 - (b) Whose conduct indicates that the child is in need of supervision.

If a child is taken into custody under Nev. Rev. Stat. Ann. § 62C.010(1), subsection (2) requires the officer to notify the parent or guardian of the child taken into custody, and the facility where the child is detained must notify a probation officer and, if the officer’s attempts at notification are not successful, also attempt to notify the parent or guardian of the child taken into custody. Nev. Rev. Stat. Ann. § 62C.010(2)(a), (b). The child must be released to a parent, guardian, or responsible adult that agrees in writing to bring the child to juvenile court at a stated time unless the release is “impracticable or inadvisable or has been otherwise ordered by the juvenile court.” Nev. Rev. Stat. Ann. § 62C.010(2)(c). Regarding the written agreement signed by the responsible adult, subsection (c) also states in part, “If the person fails to produce the child at the time stated in the agreement or upon a summons from the juvenile court, a writ may be issued for the attachment of the person or of the child requiring that the person or child, or both, be brought before the juvenile court at a time stated in the writ.” Nev. Rev. Stat. Ann. § 62C.010(2)(c).

If a child in custody is not released as stated above, the child must be taken to juvenile court or a “place of detention designated by the juvenile court.” Nev. Rev. Stat. Ann. § 62C.010(3)(a). The juvenile court then may order the child to be released to a parent, guardian, or other appointed person, to be detained in a designated place, or to be conditionally released for supervised detention in the child’s home that may include electronic surveillance. Nev. Rev. Stat. Ann. § 62C.010(3)(b).

⁷⁰ The juvenile court may also receive a petition that a child is in need of services, but upon an initial receipt of this petition “the juvenile court: (a) Shall admonish the child to obey the law and to refrain from repeating the acts for which the petition was filed; (b) Shall maintain a record of the admonition; (c) Shall refer the child to services available in the community for counseling, behavioral modification and social adjustment; and (d) Shall not adjudicate the child to be in need of supervision, unless a subsequent petition based upon additional facts is filed with the juvenile court after admonition and referral pursuant to this subsection.” Nev. Rev. Stat. Ann. §62E.410(1).

When a child is taken into custody as an alleged child in need of supervision, Nev. Rev. Stat. § 62C.050 (Release of child alleged to be in need of supervision required within certain period; exceptions) provides,

1. Except as otherwise provided in this section, if a child who is alleged to be in need of supervision is taken into custody and detained, the child must be released not later than 24 hours, excluding Saturdays, Sundays and holidays, after the child's initial contact with a peace officer or probation officer to:
 - (a) A parent or guardian of the child;
 - (b) Any other person who is able to provide adequate care and supervision for the child; or
 - (c) Shelter care.
2. A child does not have to be released pursuant to subsection 1 if the juvenile court:
 - (a) Holds a detention hearing;
 - (b) Determines that the child:
 - (1) Has threatened to run away from home or from the shelter;
 - (2) Is accused of violent behavior at home; or
 - (3) Is accused of violating the terms of a supervision and consent decree; and
 - (c) Determines that the child needs to be detained to make an alternative placement for the child.The child may be detained for an additional 24 hours but not more than 48 hours after the detention hearing, excluding Saturdays, Sundays and holidays.
3. A child does not have to be released pursuant to this section if the juvenile court:
 - (a) Holds a detention hearing; and
 - (b) Determines that the child:
 - (1) Is a ward of a federal court or held pursuant to a federal statute;
 - (2) Has run away from another state and a jurisdiction within that state has issued a want, warrant or request for the child; or
 - (3) Is accused of violating a valid court order.

The child may be detained for an additional period as necessary for the juvenile court to return the child to the jurisdiction from which the child originated or to make an alternative placement for the child.

4. For the purposes of this section, an alternative placement must be in a facility in which there are no physical restraining devices or barriers.

A child may also be adjudicated delinquent pursuant to Nev. Rev. Stat. Ann. § 62D.040.⁷¹ A “delinquent child” is defined as “a child who is adjudicated delinquent pursuant to the provisions of this title.” Nev. Rev. Stat. Ann. § 62A.070. Under Nev. Rev. Stat. Ann. § 62B.330(2), “a child commits a delinquent act if the child:(a) Violates a county or municipal ordinance; (b) Violates any rule or regulation having the force of law; or (c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada. . . .” Therefore, for a violation of county prostitution ordinances, Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception), or Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty), the child can be considered a delinquent child. However, the court will not have jurisdiction over a child charged with a delinquent offense if the child committed “[a]ny . . . offense if, before the offense was

⁷¹ Nev. Rev. Stat. Ann. § 62D.040(2)–(6) (Procedure at first appearance at intake and before juvenile court; when adjudicating hearing is required; standards of proof; actions of court after determination of whether or not allegations have been established) provides,

2. If the child denies the allegations in the petition, the juvenile court shall:
 - (a) Conduct an adjudicatory hearing concerning the allegations; and
 - (b) Record its findings on whether the allegations have been established.
3. If the child is alleged to be in need of supervision, the allegations in the petition must be established by a preponderance of the evidence based upon competent, material and relevant evidence.
4. If the child is alleged to have committed a delinquent act, the allegations in the petition must be established by proof beyond a reasonable doubt based upon competent, material and relevant evidence.
5. If the juvenile court finds that the allegations in the petition have not been established, the juvenile court shall dismiss the petition and order that the child be discharged from any facility for the detention of children or temporary care, unless otherwise ordered by the juvenile court.
6. If the juvenile court finds that the allegations in the petition have been established, the juvenile court shall make a proper disposition of the case.

committed, the person previously had been convicted of a criminal offense.” Nev. Rev. Stat. Ann. § 62B.330(3)(f). This means that, if a child is convicted of one criminal offense in Nevada, the child will be tried as an adult if charged with any other criminal offense Nev. Rev. Stat. Ann. § 62B.370(2)(a).

Once a child is adjudicated pursuant to Nev. Rev. Stat. Ann. § 62D.040 to be a child in need of supervision, Nev. Rev. Stat. Ann. § 62E.420 (Placement in certain facilities prohibited) prohibits the juvenile court from placing a child in need of supervision in “a state facility for the detention of children or any other facility that provides correctional care.” But, the juvenile court has several options for placement of a child through disposition. Pursuant to Nev. Rev. Stat. Ann. § 62E.110(1) (Placement of child in home; commitment of child to institution or facility),

1. Except as otherwise provided in this chapter, the juvenile court may:
 - (a) Place a child in the custody of a suitable person for supervision in the child’s own home or in another home; or
 - (b) Commit the child to the custody of a public or private institution or agency authorized to care for children.

In addition to commitment inside or outside the home, alternative placement may be available for juveniles adjudicated delinquent or in need of supervision for the first time. Pursuant to Nev. Rev. Stat. Ann. § 62E.210(1) (When juvenile court may order completion of certain alternative programs; payment of cost of participation in such programs),

1. If a child has not previously been adjudicated delinquent or in need of supervision and the unlawful act committed by the delinquent child did not involve the use or threatened use of force or violence against a victim, the juvenile court may order a child to complete any or all of the following programs:
 - (a) A program of cognitive training and human development established pursuant to NRS 62E.220.
 - (b) A program for the arts as described in NRS 62E.240.
 - (c) A program of sports or physical fitness as described in NRS 62E.240.

A delinquent child under 12 may not be committed in “a state facility for the detention of children.” Nev. Rev. Stat. Ann. § 62E.510(1). In contrast, for a child 12 or older, “the juvenile court shall not commit the child to a private institution.” Nev. Rev. Stat. Ann. §62E.510(2).⁷²

Alternatively, in certain circumstances, a delinquent child may be routed into Child and Family Services for placement. Pursuant to Nev. Rev. Stat. Ann. § 62E.520(1) (Commitment of child to Division of Child and Family Services: Conditions and limitations; notice; investigation and recommendation for placement of child),

1. The juvenile court may commit a delinquent child to the custody of the Division of Child and Family Services for suitable placement if:
 - (a) The child is at least 8 years of age but less than 12 years of age, and the juvenile court finds that the child is in need of placement in a correctional or institutional facility; or
 - (b) The child is at least 12 years of age but less than 18 years of age, and the juvenile court finds that the child:
 - (1) Is in need of placement in a correctional or institutional facility; and
 - (2) Is in need of residential psychiatric services or other residential services for the mental health of the child.

⁷² Here and elsewhere in this report that Nev. Rev. Stat. Ann. § 62E.510 is quoted or cited, the language has been updated to reflect the changes made by Senate Bill 476 in the 76th Regular Session. 2011 Nev. Stat. 401 (effective July 1, 2011).

5.4.1 Recommendation: Establish a mandatory response law that directs any minor involved in prostitution or who is a victim of trafficking for sexual servitude away from the criminal justice system and into a protective system.

5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*

Pursuant to Nev. Rev. Stat. Ann. § 432B.020(1)(b) (“Abuse or neglect of a child” defined), “abuse or neglect of a child” includes “sexual abuse or sexual exploitation . . . of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.” Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined) states,

“Sexual exploitation” includes forcing, allowing⁷³ or encouraging a child:

1. To solicit for or engage in prostitution;
2. To view a pornographic film or literature; and
3. To engage in:
 - a. Filming, photographing or recording on videotape; or
 - b. Posing, modeling, depiction or a live performance before an audience,which involves the exhibition of a child’s genitals or any sexual conduct with a child, as defined in NRS 200.700 [Definitions]

Nev. Rev. Stat. Ann. § 432B.100 (“Sexual abuse” defined) states,

“Sexual abuse” includes acts upon a child constituting:

1. Incest under NRS 201.180;
2. Lewdness with a child under NRS 201.230;
3. Sado-masochistic abuse under NRS 201.262;
4. Sexual assault under NRS 200.366;
5. Statutory sexual seduction under NRS 200.368;
6. Open or gross lewdness under NRS 201.210; and
7. Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child under NRS 200.5083.

As a result of the inclusion of “sexual exploitation” and “sexual abuse” within the definition of “abuse or neglect of a child,” domestic minor sex trafficking victims can be considered abused or neglected.

5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.*

Nev. Rev. Stat. Ann. § 432B.130 (Persons responsible for child’s welfare) states,

A person is responsible for a child’s welfare under the provisions of this chapter if the person is the child’s parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, or a person directly responsible or serving as a volunteer for or employed in a public or private home, institution or facility where the child actually resides or is receiving child care outside of the home for a portion of the day.

⁷³ “‘Allow’ means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.” Nev. Rev. Stat. Ann. § 432B.020(3).

5.6.1 Recommendation: Clarify the reach of the child protection laws by amending the definition of “persons responsible for child’s welfare” to include a person who has control of a child to reach traffickers.

5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or CSEC without regard to ineligibility factors.*

For “compensation for certain victims of criminal acts,” pursuant to Nev. Rev. Stat. Ann. § 217.070 (“Victim” defined) a “victim” is defined as

1. A person who is physically injured or killed as the direct result of a criminal act;
2. A minor who was involved in the production of pornography in violation of NRS 200.710 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance], 200.720 [Promotion of sexual performance of minor unlawful], 200.725 [Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty] or 200.730 [Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties];
3. A minor who was sexually abused, as “sexual abuse” is defined in NRS 432B.100 [“Sexual abuse” defined],⁷⁴

....

Therefore, those domestic minor sex trafficking victims “physically injured” from any CSEC crime, and those involved in the production of pornography are entitled to compensation.

Pursuant to Nev. Rev. Stat. Ann. § 217.210(1) (Limitations on time for making order for payment of compensation; exception),

Except as otherwise provided in subsection 2, an order for the payment of compensation must not be made unless the application is made within 1 year after the date of the personal injury or death on which the claim is based, unless waived by the board of examiners or a person designated by the Board for good cause shown and the personal injury or death was the result of an incident or offense that was reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within 5 days of the time when a report could reasonably have been made.

However, these time limits “do not apply to a minor who is sexually abused or who is involved in the production of pornography,” and “[s]uch a minor must apply for compensation before reaching 21 years of age.” Nev. Rev. Stat. Ann. § 217.210(2).

Additional ineligibility factors could preclude a domestic minor sex trafficking victim from receiving compensation. If the compensation board considers the domestic minor sex trafficking victim’s act of prostitution an act that makes the victim “a coconspirator, codefendant, accomplice . . . of the offender whose crime caused the victim’s injuries,” the victim will not receive compensation. Nev. Rev. Stat. Ann. § 217.220(1)(c). Additionally, the victim will not receive compensation if the victim “[f]ails to cooperate with law enforcement agencies.” Nev. Rev. Stat. Ann. § 217.220(1)(f).

Nevada also has specialized aid to victims of sexual assault,⁷⁵ victims of domestic violence,⁷⁶ and victims of sexual abuse.⁷⁷ Domestic minor sex trafficking victims will likely not be considered victims of sexual assault

⁷⁴ See *supra* note 59.

⁷⁵ Pursuant to Nev. Rev. Stat. Ann. § 217.280 (“Victim of sexual assault” defined), “‘victim of sexual assault’ means a person who has been sexually assaulted as defined by NRS 200.366 or a person upon whom a sexual assault has been attempted.” Under Nev. Rev. Stat. Ann. § 200.366(1) (Sexual assault: Definitions; penalties), “A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the

due to the requirement of the action occurring “against the will of the victim” or victims of domestic violence. However, some of these victims may be considered victims of sexual abuse. Nev. Rev. Stat. Ann. §§ 217.280, 200.366(1). Those domestic minor sex trafficking victims who are also considered “victims of sexual abuse” may receive counseling upon request. Nev. Rev. Stat. Ann. § 217.480(1).

5.7.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 217.210 (Limitations on time for making order for payment of compensation; exceptions) and Nev. Rev. Stat. Ann. § 217.220 (Award of compensation prohibited under certain circumstances; exceptions) to stipulate an exception to ineligibility criteria for domestic minor sex trafficking victims of Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties), Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception), Nev. Rev. Stat. Ann. § 201.300 (Pandering: Definitions; penalties; exception), Nev. Rev. Stat. Ann. § 201.330 (Pandering: Detaining person in brothel because of debt; penalties), and Nev. Rev. Stat. Ann. § 201.340(1) (Pandering; furnishing transportation; penalties) in recognition of the challenges these victims face through trauma-bonding, denial, and delayed disclosure.

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

There are situations when a domestic minor sex trafficking victim will not be afforded the protections of Nevada’s rape shield laws. Pursuant to Nev. Rev. Stat. Ann. § 50.090 (Evidence of previous sexual conduct of victim of sexual assault or statutory sexual seduction inadmissible to challenge victim’s credibility; exceptions), the protections only apply to “any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime” Similarly, the protections in Nev. Rev. Stat. Ann. § 48.069 (Previous sexual conduct of victim of sexual assault: Procedure for admission of evidence to prove victim’s consent) only apply to a “prosecution for sexual assault or for attempt to commit or conspiracy to commit a sexual assault.”

Child witnesses, defined as “a child under the age of 14 years who has been or will be called to testify in a proceeding,” may testify via an “alternative method.” Nev. Rev. Stat. Ann. §§ 50.530, 50.560, 50.520. Pursuant to Nev. Rev. Stat. Ann. § 50.520 (“Alternative method” defined),

“Alternative method” means a method by which a child witness testifies which does not include all of the following:

1. Having the child testify in person in an open forum;
2. Having the child testify in the presence and full view of the finder of fact and presiding

will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct, is guilty of sexual assault.”

⁷⁶ Nev. Rev. Stat. Ann. § 217.400(3) defines “domestic violence” as

- (a) The attempt to cause or the causing of bodily injury to a family or household member or the placing of the member in fear of imminent physical harm by threat of force.
- (b) Any of the following acts committed by a person against a family or household member, a person with whom he or she had or is having a dating relationship or with whom he or she has a child in common, or upon his or her minor child or a minor child of that person:

.....

- (3) Compelling the other by force or threat of force to perform an act from which he or she has the right to refrain or to refrain from an act which he or she has the right to perform.

- (4) A sexual assault.

.....

- (6) False imprisonment.

- (7) Unlawful entry of the other’s residence, or forcible entry against the other’s will if there is a reasonably foreseeable risk of harm to the other from the entry.

⁷⁷ Nev. Rev. Stat. Ann. § 217.480 defines “sexual abuse” by referencing the definition of “sexual abuse” in Nev. Rev. Stat. Ann. § 432B.100. See *supra* note 59 for the definition of “sexual abuse.”

officer; and

3. Allowing all of the parties to be present, to participate and to view and be viewed by the child.

A child witness is allowed to testify via an alternative method in a criminal proceeding only if the court “finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child’s ability to communicate with the finder of fact” either due to “testify[ing] in the open forum” of the court or “be[ing] confronted face-to-face by the defendant.” Nev. Rev. Stat. Ann. § 50.580(1)(a), (b). Pursuant to Nev. Rev. Stat. Ann. § 50.590 (Factors for determining whether to permit alternative method), the court will consider the following factors when determining whether to allow a child to testify by an alternative method:

1. [Whether] [a]lternative methods [are] reasonably available;
2. [Whether there are] [a]vailable means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

Pursuant to Nev. Rev. Stat. Ann. § 51.385(1), (2) (Admissibility; notice of unavailability or inability of child to testify),

1. In addition to any other provision for admissibility made by statute or rule of court, a statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act of sexual conduct or physical abuse if:

(a) The court finds, in a hearing out of the presence of the jury, that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness; and

(b) The child testifies at the proceeding or is unavailable or unable to testify.

2. In determining the trustworthiness of a statement, the court shall consider, without limitation, whether:

(a) The statement was spontaneous;

(b) The child was subjected to repetitive questioning;

(c) The child had a motive to fabricate;

(d) The child used terminology unexpected of a child of similar age; and

(e) The child was in a stable mental state.

Within the chapter on Sexual Assault and Seduction, victims of Nev. Rev. Stat. Ann. § 200.366 (Sexual assault: Definitions; penalties), Nev. Rev. Stat. Ann. § 200.368 (Statutory sexual seduction: Penalties), and Nev. Rev. Stat. Ann. § 200.373 (Sexual assault of spouse by spouse) receive additional protections that are not extended to domestic minor sex trafficking victims. For instance, the identities of sexual assault and sexual seduction victims are kept confidential, including through the use of pseudonyms on their files. Nev. Rev. Stat. Ann. §§ 200.3771, 200.3772, 200.3773.

- 5.8.1 Recommendation: Enact a separate “rape shield” law, similar to Nev. Rev. Stat. Ann. § 48.069 (Previous sexual conduct of victim of sexual assault: Procedure for admission of evidence to prove victim’s consent) and Nev. Rev. Stat. Ann. § 50.090 (Evidence of previous sexual conduct of victim of sexual assault or statutory sexual seduction inadmissible to challenge victim’s credibility; exceptions) for DMST and CSEC victims applicable to Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties), Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring,

transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception), Nev. Rev. Stat. Ann. § 201.300 (Pandering: Definitions; penalties; exception), Nev. Rev. Stat. Ann. § 201.330 (Pandering: Detaining person in brothel because of debt; penalties), and Nev. Rev. Stat. Ann. § 201.340(1) (Pandering; furnishing transportation; penalties).

5.8.2 Recommendation: Enact similar protections found in the Sexual Assault and Seduction chapter for DMST and CSEC victims, including the protections in Nev. Rev. Stat. Ann. § 200.3771 (Victims of certain sexual offenses: Confidentiality of records and reports that reveal identity; when disclosure permitted; penalty), Nev. Rev. Stat. Ann. § 200.3772 (Victims of certain sexual offenses: Procedure for substituting pseudonym for name on files, records and reports; actual identity confidential; when disclosure required; immunity for unintentional disclosure) and Nev. Rev. Stat. Ann. § 200.3773 (Victims of certain sexual offenses: Public officer or employee prohibited from disclosing identity; exceptions; penalty).

5.9 *Expungement or sealing of juvenile arrest or criminal 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.*

Unless the child falls under the exception in Nev. Rev. Stat. Ann. § 62H.150,⁷⁸ once a child reaches 21 years old, “all records relating to the child must be sealed automatically.” Nev. Rev. Stat. Ann. § 62H.140. If the child is less than 21, a child or a “child’s probation officer on behalf of the child” may petition to seal records “not earlier than 3 years after the child: (a) Was last adjudicated in need of supervision or adjudicated delinquent; or (b) Was last referred to the juvenile court, whichever is later.” Nev. Rev. Stat. Ann. § 62H.130(1). After a hearing on the petition, “the juvenile court shall enter an order sealing all records relating to the child if the juvenile court finds that: (a) During the applicable 3-year period, the child has not been convicted of a felony or of any misdemeanor involving moral turpitude; and (b) The child has been rehabilitated to the satisfaction of the juvenile court.” Nev. Rev. Stat. Ann. § 62H.130(4).

5.10 *Victim restitution and civil remedies are authorized by law for minor victims of sex trafficking or CSEC.*

A court may decide to award restitution in any case. Nev. Rev. Stat. Ann. § 176.033(1)(c). Specifically, “If a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . .” Nev. Rev. Stat. Ann. § 176.033(1)(c). Additionally, a court may order restitution “as a condition of probation or suspension of sentence.” Nev. Rev. Stat. Ann. § 176A.430(1). Specifically, “The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant makes full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable.” Nev. Rev. Stat. Ann. § 176A.430(1).

Minor victims, under the age of 16, who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result,” also have a civil cause of action. Nev. Rev. Stat. Ann. § 41.1396(1). Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

1. Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

⁷⁸ A child’s records may not be sealed until the child is 30 years old if the child committed a sexual assault, battery with intent to commit sexual assault, or lewdness with a child. Nev. Rev. Stat. 62H.150.

- (a) Promoted the film, photograph or other visual presentation;
- (b) Possessed the film, photograph or other visual presentation; or
- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

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

In Nevada, most felonies have a 3-year statute of limitations.⁷⁹ Nev. Rev. Stat. Ann. § 171.085(2). Gross misdemeanors generally have a 2-year statute of limitations, and misdemeanors have a 1-year statute of limitations. Nev. Rev. Stat. Ann. § 171.090. If a sexual assault victim files a written report with a law enforcement officer during the statute of limitation period,⁸⁰ then the statute of limitations is eliminated for that case, and an offender may be charged at any time. Nev. Rev. Stat. Ann. § 171.083(1). Similarly, if a kidnapping victim files a written report with a law enforcement officer, the statute of limitations is extended for 5 years. Nev. Rev. Stat. Ann. § 171.084(1). The statute of limitations is also extended if the crime is “committed in a secret manner.” Nev. Rev. Stat. Ann. § 171.095(1). Pursuant to Nev. Rev. Stat. Ann. § 171.095(1)(b) (Limitations for offenses committed in secret manner and offenses constituting sexual abuse of child):

- (b) An indictment must be found, or an information or complaint filed, for any offense constituting sexual abuse of a child, as defined in NRS 432B.100,⁸¹ before the victim of the sexual abuse is:
 - (1) Twenty-one years old if the victim discovers or reasonably should have discovered that he or she was a victim of the sexual abuse by the date on which the victim reaches that age; or
 - (2) Twenty-eight years old if the victim does not discover and reasonably should not have discovered that he or she was a victim of the sexual abuse by the date on which the victim reaches 21 years of age.

For civil actions, a plaintiff must generally bring within 3 years “[a]n action upon a liability created by statute, other than a penalty or forfeiture.” Nev. Rev. Stat. Ann. § 11.190(3)(a). Actions for injuries to a person must generally be brought within 2 years, except as provided in Nev. Rev. Stat. Ann. § 11.215. Nev. Rev. Stat. Ann. § 11.190(4)(e). The statute of limitations will not begin running until the plaintiff reaches the age of 18. Nev. Rev. Stat. Ann. § 11.250(1). Pursuant to Nev. Rev. Stat. Ann. § 11.215 (Actions for damages for injury arising from sexual abuse of minor; exception for actions involving injury arising from appearances of minor in pornography), an action for injuries arising from the sexual abuse of a person under 18 “must be commenced within 10 years after the plaintiff: (a) Reaches 18 years of age; or (b) Discovers or reasonably should have discovered that his or her injury was caused by sexual abuse, whichever occurs later.” Nev. Rev. Stat. Ann. § 11.215(1). A claim under Nev. Rev. Stat. Ann. § 41.1396 (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses)⁸² must be brought “within 3 years after the occurrence of the following, whichever is later: (a) The court enters a verdict in a related criminal case; or (b) The victim reaches the age of 18 years.” Nev. Rev. Stat. Ann. § 11.215(2).

⁷⁹ Only acts of murder and terrorism automatically eliminate the statute of limitations. Nev. Rev. Stat. Ann. § 171.080.

⁸⁰ Pursuant to Nev. Rev. Stat. Ann. § 171.085(1), the statute of limitations for sexual assault is 4 years.

⁸¹ See *supra* note 59.

⁸² The cross-reference to Nev. Rev. Stat. Ann. § 41.1396 incorrectly appears as “NRS § 41.139” in the Nevada Code on the Lexis online database. The correct language for Nev. Rev. Stat. Ann. § 11.215 can be found on the Nevada legislature’s website. NEVADA LEGISLATURE, [HTTP://WWW.LEG.STATE.NV.US/NRS/NRS-011.HTML#NRS011SEC215](http://www.leg.state.nv.us/NRS/NRS-011.HTML#NRS011SEC215) (last visited November 21, 2011).

Legal Components:

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Domestic minor sex trafficking investigations may use wiretapping to investigate the crime.*
- 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 to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *Law enforcement and child welfare agencies 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.*

Nevada requires that all Category I peace officers⁸³ complete a program designed to train them in detecting, investigating, and responding to the sexual abuse or sexual exploitation of minors. Nev. Rev. Stat. Ann. § 432B.610(1)(a). Additionally, an officer who is regularly assigned to investigate “cases of sexual abuse or sexual exploitation of children under the age of 18 years must be certified to carry out those duties by the Peace Officers’ Standards and Training Commission.” Nev. Rev. Stat. Ann. § 432B.620(1). This training must be completed annually and covers “a program of training for the detection and investigation of and response to cases of sexual abuse or sexual exploitation of children under the age of 18 years.” Nev. Rev. Stat. § 432B.620(2). Additionally, pursuant to Nev. Rev. Stat. Ann. § 432B.620 (Certification of peace officers who regularly investigate cases of sexual abuse or sexual exploitation of children; regulations), “[i]f a law enforcement agency does not have a peace officer who is certified to investigate cases of sexual abuse or sexual exploitation of children under the age of 18 years pursuant to Nev. Rev. Stat. § 432B.610 [Training of certain peace officers for detection and investigation of and response to cases of sexual abuse or sexual exploitation of children; regulations], it may consult with a peace officer of another law enforcement agency who is so certified.” Nev. Rev. Stat. § 432B.620(3).

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

Nevada case law requires both parties to consent to audio-taping over the telephone, but allows single-party consent to in-person conversations.⁸⁴ Pursuant to Nev. Rev. Stat. Ann. § 200.620 (Interception and attempted interception of wire communication prohibited; exceptions), applicable to audio-recording in general, “it is unlawful for any person to intercept or attempt to intercept any wire communication unless: (a) The interception or attempted interception is made with the prior consent of one of the parties to the communication; and (b) An emergency situation exists and it is impractical to obtain a court order”⁸⁵ Nev. Rev. Stat. Ann. §

⁸³ For a complete list of Category I peace officers see Nev. Rev. Stat. Ann. § 432B.610(2).

⁸⁴ In *Lane v. Allstate Ins. Co.*, 969 P.2d 938, 940 (Nev. 1998), the Supreme Court of Nevada held that, although the “plain language” of Nev. Rev. Stat. Ann. § 200.620 seemed to allow for single party consent, the stronger language of “‘unless authorized to do so by one of the persons engaging in the conversation’” showed the legislature’s intent “‘that intrusion upon Nevadans’ privacy by nonconsensual recording of telephone conversations was a grater intrusion than the recording of conversations in person.’” Additionally, in *Summer v. State*, 718 P.2d 676, 680 (Nev. 1986), the Supreme Court of Nevada held that the “body bugging” of a police informant was permissible under Nev. Rev. Stat. Ann. § 600.650.

⁸⁵ Nev. Rev. Stat. Ann. § 200.620(3) further states,

Any person who has made an interception in an emergency situation as provided in paragraph (b) of subsection 1 shall, within 72 hours of the interception, make a written application to a justice of the Supreme Court or district judge for ratification of the interception. The interception must not be ratified unless the applicant shows that:

- (a) An emergency situation existed and it was impractical to obtain a court order before the interception; and

200.620(1). In contrast, under Nev. Rev. Stat. Ann. § 200.650 (Unauthorized, surreptitious intrusion of privacy by listening device prohibited), “a person shall not intrude upon the privacy of other persons by surreptitiously listening to, monitoring or recording . . . any private conversation engaged in by the other persons, or disclose the existence, content, substance, purport, effect or meaning of any conversation so listened to, monitored or recorded, unless authorized to do so by one of the persons engaging in the conversation.”

- 6.2.1 Recommendation: Enact a stand-alone law allowing communications related to sex trafficking investigations to be recorded in certain circumstances without a prior court order.

6.3 *Domestic minor sex trafficking investigations may use wiretapping to investigate the crime.*

Domestic minor sex trafficking investigations are not explicitly authorized to allow wiretapping. Pursuant to Nev. Rev. Stat. Ann. § 179.460(1) (Cases in which interception of wire or oral communications may be authorized)⁸⁶ an application to authorize “the interception of wire or oral communications” can be made “for the investigation of the offense as to which the application is made, when the interception may provide evidence of the commission of murder, kidnapping, robbery, extortion, bribery, escape of an offender in the custody of the Department of Corrections, destruction of public property by explosives, a sexual offense against a child or the commission of any offense which is made a felony by the provisions of chapter 453 [Controlled Substances] or 454 [Poisons; Dangerous Drugs and Hypodermics] of NRS.” Pursuant to Nev. Rev. Stat. Ann. § 179.460(3),

As used in this section, “sexual offense against a child” includes any act upon a child constituting:

- (a) Incest pursuant to NRS 201.180;
- (b) Lewdness with a child pursuant to NRS 201.230;
- (c) Sado-masochistic abuse pursuant to NRS 201.262;
- (d) Sexual assault pursuant to NRS 200.366;
- (e) Statutory sexual seduction pursuant to NRS 200.368;
- (f) Open or gross lewdness pursuant to NRS 201.210; or
- (g) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

An emergency exception is allowed to audio recording when one party consents and “[a]n emergency situation exists and it is impractical to obtain a court order as required by NRS 179.410 to 179.515 [Interception of Wire or Oral Communication].” Nev. Rev. Stat. Ann. § 200.620(1)(b). After making the emergency interception, within 72 hours, the supreme court or district judge must ratify the interception, and the applicant for ratification must show that: “(a) An emergency situation existed and it was impractical to obtain a court order before the interception; and (b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.” Nev. Rev. Stat. Ann. § 200.620(3). As a result, the emergency recording may only be made for cases authorized in non-emergency situations, and thus do not include domestic minor sex trafficking cases.

- 6.3.1 Recommendation: Amend Nev. Rev. Stat. Ann. §179.460(3) (Cases in which interception of wire or oral communications may be authorized) to expand the definition of “sexual offense against a child” to include the following offenses when the victim is a minor: Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties), Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception), Nev. Rev. Stat. Ann. § 201.300 (Pandering: Definitions; penalties; exception), Nev. Rev. Stat. Ann. § 201.330 (Pandering:

(b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.

⁸⁶ Here and elsewhere in this report that Nev. Rev. Stat. Ann. § 179.460 is quoted or cited, the language has been updated to reflect the changes made by the passage of Assembly Bill 11 in the 76th Regular Session. 2011 Nev. Stat. 13 (effective July 1, 2011).

Detaining person in brothel because of debt; penalties), and Nev. Rev. Stat. Ann. § 201.340(1) (Pandering; furnishing transportation; penalties).

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.*

There is no law in place that explicitly permits the use of a decoy by law enforcement for the purpose of investigating prostitution or sex trafficking unless it involves pornography. Under Nev. Rev. Stat. Ann. § 200.735 (Exemption for purposes of law enforcement), “The provisions of NRS 200.710 to 200.730 [Definitions; Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive, do not apply to law enforcement personnel during the investigation or prosecution of a violation of the provisions of NRS 200.710 to 200.730, inclusive.”

Additionally, pursuant to Nev. Stat. Ann. § 201.560(1) (Definitions; exceptions; penalties), “a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with: . . . (b) Another person whom he or she believes to be a child less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to persuade or lure the person to engage in sexual conduct.”⁸⁷

Under the chapter entitled “Motor Vehicle Drivers’ Licenses (Uniform Act)”, and pursuant to Nev. Rev. Stat. Ann. § 483.340(3), “The Department may issue a driver’s license for purposes of identification only for use by officers of local police and sheriffs’ departments, agents of the Investigation Division of the Department of Public Safety while engaged in special undercover investigations relating to narcotics or prostitution” It is unclear whether this statute can allow the officer to pose as a minor, but it is clear an officer is allowed to conduct undercover investigations related to prostitution, which could involve domestic minor sex trafficking victims.

6.4.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties), Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception), Nev. Rev. Stat. Ann. § 201.300 (Pandering: Definitions; penalties; exception), Nev. Rev. Stat. Ann. § 201.330 (Pandering: Detaining person in brothel because of debt; penalties), and Nev. Rev. Stat. Ann. § 201.340(1) (Pandering; furnishing transportation; penalties), to prohibit a defendant from asserting a defense that the subject of the offense was a law enforcement officer.

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

Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties) allows law enforcement to utilize the internet to investigate domestic minor sex trafficking. Nev. Rev. Stat. Ann. § 201.560(4) makes it a crime for a person “through the use of a computer, system or network: (a) with the intent to engage in sexual conduct with the child, [or] person believed to be a child . . . to engage in sexual conduct.”⁸⁸ Through the inclusion of the term “believed to be a child,” the statute appears to permit law enforcement to pose as minors and investigate cases of domestic minor sex trafficking online.

⁸⁷ See *supra* note 25.

⁸⁸ See *supra* note 25.

6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

Nevada imposes certain reporting requirements concerning missing and exploited children. An “exploited child” is defined as “a person under the age of 18 years who has been: (a) Used in the production of pornography in violation of the provisions of NRS 200.710; (b) Subjected to sexual exploitation as defined in NRS 432B.110 [“Sexual exploitation” defined];⁸⁹ or (c) Employed or exhibited in any injurious, immoral or dangerous business or occupation in violation of the provisions of NRS 609.210.” Nev. Rev. Stat. Ann. 432.150(3).

Pursuant to Nev. Rev. Stat. Ann. § 432.200(1) (Duties of law enforcement agency receiving report of missing child; request for and use of identifying information; notification that child is found or returned),

1. A law enforcement agency shall accept every report of a missing child which is submitted to the agency, including, but not limited to, a report made by telephone. Upon receipt of such a report, the agency shall immediately conduct a preliminary investigation and classify the cause of the disappearance of the child as “runaway,” “abducted by the parent of the child,” “abducted by a stranger” or “cause of disappearance unknown,” and shall:
 - (a) Transmit all available information about the child to the Clearinghouse within 36 hours after the report is received;
 - (b) Immediately notify such persons and make such inquiries concerning the missing child as the agency deems necessary;
 - ...
 - (d) Enter into the National Crime Information Center’s Missing Person File, as miscellaneous information, any person reasonably believed to have unlawfully abducted or detained the missing child, or aided or abetted the unlawful abduction or detention.

If the child is recovered, the law enforcement agency must transmit this information to the national Crime Information Center and Clearinghouse. Nev. Rev. Stat. Ann. § 432.200(4).

Each year, the Attorney General must “prepare and submit a report to the Governor and the Director of the Legislative Counsel Bureau concerning programs of information about missing or exploited children in this state and the identification and investigation of cases involving missing or exploited children.” Nev. Rev. Stat. Ann. § 432.180.

NOTE: ENACTED LEGISLATION AS OF 8/1/11

⁸⁹ Pursuant to Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined), “sexual exploitation” is defined as “forcing, allowing or encouraging a child: 1. To solicit for or engage in prostitution; 2. To view a pornographic film or literature; and 3. To engage in: (a) Filming, photographing or recording on videotape; or (b) Posing, modeling, depiction or a life performance before an audience, which involves the exhibition of a child’s genitals or any sexual conduct with a child as defined in NRS 200.700.”

APPENDIX A

- **Carson City:** Pursuant to Carson City, Nev., Mun. Code § 8.04.110⁹⁰ (Prostitution and related offenses),

It is unlawful, anywhere in Carson City, for any person:

1. To commit prostitution, or to offer to secure another for the purpose of prostitution, or for other lewd or indecent act or to induce, entice or procure a person who is in any thoroughfare or public or private place, to commit any such acts, or who, in any way, aids or abets or participates in the doing of any of the acts enumerated in this section;
2. To keep, set up, maintain, or operate, lease or rent, any place, structure, building or conveyance for the purpose of prostitution;
3. To occupy any place, structure, building or conveyance for the purpose of prostitution, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, with the knowledge or reasonable cause to know that the same is, or is to be used for such purpose; or for any person to lease or rent to another person any place, structure, building or room for the purpose of prostitution;
4. To receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution; or to permit any person to remain there for such purpose;
5. To transport or direct any other person to any place within Carson City, when the announced purpose of such person is to be transported or directed to any such place for the purpose of prostitution, or to offer or agree so to transport or direct any such other person;
6. To advertise or publicly solicit in Carson City the availability of transportation from Carson City to some other place for the express or obvious purpose of prostitution even if such activities are not prohibited in such other place.

A violation of this ordinance is punishable by imprisonment in the city jail for up to 6 months, a fine not to exceed \$1,000, or both. Carson City, Nev., Mun. Code § 8.04.130 (Penalties).

- **Churchill County:** Pursuant to Churchill Cnty., Nev., Code § 5.20.040⁹¹ (Prostitution unlawful unless licensed),
 - A. It is unlawful for any person to keep, own or operate any house of prostitution within the county, except as provided in this chapter.
 - B. It is unlawful to practice prostitution,⁹² to allow acts of prostitution or sex for hire services, to solicit business for a prostitute or to procure any person for the purpose of prostitution

⁹⁰ All Carson City, Nevada, Municipal Code provisions, unless otherwise noted, are taken from Carson City, Nev., Mun. Code (Codified through Ord. No. 2010-15, passed December 16, 2010 (Supp. No. 41, 3-11)), *available at* <http://library.municode.com/index.aspx?clientID=16249&stateID=28&statername=Nevada>.

⁹¹ All Churchill County, Nevada, Code provisions, unless otherwise noted, are taken from Churchill Cnty., Nev., Code (Current through bill 2011-B passed April 20, 2011), *available at* http://www.sterlingcodifiers.com/codebook/index.php?book_id=351.

⁹² Churchill Cnty., Nev., Code § 5.20.010(B) (Applicability; definitions) defines "prostitution" as "[t]he performing of any of the following acts for hire by a prostitute with a patron, for a fee: engaging in sexual intercourse; oral-genital contact; or any touching of the sexual organs or any intimate part of the body of another person for the purpose of arousing or gratifying the sexual desire of either person. The term prostitution does not comprehend any sexually related act or activity defined as a crime pursuant to the Nevada Revised Statutes."

within the county, except on a premises licensed under this chapter. “Out dates”⁹³ or “outcalls”⁹⁴ are prohibited. This chapter does not authorize operation of an escort service.

....

Pursuant to Churchill Cnty., Nev., Code § 5.20.200(D)(6) (Work permit registration required), brothels may not employ persons under 21 years of age.

A violation of Churchill Cnty., Nev., Code § 5.20.040 or Churchill Cnty., Nev., Code § 5.20.200 is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Churchill Cnty., Nev., Code § 5.20.060 (Violation; criminal penalty)

- **Clark County:** Under Clark Cnty., Nev., Code § 12.08.015⁹⁵ (Prostitution unlawful), “It is unlawful for any person to commit an act of prostitution.”⁹⁶ Pursuant to Clark Cnty., Nev., Code § 12.08.020 (Accosting and soliciting unlawful), “It is unlawful for any person to accost, solicit or invite another in any public place⁹⁷ or in or from any building or vehicle by word, gesture, publication or any other means to commit, offer, agree to afford an opportunity to commit an act of prostitution.” Clark Cnty., Nev., Code § 12.08.060 (Resorting unlawful) makes it illegal for a person to “resort to any public place for the purpose of inducing, enticing, soliciting for or procuring another to commit an act of prostitution.”

It is also unlawful under Clark Cnty., Nev., Code § 12.08.025 (Maintaining a place of prostitution unlawful) “for any person to own, lease, operate, maintain, reside in, visit or entice or attempt to entice another to reside in or visit any building or place with knowledge that acts of prostitution occurs [sic] therein.” Clark Cnty., Nev., Code § 12.08.050 (Allowing premises to be used for prostitution unlawful) makes it illegal for any person or business enterprise to knowingly lease or rent a building or portion of a building for use in an act of prostitution.

Under Clark Cnty., Nev., Code § 12.08.030 (Loitering for the purpose of soliciting unlawful),

It is unlawful for any person to remain or wander about in a public place and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of prostitution, or of patronizing a prostitute.

Clark Cnty., Nev., Code § 12.08.040 (Aiding and abetting unlawful) states,

It is unlawful for any person to knowingly aid or abet any act of prostitution or to:

- (a) Secure or offer to secure another for the purpose of committing an act of prostitution;
- or

⁹³ Churchill Cnty., Code § 5.20.010(B) defines “out date” as “[a]ny arrangement or arrangements whereby a prostitute and a patron meet at a location other than the licensed premises for the purpose of engaging in an act of prostitution.”

⁹⁴ Churchill Cnty., Nev., Code § 5.20.010 (B) defines “outcall” as “[a]ny arrangement or arrangements whereby a prostitute and a patron agree to meet at a location other than the licensed premises for the purpose of engaging in an act of prostitution.”

⁹⁵ All Clark County, Nevada, Code provisions, unless otherwise noted, are taken from Clark Cnty, Nev., Code (Codified through Ordinance No. 3959, passed June 7, 2011 (Supplement No. 90, 6-11)), available at <http://library.municode.com/index.aspx?clientID=16214&stateID=28&statename=Nevada>.

⁹⁶ Clark Cnty., Nev., Code § 12.08.010(a) (Definitions) defines prostitution as “engaging in sexual intercourse, oral-genital contact, anal-genital contact, oral-anal contact, or sado-masochistic abuse as defined in NRS 201.262, or any touching of the sexual organs or female breast of a person for monetary consideration, whether by credit, cash or check except between persons who are legally married to each other.”

⁹⁷ Clark Cnty., Nev., Code § 12.08.010(e) defines public place as, “any place of business, public building, or other building open to the general public, street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.”

- (b) Knowingly transport a person into or within the county with the purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
- (c) Knowingly receive, offer or agree to receive another into any place or building for the purpose of performing an act of prostitution, or knowingly permit another to remain there for any such purpose; or
- (d) Direct another to any place for the purpose of committing an act of prostitution.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Clark Cnty., Nev., Code § 12.08.090(a) (Penalties).

- **Las Vegas:** Las Vegas, Nevada is a city incorporated in Clark County, Nevada. Pursuant to Las Vegas, Nev., Mun. Code § 10.36.020⁹⁸ (Acts of prostitution or pandering),
 - (A) It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to:
 - (1) Commit, engage in, institute, solicit, offer or agree to commit an act of prostitution;⁹⁹
 - (2) Attempt to commit, engage in, or institute an act of prostitution; or
 - (3) Intentionally facilitate, allow, permit, encourage, procure, negotiate or provide a fee¹⁰⁰ for an act of prostitution.
 - (B) It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to:
 - (1) Secure or offer to secure another person for the purpose of committing a violation of Subsection (A) of this Section;
 - (2) Knowingly transport, offer to transport, or seek transport for a person into or within the City for the purpose of committing a violation of Subsection (A) of this Section, or to procure or pay for transportation for that purpose;
 - (3) Knowingly receive, offer or agree to receive another into any motor vehicle, place or building for the purpose of committing a violation of Subsection (A) of this Section;
 - (4) Direct another to any motor vehicle or place for the purpose of committing a violation of Subsection (A) of this Section;
 - (5) Attempt to detect the presence or identity of a Police Officer, Peace Officer, or other law enforcement officer for the purpose of attempting to avoid or escape criminal liability for violating, or attempting to violate this Chapter, by:
 - (a) Exposing or touching or seeking to expose or touch an intimate body part of another or one's self, or asking, soliciting, encouraging or attempting to procure another to do the same; or
 - (b) Inquiring, in any manner, as to whether another person is a Peace Officer, Police Officer, or other law enforcement officer;

⁹⁸ All Las Vegas, Nevada, Municipal Code provisions, unless otherwise noted, are taken from Las Vegas, Nev., Mun. Code (Codified through Ordinance No. 6149, passed May 4, 2011 (Supp. No. 7)), available at <http://library.municode.com/index.aspx?clientID=14787&stateID=28&statename=Nevada>.

⁹⁹ Las Vegas, Nev., Mun. Code § 10.36.010 (Definitions) defines prostitution as, “an act, by any person, for a fee, of engaging in an act of lewdness, sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of another person, clothed or unclothed, for the purpose of arousing or gratifying the sexual desire of either person or a third person.”

¹⁰⁰ Las Vegas, Nev., Mun. Code § 10.36.010 defines fee, regardless of whether it is “quantified”, as “anything of monetary value, service, consideration, trade, barter, exchange, accommodation, or other compensation, whether agreed to, received, offered, solicited, promised, suggested, or expected by any party to a transaction.”

(6) Possess or acquire a prescription or non-prescription controlled substance for the purposes of facilitating a violation of this Chapter or a benefit therefrom, including acquiring or possessing such substance to:

- (a) Complete a barter, trade or exchange;
 - (b) Enhance sexual performance or sexual gratification; or
 - (c) Incapacitate another so as to steal a thing of value from such other person; or
- (7) Knowingly, in any other way, aid, abet or participate in an act of prostitution or pandering.

(C) It is not a defense to a charge of offering or agreeing to an act of prostitution that there was an absence of an intent to institute, commit, engage in, procure, facilitate or carry through with an act of prostitution.

Under Las Vegas, Nev., Mun. Code § 10.36.030 (Loitering for prostitution), It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to:

- (A) Remain or wander about in a public place and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of committing a violation of Section 10.36.020¹⁰¹; or
- (B) Remain or wander about in or upon private property after having been warned against trespassing on such property and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of committing a violation of Section 10.36.020.¹⁰²

A first violation of Las Vegas, Nev., Mun. Code § 10.36.020 or Las Vegas, Nev., Mun. Code § 10.36.030 is a misdemeanor, punishable by up to six months imprisonment, a \$1000 fine, or both. Las Vegas, Nev., Mun. Code §§ 10.36.050(A) (Violation—penalty), 1.24.010 (Designated). A second offense of either ordinance committed within 3 years of the first offense of either ordinance is punishable by at least 30 days in jail and a fine not less than \$250. Las Vegas, Nev., Mun. Code § 10.36.050(A)(1). Any subsequent offense of either ordinance committed within 3 years of a second offense of either ordinance is punishable by imprisonment of at least 6 months and a fine not less than \$250. Las Vegas, Nev., Mun. Code § 10.36.050(A)(2).

- **Douglas County:** Pursuant to Douglas Cnty., Nev., Code, § 9.20.020¹⁰³ (Solicitation of prostitution— Unlawful),
 - A. It is unlawful in Douglas County for any person to accost, solicit¹⁰⁴ or invite another in any public place, or in or from any building or vehicle by word, gesture or any other means to commit, offer, agree, or afford an opportunity to commit an act of prostitution.¹⁰⁵
 - B. It is unlawful for any person to resort to an [sic] public place for the purpose of inducing, enticing, procuring or soliciting another to commit an act of prostitution.

Under Douglas Cnty., Nev., Code, § 9.20.030 (Loitering for the purposes of prostitution—unlawful),

¹⁰¹ Las Vegas, Nev., Mun. Code § 10.36.020 (Acts of prostitution or pandering).

¹⁰² Las Vegas, Nev., Mun. Code § 10.36.020 (Acts of Prostitution or Pandering).

¹⁰³ All Douglas County, Nevada, Code provisions, unless otherwise indicated, are taken from Douglas Cnty., Nev., Code, available at http://www.douglascountynv.gov/sites/County_Code/ (last visited Aug. 31, 2011).

¹⁰⁴ Douglas Cnty., Nev., Code § 9.20.10(B) (Definitions) defines solicitation of an act of prostitution as, “asking, appealing, entreating, inviting, imploring, luring, pleading, tempting, or otherwise importuning another to commit an act of prostitution.”

¹⁰⁵ Douglas Cnty., Nev., Code § 9.20.10(A) defines prostitution as, “engaging in any sexual activity, including but not limited to, sexual intercourse, masturbation, fellatio, cunnilingus, sodomy, or other infamous crime against nature, or other sexual activity or conduct of a deviate nature, for compensation of any kind.”

A. It is unlawful for any person to loiter in or near any public place, quasi-public place or thoroughfare in a manner and under circumstances manifesting the purpose of inducing, enticing or soliciting another to commit an act of prostitution.

B. Among the circumstances which may be considered in determining whether the purpose is manifested is that the person repeatedly beckons to, stops, attempts to stop or repeatedly engages persons passing in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture, or any combination of this chapter.

C. No arrest shall be made for violation of this subsection unless the arresting party first affords the person an opportunity to explain his or her conduct. No one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.

Pursuant to Douglas Cnty., Nev., Code § 9.20.040 (Abetting prostitution—unlawful),

A. It is unlawful for any person to knowingly in any manner aid or abet any act of prostitution, which includes, but is not limited to:

1. Securing or offering to secure another for the purpose of committing an act of prostitution; or
2. Knowingly transport a person into or within the county with the purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
3. Knowingly receive, offer or agree to receive another into any place or building for the purpose of performing an act of prostitution, or to knowingly permit another to remain there for any such purpose; or
4. Direct another to any place in the county for the purpose of committing an act of prostitution.

B. It is unlawful for any person, partnership, firm, association or corporation to knowingly lease or rent any hotel, motel, building, house, apartment, office, room, premises or portion thereof to any person, partnership, firm, association or corporation to be used as, or for the purpose of using the premises for a place of prostitution or to knowingly suffer or permit the same to be used for prostitution.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Douglas Cnty., Nev., Code §§ 9.20.050 (Penalties), 1.08.010(A) (Designated).

- **Elko County:** Pursuant to Elko Cnty., Nev., Code § 7-1-6(A)¹⁰⁶ (Prostitution), prostitution is unlawful in unincorporated areas of the county. The “unincorporated area” of the county does not include, “those areas of Elko County that are incorporated pursuant to the laws of the state: the cities of Elko, Carlin and Wells.” Elko Cnty., Nev., Code § 7-1-6(F). A violation of this ordinance is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not exceeding \$500.00, or both. Elko Cnty., Nev., Code § 7-1-6(B).
- **Carlin, Elko County:** Carlin is a city incorporated in Elko County, Nevada. Pursuant to Carlin, Nev., City Code § 5-9-4¹⁰⁷ (Prostitution; unlawful under certain conditions),

¹⁰⁶ Unless otherwise stated, all Elko County, Nevada, Code provisions are taken from Elko Cnty., Nev., Code (codified through Ord. No. 06-2010, passed August 5, 2010), available at http://www.sterlingcodifiers.com/codebook/index.php?book_id=569.

¹⁰⁷ Unless otherwise stated, all Carlin, Nevada Code provisions are taken from Carlin., Nev., City Code (codified through Ord. No. 234, passed December 8, 2010), available at http://www.sterlingcodifiers.com/codebook/index.php?book_id=677.

- (A) It is unlawful for any person, firm or corporation to keep or operate any house of prostitution, house of ill fame or bawdyhouse of any description within the city, except as herein provided in [Carlin, Nev., Mun. Code, Title 5, Chapter 9, Carlin Brothel Code].
- (B) It is unlawful for any person to practice prostitution, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the city, except as herein provided in [Carlin, Nev., Mun. Code, Title 5, Chapter 9, Carlin Brothel Code].

No prostitute below the age of 21 can be given a work card. Carlin, Nev., City Code § 5-9-14(C)(8) (Prostitute Registration and work card).

A violation of Carlin, Nev., City Code § 5-9-4 or Carlin, Nev., City Code § 5-9-14 is a misdemeanor, punishable by imprisonment in the city or county jail for up to 6 months, a fine not exceeding \$1,000, or both. Carlin, Nev., City Code § 1-4-1 (General Penalty).

- **Elko, Elko County:** Elko is a city incorporated in Elko County, Nevada. Pursuant to Elko, Nev., City Code § 4-9-3¹⁰⁸ (Unlawful under certain conditions),

A. It is unlawful for any person, firm or corporation to keep, own or operate any house of prostitution¹⁰⁹, house of ill fame or bawdy house of any description within the city, except as herein provided in [Elko, Nev., Mun. Code, Title 4, Chapter 9, Prostitution].

B. It is unlawful for any owner or bartender/manager of a licensed brothel¹¹⁰ to allow any person to practice prostitution or to solicit business for a prostitute or to procure any person for the purpose of prostitution within the city, except within the premises of a licensed brothel and within the boundaries of the restricted commercial district as set forth in the city zoning code. There will be no “out dates.” That is, prostitutes shall not be hired from a brothel for the purpose of prostitution to accompany a customer outside the brothel from which the prostitute is employed. All soliciting of prostitution and acts of prostitution must take place inside the premises of a licensed brothel.

C. In the trial of any case arising under the provisions of subsection A or B of this section, evidence of general reputation shall be competent evidence as to the question of the ill fame of any house of prostitution and to the question of the ill fame of any person alleged to be practicing prostitution.

Pursuant to Elko, Nev., City Code § 4-9-13(D)(7) (Work permit registration requirements), no prostitute can be younger than 21 years of age.

A violation of Elko, Nev., City Code § 4-9-3 or Elko, Nev., City Code § 4-9-13 is a misdemeanor, punishable by imprisonment for up to 6 months, a fine not exceeding \$1,000, or both. Elko, Nev., City Code § 4-9-20 (Criminal penalty).

- **West Wendover, Elko County:** West Wendover is a city incorporated in Elko County, Nevada. Pursuant to West Wendover, Nev., City Code § 4-2-7¹¹¹ (Prostitution),

¹⁰⁸ Unless otherwise stated, all Elko, Nevada Code provisions are taken from Elko, Nev., City Code (codified through Ord. No. 735, passed May 10, 2011), *available at* http://www.sterlingcodifiers.com/codebook/index.php?book_id=316http://www.sterlingcodifiers.com/codebook/index.php?book_id=569.

¹⁰⁹ Elko, Nev., City Code § 4-9-4 (Definitions) defines a house of prostitution as, “any building in which sexual acts are provided or performed for a fee.”

¹¹⁰ Elko, Nev., City Code § 4-9-4 defines a brothel as, “a duly licensed house of prostitution operated in accordance with the provisions of [Elko, Nev., Mun. Code Title 4 Ch. 9 Prostitution].”

¹¹¹ Unless otherwise stated, all West Wendover, Nevada Code provisions are taken from West Wendover, Nev., City Code (codified through Ord. No. 2011-05, passed July 5, 2011), *available at* http://www.sterlingcodifiers.com/codebook/index.php?book_id=393.

B. Prostitution¹¹² Prohibited: It shall be unlawful for any person to engage in prostitution or solicitation within the city.

C. House Of Ill Fame Prohibited: It shall be unlawful for any person to establish, maintain or operate a house of ill fame or repute or any other business employing any male or female for the purpose of prostitution within the city.

....

Violation of this ordinance is a misdemeanor, punishable by imprisonment in the city or county jail for up to 6 months, a fine not exceeding \$1,000, or both. West Wendover, Nev., City Code §§ 4-2-7(D), 1-4-1(A) (General Penalty).

- **Humboldt County:**

- **Winnemucca, Humboldt County:** Winnemucca is a city incorporated in Humboldt County, Nevada. Pursuant to Winnemucca, Nev., Mun. Code § 9.12.030¹¹³ (Prostitution and pandering – exceptions),

A. Except as provided in subsection C of this section, it is unlawful for any person:

1. To aid, offer or agree to commit any lewd or indecent act or any act of prostitution;
2. To offer to secure or secure another for the purpose of committing any act of prostitution, fornication, assignation or any other lewd or indecent act with any other person
3. To be in or near any thoroughfare or public place for the purpose of inducing, enticing or procuring another to commit an act of lewdness, fornication or unlawful sexual intercourse;
4. Knowingly to receive, offer or agree to receive any person into any place or building for the purpose of assignation or of performing any act of lewdness or fornication or knowingly to permit any person to remain there for any such purposes;
5. In any way to aid, abet or participate in the doing of any of these acts prohibited by this subsection.

....

C. Notwithstanding the provisions of subsections A and B of this section, prostitution may be engaged in within any structure or building which is situate in Block 40 or Block 41 of the Riverside Addition to the city, provided that such premises has been issued a valid city brothel business license and each employee or independent contractor therein holds a valid city brothel work and valid health card, if applicable.

A violation of this ordinance is a misdemeanor punishable by imprisonment for up to 6 months, a fine not to exceed \$1,000, or both. Winnemucca, Nev., Mun. Code §§ 9.12.050 (Prostitution and Pandering—exceptions), 1.16.020 (Punishment for misdemeanors).

- **Lincoln County:** Pursuant to Lincoln Cnty., Nev., Code § 7-2-1¹¹⁴ (Prostitution prohibited),

¹¹² West Wendover, Nev., City Code § 4-2-7(A) defines prostitution as “[t]he act or practice of offering the body for sexual relations for hire, by males or females.”

¹¹³ All Winnemucca, Nevada, Code provisions, unless otherwise noted, are taken from Winnemucca, Nev., Mun. Code (Codified through Ordinance 767, enacted October 6, 2009 (Supplement No. 6), available at <http://library.municode.com/index.aspx?clientID=16703&stateID=28&statename=Nevada>).

It shall be unlawful, as an act of prostitution, for any person within the county to engage in sexual intercourse for any money or thing of value with a person to whom he or she is not married, or to solicit a person to whom he or she is not married to have sexual intercourse for any money or thing of value with the person so soliciting.

Under Lincoln Cnty., Nev., Code, § 7-2-2 (Sexual intercourse for hire and lewd acts),

It shall be unlawful for any person to:

- A. Receive money or other thing of value in exchange for another person committing a lewd act or an act of sexual intercourse.
- B. Pay or offer or agree to pay another person to commit a lewd act or an act of sexual intercourse.
- C. Commit or offer or agree to commit any lewd act.
- D. Secure or offer another person for the purpose of committing a lewd act or an act of sexual intercourse for hire.
- E. Induce, entice or procure, or attempt to induce, entice or procure another person, in or near any place frequented by the public or any public place, to commit a lewd act or an act of sexual intercourse for hire.
- F. Knowingly transport any person to any place for the purpose of committing a lewd act or any act of sexual intercourse for hire.
- G. Knowingly transport any person to any place for the purpose of offering or agreeing to pay another person to commit a lewd act or an act of sexual intercourse.
- H. Knowingly receive, or offer or agree to receive, any person into any place or building for the purpose of performing a lewd act, or an act of sexual intercourse for hire, or to knowingly permit any person to remain in any place or building for such purpose.
- I. Aid, abet, allow, permit or participate in the commission of any of the acts prohibited in subsections A through H of this section.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Lincoln Cnty., Nev., Code §§ 7-2-5 (Violation a misdemeanor), 1-4-1(B) (General penalty).

Lincoln Cnty., Nev., Code § 7-2-4 (Exception) creates an exception to these ordinances for activities “in a licensed house of prostitution pursuant to Nevada Revised Statutes section 201.354 et seq. (2003 Code).”¹¹⁵ However, Lincoln County no longer licenses houses of prostitution.¹¹⁶

- **Lyon County:** Pursuant to Lyon Cnty. Nev., Code § 5.03.04¹¹⁷ (Prostitution permitted; compliance with provisions),

A. Prostitution Permitted: The operation of a house of prostitution within the County in accordance with the provisions of this Chapter does not constitute a public nuisance or an offense to public decency.

B. Compliance with Provisions:

1. Chapter Provisions:

¹¹⁴ All Lincoln County, Nevada, Code provisions, unless otherwise noted, are taken from Lincoln Cnty., Nev., Code (Codified through Ordinance 2010-03, enacted August 2, 2010), *available at* http://www.sterlingcodifiers.com/codebook/index.php?book_id=612.

¹¹⁵ Nev. Rev. Stat. 201.354 (Engaging in prostitution or solicitation for prostitution: penalty; exception) (2003).

1. It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.

2. Any person who violates subsection 1 is guilty of a misdemeanor.

¹¹⁶ See *Kuban v. McGinsey*, 65 P.2d 623, 624 (Nev. 1980).

¹¹⁷ All Lyon County, Nevada, Code provisions, unless otherwise noted, are taken from Lyon Cnty., Nev., Code (Codified through Ordinance 551, enacted May 19, 2011), *available at* http://www.sterlingcodifiers.com/codebook/index.php?book_id=536.

- a. It is unlawful for any person to keep or operate any house of prostitution, house of ill fame or bawdy house of any description within the County except as provided in this Chapter.
 - b. It is unlawful for any person to practice prostitution, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the County except as provided in this Chapter.
2. Zoning: No licenses shall be issued without the prospective licensee first obtaining proper zoning for the proposed operation.

Violation of this ordinance is a misdemeanor. Lyon Cnty. Nev., Code § 1.04.01 (General penalty). Pursuant to Lyon Cnty., Nev., Code § 1.04.01 (General Penalty), misdemeanors are “punishable as provided in the [Nevada Revised Statutes] for misdemeanor violations.” The Nevada Revised Statutes punish misdemeanors by either imprisonment for not more than 6 months, a fine not exceeding \$1,000, or both or a period of community service. Nev. Rev. Stat. 193.150 (Punishment of misdemeanors).

- **Nye County:** Pursuant to Nye Cnty., Nev., Code § 9.20.160¹¹⁸ (General prohibitions),

It is unlawful:

- A. For any person under the age of twenty one (21) years to enter or be a patron of any house of prostitution;
- B. For a licensee of any licensed house of prostitution, or for any employee of such licensee, to compel, entice, encourage, permit or suffer any person under the age of twenty one (21) years to enter or be a patron of any licensed house of prostitution;
- ...
- D. For any person to engage in prostitution¹¹⁹ or solicitation¹²⁰ therefor, except in a house of prostitution¹²¹ licensed under this chapter.
- ...

A violation of this ordinance is a misdemeanor, punishable by imprisonment for up to 6 months, a fine not to exceed \$1,000, or both. Nye Cnty., Nev., Code §§ 9.20.250 (Violation; penalty), 1.01.180 (General penalty).

- **Pershing County:** Under Pershing Cnty., Nev., Code § 9.08.020¹²² (Prostitution), “Any person who engages in or accepts an offer to engage in any act of prostitution shall be guilty of prostitution under this chapter.”

¹¹⁸ All Nye County, Nevada, Code provisions, unless otherwise noted, are taken from Nye Cnty., Nev., Code (Codified through Ordinance 401, enacted January 3, 2011), *available at* http://www.sterlingcodifiers.com/codebook/index.php?book_id=648

¹¹⁹ Nye Cnty., Nev., Code § 9.20.020 (Definitions) states prostitution occurs when a “male or female person who for a fee engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.”

¹²⁰ Nye Cnty., Nev., Code § 9.20.020 states that solicitation occurs when a person, “Induces, persuades, encourages, inveigles or compels a person to engage in ‘sexual conduct’ as defined in this section” or “Offers to engage in ‘sexual conduct’ as defined in this section.” Nye Cnty., Nev., Code § 9.20.020 defines sexual conduct as “Any of the acts defined in the definition of prostitution in this section.” The acts listed in the definition of prostitution are “sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.” Nye Cnty., Nev., Code § 9.20.020.

¹²¹ Nye Cnty., Nev., Code § 9.20.020 defines a house of prostitution as “Any house, building, trailer (with or without wheels), vehicle, tent or other structure or “premises” as defined in this section wherein or whereon acts of prostitution are committed, or offered to be committed.”

¹²² All Pershing County, Nevada, Code provisions, unless otherwise noted, are taken from Pershing Cnty., Nev., Code (Codified through Ordinance 279 enacted February 3, 2011), *available at* http://www.sterlingcodifiers.com/codebook/index.php?book_id=640.

Pursuant to Pershing Cnty., Nev., Code 9.08.030 (Solicitation),

- A. Any person who solicits, engages in, or accepts an offer to engage in any act of prostitution shall be guilty of solicitation under the provisions of this Chapter.
- B. Any person who solicits, engages in, or accepts an offer to engage in any lewd or dissolute conduct shall be guilty of solicitation under the provisions of this Chapter.
- C. Any person who directs any person to any place for the purpose of committing any lewd or indecent act, or any act of prostitution or fornication shall be guilty of solicitation under the provisions of this Chapter.
- D. Any peace officer while functioning in the scope of his duty shall be exempt from the provisions of this Section.

Pershing Cnty., Nev., Code § 9.08.010 (Pandering), makes it illegal for

- A. Any person who shall induce, persuade, encourage, inveigle, entice, force, or cause another person, including a spouse, to become a prostitute or an inmate of a house of prostitution shall be guilty of pandering.
- B. Any person who shall knowingly accept, receive, levy or appropriate any money or valuable thing without consideration from the proceeds of any person engaged in prostitution or detain any person for purposes of prostitution because of any debt, shall be guilty of pandering.
- C. Any person who shall knowingly transport any other person for the purpose of prostitution shall be guilty of pandering.
- D. Any person who is a pimp, panderer, or procurer or who commits any such acts or who lives in a house of prostitution shall be guilty of pandering.

Pursuant to Pershing Cnty., Nev., Code § 9.08.040 (Houses of ill fame),

- A. Any person who shall keep or rent any house, trailer, vehicle, boat or other place for the purpose of carrying on prostitution shall be guilty of keeping a house of ill fame under the provisions of this Chapter.
- B. In the trial of all cases arising under the provisions of subsection A of this Section, evidence of general reputation shall be deemed competent evidence as to the question of the ill fame of any house alleged to be so kept.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the County jail for up to 6 months, a fine not to exceed \$1,000, or both. Pershing Cnty., Nev., Code, §§ 9.080.050 (Criminal penalties), 1.08.010 (Violations; penalty).

- **Washoe County:** Pursuant to Washoe Cnty., Nev., Code, § 50.238¹²³ (Unlawful acts),

It is unlawful in any unincorporated area of the county for any person to:

1. Commit prostitution, or to offer to secure another for the purpose of prostitution or for any other lewd or indecent act, or to induce, entice or procure a person who is in any thoroughfare or public or private place to commit any such acts, or who in any way aids or abets or participates in the doing of any of the acts enumerated in sections 50.238 to 50.242¹²⁴, inclusive.
2. Keep, set up, maintain or operate, lease or rent any place, structure, building or conveyance for the purpose of prostitution.

¹²³ All Washoe County, Nevada, Code provisions, unless otherwise noted, are taken from Washoe Cnty., Nev., Code *available at* <http://cityofsparks.us/municode/index> (last visited Aug. 31, 2011).

¹²⁴ Washoe Cnty., Nev., Code § 50.240 (Evidence) and Washoe Cnty., Nev., Code § 50.242 (Penalty) do not contain any criminal violations.

3. Occupy any place, structure, building or conveyance for the purpose of prostitution, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, with the knowledge or reasonable cause to know that the same is, or is to be used for, such purpose, or for any person to lease or rent to another person any place, structure, building or room for the purpose of prostitution.
4. Receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, or to permit any person to remain there for such purpose.
5. Transport or direct any other person to any place within the county, when the announced purpose of such person is to be transported or directed to any such place for the purpose of prostitution, or to offer or agree so to transport or direct any such other person.

A violation is a misdemeanor punishable by imprisonment in the county jail for up to 6 months, a fine between \$100 and \$1,000, or both. Washoe Cnty., Nev., Code § 50.242 (Penalty).

- **Sparks, Washoe County:** Sparks is a city incorporated in Washoe County, Nevada. Pursuant to Sparks, Nev., Mun. Code § 9.24.030¹²⁵ (Prostitution—solicitation),
 - A. It is unlawful for any person to loiter in or near any public place or thoroughfare in a manner and under circumstances manifesting the purpose of offering or soliciting to commit an act of prostitution¹²⁶, or offering to procure another to commit an act of prostitution.
 - B. Among the circumstances which may be considered in determining whether such purpose is manifested are that such person repeatedly beckons to, stops, attempts to stop or engages persons passing by in conversation, repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms, or any other bodily gesture.
 - C. No arrest shall be made for a violation of this section unless the arresting officer first affords such person an opportunity to explain such conduct, and no one shall be convicted of violating this section if it appears at trial that the explanation given was true and disclosed a lawful purpose.

Pursuant to Sparks, Nev., Mun. Code § 9.24.020 (Prostitution), “It is unlawful for any person in the city to commit, offer to commit, or agree to commit an act of prostitution. This section does not apply to the customer of a prostitute.”

A violation of this ordinance is a misdemeanor, punishable by up to 6 months imprisonment, a \$1,000 fine, or both. Sparks, Nev., Mun. Code §§ 9.75.010 (Violation—penalty), 1.12.010 (Violation—penalty).

- **White Pine County:** Pursuant to White Pine Cnty., Nev., Code § 10.36.010¹²⁷ (Prohibited),

It is unlawful, as an act of prostitution, for any person, within the unincorporated areas of the county of White Pine, state of Nevada, to engage in sexual intercourse, for any money or thing of value, with a person to whom he or she is not married, or to solicit a person, to whom he or she is not married, to have sexual intercourse, for any money or thing of value, with the person so soliciting.

¹²⁵ All Sparks, Nevada, Code provisions, unless otherwise noted, are taken from Sparks, Nev., Mun. Code, available at <http://cityofsparks.us/municode/index> (last visited Sep. 8, 2011).

¹²⁶ Sparks, Nev., Mun. Code § 9.24.010 defines prostitution as, “engaging in sexual intercourse, masturbation, fellatio, cunnilingus, sodomy, an infamous crime against nature, or other sexual activity for compensation of any kind.”

¹²⁷ All White Pine County, Nevada, Code provisions, unless otherwise noted, are taken from White Pine Cnty., Nev., Code (Codified through Ordinance 437 enacted February 24, 2010), available at <http://www.sterlingcodifiers.com/NV/White%20Pine%20County/index.htm>.

Under White Pine Cnty., Nev., Code § 10.36.020 (Sexual intercourse for hire and lewd acts prohibited),

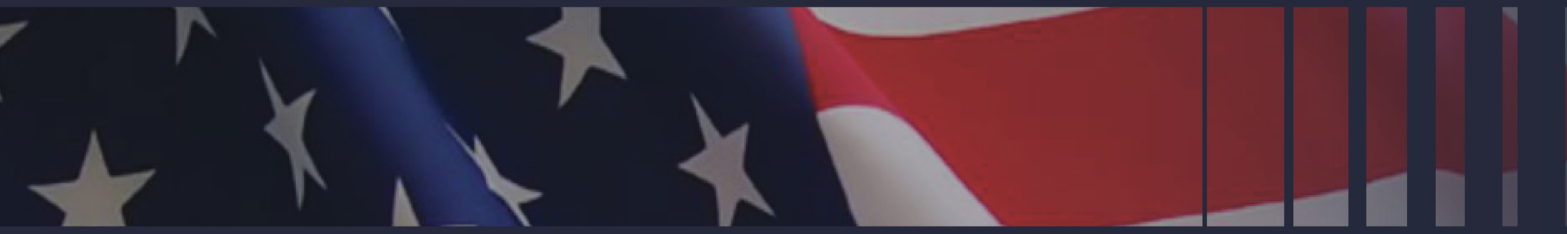
In the unincorporated areas of the county of White Pine, state of Nevada, it is unlawful for any person to:

- (1) Receive money or other thing of value in exchange for another person committing an act of sexual intercourse or an act of moral perversion;
- (2) Pay or offer or agree to pay another person to commit a lewd act or an act of sexual intercourse;
- (3) Commit or offer or agree to commit any act of moral perversion;
- (4) Secure or offer another person for the purpose of committing a lewd act or an act of sexual intercourse for hire or of moral perversion;
- (5) Induce, entice or procure, or attempt to induce, entice or procure, another person, in or near any place frequented by the public or any public place, to commit a lewd act or an act of sexual intercourse for hire or of moral perversion;
- (6) Knowingly transport any person to any place in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of committing a lewd act or an act of sexual intercourse for hire or moral perversion;
- (7) Knowingly transport any person to any place in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of offering or agreeing to pay another person to commit a lewd act or an act of sexual intercourse;
- (8) Knowingly receive, or offer to agree to receive, any person into any place or building in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of performing a lewd act, or an act of sexual intercourse for hire or of moral perversion, or to knowingly permit any person to remain in any place or building in the unincorporated areas of the county of White Pine, state of Nevada, for any such purpose;
- (9) Aid, abet, allow, permit or participate in the commission of any of the acts prohibited in subsections (1) through (8) above.

White Pine Cnty., Nev., Code § 10.36.030 (Operation of a house of prostitution prohibited) makes it illegal for

a person in the unincorporated areas of the county of White Pine, state of Nevada, to keep, set up, maintain, operate, lease or rent any person or place, structure, building or conveyance for the purpose of having therein sexual intercourse for any money or thing of value between persons not married to each other, knowing that said persons are not married to each other.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. White Pine Cnty., Nev., Code §§ 10.36.040 (Penalty), 1.01.140 (Violations—penalty).



THE PROTECTED INNOCENCE CHALLENGE

**State Report Cards on the Legal Framework
of Protection for the Nation's Children**

2011

**This man wants to
rent your daughter.**



DoYouKnowLacy.com?



Shared Hope International developed the billboard concept above to place in strategic locations around the country to bring greater awareness of the critical driving force of the commercial sex industry: demand.

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Designed by Taryn Mastrean
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Dear Reader,

The Protected Innocence Initiative marks the beginning of a new era in the movement to end sex trafficking. After serving fifteen years as a State and U.S. Representative for Washington, I left to establish Shared Hope International and engage in the global fight against sex trafficking. A fight that once began global turned local as our research on the international trafficking industry exposed a booming market for American children. Efforts to combat domestic minor sex trafficking have progressed at an unprecedented level, as illustrated by increased training, broader and more accurate identification, and more effective response by law enforcement, prosecutors, service providers, legislators, government leaders, churches, and the greater community.

We commend the leaders who strive to end the scourge of human trafficking at a global and federal level. For over a decade, the Department of State has released the Trafficking in Persons Report which analyzes prevention, prosecution, protection, and partnership efforts in countries around the world to combat human trafficking internationally. The federal Trafficking Victims Protection Act of 2000 provides a sturdy legal platform for federal action to bring justice to victims and prosecution for perpetrators.

This leadership provided inspiration and guidance for the Protected Innocence Initiative. This initiative includes the legislative framework, which serves as the foundation for Protected Innocence Challenge Report Cards. The Protected Innocence Challenge was designed to not only grade the legal framework in each state, but to establish a fabric of laws and serve as a blueprint for reform of child sex trafficking legislation. Through a proactive partnership between legislators and concerned constituents, it is our hope that state action will result in national change.

We wish to thank the following foundations, individuals, and families who contributed to make this first annual National Protected Innocence Initiative Report possible: Carstens Family Fund held by the Arizona Community Foundation, Maureen Casey, Thomas Constant, Imago Dei Fund, Luke 12:48 Foundation, Sharon Richards, Kelly & Michelle Park, and the Robles Foundation.

Thank you for taking the Protected Innocence Challenge.

Sincerely yours,

A handwritten signature in blue ink that reads "Linda Smith". The signature is fluid and cursive.

Linda Smith



Acknowledgments

The Protected Innocence Legislative Framework and Methodology were reviewed by several experts in the anti-trafficking field, and their comments contributed to the final analysis—thanks to Ambassador Mark Lagon (U.S. Department of State, Office to Monitor and Combat Trafficking in Persons 2007–09), Chair, International Relations and Security and Visiting Professor, Master of Science in Foreign Service Program, Georgetown University; Suzanna Tiapula, Esq., Director, National Center for Prosecution of Child Abuse, a program of the National District Attorneys Association; Howard Davidson, Esq., Director, American Bar Association (ABA) Center on Children and the Law; Mohamed Mattar, S.J.D., Executive Director, The Protection Project at Johns Hopkins University School of Advanced International Studies; Tessa Dysart, Esq., Associate Counsel, American Center for Law & Justice; Carol Smolenski, Executive Director, and Christine Fantacone, Policy Coordinator, both of ECPAT-USA; Mandi Sheridan Kimball, Director of Public Policy and Government Affairs, and Jennifer Michel Solak, Esq., Senior Staff Attorney, both of Children at Risk, Houston, Texas; and Kaffie McCullough, Campaign Director, the Juvenile Justice Fund's A Future. Not A Past. Campaign, Atlanta, Georgia.

The legal analysis of the 50 states and the District of Columbia that laid the foundation for the Protected Innocence Legislative Framework application and resulting Protected Innocence Challenge Report Cards was accomplished through a partnership between Shared Hope International and the American Center for Law & Justice (ACLJ), which focuses on constitutional and human rights law worldwide. The legal analysis was implemented under the direction of Samantha Healy Vardaman, Esq., Senior Director, Shared Hope International, and Tessa Dysart, Associate Counsel, ACLJ. Shared Hope Policy Counsel, Alicia Wilson, Esq., Shared Hope Policy Specialists, Dolly Donnelly, Esq. and Grace Colonnese, Esq., and Christine Raino, Esq. were essential in accomplishing the Protected Innocence research and application. Shared Hope law fellows, especially Tabatha Mansfield, Tabitha Acosta, Debra Pruitt, Tatiana Hernandez, Christen Price, and Donna Robinson along with ACLJ Senior Research Counsel, John Tuskey, and ACLJ law clerks assisted greatly in applying the Protected Innocence Legislative Framework. All Shared Hope staff were involved in key ways in the research and writing of the Protected Innocence Challenge and the implementation of the Protected Innocence Initiative.

The Protected Innocence Challenge | 2011

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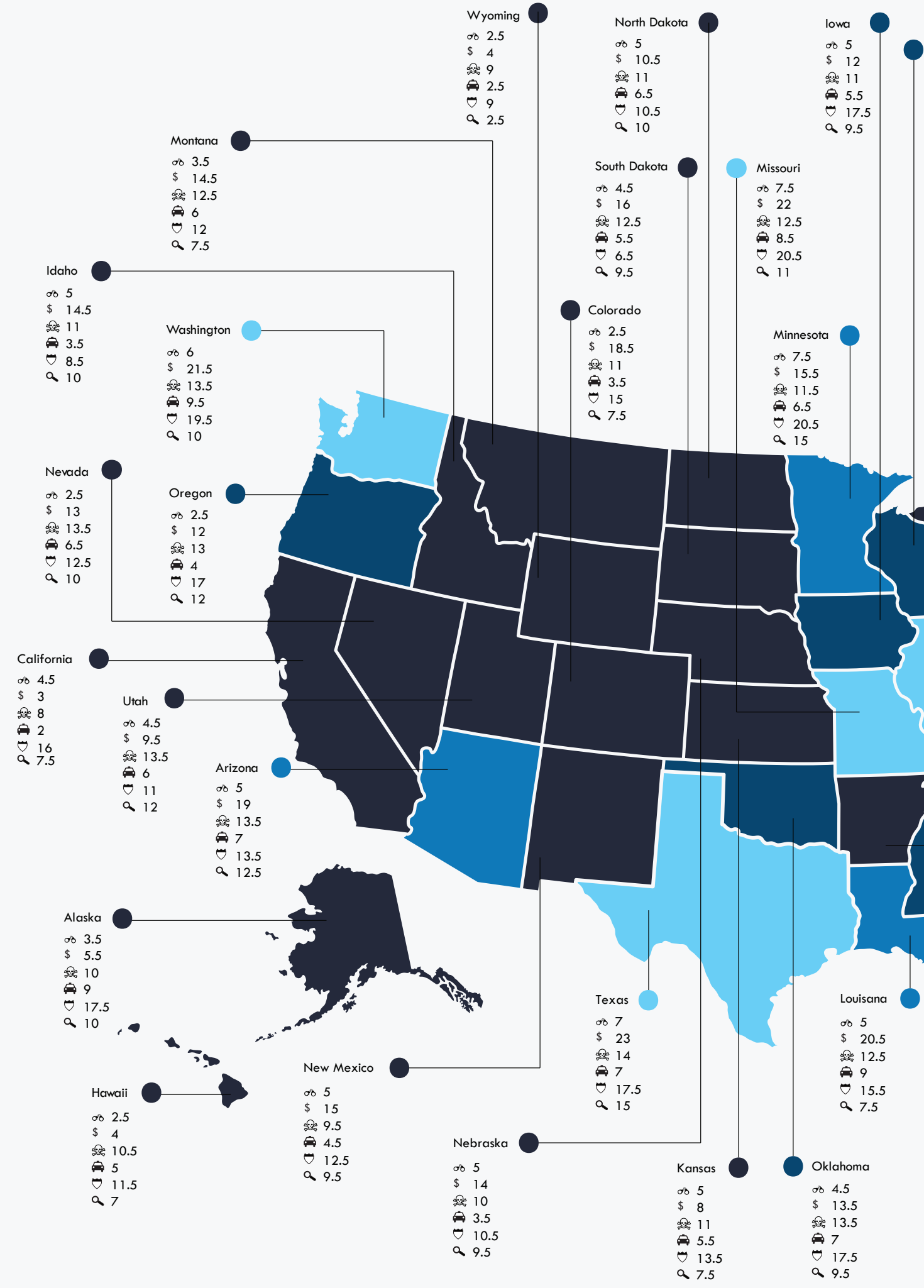
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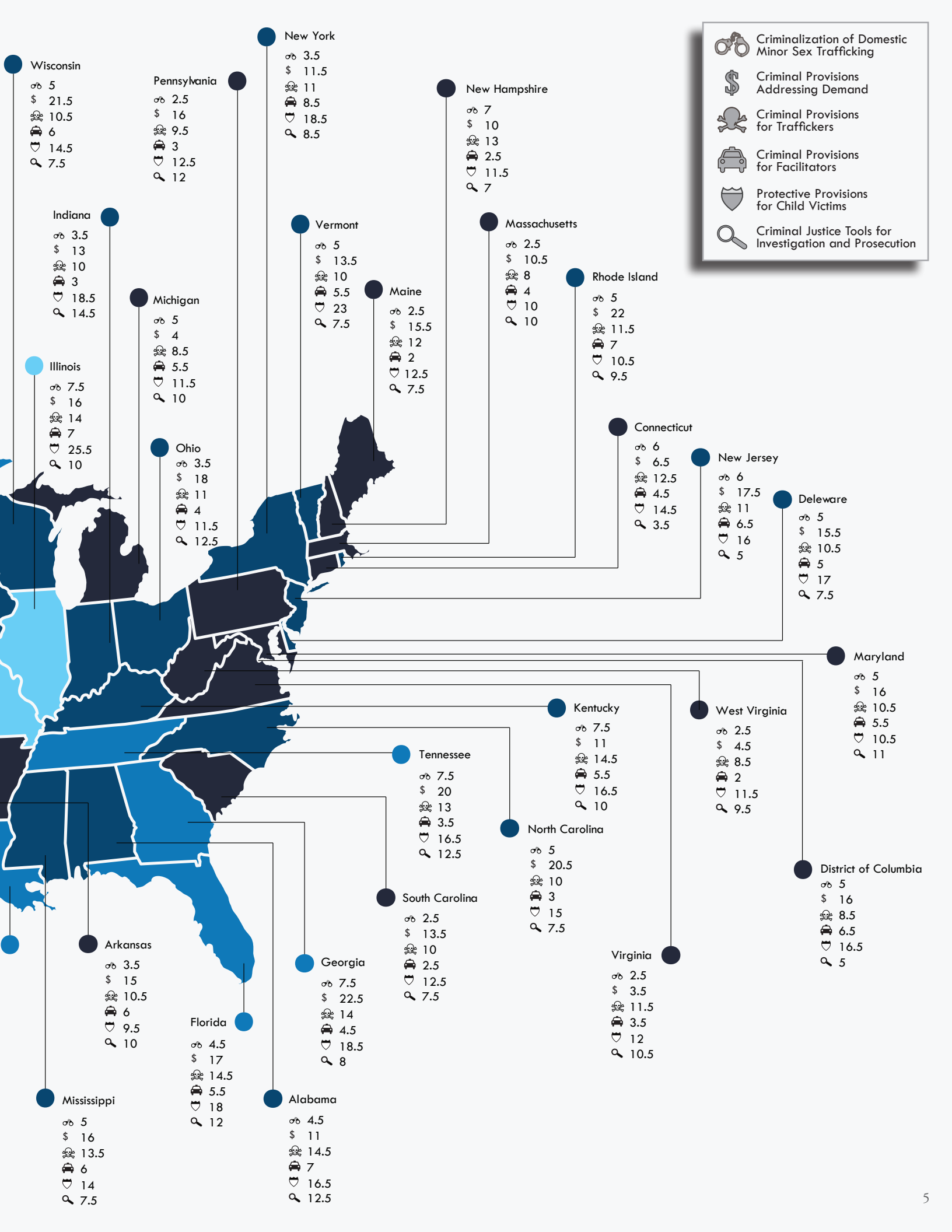
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D

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Legend:

- Criminalization of Domestic Minor Sex Trafficking
- Criminal Provisions Addressing Demand
- Criminal Provisions for Traffickers
- Criminal Provisions for Facilitators
- Protective Provisions for Child Victims
- Criminal Justice Tools for Investigation and Prosecution

Wisconsin
 ⚖️ 5
 \$ 21.5
 🚓 10.5
 🚗 6
 🛡️ 14.5
 🔍 7.5

Pennsylvania
 ⚖️ 2.5
 \$ 16
 🚓 9.5
 🚗 3
 🛡️ 12.5
 🔍 12

New York
 ⚖️ 3.5
 \$ 11.5
 🚓 11
 🚗 8.5
 🛡️ 18.5
 🔍 8.5

New Hampshire
 ⚖️ 7
 \$ 10
 🚓 13
 🚗 2.5
 🛡️ 11.5
 🔍 7

Indiana
 ⚖️ 3.5
 \$ 13
 🚓 10
 🚗 3
 🛡️ 18.5
 🔍 14.5

Vermont
 ⚖️ 5
 \$ 13.5
 🚓 10
 🚗 5.5
 🛡️ 23
 🔍 7.5

Massachusetts
 ⚖️ 2.5
 \$ 10.5
 🚓 8
 🚗 4
 🛡️ 10
 🔍 10

Rhode Island
 ⚖️ 5
 \$ 22
 🚓 11.5
 🚗 7
 🛡️ 10.5
 🔍 9.5

Michigan
 ⚖️ 5
 \$ 4
 🚓 8.5
 🚗 5.5
 🛡️ 11.5
 🔍 10

Maine
 ⚖️ 2.5
 \$ 15.5
 🚓 12
 🚗 2
 🛡️ 12.5
 🔍 7.5

Illinois
 ⚖️ 7.5
 \$ 16
 🚓 14
 🚗 7
 🛡️ 25.5
 🔍 10

Ohio
 ⚖️ 3.5
 \$ 18
 🚓 11
 🚗 4
 🛡️ 11.5
 🔍 12.5

Connecticut
 ⚖️ 6
 \$ 6.5
 🚓 12.5
 🚗 4.5
 🛡️ 14.5
 🔍 3.5

New Jersey
 ⚖️ 6
 \$ 17.5
 🚓 11
 🚗 6.5
 🛡️ 16
 🔍 5

Delaware
 ⚖️ 5
 \$ 15.5
 🚓 10.5
 🚗 5
 🛡️ 17
 🔍 7.5

Maryland
 ⚖️ 5
 \$ 16
 🚓 10.5
 🚗 5.5
 🛡️ 10.5
 🔍 11

Kentucky
 ⚖️ 7.5
 \$ 11
 🚓 14.5
 🚗 5.5
 🛡️ 16.5
 🔍 10

West Virginia
 ⚖️ 2.5
 \$ 4.5
 🚓 8.5
 🚗 2
 🛡️ 11.5
 🔍 9.5

Tennessee
 ⚖️ 7.5
 \$ 20
 🚓 13
 🚗 3.5
 🛡️ 16.5
 🔍 12.5

North Carolina
 ⚖️ 5
 \$ 20.5
 🚓 10
 🚗 3
 🛡️ 15
 🔍 7.5

District of Columbia
 ⚖️ 5
 \$ 16
 🚓 8.5
 🚗 6.5
 🛡️ 16.5
 🔍 5

South Carolina
 ⚖️ 2.5
 \$ 13.5
 🚓 10
 🚗 2.5
 🛡️ 12.5
 🔍 7.5

Virginia
 ⚖️ 2.5
 \$ 3.5
 🚓 11.5
 🚗 3.5
 🛡️ 12
 🔍 10.5

Arkansas
 ⚖️ 3.5
 \$ 15
 🚓 10.5
 🚗 6
 🛡️ 9.5
 🔍 10

Georgia
 ⚖️ 7.5
 \$ 22.5
 🚓 14
 🚗 4.5
 🛡️ 18.5
 🔍 8

Florida
 ⚖️ 4.5
 \$ 17
 🚓 14.5
 🚗 5.5
 🛡️ 18
 🔍 12

Alabama
 ⚖️ 4.5
 \$ 11
 🚓 14.5
 🚗 7
 🛡️ 16.5
 🔍 12.5

Mississippi
 ⚖️ 5
 \$ 16
 🚓 13.5
 🚗 6
 🛡️ 14
 🔍 7.5

Introduction

The Protected Innocence Challenge is based on the Protected Innocence Legislative Framework which was informed by research performed by Shared Hope International and compiled in “The National Report on Domestic Minor Sex Trafficking.” Domestic minor sex trafficking is the prostitution, pornography, or sexual performance of U.S. citizens or lawful permanent residents under the age of 18 in the United States.

Recognizing that most of the gaps in responding to domestic minor sex trafficking must be addressed at the state level, the Protected Innocence Legislative Framework sets out the basic policy principles required to create a safer environment for children. The steps necessary to create this safer environment include the following: preventing domestic minor sex trafficking through reducing demand, rescuing and restoring victims through improved training on identification, establishing protocols and facilities for victim placement, mandating appropriate services and shelter, and incorporating trauma-reducing mechanisms into the justice system. Broken systems of criminal justice and child welfare responses to victims must also be fixed to ensure that commercially sexually exploited children are treated as victims and provided with remedies through the law to recapture their lives and their futures.

In 2010, Shared Hope International exclaimed Kids Are Not For Sale in front of the Lincoln Memorial during the Stop Modern Slavery Walk.



WHAT IS DOMESTIC MINOR SEX TRAFFICKING?

Domestic minor sex trafficking is the commercial sexual exploitation of American children within U.S. borders and is synonymous with child sex slavery, child sex trafficking, prostitution of children, and commercial sexual exploitation of children (CSEC). Congress, in the federal Trafficking Victims Protection Act (TVPA), has made sex trafficking of a minor a crime.¹ Federal law defines sex trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”² When considering the crime of domestic minor sex trafficking, under the TVPA, the victim’s age is the critical issue—there is no requirement to prove that force, fraud, or coercion was used to secure the victim’s actions if the victim is a minor. Experts estimate that at least 100,000 American juveniles are victimized through prostitution in America each year.³

Shared Hope International first actively addressed the sex trafficking of American children by researching the demand for commercial sex that encourages the commercial sexual exploitation of women and girls. The DEMAND project investigated buyers, facilitators, and traffickers in four countries: Jamaica, Japan, the Netherlands, and the United States. The startling findings from this project highlighted the fact that sex trafficking is demand-driven and that the product for sale is most commonly local (domestic) children.⁴

Recognizing that a strategic response to sex trafficking required a comprehensive understanding of the local situation, Shared Hope International aligned with the U.S. Department of Justice human trafficking task forces to assess domestic minor sex trafficking and the access to victim services in ten U.S. locations: Dallas, Texas; San Antonio, Texas; Fort Worth, Texas; Salt Lake City, Utah; Buffalo, New York; Baton Rouge and New Orleans, Louisiana; Independence, Missouri; Las Vegas, Nevada; Clearwater, Florida; and The Commonwealth of the Northern Mariana Islands (U.S. Territory). The assessments investigated three areas identified by the TVPA and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as the key components necessary to effectively combat trafficking in persons: Prevention, Prosecution, and Protection. The assessments involved qualitative interviews of professionals who were likely to come into contact with victims of domestic minor sex trafficking, as well as quantitative data collection when available.

1 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.).

2 22 U.S.C. § 7102(9).

3 LINDA SMITH, SAMANTHA HEALY VARDAMAN, & MELISSA A. SNOW, SHARED HOPE INTERNATIONAL, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED YOUTH 4 (2009) [hereinafter NATIONAL REPORT] (quoting Ernie Allen, National Center for Missing and Exploited Children in DVD: Prostituted Children in the United States: Identifying and Responding to America’s Trafficked Youth (Shared Hope International 2008) (on file with author)), available at http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009.pdf.

4 SHARED HOPE INT’L, DEMAND: A COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 2 [hereinafter DEMAND], available at <http://www.sharedhope.org/Portals/0/Documents/DEMAND.pdf>.

Key



Criminalization of Domestic Minor Sex Trafficking



Criminal Provisions Addressing Demand



Criminal Provisions for Traffickers



Criminal Provisions for Facilitators



Protective Provisions for Child Victims



Criminal Justice Tools for Investigation and Prosecution

The symbols below indicate the extent a component meets grading criteria.



Full



Partial



None



In 2009, Shared Hope rallied activists in The March to End Demand in Las Vegas, Nevada.

Shared Hope identified and targeted for interviews seven professional groups as likely to come into contact with victims of domestic minor sex trafficking: federal, state, and local law enforcement; federal and state prosecutors; juvenile court personnel; juvenile probation and detention personnel; public defenders; child protective services personnel; and social services/non-governmental organizations. Shared Hope conducted a total of 297 interviews and requested statistics from relevant agencies, which were not always available, and where available, typically did not provide separate data on domestic minor sex trafficking—a term and crime with which many interviewees were not yet familiar. In those cases, Shared Hope reviewed the statistics to determine the numbers of suspected domestic minor sex trafficking victims. For example, juvenile detention facility statistics reflecting the number of youth detained under charges of prostitution could be properly counted toward the number of domestic minor sex trafficking victims in that facility since juveniles in prostitution are, by definition, victims of sex trafficking under the federal TVPA.⁵ The reliance on extrapolated data reflects the overall lack of effective identification of domestic minor sex trafficking victims and highlights the need for training, as well as data collection, regarding domestic minor sex trafficking.

Shared Hope documented the information gathered from each assessed location in area-specific reports outlining the problem’s scope, how victims of domestic minor sex trafficking accessed the justice and social services systems, how victims were labeled, and whether, as a result of that label, victims of domestic minor sex trafficking were able to access (or were barred from accessing) services as victims of a violent crime. The findings from these ten site assessments formed the foundation of “The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children.” Later, Shared Hope performed four additional rapid assessments in South Florida, Virginia, Arizona, and Washington. These findings were further substantiated at Shared Hope International’s 2008 National Training Conference on the Sex Trafficking of America’s Youth, which brought together nearly 200 first responders from across the nation, as well as experts on trauma-based services and shelter, to share their experiences and offer guidance as to the best practices for responding to domestic minor sex trafficking.

⁵ 18 U.S.C. § 1591(a); 22 U.S.C. § 7102(8), (14).



Based on the research findings, within an overarching framework that identifies minors exploited through sex trafficking as victims, four primary policy issues must be addressed to combat domestic minor sex trafficking: 1) eliminating demand; 2) prosecuting traffickers; 3) identifying victims; and 4) providing protection, access to services, and shelter for victims.

1. **Eliminating Demand.** Despite the fact that demand is the primary driver of the commercial sex industry and the commercial sexual exploitation of children, buyers are often not recognized as critical participants in the victimization of children through domestic minor sex trafficking.⁶ All buyers of sex with children—whether they be classified as preferential (pedophiles), opportunistic (thrill seekers), or situational (do not care about the age of the person being prostituted)—are committing a serious crime for which significant punishment is appropriate.

2. **Prosecuting Traffickers.** Frequently, the arrest and prosecution of the trafficker are based solely on the victim's cooperation in the investigation and testimony at trial.⁷ While victim cooperation with law enforcement is important, this approach can place a heavy burden on a domestic minor sex trafficking victim, who typically requires a lengthy amount of time before he or she will disclose the facts of his or her victimization. Therefore, it is critical for law enforcement officers to pursue innovative or alternative investigation techniques to corroborate the victims' allegations in domestic minor sex trafficking cases.

3. **Identifying Victims.** One of the primary barriers to victim identification is that laws often label minors engaging in commercial sex acts as criminals rather than victims. Misidentification causes a chain reaction of negative outcomes, the most significant of which is the failure to deliver the necessary services to interrupt and treat the trauma these children have endured. The problem occurs at all levels of first response from law enforcement arrests on the street, to the intake processes of homeless and runaway youth shelters, to court adjudication of victims as juvenile delinquents for offenses committed in connection with the prostitution of the child. Adjudicating the victim as delinquent and detaining him or her in a juvenile facility is a too frequent outcome and contributes to the return and retention of minors in commercial sexual exploitation. Law enforcement officers reported to Shared Hope International that another barrier to proper identification of victims is that prostituted juveniles are trained by their traffickers to lie to authorities and are provided with excellent fraudulent identification. This results in their registration in the arrest records as adults—an identification that follows them through their years as minors unless and until it is corrected by the insight of a law enforcement officer who recognizes that a victim is a minor and pursues a correct identification. Using tools to flag high risk children, such as chronic runaways and other status offenders, as well as youth who have fled from foster care, group homes, or other residential programs, as likely victims of domestic minor sex trafficking would greatly improve the identification process.

4. **Providing Protection, Access to Services and Shelter for Victims.** Law enforcement officers expressed frustration that they are often compelled to charge a domestic minor sex trafficking victim with a delinquency offense, such as prostitution, to detain the child and to keep the child safe from the trafficker. Detention, however, is detrimental to the victim in that the victim rarely receives any services in detention, much less services specific to the trauma endured through sex trafficking. Due to the unique trauma bonding that occurs between victims and their traffickers, these children often run from juvenile facilities right back to the people who exploited them. Also, in some states, a victim's entry into the delinquency system can disqualify him or her from accessing crime victim funds for services. Establishing protective shelters and services for domestic minor sex trafficking victims would provide law enforcement officers or juvenile courts with an alternative placement for prostituted minors. Protective shelters also provide a more conducive environment for breaking the cycle of destructive trauma bonding between a victim and the trafficker and restoring a victim to the point where the victim can assist in an investigation and trial. Despite the need for protective shelters, fewer than one hundred beds in facilities appropriate for and specializing in treating domestic minor sex trafficking victims exist across the country. Establishing these protective shelters is critical for creating an effective strategy to combat domestic minor sex trafficking.

⁶ DEMAND, *supra* note 6, at 3.

⁷ In contrast, 22 U.S.C. § 7105(b), prohibits requiring child victims of severe forms of trafficking to cooperate with law enforcement in order to receive assistance.



State Grades | Arranged Alphabetically

	Criminalization of Domestic Minor Sex Trafficking	Criminal Provisions Addressing Demand	Criminal Provisions for Traffickers	Criminal Provisions for Facilitators	Protective Provisions for Child Victims	Criminal Justice Tools for Investigation and Prosecution	Total	Grade
Alabama	4.5	11	14.5	7	16.5	12.5	66	D
Alaska	3.5	5.5	10	9	17.5	10	55.5	F
Arizona	5	19	13.5	7	13.5	12.5	70.5	C
Arkansas	3.5	15	10.5	6	9.5	10	54.5	F
California	4.5	3	8	2	16	7.5	41	F
Colorado	2.5	18.5	11	3.5	15	7.5	58	F
Connecticut	6	6.5	12.5	4.5	14.5	3.5	47.5	F
Delaware	5	15.5	10.5	5	17	7.5	60.5	D
District of Columbia	5	16	8.5	6.5	16.5	5	57.5	F
Florida	4.5	17	14.5	5.5	18	12	71.5	C
Georgia	7.5	22.5	14	4.5	18.5	8	75	C
Hawaii	2.5	4	10.5	5	11.5	7	40.5	F
Idaho	5	14.5	11	3.5	8.5	10	52.5	F
Illinois	7.5	16	14	7	25.5	10	80	B
Indiana	3.5	13	10	3	18.5	14.5	62.5	D
Iowa	5	12	11	5.5	17.5	9.5	60.5	D
Kansas	5	8	11	5.5	13.5	7.5	50.5	F
Kentucky	7.5	11	14.5	5.5	16.5	10	65	D
Louisiana	5	20.5	12.5	9	15.5	7.5	70	C
Maine	2.5	15.5	12	2	12.5	7.5	52	F
Maryland	5	16	10.5	5.5	10.5	11	58.5	F
Massachusetts	2.5	10.5	8	4	10	10	45	F
Michigan	5	4	8.5	5.5	11.5	10	44.5	F
Minnesota	7.5	15.5	11.5	6.5	20.5	15	76.5	C
Mississippi	5	16	13.5	6	14	7.5	62	D

See Methodology, Page 17

	<i>Criminalization of Domestic Minor Sex Trafficking</i>	<i>Criminal Provisions Addressing Demand</i>	<i>Criminal Provisions for Traffickers</i>	<i>Criminal Provisions for Facilitators</i>	<i>Protective Provisions for Child Victims</i>	<i>Criminal Justice Tools for Investigation and Prosecution</i>	Total	Grade
Missouri	7.5	22	12.5	8.5	20.5	11	82	B
Montana	3.5	14.5	12.5	6	12	7.5	56	F
Nebraska	5	14	10	3.5	10.5	9.5	52.5	F
Nevada	2.5	13	13.5	6.5	12.5	10	58	F
New Hampshire	7	10	13	2.5	11.5	7	51	F
New Jersey	6	17.5	11	6.5	16	5	62	D
New Mexico	5	15	9.5	4.5	12.5	9.5	56	F
New York	3.5	11.5	11	8.5	18.5	8.5	61.5	D
North Carolina	5	20.5	10	3	15	7.5	61	D
North Dakota	5	10.5	11	6.5	10.5	10	53.5	F
Ohio	3.5	18	11	4	11.5	12.5	60.5	D
Oklahoma	4.5	13.5	13.5	7	17.5	9.5	65.5	D
Oregon	2.5	12	13	4	17	12	60.5	D
Pennsylvania	2.5	16	9.5	3	12.5	12	55.5	F
Rhode Island	5	22	11.5	7	10.5	9.5	65.5	D
South Carolina	2.5	13.5	10	2.5	12.5	7.5	48.5	F
South Dakota	4.5	16	12.5	5.5	6.5	9.5	54.5	F
Tennessee	7.5	20	13	3.5	16.5	12.5	73	C
Texas	7	23	14	7	17.5	15	83.5	B
Utah	4.5	9.5	13.5	6	11	12	56.5	F
Vermont	5	13.5	10	5.5	23	7.5	64.5	D
Virginia	2.5	3.5	11.5	3.5	12	10.5	43.5	F
Washington	6	21.5	13.5	9.5	19.5	10	80	B
West Virginia	2.5	4.5	8.5	2	11.5	9.5	38.5	F
Wisconsin	5	21.5	10.5	6	14.5	7.5	65	D
Wyoming	2.5	4	9	2.5	9	2.5	29.5	F

State Grades | Arranged by Score

	Criminalization of Domestic Minor Sex Trafficking	Criminal Provisions Addressing Demand	Criminal Provisions for Traffickers	Criminal Provisions for Facilitators	Protective Provisions for Child Victims	Criminal Justice Tools for Investigation and Prosecution	Total	Grade
Texas	7	23	14	7	17.5	15	83.5	B
Missouri	7.5	22	12.5	8.5	20.5	11	82	B
Illinois	7.5	16	14	7	25.5	10	80	B
Washington	6	21.5	13.5	9.5	19.5	10	80	B
Minnesota	7.5	15.5	11.5	6.5	20.5	15	76.5	C
Georgia	7.5	22.5	14	4.5	18.5	8	75	C
Tennessee	7.5	20	13	3.5	16.5	12.5	73	C
Florida	4.5	17	14.5	5.5	18	12	71.5	C
Arizona	5	19	13.5	7	13.5	12.5	70.5	C
Louisiana	5	20.5	12.5	9	15.5	7.5	70	C
Alabama	4.5	11	14.5	7	16.5	12.5	66	D
Oklahoma	4.5	13.5	13.5	7	17.5	9.5	65.5	D
Rhode Island	5	22	11.5	7	10.5	9.5	65.5	D
Kentucky	7.5	11	14.5	5.5	16.5	10	65	D
Wisconsin	5	21.5	10.5	6	14.5	7.5	65	D
Vermont	5	13.5	10	5.5	23	7.5	64.5	D
Indiana	3.5	13	10	3	18.5	14.5	62.5	D
Mississippi	5	16	13.5	6	14	7.5	62	D
New Jersey	6	17.5	11	6.5	16	5	62	D
New York	3.5	11.5	11	8.5	18.5	8.5	61.5	D
North Carolina	5	20.5	10	3	15	7.5	61	D
Delaware	5	15.5	10.5	5	17	7.5	60.5	D
Iowa	5	12	11	5.5	17.5	9.5	60.5	D
Ohio	3.5	18	11	4	11.5	12.5	60.5	D
Oregon	2.5	12	13	4	17	12	60.5	D

*In the case of duplicate scores, states are arranged alphabetically.

**See Methodology, Page 17

	<i>Criminalization of Domestic Minor Sex Trafficking</i>	<i>Criminal Provisions Addressing Demand</i>	<i>Criminal Provisions for Traffickers</i>	<i>Criminal Provisions for Facilitators</i>	<i>Protective Provisions for Child Victims</i>	<i>Criminal Justice Tools for Investigation and Prosecution</i>	Total	Grade
Maryland	5	16	10.5	5.5	10.5	11	58.5	F
Colorado	2.5	18.5	11	3.5	15	7.5	58	F
Nevada	2.5	13	13.5	6.5	12.5	10	58	F
District of Columbia	5	16	8.5	6.5	16.5	5	57.5	F
Utah	4.5	9.5	13.5	6	11	12	56.5	F
Montana	3.5	14.5	12.5	6	12	7.5	56	F
New Mexico	5	15	9.5	4.5	12.5	9.5	56	F
Alaska	3.5	5.5	10	9	17.5	10	55.5	F
Pennsylvania	2.5	16	9.5	3	12.5	12	55.5	F
Arkansas	3.5	15	10.5	6	9.5	10	54.5	F
South Dakota	4.5	16	12.5	5.5	6.5	9.5	54.5	F
North Dakota	5	10.5	11	6.5	10.5	10	53.5	F
Idaho	5	14.5	11	3.5	8.5	10	52.5	F
Nebraska	5	14	10	3.5	10.5	9.5	52.5	F
Maine	2.5	15.5	12	2	12.5	7.5	52	F
New Hampshire	7	10	13	2.5	11.5	7	51	F
Kansas	5	8	11	5.5	13.5	7.5	50.5	F
South Carolina	2.5	13.5	10	2.5	12.5	7.5	48.5	F
Connecticut	6	6.5	12.5	4.5	14.5	3.5	47.5	F
Massachusetts	2.5	10.5	8	4	10	10	45	F
Michigan	5	4	8.5	5.5	11.5	10	44.5	F
Virginia	2.5	3.5	11.5	3.5	12	10.5	43.5	F
California	4.5	3	8	2	16	7.5	41	F
Hawaii	2.5	4	10.5	5	11.5	7	40.5	F
West Virginia	2.5	4.5	8.5	2	11.5	9.5	38.5	F
Wyoming	2.5	4	9	2.5	9	2.5	29.5	F

State Grades | Rank by Category

Criminalization of Domestic Minor Sex Trafficking

State	Score (category)	Score (overall)	Grade
Missouri	7.5	82	B
Illinois	7.5	80	B
Minnesota	7.5	76.5	C
Georgia	7.5	75	C
Tennessee	7.5	73	C
Kentucky	7.5	65	D
Texas	7	83.5	B
New Hampshire	7	51	F
Washington	6	80	B
New Jersey	6	62	D
Connecticut	6	47.5	F
Arizona	5	70.5	C
Louisiana	5	70	C
Rhode Island	5	65.5	D
Wisconsin	5	65	D
Vermont	5	64.5	D
Mississippi	5	62	D
North Carolina	5	61	D
Delaware	5	60.5	D
Iowa	5	60.5	D
Maryland	5	58.5	F
District of Columbia	5	57.5	F
New Mexico	5	56	F
North Dakota	5	53.5	F
Idaho	5	52.5	F
Nebraska	5	52.5	F
Kansas	5	50.5	F
Michigan	5	44.5	F
Florida	4.5	71.5	C
Alabama	4.5	66	D
Oklahoma	4.5	65.5	D
Utah	4.5	56.5	F
South Dakota	4.5	54.5	F
California	4.5	41	F
Indiana	3.5	62.5	D
New York	3.5	61.5	D
Ohio	3.5	60.5	D
Montana	3.5	56	F
Alaska	3.5	55.5	F
Arkansas	3.5	54.5	F
Oregon	2.5	60.5	D
Colorado	2.5	58	F
Nevada	2.5	58	F
Pennsylvania	2.5	55.5	F
Maine	2.5	52	F
South Carolina	2.5	48.5	F
Massachusetts	2.5	45	F
Virginia	2.5	43.5	F
Hawaii	2.5	40.5	F
West Virginia	2.5	38.5	F
Wyoming	2.5	29.5	F

Criminal Provisions Addressing Demand

State	Score (category)	Score (overall)	Grade
Texas	23	83.5	B
Georgia	22.5	75	C
Missouri	22	82	B
Rhode Island	22	65.5	D
Washington	21.5	80	B
Wisconsin	21.5	65	D
Louisiana	20.5	70	C
North Carolina	20.5	61	D
Tennessee	20	73	C
Arizona	19	70.5	C
Colorado	18.5	58	F
Ohio	18	60.5	D
New Jersey	17.5	62	D
Florida	17	71.5	C
Illinois	16	80	B
Mississippi	16	62	D
Maryland	16	58.5	F
District of Columbia	16	57.5	F
Pennsylvania	16	55.5	F
South Dakota	16	54.5	F
Minnesota	15.5	76.5	C
Delaware	15.5	60.5	D
Maine	15.5	52	F
New Mexico	15	56	F
Arkansas	15	54.5	F
Montana	14.5	56	F
Idaho	14.5	52.5	F
Nebraska	14	52.5	F
Oklahoma	13.5	65.5	D
Vermont	13.5	64.5	D
South Carolina	13.5	48.5	F
Indiana	13	62.5	D
Nevada	13	58	F
Iowa	12	60.5	D
Oregon	12	60.5	D
New York	11.5	61.5	D
Alabama	11	66	D
Kentucky	11	65	D
North Dakota	10.5	53.5	F
Massachusetts	10.5	45	F
New Hampshire	10	51	F
Utah	9.5	56.5	F
Kansas	8	50.5	F
Connecticut	6.5	47.5	F
Alaska	5.5	55.5	F
West Virginia	4.5	38.5	F
Michigan	4	44.5	F
Hawaii	4	40.5	F
Wyoming	4	29.5	F
Virginia	3.5	43.5	F
California	3	41	F

Criminal Provisions for Traffickers

State	Score (category)	Score (overall)	Grade
Florida	14.5	71.5	C
Alabama	14.5	66	D
Kentucky	14.5	65	D
Texas	14	83.5	B
Illinois	14	80	B
Georgia	14	75	C
Washington	13.5	80	B
Arizona	13.5	70.5	C
Oklahoma	13.5	65.5	D
Mississippi	13.5	62	D
Nevada	13.5	58	F
Utah	13.5	56.5	F
Tennessee	13	73	C
Oregon	13	60.5	D
New Hampshire	13	51	F
Missouri	12.5	82	B
Louisiana	12.5	70	C
Montana	12.5	56	F
South Dakota	12.5	54.5	F
Connecticut	12.5	47.5	F
Maine	12	52	F
Minnesota	11.5	76.5	C
Rhode Island	11.5	65.5	D
Virginia	11.5	43.5	F
New Jersey	11	62	D
New York	11	61.5	D
Iowa	11	60.5	D
Ohio	11	60.5	D
Colorado	11	58	F
North Dakota	11	53.5	F
Idaho	11	52.5	F
Kansas	11	50.5	F
Wisconsin	10.5	65	D
Delaware	10.5	60.5	D
Maryland	10.5	58.5	F
Arkansas	10.5	54.5	F
Hawaii	10.5	40.5	F
Vermont	10	64.5	D
Indiana	10	62.5	D
North Carolina	10	61	D
Alaska	10	55.5	F
Nebraska	10	52.5	F
South Carolina	10	48.5	F
New Mexico	9.5	56	F
Pennsylvania	9.5	55.5	F
Wyoming	9	29.5	F
District of Columbia	8.5	57.5	F
Michigan	8.5	44.5	F
West Virginia	8.5	38.5	F
Massachusetts	8	45	F
California	8	41	F

Criminal Provisions for Facilitators

State	Score (category)	Score (overall)	Grade
Washington	9.5	80	B
Louisiana	9	70	C
Alaska	9	55.5	F
Missouri	8.5	82	B
New York	8.5	61.5	D
Texas	7	83.5	B
Illinois	7	80	B
Arizona	7	70.5	C
Alabama	7	66	D
Oklahoma	7	65.5	D
Rhode Island	7	65.5	D
Minnesota	6.5	76.5	C
New Jersey	6.5	62	D
Nevada	6.5	58	F
District of Columbia	6.5	57.5	F
North Dakota	6.5	53.5	F
Wisconsin	6	65	D
Mississippi	6	62	D
Utah	6	56.5	F
Montana	6	56	F
Arkansas	6	54.5	F
Florida	5.5	71.5	C
Kentucky	5.5	65	D
Vermont	5.5	64.5	D
Iowa	5.5	60.5	D
Maryland	5.5	58.5	F
South Dakota	5.5	54.5	F
Kansas	5.5	50.5	F
Michigan	5.5	44.5	F
Delaware	5	60.5	D
Hawaii	5	40.5	F
Georgia	4.5	75	C
New Mexico	4.5	56	F
Connecticut	4.5	47.5	F
Ohio	4	60.5	D
Oregon	4	60.5	D
Massachusetts	4	45	F
Tennessee	3.5	73	C
Colorado	3.5	58	F
Idaho	3.5	52.5	F
Nebraska	3.5	52.5	F
Virginia	3.5	43.5	F
Indiana	3	62.5	D
North Carolina	3	61	D
Pennsylvania	3	55.5	F
New Hampshire	2.5	51	F
South Carolina	2.5	48.5	F
Wyoming	2.5	29.5	F
Maine	2	52	F
California	2	41	F
West Virginia	2	38.5	F

State Grades | Rank by Category

Protective Provisions for Child Victims

State	Score (category)	Score (overall)	Grade
Illinois	25.5	80	B
Vermont	23	64.5	D
Missouri	20.5	82	B
Minnesota	20.5	76.5	C
Washington	19.5	80	B
Georgia	18.5	75	C
Indiana	18.5	62.5	D
New York	18.5	61.5	D
Florida	18	71.5	C
Texas	17.5	83.5	B
Oklahoma	17.5	65.5	D
Iowa	17.5	60.5	D
Alaska	17.5	55.5	F
Delaware	17	60.5	D
Oregon	17	60.5	D
Tennessee	16.5	73	C
Alabama	16.5	66	D
Kentucky	16.5	65	D
District of Columbia	16.5	57.5	F
New Jersey	16	62	D
California	16	41	F
Louisiana	15.5	70	C
North Carolina	15	61	D
Colorado	15	58	F
Wisconsin	14.5	65	D
Connecticut	14.5	47.5	F
Mississippi	14	62	D
Arizona	13.5	70.5	C
Kansas	13.5	50.5	F
Nevada	12.5	58	F
New Mexico	12.5	56	F
Pennsylvania	12.5	55.5	F
Maine	12.5	52	F
South Carolina	12.5	48.5	F
Montana	12	56	F
Virginia	12	43.5	F
Ohio	11.5	60.5	D
New Hampshire	11.5	51	F
Michigan	11.5	44.5	F
Hawaii	11.5	40.5	F
West Virginia	11.5	38.5	F
Utah	11	56.5	F
Rhode Island	10.5	65.5	D
Maryland	10.5	58.5	F
North Dakota	10.5	53.5	F
Nebraska	10.5	52.5	F
Massachusetts	10	45	F
Arkansas	9.5	54.5	F
Wyoming	9	29.5	F
Idaho	8.5	52.5	F
South Dakota	6.5	54.5	F

Tools for Investigation and Prosecution

State	Score (category)	Score (overall)	Grade
Texas	15	83.5	B
Minnesota	15	76.5	C
Indiana	14.5	62.5	D
Tennessee	12.5	73	C
Arizona	12.5	70.5	C
Alabama	12.5	66	D
Ohio	12.5	60.5	D
Florida	12	71.5	C
Oregon	12	60.5	D
Utah	12	56.5	F
Pennsylvania	12	55.5	F
Missouri	11	82	B
Maryland	11	58.5	F
Virginia	10.5	43.5	F
Illinois	10	80	B
Washington	10	80	B
Kentucky	10	65	D
Nevada	10	58	F
Alaska	10	55.5	F
Arkansas	10	54.5	F
North Dakota	10	53.5	F
Idaho	10	52.5	F
Massachusetts	10	45	F
Michigan	10	44.5	F
Oklahoma	9.5	65.5	D
Rhode Island	9.5	65.5	D
Iowa	9.5	60.5	D
New Mexico	9.5	56	F
South Dakota	9.5	54.5	F
Nebraska	9.5	52.5	F
West Virginia	9.5	38.5	F
New York	8.5	61.5	D
Georgia	8	75	C
Louisiana	7.5	70	C
Wisconsin	7.5	65	D
Vermont	7.5	64.5	D
Mississippi	7.5	62	D
North Carolina	7.5	61	D
Delaware	7.5	60.5	D
Colorado	7.5	58	F
Montana	7.5	56	F
Maine	7.5	52	F
Kansas	7.5	50.5	F
South Carolina	7.5	48.5	F
California	7.5	41	F
New Hampshire	7	51	F
Hawaii	7	40.5	F
New Jersey	5	62	D
District of Columbia	5	57.5	F
Connecticut	3.5	47.5	F
Wyoming	2.5	29.5	F

Methodology

The purpose of the Protected Innocence Legislative Framework is to elaborate the key policy principles that have been identified as critical to making the proper response to domestic minor sex trafficking. These principles, as elaborated above, are eliminating demand, prosecuting the traffickers, identifying the victims, and providing protection, access to services, and shelter for victims. These principles can be grouped into six areas of law:

1. Criminalization of Domestic Minor Sex Trafficking
2. Criminal Provisions Addressing Demand
3. Criminal Provisions for Traffickers
4. Criminal Provisions for Facilitators
5. Protective Provisions for the Child Victim
6. Criminal Justice Tools for Investigation and Prosecution

Each area of law may have several laws that affect the policy within the state's code. As such, specific questions must be asked to determine whether state laws sufficiently address the policy need.

Analysis

Each state will be graded on the basis of the following points of law:

1. Criminalization of Domestic Minor Sex Trafficking

- 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.

Note: The vast majority of states have human trafficking laws. Within these statutes, however, there are variations in coverage; some do not expressly cover the sex trafficking of minors. State human trafficking laws that are consistent with each other and with federal law in scope and penalty will prevent migration of the crime to more lenient states or onto tribal lands, many of which are close to densely populated areas and contain attractions for this activity, such as casinos.

- 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.

Note: In the absence of a clear and specific child sex trafficking statute, CSEC laws become critical to punish the crime of commercial sexual exploitation of a child. CSEC statutes are those that make the sexual exploitation of a minor a criminal offense. These offenses range from prostitution to live or recorded sexual performance. Also, sexual offenses can be committed in the course of commercial sexual exploitation and, in some cases, establish the predicate offense for certain trafficking or CSEC offenses. Sexual offense statutes may also be used to prosecute CSEC offenses, although this is not preferred due to the potential resulting failure to identify the victim as a trafficking or CSEC victim.

- 1.3 CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.

Note: Language referring to human trafficking is necessary to ensure that CSEC victims are properly identified as human trafficking victims and thus may access the protections and benefits outlined under federal and some state statutes. This is also necessary to further the collection of data on human trafficking, which is critical to countering domestic minor sex trafficking.

2. Criminal Provisions Addressing Demand

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

Note: Language capturing the entire trafficking circle from trafficker to buyer to victim is necessary to mount a comprehensive attack on domestic minor sex trafficking.

- 2.2 Buyers of commercial sex acts with a minor can be prosecuted under CSEC laws.

Note: Anti-demand provisions are critical. State laws on commercial sex abuse of a minor, child prostitution, commercial sexual exploitation of minor, etc. must cover the crime of buying sex with a minor. These provisions will ideally refer to the human trafficking statute to make it clear that buying sex with a minor is domestic minor sex trafficking.

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

Note: This can be accomplished by amending traditional solicitation and prostitution laws to make them inapplicable to buying sex with a minor along with amending CSEC or trafficking laws to ensure that buyers of sex acts with minors are included. This is important to ensure that crimes of domestic minor sex trafficking are separated from crimes of solicitation and/or prostitution and that buyers are never allowed to proceed with diversion programs, such as a “John School” or other treatment programs.

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

Note: Under federal law, sex trafficking of a child is punishable by 10 years to life imprisonment.⁸ Consistency in sentencing between states will prevent the crime from migrating to more lenient states. Also, stiff penalties are just and are critical to deter demand.

2.5 Using the Internet 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.

Example: La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) contains a provision within the criminal statute on trafficking children for sexual purposes stating simply that “[l]ack of knowledge of the victim’s age shall not be a defense to a prosecution” under this law.

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

Note: Under federal law, sex trafficking of a child is punishable by 10 years to life imprisonment.⁹ State laws that set lower criminal penalties for sexual offenses against older minors are ignoring the definition of a minor and perpetuating the false perception that a victim aged 16 or 17 is a lesser victim. This, however, is not to be confused with enhanced penalties for offenses against a minor below a certain age that are considered especially egregious. For example, 18 U.S.C. § 1591 provides an enhanced penalty of a minimum of 15 years to life imprisonment for trafficking a minor under 14.¹⁰

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.

Note: Meaningful fines, asset forfeiture, restitution and fees can make it difficult for buyers to hide the crime they have committed from family and community. Directing the fines to a dedicated account can simultaneously offset the costs of investigating, prosecuting, and restoring the victims of the crime. Impound fees must be significant to act as a deterrent.

Example: Wash. Rev. Code Ann. §§ 9A.88.140(2), (4)(a), 43.63A.740 mandates the impounding of vehicles used to commit commercial sex abuse of a minor if owned or rented by the defendant and raises the fee to release the car from \$500 to \$2,500, which will be deposited into the Prostitution Prevention and Intervention Account to provide funding for, among other things, programs for minor victims who have been diverted for a prostitution offense and services in secure and semi-secure crisis residential shelters for victims of commercial sexual abuse.

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

Note: Child pornography is defined in federal law as any visual depiction involving the use of a minor engaging in sexually explicit conduct, or a visual depiction that has been created or modified to appear as a minor engaging in sexually explicit conduct.¹¹ Child pornography is actually an image of sexual abuse perpetrated on a child. The most common forum for child pornography today is the Internet and once images are on the Internet, they cannot be removed completely and can continue to circulate revictimizing the child each time they are viewed. Child pornography is also frequently encountered in combination with other sexual offenses against children and may serve as a gateway to acting out the images of sexual abuse on children.¹² Therefore, possessing child pornography should be viewed as a serious crime meriting meaningful prosecution.¹³

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

Note: The exchange of money or something of value does not sanitize the buyer of commercial sex with a minor from the sex offender registration requirements; domestic minor sex trafficking is a sexual offense. Buyers convicted of human trafficking with a sexual purpose or of a CSEC offense should be required to register as sex offenders.

⁸ 18 U.S.C. § 1591(a), (b)(2).

⁹ *Id.*

¹⁰ *Id.* § 1591(a), (b)(1).

¹¹ *Id.* § 2256.

¹² ALEXANDRA GELBER, U.S. DEP'T OF JUSTICE, CHILD EXPLOITATION AND OBSCENITY SECTION, CRIMINAL DIVISION, RESPONSE TO “A RELUCTANT REBELLION” 5–6 (2009), available at <http://www.justice.gov/criminal/ceos/ReluctantRebellionResponse.pdf>.

¹³ *Id.* at 14–15.

3. Criminal Provisions for Traffickers

- 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 to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.

Example: Va. Code Ann. §18.2-374.3 makes it a Class 6 felony punishable by 1–5 years' imprisonment, or one year in jail and a possible fine up to \$2500, to use the Internet to procure or to promote the use of a minor under 15 in a sexual performance or to lure or entice a child into an illegal sexual interaction. Amending this to raise the age to under 18 and raise the penalty to the levels of a trafficking crime would make this a beneficial law to counter the growing abuse of the Internet to commit sex trafficking.

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

Note: Financial penalties may include asset forfeiture, restitution, and fines for the crimes of human trafficking and commercial sexual exploitation of children. Asset forfeiture laws are critical to disrupting the criminal trafficking enterprise, offsetting the cost of investigation, prosecuting the crime, restoring the victim, and ensuring that the ill-gotten assets of trafficking are not retained by the convicted trafficker. Asset forfeiture laws have been very effective in fighting drug trafficking¹⁴ and should be viewed as an effective tool in the fight against domestic minor sex trafficking. Asset forfeiture is commonly tied to Racketeer Influenced and Corrupt Organizations (RICO) statutes in many states and thus requires prosecutors to charge these crimes in addition to human trafficking. Restitution is important to provide victims of sex trafficking with the funds to access treatment and to restart their lives. States should follow the federal model of requiring restitution for all victims of human trafficking¹⁵ and CSEC. Lastly, meaningful mandatory fines can be a deterrent and help to fund the programs necessary to serve victims.

- 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 CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.

Note: Traffickers may impregnate their victims, including minor victims, with the intent of maintaining control. The effect is to have second generation victims within a criminal "family." Breaking the bonds between victim and pimp include freeing their child from a continuing relationship with the trafficker parent. Also, children of traffickers can become victims of trafficking at the hands of their trafficker-parents.

4. Criminal Provisions for Facilitators

- 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.

Note: Facilitators are those people or entities that knowingly enable domestic minor sex trafficking or benefit from sex trafficking in any way. State sex trafficking laws must also make the act of facilitation a crime.

- 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.

Note: Asset forfeiture laws are critical to disrupting the criminal trafficking enterprise, offsetting the cost of investigation, prosecuting the crime, restoring the victim, and ensuring that the ill-gotten assets of trafficking are not retained by a person or an entity convicted of knowingly benefitting from sex trafficking, such as hotels or online classified businesses.

- 4.3 Promoting and selling child sex tourism is illegal.

Note: Businesses and individuals selling travel based on or containing components of commercial sexual exploitation of children are committing the crime of child sex tourism and driving demand for sex with children. Laws prohibiting child sex tourism should apply to a natural person as well as a corporation, and the penalty prescribed for the crime must be sufficiently serious to present substantial risk and deterrence, and should be comparable with the gravity of the crime.

Example: Wash. Rev. Code Ann. § 9.68A.102 (Promoting travel for commercial sexual abuse of a minor) states, "(1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state." The law makes the offense a felony.

- 4.4 Promoting and selling child pornography is illegal.

¹⁴ Asset Forfeiture, U.S. DRUG ENFORCEMENT ADMIN., <http://www.justice.gov/dea/programs/af.htm> (last visited Sept. 21, 2011).
¹⁵ 18 U.S.C. § 1593.

5. Protective Provisions for the Child Victims

- 5.1 A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims' compensation and other victim benefits.

Note: Language defining a minor who has been used in a commercial sex act (prostitution, pornography, or sexual performance) as a victim of sex trafficking or CSEC can lead to improved identification and responses at all levels.

- 5.2 The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.

Note: Many states allow a minor to consent to sex at an age lower than the age of majority. But a minor used in a commercial sex act is a victim of adult criminal behavior; the child's consent, therefore, cannot mitigate such acts. For this reason, consent must not be used as a defense to the crime of domestic minor sex trafficking.

Example: La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) stipulates that "C. (1) Consent of the minor shall not be a defense to a prosecution pursuant to the provisions of this Section."

- 5.3 Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.

Note: This is consistent with defining a minor in prostitution as a victim of domestic minor sex trafficking. This also establishes that a prostituted minor will not be charged as an offender, in either juvenile or adult criminal court, but rather, will be protected as a victim.

Example: Illinois's Safe Children Act, Public Act 96-1464, amended 720 Ill. Comp. Stat. Ann. 5/11-14 (Prostitution) to make a minor under 18 immune from prosecution for prostitution. Upon identifying a minor in prostitution, law enforcement must report an allegation of trafficking to the Illinois Department of Children and Family Services, which must conduct an initial investigation into child abuse or neglect within 24 hours.

Example: Tennessee Senate Bill 64 (107th General Assembly, 2011) makes minors immune from prosecution for prostitution by amending Tenn. Code Ann. § 39-13-513 (Prostitution) to state, "(d) Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the national human trafficking resource center hotline and release the minor to the custody of a parent or legal guardian."

- 5.4 Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.

Note: Establishing a child protection response is critical to ending the arrest and detention of domestic minor sex trafficking victims and ensuring instead that they are provided crime victim protections, services, and benefits. Protective shelter is far preferable to the current practice of charging the minor with an offense in order to detain him or her for his or her own safety and to assist in investigating a criminal case. Service providers struggle with case management when these victims must be placed in inappropriate places, such as ill-equipped foster care, group homes, and detention facilities, or they are returned to poor home environments. Laws are needed to establish and financially support residential programs to treat domestic minor sex trafficking victims in three stages: intervention, restoration, and transitional living. Debate exists over the level of security in and duration of these placements, as well as the size and location of such shelters; however, agreement exists as to the need for a variety of approaches from long-term shelters to home-based care to specialty foster homes, etc.

Example: Washington Senate Bill 6476, signed into law in 2010, amended Wash. Rev. Code Ann. § 13.32A.030(5)(d) (Definitions—Regulating leave from semi-secure facility), and provided for referring and placing domestic minor sex trafficking victims into the child protective services instead of the criminal justice system. Beginning July 1, 2011, the "Child in Need of Services" (CHINS) petition may be used to temporarily detain a sexually exploited child in a secure or semi-secure crisis residential center (CRC) for up to 15 days, without criminal charges. As a condition of licensing, each CRC must have staff experienced in working with child sexual exploitation victims.

Example: Illinois's Safe Children Act, Public Act 96-1464, 325 Ill. Comp. Stat. Ann. 5/3 and 325 Ill. Comp. Stat. Ann. 5/5, transfers jurisdiction over minors arrested for prostitution from the criminal system to the child protection system. The law facilitates the minor's placement in temporary protective custody if necessary, including custody within a hospital or other medical facility or designated place (which may be a licensed foster home, group home or other institution) by the Department of Children and Family Services, subject to review by the judge. Temporary protective custody may not be in a jail or criminal or juvenile detention facility.

- 5.5 Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.

Note: Expanding or interpreting the definition of "abuse and neglect" in the child protection statutes to include sex trafficking and commercial sexual exploitation would allow child protective services to include it as a specific type of maltreatment and bring situations of domestic minor sex trafficking within the investigative and protective functions of child protective services.

- 5.6 The definition of "caregiver" (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.

Note: Child protective services is often precluded from intervening in a case of non-familial domestic minor sex trafficking because the agency's mandate is limited to cases in which a parent or legal guardian is the cause of danger to the child. Defining such a person to include the person in custody or control of a minor, such as a trafficker, can bring greater protections to domestic minor sex trafficking victims through the intervention of child protective services.

5.7 Crime victims' compensation is specifically available to a child victim of sex trafficking or CSEC without regard to ineligibility factors.

Note: Ineligibility criteria contained in state crime victims' compensation programs often result in child sex trafficking victims being denied funds. Victims may be determined ineligible due to, among other things, their "involvement in the underlying crime" for which they are claiming the compensation, i.e. prostitution, or for failure to cooperate in a law enforcement investigation. This must be remedied with direct language specifically identifying these minors as victims.

Example: In Washington, Wash. Rev. Code Ann. § 7.68.060, the state crime victims' compensation applicability statute, was amended to specifically consider the minor in the charges of commercial sexual abuse of a minor under Wash. Rev. Code Ann. § 9.68A.100, promoting commercial sexual abuse of a minor under Wash. Rev. Code Ann. § 9.68A.101, or promoting travel for commercial sexual abuse of a minor under Wash. Rev. Code Ann. § 9.68A.102, as a victim of a criminal act for the purpose of the right to benefits, even if the minor is also charged with prostitution.

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

Note: Trauma reduction tools can increase the victim's successful participation through safety and protection. Some examples include:

- a. Court appointment of an attorney for the domestic minor sex trafficking victim, serving, as appropriate, as the child's legal counsel or as a guardian ad litem, could help protect the child from court system-related trauma and help better assure that their rights and legal interests were protected.
- b. Victim-witness coordinators, who have received training on child trafficking issues, are needed to shepherd the domestic minor sex trafficking victims and families through the criminal justice process.
- c. Rape shield laws limit a defendant's ability to cross-examine victims about their past sexual behavior.
- d. Prohibition on publication of an alleged rape victim's identity.
- e. Closed courtrooms for minor victim testimony can help with the problem of intimidation by defendant traffickers' friends and family packing the courtroom.
- f. Closed circuit television testimony can reduce re-traumatization of a domestic minor sex trafficking victim and assist in securing his or her testimony against an offender.

5.9 Expungement or sealing of juvenile arrest or criminal 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.

Note: Victims of domestic minor sex trafficking (and adult sex trafficking) report being hampered in attempts to restore their lives through employment or education because they have criminal records. Criminal records can prevent survivors from obtaining academic scholarships, securing certain employment, and working with children in some cases. Saddling the victim of sex trafficking with a criminal record is contrary to his or her legal definition as a victim and can inhibit full reintegration into the community.

5.10 Victim restitution and civil remedies are authorized by law for minor victims of sex trafficking or CSEC.

Note: Criminal restitution is an important part of the punishment for a convicted offender of trafficking and can provide funds for a victim to recover from the victimization. Restitution should be mandatory in any case of domestic minor sex trafficking and a means of calculating the typically unquantifiable costs of the victimization should be determined in the law. As an example, criminal restitution is mandated in the federal trafficking law.¹⁶ Often though, criminal cases are not pursued, or a convicted offender is not able to pay the restitution. Therefore, victims of domestic minor sex trafficking must be allowed to pursue civil remedies for the damages they have suffered as a result of the victimization. These might include compensatory damages, attorney's fees, and punitive damages. The continuing effects of sex trafficking on a young person can lead to future medical costs and other costs as they regain control over their life. Opportunities to access both criminal restitution and civil damages are means to pay for these needs.

Example: Civil remedies are available specifically in cases of trafficking in persons through Conn. Gen. Stat § 52-571i (Action for damages resulting from trafficking in persons), which states, "Any person aggrieved by a violation of section 53a-192a [Trafficking in persons] may bring a civil action in the superior court for the judicial district where such person resides or the judicial district of Hartford against the person or persons who committed such violation to recover actual damages, statutory damages of not more than one thousand dollars for each day such person was coerced by another person in violation of section 53a-192a and a reasonable attorney's fee."

¹⁶ U.S.C. §§ 1593(b)(1), (b)(3), 2259(b)(4).

Example: Offenders convicted of violating Vt. Stat. Ann. tit.13, § 2652(a) (Human trafficking), tit. 13, § 2653(a) (Aggravated human trafficking), or tit. 13, § 2655(a) (Solicitation) are required to pay restitution to their victims under Vt. Stat. Ann. tit. 13, § 2657 (Restitution), which states,

(a) A person convicted of a violation of this subchapter [Human trafficking] shall be ordered to pay restitution to the victim pursuant to section 7043 [Restitution] of this title.

(b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative, provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to his or her home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action) authorizes victims of human trafficking to bring a civil claim against their offenders, stating,

(a) A victim of human trafficking may bring an action against the offender in the civil division of the superior court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. Actual damages may include any loss for which restitution is available under section 2657 [Restitution] of this chapter.

(b) If the victim is deceased or otherwise unable to represent himself or herself, the victim may be represented by a legal guardian, family member, or other representative appointed by the court, provided that the legal guardian, family member, or other representative appointed by the court has not benefited in any way from the trafficking.

(c) In a civil action brought under this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

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

Note: Because of the traumatic effects of sex trafficking on a child, lengthening or eliminating the statutes of limitations on criminal and civil actions for child sex trafficking and CSEC crimes and the injurious effects on the person is important to allow the victims full access to justice. It is preferable to follow the federal model of eliminating the statute of limitations altogether in criminal actions for sex crimes involving children.¹⁷

Example: Alaska Stat. § 09.10.065(a) (Commencement of actions for acts constituting sexual offenses) provides that "(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses: (1) felony sexual abuse of a minor; (2) felony sexual assault; or (3) unlawful exploitation of a minor."

6. Criminal Justice Tools for Investigation and Prosecution

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

Note: Laws requiring the development of training materials and training of law enforcement officers are important to the response to domestic minor sex trafficking victims. Due to the unique conditions of DMST, specialized training is ideal; however, this training might be combined with general human trafficking training. Training in victim identification, the definition of domestic minor sex trafficking, investigative techniques, and victim-witness management is critical to increased identification of and improved responses to the victims. Training has resulted in demonstrable increases in investigations of domestic minor sex trafficking in places like San Antonio, Texas and Chicago, Illinois.

Example: Pursuant to Fla. Stat. Ann. § 787.06(4) (Human Trafficking), "[t]he Criminal Justice Standards and Training Commission shall establish standards for basic and advanced training programs for law enforcement officers in the subjects of investigating and preventing human trafficking crimes." Also, "[a]fter January 1, 2007, every basic skills course required for law enforcement officers to obtain initial certification must include training on human trafficking crime prevention and investigation."

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

Note: Two-party consent to audio-taped conversations makes undercover domestic minor sex trafficking investigations difficult. Allowing for single-party consent empowers law enforcement to more efficiently investigate and better prepare cases for prosecution.

Example: S.C. Code Ann. § 17-30-30(B) (Interception by employee of Federal Communications Commission, by person acting under color of law, and where party has given prior consent) permits single-party consent to audiotaping. It states, "It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception." Subsection (C) states, "It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception."

¹⁷ Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 202, 117 Stat. 650, 660 (codified as amended at 18 U.S.C. § 3283).

6.3 Domestic minor sex trafficking investigations may use wiretapping to investigate the crime.

Note: Access to wiretapping can be a decisive factor in initiating domestic minor sex trafficking investigations. The evidence obtained can lead to better evidence for prosecution and alleviate the need for victim testimony in domestic minor sex trafficking cases. The growing use of text messages to perpetrate sex trafficking makes it even more important to allow access to wiretapping in these investigations as text messages are considered interceptions of wire communications governed by wiretapping laws.

Example: The Illinois Safe Children Act, Public Act 96-1464, amended 720 Ill. Comp. Stat. Ann. 5/14-3 (Exemptions) to add human trafficking and pimping of a minor to the list of crimes that may be subject to court-ordered interceptions under judicial supervision. Evidence collected through wiretapping is admissible in civil, criminal, and administrative proceedings.

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.

Example: Ariz. Rev. Stat. § 13-3212(C) (Child prostitution) prohibits a defense to prosecution for selling a minor in prostitution or for buying sex with a minor under 15, or one the defendant knows is under 18, based on the fact “that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.”

Example: 18 Pa. Cons. Stat. § 6318(a) (Unlawful contact with minor) states, “A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth: . . . (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses). (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances). . . . 6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).”

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

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

Note: Identifying the missing and exploited child leads to identifying the domestic minor sex trafficking victim and provides an opportunity to intervene. The National Crime Information Center (NCIC), a computerized index of criminal justice information, relies on the entry of reports of missing and exploited children by local law enforcement. Also, immediate reporting to local police, the NCIC, and the National Center for Missing and Exploited Children (NCMEC) whenever a child goes missing is critical to identification and intervention, especially given the high correlation between missing children and trafficked children.¹⁸ At the same time, it is critical that first responders check the NCIC database and report to NCMEC whenever any domestic minor sex trafficking victim is rescued to see if the victim has been entered into those systems as a reported missing child.

Grading

The Protected Innocence Legislative Framework will assign a point value of 0 to 2.5 based on a written point allocation scheme accounting for the critical elements of each of the components of law discussed above. The points will be totaled for each of the six areas of law. The six totals will be added to determine the final number for each state, which will translate to the corresponding letter grade as follows:

A		90 - 100
B		80 - 89
C		70 - 79
D		60 - 69
F		< 60

These letter grades will reflect the level of protection available through law in a domestic minor sex trafficking case in the respective state. A short analysis of each state’s legislation will follow with recommendations.

It is important to note that the methodology looks solely at the laws in place in a given state and their de jure compliance with the Protected Innocence Legislative Framework at the time of the review. This analysis does not review how states enforce or implement their laws, though enforcement is critically important. Where obtained, statistics that demonstrate enforcement are noted in the state analysis but are not considered in the grade a state receives due to the inconsistency in content, collection, and maintenance of statistical data from state to state. A de facto assessment may be undertaken through the Shared Hope International Rapid Assessment of Domestic Minor Sex Trafficking Methodology and Tool, developed and implemented in fourteen locations around the country with funding from the U.S. Department of Justice (see www.sharedhope.org/Resources/Research.aspx).

¹⁸ SARA ANN FRIEDMAN, ECPAT-USA, INC., WHO IS THERE TO HELP US? HOW THE SYSTEM FAILS SEXUALLY EXPLOITED GIRLS IN THE UNITED STATES: EXAMPLES FROM FOUR AMERICAN CITIES 3 (2005), available at <http://ecpatusa.org/wp-content/uploads/2010/11/Who-Is-There-to-Help-Us.pdf>.

Issue Briefs

Section 1 | Criminalization of Domestic Minor Sex Trafficking

The following issue briefs provide a more comprehensive explanation of each of the components measured by the Protected Innocence Challenge Report Cards and highlight state statutes that align with the concept of the issue.

SECTION 1.1

<p>Area of Law</p>	<p>Criminalization of Domestic Minor Sex Trafficking</p>
<p>The Policy Point</p>	<p>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.</p>
<p>The Legislative Solution</p>	<p>The vast majority of states have human trafficking laws; however, within these statutes there are variations in coverage. States must enact human trafficking laws that are consistent with each other and federal law in scope and penalty so as to prevent migration of trafficking crimes to more lenient states or onto tribal lands. First, human trafficking laws must clearly address the crime of sex trafficking for the purposes of prosecution and victim identification. To ensure identification of sexually exploited children as victims and to prevent traffickers from escaping criminal liability through manufactured evidence of consent, all minors under the age of 18 should be deemed unable to consent to involvement in commercial sex acts, thus rendering the element of force, fraud or coercion irrelevant in domestic minor sex trafficking cases. Many state statutes accomplish this goal through the use of the words “any means” when addressing sex trafficking of minors under 18. Enacting laws that specifically criminalize trafficking of minors for commercial sexual exploitation without requiring proof of force, fraud or coercion is necessary to facilitate the prosecution of purchasers, traffickers and facilitators of commercial sex acts with children.</p>

Select Statute Highlights

The following are excerpts from statutes with the following: (1) language specifically criminalizing the commercial sexual exploitation of children or prostitution of children; (2) define a “minor” as a child under the age of 18; and (3) do not require elements of force, fraud or coercion to accomplish the trafficking.

Delaware

Del. Code Ann. tit. 11, § 787 (Trafficking of persons and involuntary servitude) makes sexual servitude of a minor a crime. Del. Code Ann. tit. 11, § 787(b)(2) provides, “[a] person is guilty of sexual servitude of a minor when the person knowingly: a. Recruits, entices, harbors, transports, provides or obtains by any means, a minor under 18 years of age, knowing that the minor will engage in commercial sexual activity, a sexually explicit performance, or the production of pornography; or b. Causes a minor to engage in commercial sexual activity or a sexually explicit performance.”

D.C.

D.C. Code § 22-1834(a) (Sex trafficking of children) states, “It is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.”

Louisiana

A separate statute makes sex trafficking of children a crime without regard to use of force, fraud, or coercion when a minor under 18 is used in a commercial sex act. La. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) states, “A. It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity. (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section. (3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor

entering into any activity prohibited by the provisions of this Section. (4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person. (5) For any person to knowingly advertise any of the activities prohibited by this Section. B. For purposes of this Section, (1) “commercial sexual activity” means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.”

Nebraska

Neb. Rev. Stat. § 28-831(2) (Human trafficking; forced labor or services; prohibited acts; penalties) provides, “No person shall knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempt to recruit, entice, harbor, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually-explicit performance, or the production of pornography, or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography. . . .” A minor is defined as “a person younger than 18 years of age.” Neb. Rev. Stat. § 28-830(7). Commercial sexual activity is “any sex act on account of which anything of value is given, promised to, or received by any person.” Neb. Rev. Stat. § 28-830(2).

Wisconsin

Wis. Stat. § 948.051 (Trafficking of a child) states, “(1) Whoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a), or sexually explicit performance is guilty of a Class C felony. (2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1). (3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.” For the purpose of this law, a child is defined as “a person who has not attained the age of 18 years.” Wis. Stat. § 948.01(1). Commercial sex acts are “sexual contact for which anything of value is given to, promised, or received, directly or indirectly by any person.” Wis. Stat. § 940.302(1)(a).

<p>Area of Law</p>	<p>Criminalization of Domestic Minor Sex Trafficking</p>
<p>The Policy Point</p>	<p>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.</p>
<p>The Legislative Solution</p>	<p>CSEC statutes are those that make specific types of exploitation of a minor a criminal act. While sexual offense laws could be utilized to prosecute some CSEC offenses, the enactment and use of specific CSEC laws is a better method for addressing these offenses and identifying victims. Additionally, sexual offense laws may not be broad enough to cover all types of conduct constituting CSEC offenses. These range from soliciting a minor for commercial sex acts to promoting prostitution of a minor to creating a live or recorded sexual performance of a minor. To protect victims and provide a means for prosecuting all CSEC perpetrators, states should enact CSEC statutes to criminalize the entire range of potential CSEC conduct, and minors victimized through these crimes should expressly be identified as CSEC victims.</p>

Select Statute Highlights

Colorado

Within Article 7 (Offenses Related to Morals) of Title 18 (Criminal Law), a comprehensive range of CSEC crimes is codified in Part 4 (Child Prostitution).

Colo. Rev. Stat. § 18-6-403(3) (Sexual exploitation of a child) states, “A person commits sexual exploitation of a child if, for any purpose, he or she knowingly: (a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; or . . . (d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.”

Colo. Rev. Stat. § 18-6-404 (Procurement of a child for sexual exploitation) provides, “Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of sexual exploitation of a child commits procurement of a child for sexual exploitation, which is a Class 3 felony.”

Colo. Rev. Stat. § 18-7-402(1) (Soliciting for child prostitution) makes it a crime when any person “(a) Solicits another for the purpose of prostitution of a child or by a child; (b) Arranges or offers to arrange a meeting of persons

for the purpose of prostitution of a child or by a child; or (c) Directs another to a place knowing such direction is for the purpose of prostitution or a child or by a child.”

Colo. Rev. Stat. § 18-7-403(1) (Pandering of a child) provides, “Any person who does any of the following for money or other thing of value commits pandering of a child: (a) Inducing a child by menacing or criminal intimidation to commit prostitution; or (b) Knowingly arranging or offering to arrange a situation in which a child may practice prostitution.”

Colo. Rev. Stat. § 18-7-403.5 (Procurement of a child) provides, “Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of prostitution of the child commits procurement of a child, which is a Class 3 felony.”

Colo. Rev. Stat. § 18-7-404(1) (Keeping a place of a child prostitution) states, “Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who performs any one or more of the following commits keeping a place of child prostitution if he: (a) Knowingly grants or permits the use of such place for the purpose of prostitution of a child or by a child; or (b) Permits the continued use of such place for the purpose of prostitution of a child or by a child after becoming aware of facts or circumstances from which he should reasonable know that the place is being used for purposes of such prostitution.”

Colo. Rev. Stat. § 18-7-405 (Pimping of a child) makes it a Class 3 felony when a person “knowingly lives on or is supported or maintained in whole or in part by money or other thing of value earned, received, procured, or realized by a child through prostitution”

Colo. Rev. Stat. § 18-7-406(1) (Patronizing a prostituted child) provides, “Any person who performs any of the following with a child not his spouse commits patronizing a prostituted child: (a) Engages in an act which is prostitution of a child or by a child, as defined in § 18-7-401(6) or (7); or (b) Enters or remains in a place of prostitution with intent to engage in an act which is prostitution of a child or by a child.”

Wash. Rev. Code § 9.68A.103 (Permitting commercial sexual abuse of a minor) states “[a] person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.”

Washington

A series of criminal CSEC laws in the Washington code make criminal a range of actions to commit CSEC.

Wash. Rev. Code § 9.68A.100 (Commercial sexual abuse of a minor) states, “(1) A person is guilty of commercial sexual abuse of a minor if: (a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her; (b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or (c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee. (2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.” Wash. Rev. Code § 9.68A.100(4) defines “sexual conduct” as “sexual intercourse or sexual contact.”

Wash. Rev. Code § 9.68A.101 (Promoting commercial sexual abuse of a minor) makes it a crime to “knowingly advance[] commercial sexual abuse of a minor or profit[] from a minor engaged in sexual conduct” by “caus[ing] or aid[ing] a person to commit or engage in commercial sexual abuse of a minor, procur[ing] or solicit[ing] customers for commercial sexual abuse of a minor, provid[ing] persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operat[ing] or assist[ing] in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engage[ing] in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor” The provision specifically limits application to situations in which the offender is “acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor.”

SECTION 1.3

Area of Law	Criminalization of Domestic Minor Sex Trafficking
The Policy Point	CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.
The Legislative Solution	CSEC and prostitution laws that refer to the state sex trafficking law would enable identification of CSEC victims as trafficking victims and ensure that prostituted minors can access the protections and benefits under federal and state statutes for trafficking victims. Such reference to the trafficking statute is also necessary to track violations and convictions under the trafficking law and to track the number of domestic minor sex trafficking victims in order to better understand the severity of the problem and ways in which to counter it. In order to accomplish these goals, CSEC laws must be amended to refer to the state sex trafficking law.

Select Statute Highlights

The following state CSEC laws refer to the state or federal human trafficking statute.

Illinois

Ill. Comp. Stat. Ann. § 720 ILCS 5/11-14(d) (Prostitution) refers to Ill. Comp. Stat. Ann. § 720 ILCS 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses) stating, “Notwithstanding the foregoing, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section [Prostitution] is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Sections 2-5 and 2-6 of the Juvenile Court Act of 1987. Pursuant to the provisions of Section 2-6 of the Juvenile Court Act of 1987, a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of Section 10-9 [Trafficking in persons, involuntary servitude, and related offenses] of this Code to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act.”

New Jersey

N.J. Stat. Ann. §2C:34-1(e) (Prostitution and related offenses) refers to New Jersey’s human trafficking law by providing an affirmative defense to prosecutions a follows: “It is an affirmative defense to prosecution for a violation of this section [Prostitution] that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to section 1 of P.L.2005, c. 77 (C.2C:13-8).”

Texas

Tex. Penal Code Ann. § 43.02 (Prostitution) refers to Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) by stating that it “is a defense to prosecution under this section that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02.”

Washington

Wash. Rev. Code § 13.40.219 (Arrest for prostitution or prostitution loitering) within the Juvenile Justice Act states in part that in any juvenile proceeding “related to an arrest for prostitution or prostitution loitering, there is a presumption that the alleged offender meets the criteria for a certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States code [the federal Trafficking Victims Protection Act of 2000 (TVPA), as amended], and that the alleged offender is also a victim of commercial sex abuse of a minor.”

Issue Briefs

Section 2 | Criminal Provisions Addressing Demand

The following issue briefs provide a more comprehensive explanation of each of the components measured by the Protected Innocence Challenge Report Cards and highlight state statutes that align with the concept of the issue.

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.
The Legislative Solution	Demand for commercial sex acts with young people is the driving force behind the child sex trafficking industry. However, the men who demand and purchase sex acts with minors often remain nameless and faceless and are frequently referred to by the innocuous term, “johns” or not arrested at all. Many state sex trafficking laws fail to include the criminal actions of buyers, leaving out a critical element of the crime of sex trafficking, and ignoring the importance of criminal deterrence necessary to combat child sex trafficking. Also, a failure to make the actions of the buyer a crime under a serious, specific criminal statute guarantees that the investigation and prosecution of these crimes will not rise in priority status, as they continue to be viewed as a mere “vice” crime or “quality of life” crime, rather than the rape and sexual abuse of a child which child sex trafficking actually is. It is therefore critically important that states enact human trafficking laws that apply to the criminal actions of buyers and attempted buyers of sex acts with minors.

Select Statute Highlights

Indiana

Indiana’s human trafficking law applies to the crime of purchasing sex acts with minors who have been forced into prostitution. Ind. Code Ann. § 35-42-3.5-1(c) (Human trafficking), states, “A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into: (1) forced labor; (2) involuntary servitude; or (3) prostitution; commits human trafficking, a Class C felony.”

Louisiana

Louisiana has enacted a separate human trafficking statute for children that reaches the actions of buyers who “obtain . . . the use of [a minor] for the purpose of engaging in commercial sexual activity.” La. Stat. Ann. §14:46.3(A)(1)(Trafficking of children for sexual purposes) states in part, “It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”

Rhode Island

R.I. Gen. Laws § 11-67-6(b)(2) (Sex trafficking of a minor) expressly applies to buyers of sex from minors making it a crime when a person “purchases a minor for the purposes of commercial sex acts” without regard to whether the victim was forced, deceived, or coerced to commit the commercial sex act.

Texas

Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons) applies to buyers of sex with domestic minor sex trafficking victims. Tex. Penal Code Ann. § 20A.02(a) (8) states, “A person commits an offense if the person knowingly. . . engages in sexual conduct with a child [under 18] trafficked in the manner described in Subdivision (7).”

Vermont

Vt. Stat. Ann. tit. 13, § 2655(a) (Solicitation) is codified within the human trafficking laws and makes it illegal for a person to “knowingly solicit a commercial sex act from a victim of human trafficking.”

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	Buyers of commercial sex acts with a minor can be prosecuted under CSEC laws.
The Legislative Solution	Anti-demand provisions are critical. Too often buyers who demand commercial sex acts with children are not prosecuted using CSEC laws because these laws are insufficiently broad to include the criminal purchase, despite the critical role that buyers play in the trafficking transaction. In the absence of provisions to address the buyer under CSEC laws, law enforcement and prosecutors are left with viewing the crime of buying commercial sex acts with a minor as prostitution or a general sex offense, like rape or sexual abuse. The tremendous disparity between the penalties for the vice crime of prostitution and the serious crime of child rape or sexual abuse results in buyers of sex acts with a child being penalized in hugely varying degrees depending upon how they are charged. It also leads to some buyers being registered as sex offenders while others are sent home with a citation for prostitution. State laws on commercial sexual abuse of a minor, child prostitution, commercial sexual exploitation of a minor, etc. that expressly include the crime of buying sex with a minor establish consistency and criminal deterrence.

Select Statute Highlights

The following CSEC laws expressly make the purchase of commercial sex acts with a minor a separate and specific crime.

Colorado

Colo. Rev. Stat. § 18-7-406 (Patronizing a prostituted child) states, “(1) Any person who performs any of the following with a child not his spouse commits patronizing a prostituted child: (a) Engages in an act which is prostitution of a child or by a child [under the age of 18] . . .or (b) Enters or remains in a place of prostitution with intent to engage in an act which is prostitution of a child or by a child.”

Maine

Me. Rev. Stat. Ann. tit., 17-A. § 855 (Patronizing prostitution of minor) states “A person is guilty of patronizing prostitution of a minor if: A. The person, in return for another’s prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age. . . .”

North Carolina

N.C. Gen. Stat. § 14-190.19 states, “(a) Offense. A person commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this section, “patronizing a minor prostitute” means: (1) Soliciting or requesting a minor to participate in prostitution; (2) Paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or (3) Paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement. (b) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.”

Rhode Island

Under R.I. Gen. Laws § 11-37-8.8(a) (Indecent solicitation of a child), “(a) A person is guilty of indecent solicitation of a child if he or she knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution . . . (b) As used in this section, the word “solicit” or “solicitation” means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.”

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.
The Legislative Solution	Solicitation statutes should not apply to a buyer of commercial sex acts with a minor. These laws are intended to address the vice crime of prostitution and typically permit a lenient punitive response to the buyer that is inconsistent with the serious crime of commercial sexual exploitation of a child. In some states a diversion program or “John School” which is geared toward behavior change rather than punishment are mandated as punishment for solicitation; these types of responses are inappropriate to the crime of CSEC or child sex trafficking and inadequate to deter demand for commercial sex with minors. Amending solicitation or patronizing prostitution statutes to ensure inapplicability when a minor under 18 is involved in the prostitution is a critical step in ensuring that offenders are properly identified and punished.

Select Statute Highlights

The statutes highlighted below are either separate criminal laws from solicitation of prostitution laws or contain provisions specifying the more serious crime of soliciting or patronizing a minor for prostitution and providing heightened penalties.

Minnesota

Pursuant to Minn. Stat. Ann. § 609.324 Subd. 1 “(a) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$40,000, or both: (1) engages in prostitution with an individual under the age of 13 years; or (2) hires or offers or agrees to hire an individual under the age of 13 years to engage in sexual penetration or sexual contact. (b) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both: (1) engages in prostitution with an individual under the age of 16 years but at least 13 years; or (2) hires or offers or agrees to hire an individual under the age of 16 years but at least 13 years to engage in sexual penetration or sexual contact. (c) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both: (1) engages in prostitution with an individual under the age of 18 years but at least 16 years; or (2) hires or offers or agrees to hire an individual under the age of 18 years but at least 16 years to engage in sexual penetration or sexual contact.”

New Jersey

N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses) provides an enhanced penalty provision within the general prostitution law. The law states, “b. A person commits an offense if: (1) The actor engages in prostitution [punishable as a disorderly persons offense];. . . (7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.”

Rhode Island

R.I. Gen. Laws § 11-37-8.8(a) (Indecent solicitation of a child) is a separate statute from R.I. Gen. Laws § 11-34.1-3(a) (Procurement of sexual conduct for a fee). It provides, “A person is guilty of indecent solicitation of a child if he or she knowingly solicits another person under eighteen(18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in prostitution.”

South Carolina

S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined) is codified in Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution), separate and apart from the prostitution laws, and makes it a crime for any individual “(A) . . . if he is not a minor and he patronizes a minor prostitute . . . (1) soliciting or requesting a minor to participate in prostitution; (2) paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; . . . (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than five years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum term. Sentences imposed pursuant to this section shall run consecutively with and shall commence at the expiration of any other sentence being served by the individual sentenced.”

Tennessee

Tenn. Code Ann. § 39-13-514 (Patronizing prostitution) provides, “(a) A person commits an offense under this section who patronizes prostitution. (b) (1) Patronizing prostitution is a Class B misdemeanor . . . (4)(A) Patronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is a Class E felony.” “Patronizing prostitution” is defined as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.” Tenn. Code Ann. § 39-13-512(3).

Texas

Under Tex. Penal Code § 43.02 (Prostitution), “(a) A person commits an offense if he knowingly: (1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or (2) solicits another in a public place to engage with him in sexual conduct for hire. . . . (c) An offense under this section is a Class B misdemeanor, except that the offense is: . . . (3) a felony of the third degree if the person solicited is 14 years of age or older and younger than 18 years of age; or (4) a felony of the second degree if the person solicited is younger than 14 years of age.”

<p>Area of Law</p>	<p>Criminal Provisions Addressing Demand</p>
<p>The Policy Point</p>	<p>Penalties for buyers of commercial sex acts with minors are as high as federal penalties.</p>
<p>The Legislative Solution</p>	<p>Penalties for domestic minor sex trafficking should reflect the severity of the underlying crimes of sexual exploitation. If convicted under the federal Trafficking Victims Protection Act (TVPA) of 2000 and associated federal CSEC laws (e.g., 18 U.S.C. §1591 (Sex trafficking of children or by force, fraud, or coercion), 18 U.S.C. § 2251A (Selling or buying of children), 18 U.S.C. § 2251 (Sexual exploitation of children), 18 U.S.C. § 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 18 U.S.C. § 2422 (Coercion and enticement)), a buyer of commercial sex acts with a minor faces a mandatory minimum sentence of 10 years to life imprisonment if the victim is between 14 and 18 years of age, or a mandatory minimum sentence of 15 years to life imprisonment if the victim is under the age of 14. Federal trafficking laws have been used to prosecute individuals who have attempted to buy commercial sex acts with a minor and comparable state penalties are important to prevent disparity in the punishments of a buyer convicted under federal laws and one convicted under a state trafficking law. Also, comparable state penalties are critical across the nation to prevent migration of the crime to those states with weaker penalties that then risk becoming havens for buyers who seek to commit sex trafficking crimes while avoiding substantial criminal liability.</p>

Select Statute Highlights

The statutes below reflect penalties as high as federal penalties.

Louisiana

A violation of La. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes), which includes the crime of buying sex with minors, “shall be fined not more than fifty thousand dollars, imprisoned at hard labor for not less than fifteen, nor more than fifty years, or both.” La. Stat. Ann. § 14:46.3(D)(1)(a). This penalty is enhanced when the victim is under 14 to “not more than seventy-five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor more than fifty years. At least twenty-five years of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.” La. Stat. Ann. § 14:46.3(D)(1)(b).

Rhode Island

R.I. Gen. Laws § 11-67-6(b)(2) (Sex trafficking of a minor) establishes a crime for “(b) Any person who: . . . (2) Sells or purchases a minor for the purposes of commercial sex acts; . . .” and “(c) Every person who shall commit sex trafficking of a minor, shall be guilty of a felony and subject to not more than forty (40) years imprisonment or a fine of up to forty thousand dollars (\$40,000), or both.”

Texas

Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons), which includes “engaging in sexual conduct with a trafficked child,” enhances the crime classification in the case of a minor being trafficked from a felony of the second degree to a felony of the first degree. Specifically, a conviction under Tex. Penal Code Ann. § 20A.02(a)(8) is punishable as a first degree felony by “imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years” and a possible fine up to \$10,000. Tex. Penal Code Ann. §§ 20A.02(b)(1), 12.32.

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	Using the Internet 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.
The Legislative Solution	Buyers of commercial sex acts with minors are increasingly turning to the anonymity of the Internet to identify and solicit minors, and arrange for commercial sex acts. Law enforcement operations across the country have led to minors being sold for sex on the Internet, often on online classified websites. Recent law enforcement operations, like Operation Guardian Angel in Missouri which is being replicated across the country with astounding success, have netted scores of adults seeking to buy commercial sex with minors. Child pornography too is widely available on the Internet and live sexual performances are facilitated through peer-to-peer networks, selling live, webcast child sexual performance and images of sexual abuse. Laws prohibiting this Internet solicitation and exploitation are critical to deterring this activity and protecting children from this form of commercial sexual exploitation.

Select Statute Highlights

The following statutes are highlighted because they apply to all minors under the age of 18, include specific language making the use of the Internet for the purposes of soliciting children for commercial sexual acts a crime, and clearly apply to purchasers of sex acts with minors.

Illinois

Ill. Comp. Stat. Ann. § 720 ILCS 5/11-25 (Grooming) specifically criminalizes the use of the Internet for the purposes of purchasing commercial sex acts with a child. Ill. Comp. Stat. Ann. § 720 ILCS 5/11-25(a), states, “A person commits the offense of grooming when he or she knowingly uses a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child, a child’s guardian, or another person believed by the person to be a child or a child’s guardian, to commit any sex offense as defined in Section 2 of the Sex Offender Registration Act [730 ILCS 150/2, includes patronizing a minor engaged in prostitution] or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.” Grooming is a Class 4 felony punishable with 1–3 years imprisonment and a possible fine not to exceed \$25,000 for each offense or the amount specified in the offense, whichever is greater.

Kentucky

Ky. Rev. Stat. Ann. § 510.155(1) (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities) criminalizes the “knowing[] use [of] a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation” of certain listed crimes, including the crimes of human trafficking pursuant to Ky. Rev. Stat. Ann. § 529.100 “where that offense involves commercial sexual activity” or Ky. Rev. Stat. Ann. Chapter 531 (pornography). Furthermore, pursuant to Ky. Rev. Stat. Ann. § 510.155(3) “[t]he solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person’s intent to commit the offense even if the meeting did not occur.” This crime is a Class D felony with 1–5 years imprisonment and a fine of \$1,000-\$10,000 “or double [the] gain from commission of the offense, whichever is the greater.”

Rhode Island

R.I. Gen. Laws § 11-37-8.8(a) (Indecent solicitation of a child) criminalizes any person who using the Internet “knowingly solicits another person under eighteen years of age or one whom he or she believes is a person under eighteen years of age for the purpose of engaging in prostitution or any act in violation of chapter 9 [Children], 34 [Prostitution and lewdness], or 37 [Sexual assault] of this title.” A violation is punishable by a sentence of at least 5 years imprisonment.

Virginia

Virginia law outlines a wide range of violations involving the use of the Internet and other electronic devices to commit a sexual offense or produce child pornography. One of these provisions is Va. Code Ann. § 18.2-374.3 (E), which states, “Any person 18 years of age or older who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of § 18.2-355 [Taking, detaining, etc., person for prostitution, etc., or consenting thereto] or 18.2-361 [Crimes against nature; penalty], (ii) any activity in violation of § 18.2-374.1 [Production, publication, sale, financing, etc., of child pornography; presumption as to age; severability], or (iii) a violation of § 18.2-374.1:1 [Possession, reproduction, distribution, and facilitation of child pornography; penalty] is guilty of a Class 5 felony.” This is punishable by imprisonment of 1–10 years, “or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.” Va. Code Ann. § 18.2-10.

West Virginia

W. Va. Code § 61-3C-14b (Soliciting, etc. a minor via computer; penalty) makes the use of a computer to lure or entice commercial sex acts with a minor illegal. Pursuant to W. Va. Code § 61-3C-14b, “[a]ny person over the age of eighteen, who knowingly uses a computer to solicit, entice, seduce or lure, or attempt to solicit, entice, seduce or lure, a minor known or believed to be at least four years younger than the person using the computer or a person he or she reasonably believes to be a minor, to commit any illegal act proscribed by the provisions of article eight [Crimes against chastity, morality and decency, includes engaging in prostitution], eight-b [Sexual offenses], eight-c [Filming of sexually explicit conduct of minors], or eight-d [Child abuse] of this chapter . . . is guilty of a felony.” A violation is a felony punishable by 2–10 years imprisonment and/or a fine up to \$5,000.

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.
The Legislative Solution	Purchasing sex acts with a minor is a crime. Permitting a defense to prosecution based on mistake of age subverts the intention of protecting children from exploitation and creates a weakness in the laws needed to deter this crime and to protect our children. State laws prohibiting a defense based on mistake of age in sex trafficking and commercial sexual exploitation of children (CSEC) laws send a clear statement to buyers that this crime will not be tolerated and firmly protects all minors from the danger of commercial sexual exploitation.

Select Statute Highlights

The following state laws contain language that expressly prohibits a defense to prosecution based on an age mistake defense.

Colorado

Colo. Rev. Stat. § 18-7-407 (Criminality of conduct) states, “In any criminal prosecution under sections 18-7-402 to 18-7-407 [Soliciting for child prostitution, Pandering of a child, Procurement of a child for, Keeping a place of child prostitution, Pimping of a child, Inducement of child prostitution, Patronizing a prostituted child], it shall be no defense that the defendant did not know the child’s age or that he reasonably believed the child to be eighteen years of age or older.”

Georgia

Ga. Code Ann. § 16-5-46(d) prohibits a defense based on mistake of age, stating “the accused’s lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section [Trafficking of persons for forced labor or sexual servitude].”

Louisiana

La. Stat. Ann. § 14:46.3(C)(3) (Trafficking of children for sexual purposes) states clearly that “[l]ack of knowledge of the victim’s age shall not be a defense” to the purchase of a minor for sex acts.

Minnesota

Minn. Stat. Ann. § 609.325(2) (Defenses) provides that “mistake as to age shall be no defense to prosecutions under” § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties), which states in (1)(b)(2) that it is a crime when any person “hires or offers or agrees to hire an individual under the age of 16 years but at least 13 years to engage in sexual penetration or sexual contact.” Also, Minn. Stat. Ann. § 609.352(3)(a) expressly states that “mistake is not a defense to a prosecution under” § 609.352(2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children).

New Jersey

N.J. Stat. Ann. §2C:34-1(a)(7) (Prostitution and related offenses) states, “It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.”

North Carolina

N.C. Gen. Stat. § 14-190.19(b) expressly states that “mistake of age is not a defense to a prosecution” under N.C. Gen. Stat. § 14-190.19(a) (Participating in prostitution of a minor), which criminalizes “(1) Soliciting or requesting a minor to participate in prostitution; (2) Paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or (3) Paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement.”

North Dakota

N.D. Cent. Code § 12.1–40–01(3) (Human trafficking) eliminates a defense of mistake of age by stating, “If the person subject to human trafficking is under the age of eighteen years, it is no defense that the actor did not know the child’s age or reasonably believed the child to be eighteen years of age or older.”

Texas

Tex. Penal Code Ann. § 20A.02 (Trafficking of persons) specifically eliminates a defense of mistake of age by a defendant in a trafficking of persons case, which may include some buyers. Tex. Penal Code Ann. § 20A.02(b) states in part, “[a]n offense under this section is a felony of the first degree if: (1) the applicable conduct constitutes an offense under Section 43.05 or 43.25 and the person who is trafficked is a child younger than 18 years of age at the time of the offense, regardless of whether the actor knows the age of the child at the time the actor commits the offense.”

Washington

Wash. Rev. Code § 9.68A.110(3) (Certain defenses barred, permitted) states that “it is not a defense that the defendant did not know the alleged victim’s age” for prosecutions under Wash. Rev. Code § 9.68A.040 (Sexual exploitation of a minor), Wash. Rev. Code § 9.68A.090 (Communication with minor for immoral purposes), Wash. Rev. Code § 9.68A.100 (Commercial sexual abuse of a minor), Wash. Rev. Code § 9.68A.101 (Promoting commercial sexual abuse of a minor), or Wash. Rev. Code § 9.68A.102 (Promoting travel for commercial sexual abuse of a minor).

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	Base penalties for buying sex acts with a minor are sufficiently high for all minors under 18 and not reduced for older minors.
The Legislative Solution	A minor is defined almost uniformly as a person under 18 years of age. States have laws that protect minors from a range of vices (alcohol, tobacco), legal obligations (entering into a contract), and dangers (dangerous work places). Protection from commercial sexual exploitation is no different and, given the underlying criminal act of buying prostitution, should rise in protection enforcement. The federal Trafficking Victims Protection Act (TVPA) of 2000 makes it a crime when a person “recruits, entices, harbors, transports, provides, or obtains” a person under 18 to engage in a commercial sex act. However, some state laws stagger penalties for buyers according to the age of the minor involved. This results in older minors receiving less than full protection under the law and allows buyers, and the public, to believe that an older minor is less of a victim. This staggered penalty is not the same as an enhanced penalty, which starts from a serious penalty for all minors and heightens that penalty to reflect the especially egregious crime against a child, such as the federal crime of sex trafficking in 18 U.S.C. § 1591, which provides an enhanced penalty of a minimum of 15 years to life imprisonment for trafficking a minor under 14. State laws must sufficiently protect all minors who are exploited by buyers of commercial sex acts.

Example of staggered penalties with insufficient base penalties: Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) provides a lesser penalty (Class 6 felony) for buyers of sex with minors aged 15, 16, and 17 when the state cannot prove the buyer had knowledge of the minor’s age. A person who “[e]ngag[es] in prostitution with a minor under fifteen years of age” commits a Class 2 felony and is subject to 13–27 years imprisonment (presumptive 20 years) under Ariz. Rev. Stat. Ann. § 13-705 dangerous crimes against children penalty enhancement. Also, a person who “[e]ngag[es] in prostitution with a minor who the person knows is fifteen, sixteen or seventeen years of age” is guilty of a Class 2 felony but subject only to 7–21 years (presumptive 10.5). Finally, a person who “[e]ngag[es] in prostitution with a minor who is fifteen, sixteen, or seventeen years of age” is guilty of a Class 6 felony, punishable by just .33–2 years (presumptive 1 year) but under subsection H, if the offender is sentenced to probation, “the court shall order that as an initial term of probation” 180 days imprisonment in county jail and if the offender meets certain requirements, the court has discretion to suspend 90 days of the sentence.

Select Statute Highlights

The following statutes ensure sufficiently serious base penalties for the purchase of commercial sex acts with a minor under 18.

Colorado

Colo. Rev. Stat. § 18-7-401 (Definitions) defines a child, as used in Colo. Rev. Stat. § 18-7-406(1) (Patronizing a prostituted child), as “a person under the age of eighteen years.” Under this definition, buyers prosecuted under Colo. Rev. Stat. § 18-7-406(1), a Class 3 felony, are subject to a sentence of 4–12 years imprisonment and/or a fine of \$3,000–\$750,000 regardless of the age of the victim.

Georgia

Ga. Code Ann. § 16-6-12 (Pandering), which has been held to apply to buyers, provides a person is guilty 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.” Penalties are staggered based on the victim’s age; however, these penalties are sufficiently high for all minors. If the victim is 16 or 17, the buyer is guilty of a felony punishable by 5-20 years imprisonment and/or a fine of \$2,500-\$10,000; whereas, if the victim is under 16, the buyer is guilty of a felony punishable by 10-30 years imprisonment and/or a fine not to exceed \$100,000. Ga. Code Ann. §§ 16-6-13(b)(1), (2).

fine up to \$10,000. Tex. Penal Code Ann. §§ 20A.02(a)(8), 20A.02(b)(1), 12.32.

Kentucky

Under Ky. Rev. Stat. Ann. § 531.310 (Use of a minor in a sexual performance), “A person is guilty of the use of a minor in a sexual performance if he employs, consents to, authorizes or induces a minor to engage in a sexual performance.” If the victim is under 18, the crime is a Class C felony punishable by 5-10 years imprisonment and a fine of \$1,000–\$10,000 “or double [the] gain from commission of the offense, whichever is the greater.” If the victim is under 16, the crime is a Class B felony punishable by 10-20 years imprisonment and a fine of \$1,000-\$10,000 “or double [the] gain from commission of the offense, whichever is the greater.”

Montana

Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) provides a serious penalty for trafficking of all minors under 18 of 10 years to life imprisonment and a fine up to \$250,000. Mo. Rev. Stat. § 566.213 (Sexual trafficking of a child under age twelve) provides an additionally enhanced penalty for sex trafficking of a child under 12 years of age of “life imprisonment without eligibility for probation or parole” for 25 years.

Rhode Island

R.I. Gen. Laws § 11-67-6(b)(2) (Sex trafficking of a minor) makes it a crime for “(b) Any person who: . . . (2) Sells or purchases a minor [under 18] for the purposes of commercial sex acts; . . .” and “(c) Every person who shall commit sex trafficking of a minor, shall be guilty of a felony and subject to not more than forty (40) years imprisonment or a fine of up to forty thousand dollars (\$ 40,000), or both.”

Texas

Tex. Penal Code Ann. § 20A.02(a)(8) (Trafficking of persons), which includes “engaging in sexual conduct with a trafficked child [under 18],” is a felony of the first degree punishable as a first degree felony by “imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years” and a possible

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.
The Legislative Solution	Meaningful fines, asset forfeiture, restitution, and vehicle impound fees serve as punishment and deterrence and reinforce the reality that purchasing sex acts with minors is a heinous crime. Significant financial penalties can also be used to provide domestic minor sex trafficking victims with funding for social and restorative programs and help pay for costly investigations.

Select Statute Highlights

The following states have high, preferably mandatory fines of at least \$5,000, and allow asset forfeiture.

Washington

Wash. Rev. Code § 9.68A.105 (Additional fee assessment) states, “(1)(a) In addition to penalties set forth in RCW 9.68A.100 [Commercial sexual abuse of a minor]. . . a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100 [Commercial sexual abuse of a minor]. . . or a comparable county or municipal ordinance shall be assessed a five thousand dollar fee.” Also, Wash. Rev. Code § 9A.88.140(2) (Vehicle impoundment) provides that “[u]pon an arrest for a suspected violation of commercial sexual abuse of a minor. . . the arresting law enforcement officer shall impound the person’s vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465. . . (4)(a) Prior to redeeming the impounded vehicle, and in addition to all applicable impoundment, towing, and storage fees paid to the towing company under chapter 46.55 RCW, the owner of the impounded vehicle must pay a fine to the impounding agency. The fine shall be five hundred dollars for the offenses specified in subsection (1) of this section, or two thousand five hundred dollars for the offenses specified in subsection (2) of this section. The fine shall be deposited in the prostitution prevention and intervention account established under RCW 43.63A.740.”

Wash. Rev. Code § 10.105.010(1) (Seizure and forfeiture) states in part, “[t]he following are subject to seizure and forfeiture and no property right exists in them: All personal

property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.” Wash. Rev. Code § 9.68A.120 (Seizure and forfeiture of property) applies specifically to “[a]ll visual or printed matter that depicts a minor engaged in sexually explicit conduct.” It also applies, with some exceptions to “[a]ll raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060.” It further applies to “[a]ll personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.” Chapter 9.68A includes Wash. Rev. Code § 9.68A.100 (Commercial sexual abuse of a minor) bringing seizure and forfeiture of property to bear on this crime as well.

Texas

A buyer convicted under any of Tex. Penal Code Ann. § 20A.02(a)(7), (8) (Trafficking of persons), which includes engaging in sexual conduct with a trafficked child, and § 43.02(a) (Prostitution) of a minor may be required to pay possible fines up to \$10,000.

Rhode Island

Buyers convicted of violating R.I. Gen. Laws § 11-67-6(b) (Sex trafficking of a minor) states, “(b) Any person who: (1) Recruits, employs, entices, solicits, isolates, harbors, transports, provides, persuades, obtains, or maintains, or so attempts, any minor for the purposes of commercial sex acts; or (2) Sells or purchases a minor for the purposes of commercial sex acts; . . . (c) . . . shall be guilty of a felony and subject to not more than forty (40) years imprisonment or a fine of up to forty thousand dollars (\$40,000), or both.”

A buyer convicted of R.I. Gen. Laws § 11-67-6(b)(3) (Sex trafficking of a minor) also may be required to pay restitution pursuant to R.I. Gen. Laws § 11-67-4 (Restitution), which states, “[i]n addition to any other amount of loss identified, the court shall order restitution including the greater of: (a) The gross income or value to the defendant of the victim’s labor or commercial sexual activity; or (b) The value of the victim’s labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act (FLSA) or the minimum wage law, whichever is greater.”

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	Buying and possessing child pornography carries penalties as high as similar federal offenses.
The Legislative Solution	<p>Child pornography is the actual image of sexual abuse as it is being perpetrated on a child. Minor victims depicted in child pornography suffer irreparable physical, emotional and psychological harm. The most common forum for child pornography today is the Internet and once images are on the Internet, they cannot be removed completely and can continue to circulate, re-victimizing the child each time the images are viewed. A federal conviction for possession of child pornography is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000. Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000. To decrease demand for these images, those who demand, purchase and possess child pornography must be subject to serious prison sentences, fines, and asset forfeiture, and should be required to pay restitution to the victims.</p>

Select Statute Highlights

The following statutes demonstrate substantial sentences and asset forfeiture for the possession or purchase of child pornography.

Georgia

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, Ga. Code Ann. § 16-12-100(b)(6) prohibits “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.” A person who violates this statute is guilty of a felony punishable by 5–20 years imprisonment and a fine not to exceed \$100,000. In addition, pursuant to Ga. Code Ann. § 16-12-100(e)(1), “A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in: (A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and (B) Any property used, or intended to be used, to commit such offense.”

Mississippi

Miss. Code Ann. § 97-5-33(3) (Exploitation of children; prohibitions) states, “No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” Under subsection (5), a person may not “by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” A violation of Miss. Code Ann. § 97-5-33 is punishable by 5–40 years imprisonment and a \$50,000–\$500,000 fine for the first offense and 20 years to life and a \$100,000–\$1,000,000 fine for subsequent violations.

Tennessee

Pursuant to Tenn. Code Ann. § 39-17-1004(a)(1) (Offense of aggravated sexual exploitation of a minor), “(a)(1) It is unlawful for a person to knowingly . . . purchase or exchange material . . . that includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.” Under subsection (b)(1), “It is unlawful for a person to knowingly . . . purchase or exchange material that is obscene, as defined in § 39-17-901. . . which includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.” Violation is a Class C felony punishable by 3–15 years imprisonment and a possible fine not to

exceed \$10,000. However, if the number of individual images is greater than 25, the crime is a Class B felony punishable by 8–30 years imprisonment and a possible fine not to exceed \$25,000. The defendant can be charged on individual counts for each image.

Under Tenn. Code Ann. § 39-17-1003(a) (Offense of sexual exploitation of a minor), “[i]t is unlawful for any person to knowingly possess material that includes a minor engaged in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive.” The Class D felony is punishable by 2–12 years imprisonment and a possible fine not to exceed \$5,000 for each individual image possessed. If the number of images and/or materials exceeds 50, then the crime is a Class C felony punishable by 3–15 years imprisonment and a possible fine not to exceed \$10,000. If the number of images and/or materials exceeds 100, then the crime is a Class B felony punishable by 8–30 years imprisonment and a possible fine not to exceed \$25,000.

Moreover, Tenn. Code Ann. § 39-17-1008 (Forfeiture of any conveyance or real or personal property used in commission of an offense under this part [Sexual Exploitation of Children]), states, “(a) Any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under the provisions of title 40, chapter 33, part 2. (b) Notwithstanding the provisions of § 40-33-211 [Property disposition], the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund. Moneys from the fund shall be expended to fund activities authorized by the child abuse fund as set out in § 39-13-530 [Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors Child abuse fund]. . . .”

Wisconsin

Wis. Stat. § 948.12(2m) penalizes “[w]hoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply... (a) The person knows that he or she has exhibited or played the recording. (b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct. (c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.” Under Wis. Stat. § 948.12(3)(a), a violation is a Class D felony punishable by a maximum fine of \$100,000 and/or a maximum sentence of 25 years, unless the defendant is under 18, in which case he is guilty of a Class I felony

punishable by a maximum fine of \$10,000 or a maximum sentence of 3½, or both.

Wis. Stat. § 973.042(2) (Child pornography surcharge) provides, “If a court imposes a sentence or places a person on probation for a crime under s. 948.05 [Sexual exploitation of a child] or 948.12 [Possession of child pornography] and the person was at least 18 years of age when the crime was committed, the court shall impose a child pornography surcharge of 500 [sic] for each image or each copy of an image associated with the crime. The court shall determine the number of images or copies of images associated with the crime by preponderance of the evidence and without a jury.”

Area of Law	Criminal Provisions Addressing Demand
The Policy Point	Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.
The Legislative Solution	Purchasers of sex acts with minors and child pornography are sexual predators—the exchange of money does not sanitize the underlying crime of child rape or molestation and the consequences should be the same for buyers as for rapists. Sex offender registry laws are intended to provide people with information about sex offenders who pose a real threat to children that will prevent them and their children from being victimized. The requirement to register as a sex offender serves as punishment, deterrence, and a warning to the public of the danger they pose to children. Domestic minor sex trafficking is a sex offense and state laws should reflect this to require registration.

Select Statute Highlights

The following statutes require sex offender registration for individuals convicted of sex trafficking, purchasing sex with minors, and purchasing or possessing child pornography.

Colorado

Colo. Rev. Stat. § 16-22-103(1), (2) (Sex offender registration—required—applicability—exception) requires anyone convicted in Colorado or another jurisdiction of an “unlawful sex offense” or another offense “the underlying factual basis of which involves unlawful sexual behavior” to register as a sex offender. Colo. Rev. Stat. § 16-22-102(9)

(Definitions) defines “unlawful sexual behavior” as including the following offenses requiring sex offender registration: “. . . (j) Trafficking in children, in violation of section 18-3-502, C.R.S.; (k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.; . . . (t) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.; . . .”

Delaware

A buyer convicted under Del. Code Ann. tit. 11, § 787(b) (2) (Trafficking of persons and involuntary servitude) must register as a sex offender pursuant to Del. Code Ann. tit. 11, § 4120(b)(1) (Registration of sex offenders) which provides “Any sex offender who is released, discharged or paroled from any Level IV or Level V facility or other custodial institution after that sex offender has completed a sentence imposed following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender.” Del. Code Ann. tit. 11, § 4121(a)(4)a. (Community notification

of sex offenders on probation, parole, conditional release or release from confinement) defines “sex offender” in part as “any person who is, or has been . . . [c]onvicted of any of the offenses specified in . . . § 787(b)(2) . . . §§ 1108 through 1112A . . . of this title, or of any attempt or conspiracy to commit any of the aforementioned offenses.” Therefore, a buyer convicted of trafficking under Del. Code Ann. tit. 11, § 787(b)(2), possession of child pornography under Del. Code Ann. tit. 11, § 1111, dealing in child pornography under Del. Code Ann. tit. 11, § 1109, or sexual solicitation of a child Del. Code Ann. tit. 11, § 1112A must register as a sex offender.

Indiana

Pursuant to Ind. Code Ann. § 11-8-8-7(a) (Persons who must register), “A sex or violent offender who resides in Indiana,” who is or intends to be employed for a certain time period in Indiana, or “who is enrolled or intends to be enrolled” as a student must register under the sex offender chapter. A “sex or violent offender” is defined in Ind. Code Ann. § 11-8-8-5(a) to include, among others, persons convicted under Ind. Code Ann. § 35-42-4-3 (Child molesting), § 35-42-4-5 (Vicarious sexual gratification), § 35-42-4-6 (Child solicitation), § 35-42-4-9 (Sexual misconduct with a minor as a Class A, Class B, or Class C felony, except for certain persons convicted of Class C felonies who are not more than 4 years older than the victim), § 35-42-4-4(c) (Possession of child pornography), and § 35-42-3.5-1(c)(3) (Human trafficking, where the victim is under 18).

Maryland

Pursuant to Md. Code Ann., Crim. Proc. § 11-704(a) (Registration required), sex offender registration is required for tier I, II, and III sex offenders. A “tier I sex offender” in Md. Code Ann., Crim. Proc. § 11-701(o) includes a person convicted of the following: . . . ; (2) conspiring to commit, attempting to commit, or committing a violation of . . . § 11-208 [Possession of visual representation of child under 16 engaged in certain sexual acts] . . . ; (3) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection; (4) any of the following federal offenses: . . . (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591; (vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b); . . .” A “Tier II sex offender” in Md. Code Ann., Crim. Proc. § 11-701(p) includes those persons convicted of: (1) conspiring to commit, attempting to commit, or committing a violation of . . . § 3-324 [Sexual solicitation of minor], [or] § 11-207 [Child pornography] . . . ; (2) conspiring to commit, attempting to commit, or committing a violation of § 11-303 [Human trafficking], § 11-305 [Abduction of child under 16], or § 11-306 [House of prostitution]. . . , if the intended prostitute or victim is a minor; (3) conspiring to commit, attempting to commit, or committing a violation of . . . ; (4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender; (5) a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection; . . .”

North Carolina

Pursuant to N.C. Gen. Stat. § 14-208.7(a), “A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides.” The definition of “reportable conviction” includes “a sexually violent offense.” N.C. Gen. Stat. § 14-208.6(4). The term, “sexually violent offense,” is defined in N.C. Gen. Stat. § 14-208.6(5) as, “a violation of . . . G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), . . . G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), . . . G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), . . . G.S. 14-190.19 (participating in the prostitution of a minor), . . . G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), . . .”

South Carolina

S.C. Code Ann. § 23-3-430(C) (Sex offender registry) requires registration of “a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender: . . . (13) violations of Article 3, Chapter 15 of Title 16 [Obscenity, material harmful to minors, child exploitation, and child prostitution involving a minor] . . . (17) trafficking in persons (Section 16-3-930) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense; . . .”

Issue Briefs

Section 3 | Criminal Provisions for Traffickers

The following issue briefs provide a more comprehensive explanation of each of the components measured by the Protected Innocence Challenge Report Cards and highlight state statutes that align with the concept of the issue.

<p>Area of Law</p>	<p>Criminal Provisions for Traffickers</p>
<p>The Policy Point</p>	<p>Penalties for trafficking a child for sexual exploitation are as high as federal penalties</p>
<p>The Legislative Solution</p>	<p>The commercial sexual exploitation of children and sex trafficking are egregious crimes and the penalties must reflect the severity of the offense. Penalties for domestic minor sex trafficking should reflect the severity of the underlying crimes of sexual exploitation. If convicted under the federal Trafficking Victims Protection Act (TVPA) of 2000 and associated federal CSEC laws (e.g., 18 U.S.C. §1591 (Sex trafficking of children or by force, fraud, or coercion), 18 U.S.C. § 2251A (Selling or buying of children), 18 U.S.C. § 2251 (Sexual exploitation of children), 18 U.S.C. § 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 18 U.S.C. § 2422 (Coercion and enticement)), a trafficker of commercial sex acts with a minor faces a mandatory minimum sentence of 10 years to life imprisonment if the victim is between 14 and 18 years of age, or a mandatory minimum sentence of 15 years to life imprisonment if the victim is under the age of 14 or force, fraud or coercion were used to cause the trafficking. Federal trafficking laws are being used to secure serious sentences for traffickers and comparable state penalties are important to prevent disparity in the punishments. Also, comparable state penalties are critical across the nation to prevent migration of the crime to those states with weaker penalties that then risk becoming havens for traffickers who seek to commit sex trafficking crimes while avoiding substantial criminal liability.</p>

Select Statute Highlights

Alabama

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) makes it illegal for a trafficker who “knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.” Violation of Ala. Code § 13A-6-152(a) (2) is a Class A felony punishable by a sentence of 10–99 years imprisonment and a possible fine up to \$60,000 or any amount up to double the profit or loss to the victim.

Traffickers prosecuted under Ala. Code § 13A-12-111(a) (Promoting prostitution in the first degree), which provides that “(a) A person commits the crime of promoting prostitution in the first degree if he knowingly: . . . (2) Advances or profits from prostitution of a person less than 16 years of age” are in violation of a Class B felony and subject to a sentence of 2–20 years imprisonment and a possible fine up to \$30,000. If the victim is under 18, it is a Class C felony punishable by 1–10 years imprisonment and a possible fine up to \$30,000.

If the victim is under 12, then a mandatory minimum sentence of 10 years imprisonment applies.

Georgia

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

Furthermore, a trafficker could be found to be involved in a pattern of racketeering activity and be subject to additional penalties and asset forfeiture. “Racketeering activity” is defined in Ga. Code Ann. § 16-14-3 (Definitions) to include prostitution, keeping a place of prostitution, pimping, pandering, and trafficking of persons for labor or sexual servitude

and is punishable by 5–20 years imprisonment and/or a fine up to the greater of \$25,000 or three times the proceeds of the crime. Asset forfeiture is available 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 is subject to forfeiture to the state.” Also, under Ga. Code Ann. § 16-5-4(k)(1) any offense defined as racketeering activity constitutes criminal gang activity punishable by 5–15 years imprisonment and/or a fine of \$10,000–\$15,000.

Missouri

A trafficker who violates Mo. Rev. Stat. § 566.212.1 (Sexual trafficking of a child), is guilty of “a felony punishable by imprisonment for a term of years not less than ten years or life and a fine not to exceed two hundred fifty thousand dollars if the child is under the age of eighteen. If a violation of this section was effected by force, abduction, or coercion, the crime of sexual trafficking of a child shall be a felony for which the authorized term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than twenty—five years of such sentence.” Mo. Rev. Stat. § 566.213 (Sexual trafficking of a child under age twelve) enhances the penalty for sex trafficking of a child under 12 years of age to “a felony for which the authorized term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than twenty—five years of such sentence.”

Tennessee

Tenn. Code Ann. § 39-13-309 (Trafficking for sexual servitude) is a Class B felony punishable by 8–30 years imprisonment and a possible fine not to exceed \$25,000. Additionally, a trafficker could be charged with Tenn. Code Ann. § 39-13-515 (Promoting prostitution) which is a Class E felony for promoting prostitution of a minor punishable by 1–6 years imprisonment and a possible fine not to exceed \$3,000.

In addition, a trafficker could be found guilty of money laundering pursuant to Tenn. Code Ann. § 39-14-903. Tenn. Code Ann. § 39-14-903(b)(1) states, “It is an offense to knowingly use proceeds derived directly or indirectly from a specified unlawful activity with the intent to promote, in whole or in part, the carrying on of a specified unlawful activity.” A violation of the money laundering statute is a Class B felony punishable by 8–30 years imprisonment and a possible fine not to exceed \$25,000.

Area of Law	Criminal Provisions for Traffickers
The Policy Point	Creating and distributing child pornography carries penalties as high as similar federal offenses.
The Legislative Solution	The demand for images of child sexual abuse has exploded with the introduction of the Internet, bringing anonymity and privacy to the buyer and seller of child pornography. Traffickers of child pornography are seizing the opportunity to make and sell child pornography on the Internet. A legislative response from states to criminalize and impose serious penalties for those persons who manufacture and sell these images is critical. States must enact laws which mandate serious penalties for those persons who create and sell child pornography with penalties adequately steep to destroy the incentive to supply the market for such materials.

Select Statute Highlights

The highlighted statutes apply to all minors under the age of 18 and impose mandatory, significant punishments.

Hawaii

Creating and distributing child pornography is a crime under Haw. Rev. Stat. Ann. § 707-750(1)(a), (b) (Promoting child abuse in the first degree), which states, “A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person: (a) Produces or participates in the preparation of child pornography; . . .” Promoting child abuse in the first degree is a Class A felony punishable by 20 years imprisonment without the possibility of suspension of sentence or probation and a possible fine up to \$50,000

Kentucky

Ky. Rev. Stat. Ann. § 531.310 (Use of a minor in a sexual performance) is a Class C felony when the minor is between 16 and 18, punishable by 5-10 years imprisonment (increased to 10–20 years for minors under 16) and the greater of a fine of \$1,000–\$10,000 or double the profit from the crime.

Massachusetts

Mass. Gen. Laws Ann. ch. 272, § 29A(a), (b) (Child pornography—enticement, solicitation, employment of children) criminalizes any person who with knowledge “or while in possession of such facts that he should have reason to know” a child is under the age of 18 “hires, coerces, solicits, or entices,

employs, procures, uses, . . . such child to pose or be exhibited in a state of nudity, for the purpose of representation or reproduction in any visual material” or “to participate or engage in any act that depicts, describes, or represents sexual conduct for the purpose of representation or reproduction in any visual material, or to engage in any live performance involving sexual conduct, . . .” and mandates punishment of 10–20 years imprisonment and/or a fine of \$10,000–\$50,000.

Virginia

Va. Code Ann. § 18.2-374.1(B) (Production, publication, sale, financing, etc., of child pornography; presumption as to age; severability) states, “[a] person shall be guilty of production of child pornography who: 1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such person to perform in or be a subject of child pornography; or 2. Produces or makes or attempts or prepares to produce or make child pornography; or 3. Who knowingly takes part in or participates in the filming, photographing, or other production of child pornography by any means; or 4. Knowingly finances or attempts or prepares to finance child pornography.” A violation of Va. Code Ann. § 18.2-374.1(B) carries a sentence of 5-30 years imprisonment when the subject of the child pornography is a child under 15, with a mandatory minimum of 5 years if the offender is at least 7 years older than the subject of the child pornography. When the subject of the child pornography is at least 15 but less than 18, the sentence is 1–20 years, except if the offender is at least 7 years older than the child then the sentence is 3–30 years, with a 3-year “mandatory minimum term of imprisonment.”

Area of Law	Criminal Provisions for Traffickers
The Policy Point	Using the Internet to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.
The Legislative Solution	Traffickers of commercial sex acts with minors are increasingly turning to the Internet to identify and recruit the large numbers of minors left vulnerable to these cyber-predators. Also, the Internet is a lucrative venue to sell commercial sex acts, live and recorded sexual performance by minors, and child pornography to the growing number of buyers. Law enforcement operations across the country have led to minors being sold for sex on the Internet, often on online classified websites. Child pornography too is widely available on the Internet and live sexual performances are facilitated through peer-to-peer networks, selling live, webcast child sexual performance and images of sexual abuse. Laws prohibiting this Internet recruitment and exploitation are critical to deterring the traffickers and protecting children from this form of commercial sexual exploitation.

Select Statute Highlights

The following statutes are highlighted because they apply to all minors under the age of 18, include specific language making the use of the Internet for the purposes of recruiting or selling children for commercial sexual acts a crime, and clearly apply to traffickers.

Illinois

720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming) criminalizes any person who “knowingly uses a computer on-line service, Internet service, . . . [to] solicit . . . or attempt to . . . solicit . . . a child . . . to commit” a violation of 720 Ill. Comp. Stat. Ann. 5/11-14.4 (Promoting juvenile prostitution), 720 Ill. Comp. Stat. Ann. 5/11-17.1 (Keeping a place of juvenile prostitution), 720 Ill. Comp. Stat. Ann. 5/11-19.1 (Juvenile pimping and aggravated juvenile pimping), or 720 Ill. Comp. Stat. Ann. 5/11-19.2 (Exploitation of a child). A violation of 720 Ill. Comp. Stat. Ann. 5/11-25(a) is a Class 4 felony punishable by a sentence of punishable by a sentence of 1–3 years imprisonment and a possible fine up to \$25,000.

Kentucky

Ky. Rev. Stat. Ann. § 510.155(1) (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities) criminalizes the “knowing[] use [of] a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reck

less in that belief, for any activity in violation” of certain listed crimes, including the crimes of human trafficking pursuant to Ky. Rev. Stat. Ann. § 529.100 “where that offense involves commercial sexual activity” or Ky. Rev. Stat. Ann. Chapter 531 (pornography).

Virginia

Va. Code § 18.2-374.3(E) states in part, “[a]ny person 18 years of age or older who uses a communications system, including but not limited to computers or computer networks or bulletin boards, or any other electronic means, for the purposes of soliciting any person he knows or has reason to believe is a child less than 18 years of age for (i) any activity in violation of § 18.2-355 [Taking, detaining, etc., person for prostitution, etc., or consenting thereto] or 18.2-361 [Crimes against nature; penalty], (ii) any activity in violation of § 18.2-374.1 [Production, publication, sale, financing, etc., of child pornography; presumption as to age; severability], or (iii) a violation of § 18.2-374.1:1 [Possession, reproduction, distribution, and facilitation of child pornography; penalty] is guilty of a Class 5 felony” punishable by imprisonment of 1–10 years, “or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.”

Area of Law	Criminal Provisions for Traffickers
The Policy Point	Financial penalties for traffickers, including asset forfeiture, are sufficiently high
The Legislative Solution	The primary reason traffickers exploit children is profit. Children are low-cost products which can be sold multiple times for the enrichment and benefit of their trafficker. Asset forfeiture is a critical means of prohibiting a criminal from keeping the proceeds or instrumentalities of the crime. Asset forfeiture is frequently available if a trafficker is also charged with a racketeering (RICO) violation, but should also be available directly for violations of sex trafficking and commercial sexual exploitation of children (CSEC). Financial penalties, including fines and asset forfeiture, are critical to disrupting the criminal trafficking enterprise and deterring the crime, as well as offsetting the cost of investigating, prosecuting and providing services to restore victims' lives.

Select Statute Highlights

California

Traffickers convicted of violating Cal. Penal Code § 236.1 (Human trafficking defined; punishment), where the victim is a minor under 18, are required to pay a fine not to exceed \$100,000. Traffickers prosecuted under Cal. Penal Code § 266j (Procurement of child) are required to pay a fine up to \$15,000. Furthermore, traffickers are subject to forfeit property and proceeds acquired through a “pattern of criminal profiteering activity” under the provisions of the California Control of Profits of Organized Crime Act, Cal. Pen. Code, Part 1 (Of crimes and punishments), Title 7 (Of crimes against public justice), Chapter 9 (Criminal Profiteering).

Connecticut

A trafficker convicted of Conn. Gen. Stat. § 53a-192a (Trafficking in Persons) and § 53a-86(a)(2) (Promoting prostitution in the first degree: Class B felony) could be fined up to \$15,000. A trafficker is also subject to asset forfeiture pursuant to Conn. Gen. Stat. § 54-36p (Forfeiture of moneys and property related to sexual exploitation and human trafficking).

D.C.

A conviction under D.C. Code § 22-1834 (Sex trafficking of children) can result in a fine up to \$200,000. Additionally, a trafficker can face asset forfeiture under chapter 18A (Human trafficking), D.C. Code § 22-1838(a), (b) (Forfeiture) which states, in addition to any sentence imposed, that the

individual or business shall forfeit to the District of Columbia: (a) . . . (1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and(2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation. (b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them: (1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter., (2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.” A trafficker’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.”

Illinois

A trafficker may be fined not to exceed \$25,000 for each felony offense or the amount specified in the offense, whichever is greater for violations of the following statutes: Ill. Comp. Stat. Ann. § 720 ILCS 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses), Ill. Comp. Stat. Ann. § 720 ILCS 5/11-14.4(d) (Promoting juvenile prostitution), Ill. Comp. Stat. Ann. § 720 ILCS 5/10-5.1(g) (Luring of a minor), Ill. Comp. Stat. Ann. § 720 ILCS 5/11-6(c) (Indecent solicitation of a child), Ill Comp. Stat. Ann. § 720 ILCS 5/11-14.3(b) (Promoting prostitution) and Ill. Comp. Stat. Ann. § 720 ILCS 5/11-9.1(c) (Sexual exploitation of a child). Ill. Comp. Stat. Ann. § 720 ILCS 5/10-9(j) (Trafficking in persons; involuntary servitude, and related offenses) states,

“[a] person who commits the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services . . . is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963 [725 ILCS 5/124B-5 et seq.].” Furthermore, Illinois has enacted specific forfeiture statutes with relation to specific offenses. Ill. Comp. Stat. Ann. § 725 ILCS 5/124B-300 (Persons and property subject to forfeiture), states, “A person who commits the offense of involuntary servitude, involuntary servitude of a minor, or trafficking of persons for forced labor or services under Section 10A-10 of the Criminal Code of 1961 [720 ILCS 5/10A-10] shall forfeit to the State of Illinois any profits or proceeds and any property he or she has acquired or maintained in violation of Section 10A-10 of the Criminal Code of 1961 [720 ILCS 5/10A-10] . . .”

Indiana

Traffickers convicted under Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking; sexual trafficking of a minor; human trafficking), § 35-45-4-4 (Promoting prostitution), § 35-52-4-6 (Child solicitation), § 35-42-4-4(b) (Child exploitation), § 35-45-9 (Criminal Gang Control), § 35-45-6-2 (Corrupt business influence), or § 35-45-15-5 (Money laundering), all felonies, can be ordered to pay a possible fine up to \$10,000.

Indiana’s general forfeiture provision regarding proceeds of a crime, Ind. Code Ann. § 34-24-1-1(a)(3) (Seizure of vehicles and property commonly used as consideration for controlled substances offenses; seizure of tobacco products and personal property owned and used to facilitate violation), would require traffickers convicted of any criminal offense to forfeit “[a]ny portion of real or personal property purchase with money that is traceable as a proceed of a violation of a criminal statute.” Furthermore, under Ind. Code Ann. § 34-24-1-1(a)(4), vehicles used by traffickers to “(A) commit, attempt to commit, or conspire to commit; (B) facilitate the commission of; or (C) escape from the commission of: . . . kidnapping (IC 35-42-3-2) . . . child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4)” may also be seized. Ind. Code Ann. § 34-24-1-1(a)(10), (c) permit “[a]ny equipment, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4 [production and distribution of child pornography]” may be seized, but only if it is proved “by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).”

Washington

Wash. Rev. Code § 9A.88.140(2) (Vehicle impoundment — fees and fine) provides that “[u]pon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person’s vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465.” Subsection (4) sets a \$2,500 fine to the impounding agency prior to redeeming the vehicle. Pursuant to Wash. Rev. Code § 9A.20.021(a) a trafficker faces a fine under human trafficking or promoting commercial sexual abuse of a minor of \$50,000. In addition, Wash. Rev. Code § 9.68A.105 imposes a non-discretionary \$5,000 penalty for any conviction under Wash. Rev. Code § 9.68A.101 (Promoting commercial sexual abuse of a minor).

Wash. Rev. Code § 10.105.010(1) (Seizure and forfeiture) states in part, “[t]he following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.” This provision applies to all felonies, except contraband, narcotics, firearms, gambling devices, money laundering, fish and wildlife offenses, and Wash. Rev. Code § 10.105.900 (Human trafficking); thus, it could be applied in a case of commercial sexual abuse of a minor.

Wash. Rev. Code § 9.68A.120 (Seizure and forfeiture of property) applies specifically to “[a]ll visual or printed matter that depicts a minor engaged in sexually explicit conduct.” It also applies, with some exceptions to “[a]ll raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation

of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060.” It further applies to “[a]ll personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.” Chapter 9.68A includes Wash. Rev. Code § 9.68A.100 (Commercial sexual abuse of a minor) bringing seizure and forfeiture of property to bear on this crime as well.

Also pursuant to Wash. Rev. Code § 9A.82.100(4)(f) (Remedies and procedures) if charged under Wash. Rev. Code § 9A.40.100 (Human trafficking), a trafficker faces asset forfeiture through the criminal profiteering statute. This statute also provides a cause of action for damages, and possible treble damages at the court’s discretion. Wash. Rev. Code §§ 9A.82.100(1)(a), 9A.82.100(4)(d). A trafficker could also face an action to prevent, restrain, or remedy a pattern of human trafficking in which the court may impose a civil penalty not exceeding \$250,000, in addition to the cost of the suit, which includes reasonable investigative and attorney’s fees. Wash. Rev. Code § 9A.82.100(1)(d).

Area of Law	Criminal Provisions for Traffickers
The Policy Point	Convicted traffickers are required to register as sex offenders.
The Legislative Solution	Society understands that sex offenders pose a real threat to children and they should be carefully monitored and tracked. Thus, sex offender registry laws are intended to provide people with information that will prevent them and their children from being victimized. Being designated with the term “sex offender” attaches a serious but critically necessary social stigma to perpetrators. Since traffickers of sex acts with minors commercially exploit and cause irreparable damage to children, they too should be classified as “sex offenders” to punish them, deter others, and warn the public of their crime in order to protect other children from sexual exploitation. States should amend their sex offender registry laws to require registration because the commercial nature of sex trafficking should not immunize traffickers from the sex offender registration requirements.

Select Statute Highlights

Arizona

Ariz. Rev. Stat. Ann. § 13-3821(A) (Persons required to register) lists the crimes for which an offender must register as a sex offender. The list includes, in relevant part, the following crimes: “9. Taking a child for the purpose of prostitution pursuant to section 13-3206, 10. Child prostitution pursuant to section 13-3212 subsection A or subsection B, paragraphs 1 or 2, 11. Commercial sexual exploitation of a minor pursuant to section 13-3552, 12. Sexual exploitation of a minor pursuant to section 13-3553, 13. Luring a minor for sexual exploitation pursuant to section 13-3554, 14. Sex trafficking of a minor pursuant to section 13-1307. . . 21. Aggravated luring a minor for sexual exploitation pursuant to section 13-3560.”

Colorado

Pursuant to Colo. Rev. Stat. § 16-22-103(1)(a), (2)(a) (Sex offender registration—required—applicability— exception) any person convicted of an “unlawful sexual offense as defined in section 18-3-411 (1), C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.” or “any person convicted. . . of unlawful sexual behavior. . .” must register. Colo. Rev. Stat. § 18-3-411(1) (Sexual offenses against children) and § 16-22-102(9) (Definitions) define “unlawful sexual offenses” and “unlawful sexual behavior” as including: “(j) Trafficking in children, in violation of section 18-3-502, C.R.S.; (k) Sexual exploitation of children, in violation of section 18-6-403, C.R.S.; (l) Procurement of a child for sexual exploitation, in violation of section 18-6-404, C.R.S.; . . .(n)

Soliciting for child prostitution, in violation of section 18-7-402, C.R.S.; (o) Pandering of a child, in violation of section 18-7-403, C.R.S.; (p) Procurement of a child, in violation of section 18-7-403.5, C.R.S.; (q) Keeping a place of child prostitution, in violation of section 18-7-404, C.R.S.; (r) Pimping of a child, in violation of section 18-7-405, C.R.S.; (s) Inducement of child prostitution, in violation of section 18-7-405.5, C.R.S.; (t) Patronizing a prostituted child, in violation of section 18-7-406, C.R.S.; . . .”

Florida

Perpetrators of domestic minor sex trafficking are required to register under Fla. Stat. § 775.21 (Florida’s Sexual Predators Act). Fla. Stat. § 775.21(4)(b) subjects “sexual predators” convicted of a sexual offense to registration and community and public notification, pursuant to subsections (6) and (7), if the offense was “[a]ny felony violation, or any attempt thereof, of . . . s. 796.03 [Procuring person under age of 18 for prostitution]; s. 796.035 [Selling or buying of minors into sex trafficking or prostitution; penalties]; . . .”

Idaho

Pursuant to Idaho Code Ann. § 18-8304(1)(a) (Application of chapter—rulemaking authority) any person who commits anyone of the following crimes, including attempt, solicitation, or conspiracy of such crime, must register as a sex offender under Chapter 83 (Sexual offender registration notification and community right-to-know Act): Idaho Code Ann. § 18-1507 (sexual exploitation of a child), Idaho Code Ann. § 18-5609 (inducing person under eighteen years of age into prostitution), Idaho Code Ann. § 18-5611 (inducing person

under eighteen years of age to patronize a prostitute), Idaho Code Ann. § 18-8602 (Human trafficking defined).

Indiana

Ind. Code § 11-8-8-7(a)(1) (Persons who must register—Place of registration—Sexually violent predators—Duties of local law enforcement authorities) require registration by a sex or violent offender defined in Ind. Code § 11-8-8-5(a) (Sex of violent offender” defined) as any person convicted of: “(4) Child exploitation (IC 35-42-4-4(b)), . . . (6) Child solicitation (IC 35-42-4-6). . . (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony, (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age, (16) Sexual trafficking of a minor (IC 35-42-3.5-1(b)), (17) Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less than eighteen (18) years of age. . . .”

Iowa

Iowa Code § 692A.103 (1) (Offenders required to register) states, “A person who has been convicted of any sex offense classified as a tier I, tier II, or tier III offense . . . if the offender resides, is employed, or attends school in this state. . .” must register as a sex offender. Iowa Code § 692A.102(1) (Sex offense classifications) classifies sex offenses into different tiers including “b. Tier II offenses . . . (19) Sexual exploitation of a minor in violation of section 728.12, subsection 2 or 3 [and] c. Tier III offenses . . . (24) Human trafficking in violation of section 710A.2 if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense . . . (26) Sexual exploitation of a minor in violation of section 728.12, subsection 1. . . (31) Enticing a minor in violation of section 710.10, if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor, (32) Sex trafficking of children in violation of 18 U.S.C. § 1591. . . (38) Sexual exploitation of children in violation of 18 U.S.C. § 2251, [and] (39) Selling or buying of children in violation of 18 U.S.C. § 2251A. . . .”

Kentucky

Under Ky. Rev. Stat. Ann. § 17.510(2) (Registration system for adults who have committed sex crimes or crimes against minors—Persons required to register) requires “registrants” to register as sex offenders. Ky. Rev. Stat. Ann. § 17.500(5) (a) (Definitions) defines “registrant” as including “[a]ny person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed: 1. A sex crime; or 2. A criminal offense against a victim who is a minor.” KRS § 17.500(5)(a).KRS

§ 17.500(3)(a) defines “criminal offense against a victim who is a minor” as “5. Human trafficking involving commercial sexual activity, as set forth in KRS 529.100; 6. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18); . . .”

Minnesota

Pursuant to Minn. Stat. § 243.166, subd. 1b(a)(2) (Registration of predatory offenders) a person must register if “charged with or petitioned for a violation of . . . soliciting a minor to engage in prostitution in violation of section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324 [Patrons, prostitutes; housing individuals engaged in prostitution; penalties]; soliciting a minor to engage in sexual conduct in violation of section 609.352 [Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children]; using a minor in a sexual performance in violation of section 617.246 [Use of minors in sexual performance prohibited]. . . .”

South Carolina

S.C. Code Ann. § 23-3-430(C)(13), (17) (Sex offender registry; convictions and not guilty by reason of insanity findings requiring registration) requires registration for offenders who violated, among other things, a violation of S.C. Code Ann. § 16-3-930 (Trafficking in persons) and any offense falling within Title 16, Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution) when a minor is involved, which includes S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor) and S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor).

Area of Law	Criminal Provisions for Traffickers
The Policy Point	Laws relating to termination of parental rights for certain offenses include sex trafficking or CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.
The Legislative Solution	Traffickers use physical and psychological tactics to maintain control over their victims. Intentionally impregnating victims is one way traffickers ensure the victim will not leave, using the baby as a bond. Traffickers who have children with their victims might later place their own children in the sex trafficking market. Also, children of a trafficking victim are exposed to daily violence and manipulation. Opportunity for freedom by the victim-parent from an ongoing relationship through the trafficker-parent's rights to the child, and freedom for the child from the relationship with a trafficker-parent is essential for a child's protection. State laws regarding termination of parental rights frequently identify a conviction for state or federal crimes of violence or extended incarceration as grounds for a termination petition. Clear legislative intent is needed to include convictions for child sex trafficking or commercial sexual exploitation of children (CSEC) crimes as grounds for termination of parental rights.

Select Statute Highlights

Arizona

Ariz. Rev. Stat. Ann. § 8-863 (Hearing to terminate parental rights) states, "The court may terminate the parental rights of a parent if the court finds by clear and convincing evidence one or more of the grounds prescribed in section 8-533." Ariz. Rev. Stat. Ann. § 8-533(B) (Petition; who may file; grounds) states in part, "[e]vidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child: . . . 2. That the parent has neglected or willfully [sic] abused a child. . . ." Ariz. Rev. Stat. Ann. § 8-201(2)(a) (Definitions), defines "abuse" in relevant part as "commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, . . . or child prostitution pursuant to section 13-3212."

Florida

Parental rights may be terminated under Fla. Stat. § 39.806(1)(d)(2) (Grounds for termination of parental rights) when the parent is determined to be a sexual predator as defined in Fla. Stat. § 775.21(4), which includes convictions for the full range of sex trafficking, CSEC, and sexual offenses. Fla. Stat. § 775.21(4)(b) defines "sexual predators" as persons convicted of "[a]ny felony violation, or any attempt thereof, of . . . s.

796.03 [Procuring person under age of 18 for prostitution]; s. 796.035 [Selling or buying of minors into sex trafficking or prostitution; penalties]; . . . s. 847.0145 [Selling or buying of minors; penalties]; . . . and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances], s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances], or s. 787.025(2)(c) [Luring or enticing a child], where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011 [Sexual battery], . . . ; s. 794.05 [Unlawful sexual activity with certain minors]; s. 796.03 [Procuring person under age of 18 for prostitution]; s. 796.035 [Selling or buying of minors into sex trafficking or prostitution; penalties]; s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age]; s. 825.1025 [Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person]; s. 827.071 [Sexual performance by a child; penalties]; s. 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty]; s. 847.0135 [Computer pornography; traveling to meet minor; penalties], . . . ; or a violation of a similar law of another jurisdiction; . . ."

Iowa

Iowa Code § 600A.8(10) (Grounds for termination) permits the court to order the termination of parental rights based on “clear and convincing proof” that any of the following grounds exist: “[t]he parent has been convicted of a felony offense that is a ‘sex offense against a minor’ as defined in section 692A.101 [Definitions]. . .” Pursuant to Iowa Code § 692A.101 (Definitions) “Sex offense against a minor” “means an offense for which a conviction has been entered for a sex offense classified as a tier I, tier II, or tier III offense under this chapter if such offense was committed against a minor, or otherwise involves a minor.” Iowa Code § 692A.102(1) (Sex offense classifications) classifies sex offenses into different tiers including “b. Tier II offenses . . . (19) Sexual exploitation of a minor in violation of section 728.12, subsection 2 or 3 [and] c. Tier III offenses . . . (24) Human trafficking in violation of section 710A.2 if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense. . . . (26) Sexual exploitation of a minor in violation of section 728.12, subsection 1. . . . (31) Enticing a minor in violation of section 710.10, if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor., (32) Sex trafficking of children in violation of 18 U.S.C. § 1591. . . . (38) Sexual exploitation of children in violation of 18 U.S.C. § 2251, [and] (39) Selling or buying of children in violation of 18 U.S.C. § 2251A. . . .”

Maine

Me. Rev. Stat. Ann. tit. 22, § 4055(1)(B)(2) (Grounds for termination) provides, “[t]he court may order termination of parental rights if: A. One of the following conditions has been met: The court finds, based on clear and convincing evidence, that: a) Termination is in the best interest of the child; and b) Either: i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child’s needs; ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child’s needs. . . .” Under Me. Rev. Stat. Ann. tit. 22, § 4055(1-A)(B), the court may presume that the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child’s needs if: The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of: . . . 11) Promotion of prostitution;”

Minnesota

Minn. Stat. § 260C.301, subd. 3 (Termination of parental rights) requires a county attorney to: “[F]ile a termination of parental rights petition within 30 days of the responsible social services agency determining that a child has been subjected to egregious harm as defined in section 260C.007, subdivision 14 [Definitions], [or] is determined to be the sibling of another child of the parent who was subjected to egregious harm” Pursuant to Minn. Stat. § 260C.007, subd. 14, “egregious harm” is defined as: “[T]he infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care. . . . Egregious harm includes, but is not limited to: . . . (7) conduct towards a child that constitutes solicitation, inducement, or promotion of, or receiving profit derived from prostitution under section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking];”

Missouri

Mo. Rev. Stat. § 211.447(5) (Petition to terminate parental rights filed, when—juvenile court may terminate parental rights, when—investigation to be made—grounds for termination) provides that “the juvenile officer or the division may file a petition to terminate the parental rights of the child’s parent when it appears that one or more of the following grounds for termination exist . . . 4. The parent has been found guilty or pled guilty to a felony violation of chapter 566 [Sexual offenses], R.S.Mo., when the child or any child in the family was a victim” Chapter 566 (Sexual offenses) includes a violation of Mo. Rev. Stat. 566.212 (Sexual trafficking of a child—penalty) or Mo. Rev. Stat. § 566.213 (Sexual trafficking of a child under age twelve—affirmative defense not allowed, when—penalty).

Issue Briefs

Section 4 | Criminal Provisions for Facilitators

The following issue briefs provide a more comprehensive explanation of each of the components measured by the Protected Innocence Challenge Report Cards and highlight state statutes that align with the concept of the issue.

SECTION 4.1

<p>Area of Law</p>	<p>Criminal Provisions for Facilitators</p>
<p>The Policy Point</p>	<p>The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.</p>
<p>The Legislative Solution</p>	<p>Facilitators of domestic minor sex trafficking are those people or businesses that assist, enable, aid, or financially benefit from child sex trafficking. These actions are essential to the success of the sex trafficking enterprise but facilitators are rarely held accountable for their role in the crime of sex trafficking. Due to the low risk of being prosecuted or seriously penalized, facilitators often reap the financial benefits of the sex trafficking industry without significant risk of criminal liability. Including the act of assisting, enabling, and/or financially benefitting from domestic minor sex trafficking in state human trafficking laws allow law enforcement to fully investigate cases, enabling prosecutors to obtain convictions and providing judges appropriate sentencing for these perpetrators who provide the opportunity and means for the commercial sexual exploitation of children.</p>

Select Statute Highlights

D.C.

D.C. Code § 22-1836 (Benefitting financially from human trafficking) states, “It is unlawful for an individual or business knowingly to benefit, financially or by receiving anything of value, from voluntarily participating in a venture which has engaged in any act in violation of . . . § 22-1833 [Trafficking in labor or commercial sex acts], § 22-1834 [Sex trafficking of children], or § 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], knowing or in reckless disregard of the fact that the venture has engaged in the violation.”

Iowa

Iowa Code § 710A.2(4), (7) (Human trafficking) makes any “person who benefits financially or by receiving anything of value from knowing participation in human trafficking . . . [when] the victim is under the age of eighteen” guilty of a felony.

Louisiana

La. Stat. Ann. § 14:46.3(A)(2), (4) (Trafficking of children for sexual purposes) makes it unlawful “for any person to knowingly benefit from activity prohibited by the provisions of this Section” or “[f]or any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.”

Mississippi

Miss. Code Ann. § 97-3-54.1(2) (Anti-human trafficking act) provides, “A person who [...] benefits, whether financially or by receiving anything of value, from participation in a venture that has engaged in an act described in this section” is guilty of facilitation. Also, anyone who knowingly conspires with or aids and abets a person to commit human trafficking may be treated as a principal trafficker, even if the principal trafficker has not been convicted.

South Carolina

S.C. Code Ann. § 16-3-930 (Trafficking in persons) includes the crime of facilitation, stating that anyone who “recruits, entices, harbors, transports, provides, or obtains by any means another person knowing that the person will be subjected to forced labor or services, or aids, abets, attempts, or conspires to do any of the above acts is guilty of a felony.”

Wisconsin

Wis. Stat. § 948.051(2) (Trafficking of a child) penalizes “[w]hoever benefits in any manner from a violation of sub. (1)...if the person knows that the benefits come from an act described in sub. (1).” Subsection (1) makes “[w]hoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain or harbor, any child for the purpose of commercial sex acts” guilty of trafficking.

Area of Law	Criminal Provisions for Facilitators
The Policy Point	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.
The Legislative Solution	Facilitators benefit economically from a multibillion dollar human trafficking industry in the United States while rarely being held financially liable for the consequences of the crime. Financial penalties, including seizing and forfeiting the money and property used in connection with or derived from the facilitation of commercial sexual exploitation of children, will serve as a deterrent to assisting or benefitting from this crime. Also, financial penalties could be directed to pay for victim services and costly investigations, following the models of other crimes like drug forfeiture programs. Asset forfeiture and financial penalties are frequently available through racketeering and money laundering laws, but ensuring these are also available directly through the criminal statute on sex trafficking is important to reach all facilitators. In crafting laws to reach facilitator with criminal liability, states should mandate serious financial penalties including asset forfeiture.

Select Statute Highlights	
Illinois	Ill. Comp. Stat. Ann. § 725 ILCS 5/124B-300 (Persons and property subject to forfeiture) states, “A person who commits the offense of involuntary servitude, involuntary servitude of a minor, or trafficking of persons for forced labor or services under [720 ILCS 5/10-9] shall forfeit to the State of Illinois any profits or proceeds and any property he or she has acquired or maintained in violation of [the section]” which applies to facilitators.
Louisiana	La. Stat. Ann. § 14:46.3(D)(3)(a),(b) (Trafficking of children for sexual purposes), which applies to facilitators, states that “the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1. (b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.”
Oregon	Or. Rev. Stat. § 131.558(10) (Property subject to forfeiture) mandates asset forfeiture in racketeering charges of “[a]ll personal property that is used or intended to be used to commit or facilitate prohibited conduct.” “Prohibited conduct” is defined in Or. Rev. Stat. § 131.550(b)(Definitions) as “any crime listed in ORS 131.602,” which includes at subsection (138) (Prohibited conduct for purposes of instrumentalities of crime), “[t]rafficking in persons, as defined in ORS 163.266” which includes the crime of facilitating trafficking.
Rhode Island	R.I. Gen. Laws § 11-67-5 (Forfeitures) calls for the forfeiture of “any profits or proceeds any interest or property . . . acquired or maintained in violation of” R.I. Gen. Laws § 11-67-2 (Involuntary servitude) or R.I. Gen. Laws § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity), which include the crime of facilitation.

Area of Law	Criminal Provisions for Facilitators
The Policy Point	Promoting and selling child sex tourism is illegal.
The Legislative Solution	Sex tourism encourages commercial sexual exploitation of children (CSEC) and creates incentives for traffickers and facilitators to increase profits while furthering the clandestine nature of the trafficking offense by interfering with detection of trafficking crimes that are disguised as travel services. Some states have made sex tourism a crime when the commercial sexual exploitation involved adult victims; these and all sex tourism criminal statutes should enhance penalties when the victim of the commercial sexual activity is a minor under 18 in recognition of the more serious underlying crime. States should enact a law that prohibits selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor if the travel—either arriving or departing—is occurring in their state to protect their children from the demand that is generated through sex tourism.

Select Statute Highlights

Alaska

Alaska Stat. § 11.66.120(a)(3) (Promoting prostitution in the second degree) makes it a Class B felony when a person “offers, sells, advertises, promotes, or facilitates travel that includes commercial sexual conduct as enticement for the travel,” punishable by 1–3 years imprisonment and a possible fine not to exceed \$100,000.

Hawaii

Haw. Rev. Stat. Ann. § 712-1208(1) (Promoting travel for prostitution) makes it illegal when a facilitator “knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the state.” Promoting travel for prostitution is a Class C felony punishable by a sentence of 5 years imprisonment and a possible \$10,000 fine.

Haw. Rev. Stat. Ann. §468L-7.5 (10) (Prohibited Acts) criminalizes the “[s]elling, advertising, or otherwise offering to sell travel services or facilitate travel: (A) For the purpose of engaging in a commercial sexual act; (B) That consists of tourism packages or activities using and offering sexual acts as enticement for tourism; or (C) That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services.” Haw. Rev. Stat. Ann. § 486L-8 (Restitution) permits a convicted offender of “any provision

of this chapter . . . may be ordered . . . to make restitution to all persons injured by the act or practice.”

Missouri

Mo. Rev. Stat. § 567.085(1) (Promoting travel for prostitution) states that a “person commits the crime of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in prostitution as defined by section 567.010.” The Class C felony is punishable by a maximum term of imprisonment and conditional release of 7 years.

Mo. Rev. Stat. § 567.087 (Prohibitions on travel agencies or tour operators—rebuttable presumption, advertisements) states, “1. No travel agency or charter tour operator shall: (1) Promote travel for prostitution under section 567.085; (2) Sell, advertise, or otherwise offer to sell travel services or facilitate travel: (a) For the purpose of engaging in a commercial sex act as defined in section 566.200, RSMo [Definitions], (b) That consists of tourism packages or activities using and offering any sexual contact as defined in section 566.010, RSMo [Prostitution], as enticement for tourism; or (c) That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services. 2. There shall be a rebuttable presumption that any travel agency or charter tour operator using advertisements that include the term “sex tours” or “sex travel” or include depictions of human genitalia is in violation of this section.”

Mo. Rev. Stat. § 567.089 (Offering travel for purpose of prostitution prohibited—penalties) states, “1. No travel agency or charter tour operator shall engage in selling, advertising, or otherwise offering to sell travel services, tourism packages, or activities that solicit, encourage, or facilitate travel for the purpose of engaging in prostitution. 2. Upon violation of this section by a travel agency or charter tour operator, the secretary of state shall revoke the articles of incorporation of the travel agency or charter tour operator. The secretary of state, as part of a proceeding brought under this section, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.”

New York

NY. Penal. Law § 230.25 (Promoting prostitution in the third degree) states that “a person is guilty of promoting prostitution in the third degree when he knowingly: 1) advances or profits from prostitution by controlling or owning, either alone or in association with others... a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction.” The Class D felony is punishable by up to 7 years’ imprisonment and a possible fine not to exceed \$5,000 or double the amount of the profit from the crime, whichever is higher.

Washington

Wash. Rev. Code § 9A.88.085 (Promoting travel for prostitution) makes it a Class C felony with a maximum of 12 months in prison to “promot[e] travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be patronizing a prostitute or promoting prostitution, if occurring in [Washington].” Wash. Rev. Code § 9.68A.102(1) (Promoting travel for commercial sexual abuse of a minor) makes it a crime if a person “knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in [Washington].” Also a Class C felony with a maximum sentence of 12 months, this statute requires a convicted offender to register as a sex offender upon completion of the prison term.

Area of Law	Criminal Provisions for Facilitators
The Policy Point	Promoting and selling child pornography is illegal.
The Legislative Solution	The demand for images of child sexual abuse has exploded with the introduction of the Internet, bringing anonymity and privacy to the buyer and seller of child pornography, and creating a tremendous opportunity for individuals and businesses to capitalize on the opportunity to make profits from facilitating the manufacture and sale of the images. A legislative response from states to criminalize and impose serious penalties for those persons who promote or sell these images is critical.

Select Statute Highlights

The state laws highlighted below define a child as a person under the age of 18 and impose serious penalties on offenders.

Idaho

Idaho Code § 18-1507(3)(b) (Sexual exploitation of a child) states, “A person commits sexual exploitation of a child if, for any commercial purpose, he knowingly . . . promotes . . . sells . . . or distributes any sexually exploitative material.” This is a felony punishable by imprisonment up to 30 years and/or a fine up to \$50,000.

Kansas

Kan. Stat. Ann. § 21-5510(a)(4) (Sexual exploitation of a child) makes it a crime to “promot[e] any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.” Kan. Stat. Ann. § 21-5510(b)(2) defines promoting to include “procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing manufacturing, issuing, publishing, displaying, exhibiting or advertising.” This is a felony punishable by 31–24 months and a possible fine not to exceed \$300,000, but if the victim is under 14 and the offender is 18 or older, the crime is punishable by a mandatory 25 years to life imprisonment and a possible fine not to exceed \$500,000.

Nevada

Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty) makes it a category B felony when a person “knowingly prepares, advertises or distributes any item

or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct” punishable by imprisonment for 1–15 years and/or a fine not to exceed \$15,000. Victims under 16 who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result. . .” also have a civil cause of action against facilitators pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) and may recover actual damages deemed to be at least \$150,000, plus attorney’s fees and costs.”

New Hampshire

N.H. Rev. Stat. Ann. § 649-A:3(I)(b), (II) makes it a Class A felony to “possess, or control . . . or [b]ring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct” punishable by up to 15 years imprisonment and fines up to \$4,000 or up to \$100,000 for a corporation or, in the alternative, up to double the value of any property gained in the commission of the felony. It is also unlawful under N.H. Rev. Stat. Ann. § 649-A:3-a(I)(a), (b) to “[k]nowingly sell, exchange, or otherwise transfer, or possess with the intent to sell, exchange, or otherwise transfer any” child pornography or to “[k]nowingly publish, exhibit, or otherwise make available . . .” child pornography. This offense is punishable by up to 20 years imprisonment with a minimum sentence of ½ of the maximum or, where previously convicted of such an offense or its reasonable equivalent in another jurisdiction, up to 30 years imprisonment with a minimum sentence of ½ of the maximum.

Issue Briefs

Section 5 | Protective Provisions for Child Victims

The following issue briefs provide a more comprehensive explanation of each of the components measured by the Protected Innocence Challenge Report Cards and highlight state statutes that align with the concept of the issue.

<p>Area of Law</p>	<p>Protective Provisions for the Child Victims</p>
<p>The Policy Point</p>	<p>A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims' compensation and other victim benefits.</p>
<p>The Legislative Solution</p>	<p>Child victims of sex trafficking and CSEC often continue to be viewed as juvenile delinquents instead of victims due to the unique nature of their exploitation and injuries. These children must expressly be defined as victims under state law to ensure them access to crime victims' compensation, court protections, and various programs designed to protect and respond to victims of sexual crimes. Changing the language in state and federal laws to ensure that commercially sexually exploited children are deemed victims without regard to the nature of their injuries will lead to improved identification of sexually exploited children and make existing child protective services more readily available to them.</p>

Select Statute Highlights

Louisiana

La. Stat. Ann. § 46:1842 (Definitions) for La. Stat. Ann. Title 46 (Public welfare and assistance), Chapter 21-B (Rights of crime victims and witnesses) defines the following: “(1.1) “Crime victim who is a minor” means a person under the age of eighteen against whom any of the following offenses have been committed: (a) Any homicide, or any felony offense defined or enumerated in R.S. 14:2(B) [Definitions] [which includes La. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes)], (b) Any sexual offense. . . .”

New Mexico

N.M. Stat. Ann. § 30-52-2(B) (Human trafficking; benefits and services for human trafficking victims) defines a human trafficking victim as “a person subjected to human trafficking by a person charged in New Mexico with the crime of human trafficking.” The crime of human trafficking includes “recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity;” therefore, a child subjected to this action would be considered a victim. N.M. Stat. Ann. § 30-52-2(A) also recognizes the victim status of trafficking victims by stating, “[h]uman trafficking victims found in the state shall be eligible for benefits and services from the state until the victim qualifies for benefits and services authorized by the federal Victims of Trafficking and Violence Protection Act of 2000 [Pub. L. No. 106-386, § 2002]; provided that the victim cooperates in the investigation or prosecution

of the person charged with the crime of human trafficking. Benefits and services shall be provided to eligible human trafficking victims regardless of immigration status and may include: (1) case management; (2) emergency temporary housing; (3) health care; (4) mental health counseling; (5) drug addiction screening and treatment; (6) language interpretation, translation services and English language instruction; (7) job training, job placement assistance and post-employment services for job retention; (8) services to assist the victim and the victim’s family members; or (9) other general assistance services and benefits as determined by the children, youth and families department.”

Texas

Tex. Code Crim. Proc. Ann. art. 56.01(3) (Definitions), which provides definitions applicable to Chapter 56 (Rights of crime victims), defines a “victim” as “a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another.”

Vermont

Vt. Stat. Ann. tit.13, § 2651(13) (Definitions) specifically defines a “victim of human trafficking” as “a victim of a violation of section 2652 [Human trafficking] of this title.” This definition is used within Vt. Stat. Ann. tit. 13, § 2657 (Restitution), Vt. Stat. Ann. tit. 13, § 2662 (Private cause of action), Vt. Stat. Ann. tit. 13, § 2663 (Classification of victims; immigration assistance), and 2011 Vt. Acts & Resolves. 55, sect. 3. (Services for victims of human trafficking).

Washington

A commercially sexually exploited child is defined as a victim throughout Washington's laws. Wash. Rev. Code § 7.68.070(3)(b) (Benefits—Right to and amount—Limitations) clarifies that “[a] person identified as the “minor” in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act for the purpose of the right to benefits under this chapter [Victims of crimes — compensation, assistance] even if the person is also charged with prostitution under RCW 9A.88.030.”

For purposes of receiving victim services under chapter 13.32A (Family Reconciliation Act), Wash. Rev. Code § 13.32A.030(17) (Definitions—Regulating leave from semi-secure facility) contains a specific provision defining “sexually exploited child” to mean “any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.”

Wash. Rev. Code §13.40.219 (Arrest for prostitution or prostitution loitering—Alleged offender—Victim of severe form of trafficking, commercial sex abuse of a minor), while implicitly allowing juveniles to be arrested for prostitution, specifies that “in any proceeding under this chapter [Juvenile Justice Act of 1977] related to an arrest for prostitution or prostitution loitering, there is a presumption that the alleged offender meets the criteria for a certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States code [Trafficking Victims Protection Act of 2000, as amended], and that the alleged offender is also a victim of commercial sex abuse of a minor.”

<p>Area of Law</p>	<p>Protective Provisions for the Child Victims</p>
<p>The Policy Point</p>	<p>The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.</p>
<p>The Legislative Solution</p>	<p>A minor cannot consent to commercial sex acts, which are themselves, criminal acts. For the same reason, age of consent laws also are irrelevant for commercial sex transactions. Permitting a defense to prosecution or civil actions based on the child’s consent incorrectly implies that a minor—or any person—could authorize criminal sex acts. Sex trafficking and commercial sexual exploitation laws that do not expressly prohibit a defense based on the child’s consent to sex acts unfairly shift the burden to the child to prove she or he did not in fact consent and may result in shielding buyers, traffickers and facilitators from prosecution and accountability. Moreover, permitting a defense that presumes a minor can consent to commercial sex acts further undermines the perception of prostituted children as victims, instead supporting a perception of these children as willingly delinquent youth.</p>

Select Statute Highlights

Alabama

Alabama’s human trafficking statute lists evidence which cannot serve as a defense in the prosecution of a human trafficking case. Pursuant to Ala. Code § 13A-6-154(3) (Evidence of certain facts or conditions not deemed a defense), any facts relating to “consent of or permission by a victim of human trafficking or anyone else on the victim’s behalf to any commercial sex act or sexually explicit performance. . .” are excluded from evidence.

Georgia

Under Ga. Code Ann. § 16-5-46(d) (Trafficking of persons for labor or sexual servitude), “The age of consent for sexual activity or the accused’s lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.”

Idaho

Idaho Code Ann. § 18-1507(1) (Sexual exploitation of a child) states that “a child below the age of eighteen years is incapable of giving informed consent to the use of his or her body for a commercial purpose.”

Illinois

For the purpose of recovering civil damages and remedies from individuals who “recruited, harmed, profited from, or maintained” victims in the sex trade industry, 740 Ill. Comp.

Stat. Ann. 128/25 (Non-defenses) provides that “(a) It is not a defense to an action brought under this Act that: . . .(6) the victim of the sex trade consented to engage in acts of the sex trade; . . .”

Louisiana

Pursuant to La. Rev. Stat. Ann. § 14:46.3(C)(1) (Trafficking of children for sexual purposes), “Consent of the minor shall not be a defense to a prosecution pursuant to the provisions of this section.”

Minnesota

Minn. Stat. § 609.325, subd. 2 (Defenses) expressly states that “[c]onsent . . . shall be no defense to prosecutions under 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties].”

Vermont

In Vermont, a victim’s consent is immaterial in a prosecution for an offense of human trafficking. Vt. Stat. Ann. tit. 13, § 2652(d) (Human trafficking) states, “In a prosecution for a violation of this section, the victim’s alleged consent to the human trafficking is immaterial and shall not be admitted.”

Area of Law	Protective Provisions for the Child Victims
The Policy Point	Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.
The Legislative Solution	<p>A critical step in protecting the victims of domestic minor sex trafficking and recognizing them as victims is to ensure that they are not simultaneously subject to arrest and prosecution for prostitution which they were caused to engage in through the trafficking violation. State and federal human trafficking laws serve the purpose of criminalizing traffickers and protecting children, therefore, it is a conflict of law to retain provisions that permit prostituted children to also be charged and prosecuted for prostitution. Misplaced beliefs abound, including that there will be no incentive for children to disclose information about their traffickers without the fear of being criminally charged, that children will begin to prostitute independently for pocket money, or that traffickers will increase their exploitation of children through prostitution as the fear of arrest and prosecution are lifted. These beliefs are not grounded on facts or on the experience of the experts working with these issues. The continuation of conflicting laws are a significant system gap and prevents proper responses along the line from first responders who find themselves assuming the role of child counselors to the detention facilities finding themselves identifying victims of sex trafficking mixed with juvenile offenders. Prostitution statutes should be amended to eliminate criminal liability for child victims of commercial sexual exploitation of children (CSEC) and sex trafficking.</p>

Select Statute Highlights

Illinois

Illinois immunizes from prostitution charges any person under the age of 18. Pursuant to 720 Ill. Comp. Stat. Ann. 5/11-14(d) (Prostitution) “if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Sections 2-5 and 2-6 of the Juvenile Court Act of 1987 [705 ILCS 405/2-5 and 705 ILCS 405/2-6]. Pursuant to the provisions of Section 2-6 of the Juvenile Court Act of 1987 [705 ILCS 405/2-6], a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of Section 10-9 of this Code [720 ILCS 5/10-9] to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.4 et seq.]. Furthermore, 720 Ill. Comp.

Stat. Ann. 5/11-14.3(a)(2)(C) (Promoting prostitution) also clarifies that an offense for profiting from prostitution by “any means . . . including from a person who patronizes a prostitute . . . does not apply to a person engaged in prostitution who is under 18 years of age. A person cannot be convicted of promoting prostitution under this paragraph (C) if the practice of prostitution underlying the offense consists exclusively of the accused’s own acts of prostitution under Section 11-14 of this Code [720 ILCS 5/11-14 [Prostitution]].”

Minnesota

Minn. Stat. Ann. § 260B.007, subd.6(c) amends the definition of a “delinquent child” to “not include a child under the age of 16 years of age alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct,” effective August 1, 2014. Also Minn. Stat. Ann. § 260B.007, subd. 16(d) (Juvenile petty offender; juvenile petty offense) clarifies that a “juvenile petty offense” will not include “a child under the age of 16 years alleged to have violated any law relating to being

hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct which, if committed by an adult, would be a misdemeanor.”

Tennessee

Minors under 18 are immune from being charged with Tenn. Code Ann. § 39-13-513 (Prostitution), stating, “Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the National Human Trafficking Resource Center hotline and release the minor to the custody of a parent or legal guardian.”

Area of Law	Protective Provisions for the Child Victims
The Policy Point	Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.
The Legislative Solution	Establishing a child protection response is critical to ending the arrest and detention of domestic minor sex trafficking victims and ensuring instead that they are provided crime victim protections, services, and benefits. This encompasses beginning with non-punitive first responses and following through with specialized services for child sex trafficking victims to include protective shelters, physical and mental health care, education, and recovery programs. Services should be delivered by trained trauma responders and health care providers. Laws are required to retrofit existing system responses, such as child protective services and child welfare programs or runaway and homeless youth programs, or to establish and financially support new systems designed to treat domestic minor sex trafficking victims at all stages, including intervention and restoration.

Select Statute Highlights

Illinois

The Illinois Safe Children Act established a comprehensive protective response for commercially sexually exploited children. 720 Ill. Comp. Stat. Ann. 5/11-14(d) (Prostitution) provides that “if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person . . . shall be subject to [] temporary protective custody” The detaining officer also must “report an allegation of a violation of Section 10-9 of this code [Trafficking in persons, involuntary servitude, and related offenses] . . . to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours pursuant to Section 7.4 of the Abused and Neglected Child Reporting Act [325 ILCS 5/7.4 et seq.]” 705 Ill. Comp. Stat. Ann. 405/2-7 (Temporary custody) defines “temporary custody” as “temporary placement of the minor out of the custody of his or her guardian or parent, and includes the following: (1) “Temporary protective custody” . . . within a hospital or other medical facility or a place previously designated for such custody by the Department of Children and Family Services, subject to review by the court, including a licensed foster home, group home, or other institution. However, such place shall not be a jail or other place for the detention of the criminal or juvenile offenders, (2) “Shelter care” means a physically unrestrictive facility designated by the Department of Children and Family Services or a licensed child welfare agency, or other suitable place designated by the court for a minor who requires care away from his or her home.”

Minnesota

Under recently enacted legislation, “[i]f sufficient funding from outside sources is donated, the commissioner of public safety” will be required to develop a statewide victim services model to “address the needs of sexually exploited youth and youth at risk of sexual exploitation.” Even if Minnesota does not receive adequate funding to implement this victim services model, several protective provisions currently are available to sexually exploited youth under the child protection provisions of Minnesota’s Juvenile Court Act. Effective August 1, 2014, Minn. Stat. Ann. § 260B.007, subd.6(c) amends the definition of a “delinquent child” to “not include a child under the age of 16 years of age alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct” and § 260B.007, subd. 16(d) (Juvenile petty offender; juvenile petty offense) clarifies that a “juvenile petty offense” will not include “a child under the age of 16 years alleged to have violated any law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct which, if committed by an adult, would be a misdemeanor.” Identified child victims will be handled as children in need of services under Minn. Stat. Ann. § 609.093, subd. 1 (Juvenile prostitutes; diversion or child protection proceedings), which states that when a 16 or 17 year old child is “alleged to have engaged in prostitution . . . who (1) has not been previously adjudicated delinquent for engaging in prostitution . . . (2) has not previously participated in or completed a diversion program for engaging in prostitution . . . (3) has not previously been placed on probation without an adju-

dication or received a continuance under section 260B.198, subdivision 7, for engaging in prostitution . . . (4) has not previously been found to be a child in need of protection or services for engaging in prostitution . . . or because the child is a sexually exploited youth . . . and (5) agrees to successfully complete a diversion program under section 388.24 [Pretrial diversion programs for juveniles] or fully comply with a disposition order under section 260C.201 . . . (b) The prosecution shall refer [such] a child . . . to a diversion program under section 388.24 or file a petition under section 260C.141 alleging the child to be in need of protection or services.” Minn. Stat. Ann. § 260C.007, subd.6 (17) clarifies that a “child in need of protection or services” includes “sexually exploited youth.”

Minn. Stat. Ann. § 609.093, subd. 3 provides that if the 16 or 17 year old child successfully completes a diversion program under Minn. Stat. Ann. § 388.24 (Pretrial diversion programs for juvenile), or, where the prosecutor filed a petition under Minn. Stat. Ann. § 260C.201 to treat the child as a child in need of protection or services and the court entered an order under Minn. Stat. Ann. § 26C.201, the child fully complied with the court’s order, the court will be required to dismiss the charge against the child, while a child who does not will be able to be referred back to the court for further juvenile delinquency proceedings, and possible detention.

New York

New York’s Safe Harbour Act establishes a protective system of response to sex trafficked children. N.Y. Soc. Serv. Law § 447-a (1) (Definitions) defines the term “sexually exploited” as “any person under the age of eighteen who has been subjected to sexual exploitation because he or she: (a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law; (b) engages in any act as defined in section 230.00 [Prostitution] of the penal law; (c) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law; (d) engages in acts or conduct described in article two hundred sixty-three [Sexual performance by a child] or section 240.37 [Loitering for the purpose of engaging in a prostitution offense] of the penal law.” Sexually exploited children can be placed in a “short-term safe house” or “safe house” both of which are defined in part as “a residential facility operated by an authorized agency . . . including a residential facility operating as part of an approved runaway program . . . or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides shelter, services and care to sexually exploited children . . .” N.Y. Soc. Serv. Law § 447-a(2), (4). Also in both short term and long term safe housing sexually exploited children will receive

services “including food, shelter, clothing, medical care, counseling, crisis intervention” and for long term housing, services will either be provided through “direct provision of services, or through written agreements with other community and public agencies . . .” N.Y. Soc. Serv. Law § 447-a(2),(4).

Pursuant to N.Y. Fam. Ct. Act § 739(a) (Release or detention after filing of petition and prior to order of disposition) , upon an initial appearance at a juvenile delinquency proceeding if the child is a sexually exploited child, “the court may direct the respondent to an available short-term safe house as an alternative to detention.” Moreover, N.Y. Fam. Ct. Act §739(a) notes “the court shall not direct detention [of a sexually exploited minor] unless it finds and states the facts and reasons for so finding that unless the respondent is detained there is a substantial probability that the respondent will not appear in court on the return date and all available alternatives to detention have been exhausted.” During a trial, the minor must file a petition to receive these services. While there is a presumption that a minor is a victim when that minor is arrested prostitution, the child must make “a petition alleging that the respondent is in need of supervision” in substitution for the delinquency proceedings. N.Y. Fam. Ct. Act §311.4(3). If the minor does not make this motion, they will likely be detained. Similarly, if the victim is unwilling “to cooperate with specialized services for sexually exploited youth” or has a prior prostitution conviction, the minor will be subject to the delinquency proceedings and could be detained. N.Y. Fam. Ct. Act §311.4(3).

Vermont

Vt. Stat. Ann. tit.13, § 2652(e) (Human trafficking) states that “[i]f a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.” Vt. Stat. Ann. tit. 33, § 5102(3) (Definitions and provisions of general application) defines a “child in need of care or supervision (CHINS)” as one who, “(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being; (C) is without or beyond the control of his or her parent, guardian, or custodian; or (D) is habitually and without justification truant from compulsory school attendance.” Vt. Stat. Ann. tit. 33, § 5301 (Taking into custody) governs when law enforcement may take a CHINS into custody. Vt. Stat. Ann. tit. 33, § 5301 states, “A child may be taken into custody: (1) Pursuant to an order of the family division of the superior court under the provisions of this chapter, (2) By an officer when the officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal from the child’s current home is necessary for the child’s protection, (3) By an officer when the officer

has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider.”

Washington

As defined in Wash. Rev. Code § 13.32A.030(5)(d) (Definitions—Regulating leave from semi secure facility), “Child in need of services’ means a juvenile: . . . [w]ho is ‘sexually exploited’.” A “sexually exploited child” is defined as “any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.” Wash. Rev. Code § 13.32A.030(17). Pursuant to Wash. Rev. Code § 74.13.034 (Crisis residential centers—Removal to another center or secure facility—Placement in secure juvenile detention facility), a sexually exploited child, as defined in Wash. Rev. Code § 13.32A.030(17), may be “(1) . . . taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032 [Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities] may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed fifteen consecutive days from the point of intake as provided in RCW 13.32A.130.” Wash. Rev. Code. § 74.15.255 [Licenses for secure or semi-secure crisis residential centers or HOPE centers—Requirement—Access to person trained to work with needs of sexually exploited children] requires each crisis residential center to have a staff member, or “access to a person, who has been trained to work with the needs of sexually exploited children.”

An alternative response that also keeps the minor out of a juvenile detention facility is diversion. Wash. Rev. Code § 13.40.087 (Youth who have been diverted — Alleged prostitution or prostitution loitering offenses—Services and treatment) provides that “[w]ithin available funding, when a youth who has been diverted under RCW 13.40.070 [Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs] for an alleged offense of prostitution or prostitution loitering is referred to the department, the department shall connect that youth with the services and treatment specified in RCW 74.14B.060 [Sexually abused children—Treatment services] and 74.14B.070 [Child victims of sexual assault or sexual abuse—Early identification, treatment].”

<p>Area of Law</p>	<p>Protective Provisions for the Child Victims</p>
<p>The Policy Point</p>	<p>Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.</p>
<p>The Legislative Solution</p>	<p>Child protective services can investigate and remove a child from a situation in which abuse or neglect is endangering the child’s wellbeing. Ensuring that the definition of “abuse and neglect” in child welfare statutes includes sex trafficking and the various forms of commercial sexual exploitation of a child (CSEC) will permit child protective services to act when a child victim of sex trafficking is in the control of a trafficker. This will provide the alternative response that law enforcement need and desire to avoid arresting the prostituted girls they encounter in their work. Also, states that include commercial sexual exploitation in their statutory definitions of “abuse and neglect” can direct domestic minor sex trafficking victims into child welfare services through early and consistent identification of victims, without involving victims in the criminal justice process and burdening law enforcement with child welfare matters.</p>

Select Statute Highlights

Florida

Fla. Stat. Ann. § 39.01(2) (Definitions) defines “abuse” as “any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired” Additionally, “harm” is defined in subsection (32) in part as the following: “‘Harm’ to a child’s health or welfare can occur when any person: (c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to: 1. Solicit for or engage in prostitution; or 2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children]. . . .”

Idaho

Idaho Code § 16-1602(1)(b) (Definitions) defines “abuse,” in part, as including “[s]exual conduct, including . . . prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child’s health or welfare or mental injury to the child.”

Illinois

Ill. Comp. Stat. Ann. § 705 ILCS 405/2-3(2)(vi) (Neglected or abused minor) and § 325 ILCS 5/3(h) (Definitions) defines “abused child,” in part, as “a child whose parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent . . . commits or allows to be committed the offense of . . . involuntary sexual servitude of a minor. . . as defined in [720 ILCS 5/10-9] against the child.” Ill. Comp. Stat. Ann. § 705 ILCS 405/2-3(2)(vii) (Neglected or abused minor) adds that an “abused” child includes a minor encouraged or required to “commit any act of prostitution . . . and extending those definitions to include minors under 18 years of age.”

Iowa

Iowa Code § 232.68(2)(c), (e) (Definitions) defines “child abuse” or “abuse” as the “commission of a sexual offense with or to a child pursuant to chapter 709 [Sexual abuse] . . . or section 728.12 [Sexual exploitation of a minor], . . .with or to a person under the age of eighteen years” and “[t]he acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1 [Prostitution] . . . with or to a person under the age of eighteen years.”

Kentucky

Pursuant to Ky. Rev. Stat. Ann. § 600.020(1) (Definitions) an “abused or neglected child” includes “a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child: . . . ; (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; . . .” Ky. Rev. Stat. Ann. § 600.020(56) further defines “sexual exploitation” as behavior that “includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law.”

Minnesota

Minn. Stat. Ann. § 260C.007(5) (Definitions) defines “child abuse,” in part, as “an act that involves a minor victim that constitutes a violation of section . . . 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking], 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties], . . . 617.246 [Use of minors in sexual performance prohibited].”

New Hampshire

Pursuant to N.H. Rev. Stat. Ann. § 169-C:3(II)(a) (Definitions) an “abused child” is defined as “any child who has been sexually abused.” N.H. Rev. Stat. Ann. § 169-C:3(XXVII-a) defines “sexual abuse” as including: “the following activities under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm: the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual depiction of such conduct; or the . . . prostitution, or other form of sexual exploitation of children, . . . who is under the age of 18 years.”

Rhode Island

R.I. Gen. Laws § 40-11-2(1) defines an “abused and/or neglected child,” in part, as one “whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare: . . . (vii) Sexually exploits the child in that the person allows, permits or encourages the child to engage in prostitution as defined by the provisions in § 11-34.1-1 [Commercial sexual activity] et seq., entitled “Commercial Sexual Activity”; or (viii) Sexually exploits the child in that the person allows, permits, encourages or engages in the obscene or pornographic photographing, filming or depiction of the child in a setting which taken as a whole suggests to the average person that the child is about to engage in or has engaged in, any sexual act, or which depicts any such child under eighteen years of age, performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality.”

Tennessee

Tenn. Code Ann. § 37-1-102(12)(I) (Definitions) defines a “dependent and neglected child” to include a child “[w]ho is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity.”

Wisconsin

Wis. Stat. § 48.02(1)(c),(d) (Definitions) of the Children’s Code defines “abuse” as including a “violation of s. 948.05 [Sexual exploitation of a child]” or “[p]ermitting, allowing or encouraging a child to violate s. 944.30 [Prostitution].”

<p>Area of Law</p>	<p>Protective Provisions for the Child Victims</p>
<p>The Policy Point</p>	<p>The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.</p>
<p>The Legislative Solution</p>	<p>Traffickers who are in custody or control of a child often abuse and neglect their victims. However, child protective services in most states is precluded from intervening because the mandate is limited to cases of custodial abuse and neglect, containing their investigations and intervention to cases in which a parent, guardian, caretaker or other person with legally provided custodial rights caused the abuse or neglect. Non-familial traffickers seldom have legal custody of their victims. The child protective services mandate is derived from the legal definitions of “caregiver” and “abuse and neglect.” It is therefore necessary that state statutory definitions of the term “caregiver” (or similar) include persons acting in a parental role by having possession of a child and controlling a child in order for child protective services to intervene in these cases and bring an abused trafficked child within the protective systems already in place in every state.</p>

Select Statute Highlights

The following state laws broadly define “caregiver” to potentially include a trafficker.

Kentucky

The term “person exercising custodial control or supervision” over the child is defined in Ky. Rev. Stat. Ann. § 600.020(43) for purposes of the Unified Juvenile Code (chapters 600 to 645) as “a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child.”

New Jersey

N.J. Stat. Ann. §9:6-2 (Parent and custodian defined) defines “the person having care, custody and control of any child” as including “any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed.”

North Carolina

The definition of “custodian” under N.C. Gen. Stat. § 7B-101(8) (Definitions) is “a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.”

West Virginia

For purposes of West Virginia’s child abuse and neglect provisions, W. Va. Code § 49-1-4(5) (Definitions) defines a “custodian” as “a person who has or shares actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceedings.”

Wisconsin

Wis. Stat. § 48.981(1)(am)(6), (7) (Abused or neglected children and abused unborn children), which establishes the requirements for reporting neglect and abuse at Wis. Stat. § 48.981(2), (2m), (3) and (3m), provides that “[c]aregiver” means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons...[including]... [a] person who provides or has provided care for the child in or outside of the child’s home...[or]...[a]ny other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.”

Area of Law	Protective Provisions for the Child Victims
The Policy Point	Crime victims' compensation is specifically available to a child victim of sex trafficking or CSEC without regard to ineligibility factors.
The Legislative Solution	Victims of domestic minor sex trafficking and CSEC are commonly caused to commit crimes as a result of being trafficked. This cannot be allowed to prevent them from accessing crime victims' compensation, critically needed to fund the process of restoration. At the societal level, awarding compensation acknowledges that trafficking is a crime. At the individual level, compensation acknowledges victims' pain and suffering. At the practical level, compensation can assist victims in rebuilding their lives. Crime victims' compensation programs frequently contain eligibility criteria that can foreclose a domestic minor sex trafficking victim's access to an award, such as required cooperation with law enforcement, reporting the crime within short time limits, and being deemed to have contributed to the crime for which they are claiming compensation. Statutory exceptions for victims of domestic minor sex trafficking to the ineligibility factors, beyond just "good cause" exceptions, are necessary to ensure access to these funds.

Select Statute Highlights	
D.C.	<p>persons for labor or sexual servitude). Pursuant to Ga. Code Ann. § 17-15-2(9)(D), a "victim" is defined as someone who "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]." Ga. Code Ann. § 17-15-7(e) (Persons eligible for awards) ensures that human trafficking victims are specifically excluded from becoming ineligible or having awards reduced due to being considered accomplices to the crime, stating, "A person who is criminally responsible for the crime upon which a claim is based or is an accomplice of such person shall not be eligible to receive an award with respect to such claim; provided, however, that such ineligibility shall not apply if the claimant is a victim as defined in subparagraph (D) of paragraph (9) of Code Section 17-15-2."</p>
Georgia	<p>Under Chapter 7.68 (Victims of crimes—compensation, assistance), Wash. Rev. Code § 7.68.070(3)(b) (Benefits—Right to and amount—Limitations) states that "[a] person identified as the 'minor' in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030."</p>
<p>In D.C., the crime of human trafficking and sex trafficking of children are specifically listed as offenses for which the victim may seek compensation. D.C. Code § 4-501 (Definitions), defines "crime" for the crime victim's compensation statute as "the offense of, or the attempt to commit the offense of . . . benefitting financially from human trafficking, using a minor in a sexual performance, promoting a sexual performance by a minor, attending or possessing a sexual performance by a minor, trafficking in labor or commercial sex acts, sex trafficking of children, a felony violation of an act codified in Chapter 27 of Title 22 of the District of Columbia Code, where a person was compelled to engage in prostitution or was a minor . . ." Sex trafficking victims are specifically protected from disqualification and reductions in awards under D.C. Code § 4-508(a)(1) (Disqualification and reductions), which states, "The Court shall not award compensation if the: (1) Claimant knowingly or willingly participated in the commission of the crime which forms the basis for the claim; provided, that a claimant who was a minor and a victim of sex trafficking of children, may be awarded compensation."</p>	

Area of Law	Protective Provisions for the Child Victims
The Policy Point	Victim-friendly procedures and protections are provided in the trial process for minors under 18.
The Legislative Solution	States should enact laws that provide protections for domestic minor sex trafficking victims in the trial process. A victim-friendly justice system will reduce the trauma experienced by commercially sexually exploited children and will foster successful participation of the victim in the justice system. Examples of such victim-friendly procedures include: (1) court appointed attorneys; (2) victim witness coordinators; (3) domestic minor sex trafficking shield laws; (4) closed courtrooms for minor victim testimony; (5) closed circuit testimony; and (6) application of the “rape shield” law to reduce the trauma of cross-examination related to prior sexual conduct. The statutes enacted by states must have an adequate focus on all victims of sexual exploitation or abuse to ensure equal protection for those minors who pursue prosecution of their trafficker. While many states have enacted laws providing protections to victim-witnesses in rape and sexual assault prosecutions, few specifically provide these protections for victims testifying in prosecutions under trafficking or commercial sexual exploitation statutes.

Select Statute Highlights

D.C.

Domestic minor sex trafficking victims are protected from the introduction of certain evidence at trial. Pursuant to D.C. Code § 22-1839 (Reputation or opinion evidence), which states “[i]n a criminal case in which a person is accused of trafficking in commercial sex, as prohibited by § 22-1833, sex trafficking of children, as prohibited by § 22-1834, or benefitting financially from human trafficking, as prohibited by § 22-1836, reputation or opinion evidence of the past sexual behavior of the alleged victim is not admissible. . . .”

Illinois

Child victim witnesses are provided with certain protections through the trial process. Ill. Comp. Stat. Ann. § 725 ILCS 5/115-7(a) (Prior sexual activity or reputation of victim of sexual offense) makes evidence relating to the prior sexual activity or reputation of an alleged victim inadmissible in any prosecution of various sexual offenses. Ill. Comp. Stat. Ann. § 725 ILCS 5/115-11 (Closed trial during testimony of child victim of a sexual offense permitted) states, “In a prosecution for a criminal [sexual] offense . . . where the alleged victim of the offense is a minor under 18 years of age, the court may exclude from the proceedings while the victim is testifying, all persons, who, in the opinion of the court, do not have a direct interest in the case, except the media.” Also pursuant to

Ill. Comp. Stat. Ann. § 725 ILCS 190/3 (Confidentiality of Law Enforcement and Court Records) in any investigation or proceeding pertaining to a criminal sexual offense the identity of any child-victim must be excluded from the records and kept confidential.

Indiana

Ind. Code Ann. § 35-42-3.5-4 (a)(3) (Rights of alleged victims) provides that human trafficking victims must be provided protection if their safety is at risk or if there is danger of “additional harm by recapture of the victim by the person who allegedly committed the offense.” Protections include “ensuring that the names and identifying information of the alleged victim and the victim’s family members are not disclosed to the public.” In addition, Ind. Code Ann. §§ 35-37-4-8(a)-(e), 35-37-4-6 provides that victims of trafficking and sexual offenses of any age in prosecutions for Ind. Code Ann. § 35-42-3.5-1 (Promotion of human trafficking; sexual trafficking of a minor; human trafficking) and § 35-42-4 (Sex crimes) may give testimony via two-way closed circuit television if certain requirements are met. The court also must provide safeguards, such as separate waiting rooms, “to minimize the contact of the victim of an offense” with the defendant and the defendant’s friends and relatives during criminal proceedings. Ind. Code Ann. § 35-37-4-11(a)-(c).

Minnesota

Regardless of the age of the victim, Minnesota law provides special protections for victims of sexual offenses pursuant to Minn. Stat. Ann. § 609.347 (Evidence in criminal sexual conduct cases). Minn. Stat. Ann. § 609.347, subd. 3(a), (b) provides that evidence of a victim's past sexual conduct, with limited exceptions, shall not be admitted or referenced in certain sexual offense cases. Minn. Stat. Ann. § 595.02, subd. 4(a) further provides that when a child under 12 years of age she may provide testimony via closed-circuit television or videotaped recording. Additionally, pursuant to Minn. Stat. Ann. §§ 631.045, 631.046, subd. 1, the judge may exclude spectators from the courtroom at "trial of a complaint or indictment for a violation of sections . . . 617.246, subdivision 2 [Use of minor in sexual performance prohibited] . . . when a minor under 18 years of age is the person upon, with, or against whom the crime is alleged to have been committed," and may also authorize the presence of any supportive person in the courtroom for prosecuting witnesses who are minors in cases involving child abuse as defined in Minn. Stat. Ann. § 630.36 (Issues, how disposed of), which expressly includes conduct amounting to a violations of, among other laws, Minn. Stat. Ann. § 609.321 (Prostitution and sex trafficking; definitions), Minn. Stat. Ann. § 609.322 (Solicitation, inducement and promotion of prostitution; sex trafficking), and Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

Virginia

Va. Code Ann. § 18.2-67.7 (Admission of evidence) provides protection to the testifying victim of a sexual offense (commonly called "rape shield law"). It states, "A. In prosecutions under this article [Criminal sexual assault], or under clause (iii) or (iv) [involving minors] of § 18.2-48 [Abduction with intent to extort money or for immoral purpose], 18.2-370 [Taking indecent liberties with children; penalties], 18.2-370.01 [Indecent liberties by children; penalty], or 18.2-370.1 [Taking indecent liberties with child by person in custodial or supervisory relationship; penalties], general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct shall not be admitted. Unless the complaining witness voluntarily agrees otherwise, evidence of specific instances of his or her prior sexual conduct shall be admitted only if it is relevant and is: 1. Evidence offered to provide an alternative explanation for physical evidence of the offense charged which is introduced by the prosecution, limited to evidence designed to explain the presence of semen, pregnancy, disease, or physical injury to the complaining witness's intimate parts; or 2. Evidence of sexual

conduct between the complaining witness and the accused offered to support a contention that the alleged offense was not accomplished by force, threat or intimidation or through the use of the complaining witness's mental incapacity or physical helplessness, provided that the sexual conduct occurred within a period of time reasonably proximate to the offense charged under the circumstances of this case; or 3. Evidence offered to rebut evidence of the complaining witness's prior sexual conduct introduced by the prosecution."

<p>Area of Law</p>	<p>Protective Provisions for the Child Victims</p>
<p>The Policy Point</p>	<p>Expungement or sealing of juvenile arrest or criminal 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.</p>
<p>The Legislative Solution</p>	<p>A juvenile arrest or criminal record is a barrier to a victim of child sex trafficking seeking to move forward with life. Juvenile records can prevent survivors from obtaining academic scholarships, or federal student loans, or securing certain kinds of employment, or working with children. For commercially sexually exploited children, having a juvenile record further victimizes them and hinders their ability to rebuild their lives. Laws are needed that expressly protect victims of commercial sexual exploitation of children (CSEC) and sex trafficking by expunging or sealing juvenile criminal records and keeping such records out of public view or access. Burdening prostituted children with a criminal record is contrary to their status as trafficking victims.</p>

Select Statute Highlights

Alaska

Alaska Stat. § 47.12.300(d) (Court records) provides that the court shall order a minor’s records sealed “within 30 days of the date of a minor’s 18th birthday or, if the court retains jurisdiction of a minor past the minor’s 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor.” This extends to all “records pertaining to that minor in a proceeding under this chapter [Delinquent minors] sealed, as well as records of all . . . criminal proceedings against the minor, and punishments assessed against the minor.”

Arkansas

Ark. Code Ann. § 16-90-602(a) (Minor nonviolent felony offenders—Petition) allows “[a] person who is convicted of a nonviolent felony committed while the person was under the age of eighteen years and who was incarcerated or whose sentence was suspended, or who was placed on probation” to “petition the convicting court to have the record of the conviction expunged upon the completion of the sentence or expiration of the suspension or probation period or at any time thereafter.”

Indiana

Under Ind. Code Ann. § 31-39-8-2 (Petition to juvenile court for removal of records), “Any person may petition a juvenile court at any time to remove from: (1) the court’s files; (2) the files of law enforcement agencies; and (3) the files of

any other person who has provided services to a child under a court order; those records pertaining to the person’s involvement in juvenile court proceedings.” In determining whether to grant such a petition, Ind. Code Ann. § 31-39-8-3 states the court may consider “(1) the best interests of the child; (2) the age of the person during the person’s contact with the juvenile court or law enforcement agency; (3) the nature of any allegations; (4) whether there was an informal adjustment or an adjudication; (5) the disposition of the case; (6) the manner in which the person participated in any court ordered or supervised services; (7) the time during which the person has been without contact with the juvenile court or with any law enforcement agency; (8) whether the person acquired a criminal record; and (9) the person’s current status.”

Utah

Utah Code Ann. § 78A-6-1105(1)(a) (Expungement of juvenile court record—Petition—Procedure) allows a person adjudicated under the Juvenile Court Act of 1996 to “petition the court for the expungement of the person’s juvenile court record and any related records in the custody of a state agency, if: (i) the person has reached the age of 18 years of age; and (ii) one year has elapsed from the date of termination of the continuing jurisdiction of the juvenile court, or if the person was committed to a secure youth corrections facility, one year from the date of the person’s unconditional release from the custody of the Division of Juvenile Justice Services.” Once the court orders the person’s records sealed, the person’s case will “be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of

the records, and only to persons named in the petition.” Utah Code Ann. § 78A-6-1105(4).

such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.”

Vermont

Similarly, Vt. Stat. Ann. tit. 33, § 5119(a) governs the sealing of records relating to a child adjudicated delinquent after July 1, 1996. Vt. Stat. Ann. tit. 33, § 5119(a) states, “(1) . . . the court shall order the sealing of all files and records related to the proceeding if two years have elapsed since the final discharge of the person unless, on motion of the state’s attorney, the court finds: (A) the person has been convicted of a listed crime as defined in 13 V.S.A. § 5301 [Definitions] or adjudicated delinquent of such an offense after such initial adjudication, or a proceeding is pending seeking such conviction or adjudication; or (B) rehabilitation of the person has not been attained to the satisfaction of the court. (2) At least 60 days prior to the date upon which a person is eligible to have his or her delinquency record automatically sealed pursuant to subdivision (1) of this subsection, the court shall provide such person’s name and other identifying information to the state’s attorney in the county in which the person was adjudicated delinquent. The state’s attorney may object, and a hearing may be held to address the state’s attorney’s objection. (3) The order to seal shall include all the files and records relating to the matter in accordance with subsection (d) of this section; however, the court may limit the order to the court files and records only upon good cause shown by the state’s attorney. . . .”

Where a commercially sexually exploited minor participates in a juvenile diversion program, Vt. Stat. Ann. tit. 3, § 163(e), (f) (Juvenile court diversion project) allows for juvenile records to be sealed after the successful completion of a diversion program. Vt. Stat. Ann. tit. 3, § 163(e), (f) provides, “(e) Within 30 days of the two-year anniversary of a successful completion of juvenile diversion, the court shall order the sealing of all court files and records, law enforcement records other than entries in the juvenile court diversion project’s centralized filing system, fingerprints, and photographs applicable to a juvenile court diversion proceeding unless, upon motion, the court finds: (1) the participant has been convicted of a subsequent felony or misdemeanor during the two-year period, or proceedings are pending seeking such conviction; or (2) rehabilitation of the participant has not been attained to the satisfaction of the court. (f) Upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this section shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to

Wyoming

Wyo. Stat. Ann. § 14-6-241(a) (Expungement of records in juvenile and municipal courts) states that a person 18 years old “adjudicated delinquent as a result of having committed a delinquent act other than a violent felony. . .” may petition to have the court expunge the person’s juvenile court records. If the court determines that the person has not been convicted of a felony subsequent to being adjudicated delinquent, and “that no proceeding involving a felony is pending or being instituted against the petitioner and the rehabilitation of the petitioner has been attained to the satisfaction of the court or the prosecuting attorney,” the court must order that all of the person’s juvenile records “in the custody of the court or any agency or official, pertaining to the petitioner’s case” expunged. Once the court enters an order of expungement, “the proceedings in the petitioner’s case are deemed never to have occurred and the petitioner may reply accordingly upon any inquiry in the matter.” Wyo. Stat. Ann. § 14-6-241(a). Records related to the conviction of a juvenile for a misdemeanor in circuit court also may be expunged, subject to the requirements of Wyo. Stat. Ann. § 14-6-241(a). Moreover, under Wyo. Stat. Ann. § 7-19-504(b) (Access to and dissemination of information), any information retained in the Wyoming juvenile justice information system will be deleted when the juvenile turns 18 years old.

Area of Law	Protective Provisions for the Child Victims
The Policy Point	Victim restitution and civil remedies are authorized by law for minor victims of sex trafficking or CSEC.
The Legislative Solution	Sex trafficking is a multi-billion dollar industry. States must enact laws that permit victims of domestic minor sex trafficking to pursue civil remedies for the damages they have suffered as a result of the victimization. Restitution and civil remedies should include payment for medical and psychological treatment, lost income, attorney’s fees and costs, and other damages. Restitution and civil remedies will serve to punish those persons who commercially sexually exploit children while providing much needed funding for victim services. The purpose of restitution and civil remedy laws is to make victims whole again and empower them with the private right to vindicate their civil rights and hold their traffickers directly accountable for their actions.

Select Statute Highlights

California

Cal. Civ. Code § 52.5 (Action by victim of human trafficking) expressly states that victims of Cal. Penal Code § 236.1 (Human trafficking defined; punishment) “may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney’s fees and costs,” as well as “litigation costs including, but not limited to, expert witness fees and expenses.” Additionally, “the plaintiff may be awarded up to three times his or her actual damages or ten thousand dollars (\$10,000), whichever is greater,” as well as “punitive damages may also be awarded upon proof of the defendant’s malice, oppression, fraud, or duress in committing the act of human trafficking.”

Cal. Penal Code § 1202.4(q) (Restitution; amount; hearing and court order; financial disclosure) expressly makes restitution available to a victim of Cal. Penal Code § 236.1 (Human trafficking defined; punishment), while restitution is available to domestic minor sex trafficking victims whose offenders are guilty of other crimes under Cal. Penal Code § 1202.4 (Restitution; amount; hearing and court order; financial disclosure). Specifically, Cal. Penal Code § 1202.4(f)(3) provides that a victim may receive restitution for the following: “(A) Full or partial payment for the value of stolen or damaged property. . . .(B) Medical expenses, (C) Mental health counseling expenses, (D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor’s parent, parents,

guardian, or guardians, while caring for the injured minor. . . . (E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor’s parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. . . . (F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288 [Lewd or lascivious acts involving children], (G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court, (H) Actual and reasonable attorney’s fees and other costs”

Connecticut

Civil remedies are specifically available in cases of trafficking in persons through Conn. Gen. Stat § 52-571i (Action for damages resulting from trafficking in persons). Pursuant to Conn. Gen. Stat. § 52-571i, “[a]ny person aggrieved by a violation of section 53a-192a [Trafficking in persons] may bring a civil action in the superior court for the judicial district where such person resides or the judicial district of Hartford against the person or persons who committed such violation to recover actual damages, statutory damages of not more than one thousand dollars for each day such person was coerced by another person in violation of section 53a-192a and a reasonable attorney’s fee.”

A domestic minor sex trafficking victim may also receive restitution under Conn. Gen. Stat. § 53a-28(c) which states, “if (1) a person is convicted of an offense that resulted in injury to another person or damage to or loss of property, (2) the victim requests financial restitution, and (3) the court finds that the victim has suffered injury or damage to or loss of

property as a result of such offense, the court shall order the offender to make financial restitution under terms that it determines are appropriate. . . . Restitution ordered by the court pursuant to this subsection shall be based on easily ascertainable damages for injury or loss of property, actual expenses incurred for treatment for injury to persons and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses, but may include the costs of counseling reasonably related to the offense. . . .”

Florida

A specific remedy is provided in Fla. Stat. Ann. § 847.01357 (Exploited children’s civil remedy) for certain victims of exploitation through child pornography. This provision states, “(1) Any person who, while under the age of 18, was a victim of a sexual abuse crime listed in chapter 794 [Sexual Battery], chapter 800 [Lewdness; indecent exposure], chapter 827 [Abuse of children], or chapter 847 [Obscenity], where any portion of such abuse was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such images or movies, may bring an action in an appropriate state court against the producer, promoter, or possessor of such images or movies, regardless of whether the victim is now an adult. In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney’s fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$150,000.”

Restitution may be awarded pursuant to Fla. Stat. Ann. § 775.089 (Restitution). Fla. Stat. Ann. § 775.089 (Restitution)(1)(a) states in part, “In addition to any punishment, the court shall order the defendant to make restitution to the victim for: 1. Damage or loss caused directly or indirectly by the defendant’s offense; and 2. Damage or loss related to the defendant’s criminal episode, unless it finds clear and compelling reasons not to order such restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with s. 948.03.”

Illinois

720 Ill. Comp. Stat. Ann. 5/10-9(g) (Trafficking in persons, involuntary servitude, and related offenses) requires the court to order a defendant convicted of sex trafficking to make restitution to the victim for the greater of: “(1) the gross income or value to the defendant of the victim’s labor or services or (2) the value of the victim’s labor as guaranteed under the

Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) [29 U.S.C. § 201 et seq.] or the Minimum Wage Law [820 ILCS 105/1 et seq.], whichever is greater.”

Furthermore, 730 Ill. Comp. Stat. Ann. 5/5-5-6 (Restitution) requires the court to order a defendant convicted of any offense under Illinois’ criminal laws to make restitution to a victim who “received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant” Additionally, 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1),(g) provides, “(1) In addition to any other penalty prescribed by law and any restitution ordered under this Section that did not include long-term physical health care costs, the court may, upon conviction of any misdemeanor or felony, order a defendant to pay restitution to a victim in accordance with the provisions of this subsection (f-1) if the victim has suffered physical injury as a result of the offense that is reasonably probable to require or has required long-term physical health care for more than 3 months. As used in this subsection (f-1) “long-term physical health care” includes mental health care. (2) An order of restitution made under this subsection (f-1) shall fix a monthly amount to be paid by the defendant for as long as long-term physical health care of the victim is required as a result of the offense. The order may exceed the length of any sentence imposed upon the defendant for the criminal activity. The court shall include as a special finding in the judgment of conviction its determination of the monthly cost of long-term physical health care. . . . (g) In addition to the sentences provided for in Sections . . . 11-19.2 [Exploitation of a child], 11-20.1 [Child pornography], 11-20.1B [Aggravated child pornography], . . . and subdivision (a)(4) of Section 11-14.4 [Promoting juvenile prostitution], of the Criminal Code of 1961, the court may order any person who is convicted of violating any of those Sections . . . to meet all or any portion of the financial obligations of treatment, including but not limited to medical, psychiatric, or rehabilitative treatment or psychological counseling, prescribed for the victim or victims of the offense. . . .”

Civil remedies are available to victims of domestic minor sex trafficking in the Predator Accountability Act. Specifically, Ill. Comp. Stat. Ann. 128/15 (Cause of action) provides a civil cause of action to victims of 720 Ill. Comp. Stat. Ann. 5/210-9 (Trafficking in persons, involuntary servitude, and related offenses), 5/11-14.4(a)(2),(3), (4) (Promoting juvenile prostitution), 5/11-19.1 (Juvenile pimping and aggravated juvenile pimping), 5/11-20.1(Child pornography), or 5/11-20.3 (Aggravated child pornography).

Area of Law	Protective Provisions for the Child Victims
The Policy Point	Statutes of limitations for civil and criminal actions for child sex trafficking or CSEC offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.
The Legislative Solution	The effect of sex trafficking on a child is traumatic, potentially long-lasting, and is extremely injurious to the person; it is a hidden crime as well. For these reasons the statutes of limitations on criminal and civil actions for child sex trafficking and CSEC crimes should be lengthened or eliminated. It is important to allow victims full access to justice in both civil and criminal forums, and to provide adequate time for law enforcement and prosecutors to discover, investigate and develop cases for successful prosecution.

Select Statute Highlights

Alaska

Alaska Stat. § 12.10.010 provides that prosecutions for “felony sexual abuse of a minor” and for violations of Alaska Stat. §§ 11.66.110–11.66.130 (Promoting prostitution in the first through fourth degrees) and § 11.41.452 (Online enticement of a minor) or § 11.41.455 (Unlawful exploitation of a minor) may be brought at any time if the victim was younger than 18 when the offense was committed, but prosecutions for human trafficking must be initiated within “10 years after the commission” of the offense.

For civil actions, Alaska Stat. § 09.10.065(a) (Commencement of actions for acts constituting sexual offenses) provides that “(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses: (1) felony sexual abuse of a minor; (2) felony sexual assault; or (3) unlawful exploitation of a minor.”

Arizona

Ariz. Rev. Stat. Ann. § 13-107(A) (Time limitations) provides that any offense under Chapter 35.1 (Sexual exploitation of children) that is a Class 2 felony may be commenced at any time. Under Chapter 35.1, § 13-3552 (Commercial sexual exploitation of a minor; classification) states, “A. A person commits commercial sexual exploitation of a minor by knowingly: 1. Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct, 2. Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals

or anus or the areola or nipple of the female breast for financial or commercial gain, 3. Permitting a minor under the person’s custody or control to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct, 4. Transporting or financing the transportation of any minor through or across this state with the intent that the minor engage in prostitution, exploitive exhibition or other sexual conduct for the purpose of producing a visual depiction or live act depicting such conduct.”

Arkansas

The statute of limitations is not eliminated for criminal domestic minor sex trafficking statutes; however, it is significantly extended for certain related offenses. Pursuant to Ark. Code Ann. § 5-1-109(a)(2) (Statute of limitations), “[a] prosecution may be commenced for a violation of the following offenses, if, when the alleged violation occurred, the offense was committed against a minor, the violation has not been previously reported to a law enforcement agency or prosecuting attorney, and the victim has not reached the age of twenty-eight (28) years of age: . . . (I) Engaging children in sexually explicit conduct for use in visual or print medium, Section 5-27-303; (J) Transportation of minors for prohibited sexual conduct, Section 5-27-305; (K) Employing or consenting to the use of a child in a sexual performance, Section 5-27-402; (L) Producing, directing, or promoting a sexual performance by a child, Section 5-27-403; (M) Computer child pornography, Section 5-27-603; and (N) Computer exploitation of a child in the first degree, Section 5-27-605.”

Colorado

Pursuant to Colo. Rev. Stat. § 16-5-40(1)(a) (Limitation for commencing criminal proceedings and juvenile delinquency proceedings) there is no time limit for commencing a prosecution for “any sex offense against a child” or “attempt, conspiracy, or solicitation to commit any sex offense against a child.” Colo. Rev. Stat. § 16-5-401(c)(IV) (Limitation for commencing criminal proceedings and juvenile delinquency proceedings) defines “Sex offense against a child” as an unlawful sexual offense defined in section 18-3-411(1), which defines “unlawful sexual offense” as including “trafficking in children, as described in section 18-3-502; sexual exploitation of a child, as described in section 18-6-403; procurement of a child for sexual exploitation, as described in section 18-6-404; . . . soliciting for child prostitution, as described in section 18-7-402; pandering of a child, as described in section 18-7-403; procurement of a child, as described in section 18-7-403.5; keeping a place of child prostitution, as described in section 18-7-404; pimping of a child, as described in section 18-7-405; inducement of child prostitution, as described in section 18-7-405.5; patronizing a prostituted child, as described in section 18-7-406; class 4 felony internet luring of a child, as described in section 18-3-306 (3); internet sexual exploitation of a child, as described in section 18-3-405.4; or criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this subsection (1).”

Texas

Tex. Code Crim. Proc. Ann. Art. 12.01(1)(G) eliminates the statute of limitations under Tex. Penal Code Ann. § 20A.02(a) (7), (8) (Trafficking of persons) and § 20A.03 (Continuous trafficking of persons). Tex. Code Crim. Proc. Ann. Art. 12.01(2)(G), (H) imposes a 10 year statute of limitations on prosecutions for trafficking under Tex. Penal Code Ann. § 20A.02(1), (2), (3), or (4) and § 43.05(a)(1) (Compelling prostitution). However, Tex. Code Crim. Proc. Ann. Art. 12.01(6)(A), (C) provides that where the victim was under 18 at the time of the offense, violations of Tex. Penal Code Ann. § 20A.02(5), (6) (Trafficking of persons) and § 43.05(a) (2) (Compelling prostitution) may be brought within “ten years from the 18th birthday of the victim of the offense.” Tex. Penal Code Ann. § 20.04(a) eliminates any statute of limitations for sexual assault against a child under Tex. Penal Code Ann. Art. 22.011(a)(2), aggravated sexual assault against a child under Tex. Penal Code Ann. § 22.021(a)(1) (B)), continuous sexual abuse of a child (§ 21.02), or indecency with a child (§ 21.11). Tex. Code of Crim. Proc. Ann. Art. 12.01(5) states a 20-year statute of limitations (from the victim’s 18th birthday) if the victim is younger than 17 at

the time of the offense of sexual performance of a child (Tex. Penal Code Ann. § 43.25) or aggravated kidnapping “with the intent to violate or abuse the victim sexually.”

Tex. Civ. Prac. & Rem. Code Ann. § 16.0045 (Five-year limitations period) extends the standard two year statute of limitations for civil actions to five years for injuries resulting from Tex. Penal Code § 22.011 (Sexual assault), § 22.021 (Aggravated sexual assault), § 21.02 (Continuous sexual abuse of young child), § 20A.02 (Trafficking of persons), or § 43.05 (Compelling prostitution).

Issue Briefs

Section 6 | Criminal Justice Tools for Investigation and Prosecution

The following issue briefs provide a more comprehensive explanation of each of the components measured by the Protected Innocence Challenge Report Cards and highlight state statutes that align with the concept of the issue.

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Point	Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.
The Legislative Solution	Law enforcement officers are most often the first responders in a domestic minor sex trafficking situation. Providing them with the awareness, skills and tools necessary to respond appropriately and effectively is critically important. Given limited time and competing priorities, mandatory training on issues of domestic minor sex trafficking will result in an increase in enforcement and successful prosecutions. Training will also lead to implementing protocols across the law enforcement community to enhance officers' ability to detect a trafficking situation and to work effectively with trafficking victims. The objectives of many anti-trafficking task forces include working collaboratively to identify victims, convict traffickers, and implement unique agency policies and procedures for victims of sex trafficking given limited community resources.

Select Statute Highlights

Few states mandate training specifically on domestic minor sex trafficking. The following are examples of state laws that mandate law enforcement training on human trafficking issues.

Georgia

Ga. Code Ann. § 35-1-16(a) (Training law enforcement officers investigating crimes involving trafficking persons for labor or sexual servitude) mandates the Georgia police officer training council to establish procedures, 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.”

Florida

Fla. Stat. § 787.06(5) (Human Trafficking) requires “[e]ach state attorney to develop standards of instruction for prosecutors to receive training on the investigation and prosecution of human trafficking crimes and to provide for periodic and timely instruction.”

Indiana

Ind. Code Ann. § 5-2-1-9(a)(10), which requires the Indiana Law Enforcement Training Board to provide “[m]inimum standards for a course of study on human and sexual trafficking that must be required for each person accepted for training at a law enforcement training school or academy and for in-service training programs for law enforcement officers. The course must cover the following topics: (A) Examination of the human and sexual trafficking laws (IC 35-42-3.5), (B) Identification of human and sexual trafficking, (C) Communicating with traumatized persons, (D) Therapeutically appropriate investigative techniques, (E) Collaboration with federal law enforcement officials, (F) Rights of and protections afforded to victims, (G) Providing documentation that satisfies the Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (Form I-914, Supplement B) requirements established under federal law [and] (H) The availability of community resources to assist human and sexual trafficking victims.”

Texas

Texas Code § 402.035(d)(5),(7) states the Human Trafficking Prevention Task Force shall “work with the Commission on Law Enforcement Officer Standards and Education to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking;” and “examine training protocols related to human trafficking issues, as developed and implemented by federal, state and local law enforcement agencies.”

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Point	Single party consent to audiotaping is permitted in law enforcement investigations.
The Legislative Solution	Recorded evidence collected through phone conversations is necessary to increase the number of successful prosecutions of domestic minor sex trafficking cases. This important tool can lead to actionable evidence while simultaneously providing protection to investigating officers by permitting them to record and broadcast their interactions with the criminals. States should enact laws that permit single party consent to audiotaping to facilitate the collection of evidence against persons who commercially sexually exploit children.

Select Statute Highlights	
Kansas	<p>son not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.”</p> <hr/> <p style="text-align: center;">South Dakota</p> <p>South Dakota allows single party consent to audiotaping. Pursuant to S.D. Codified Laws § 23A-35A-20(1) (Unlawful interception—telephone or telegraph—consent), an individual who is “[n]ot a sender or receiver of a telephone or telegraph communication, intentionally and by means of an eavesdropping device overhears or records a telephone or telegraph communication, or aids, authorizes, employs, procures, or permits another to so do, without the consent of either a sender or receiver thereof” is guilty of a felony.</p> <hr/> <p style="text-align: center;">Texas</p> <p>Tex. Penal Code Ann. § 16.02(c)(3),(4) states, “(c) It is an affirmative defense to prosecution under Subsection (b) [Unlawful interception, use or disclosure of wire, oral, or electronic communications] that: . . . (3) a person acting under color of law intercepts:(A) a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception;. . .(4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if:(A) the person is a party to the communication; or(B) one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act;. . .”</p>
Kansas allows single party consent to audiotaping, stating in Kan. Stat. Ann. § 21-6101(a)(1) (Breach of privacy) that a breach of privacy occurs when an individual “without the consent of the sender or receiver” intercepts the contents of a message sent via “telephone, telegraph, letter or other means of private communication.”	
Oregon	
Or. Rev. Stat. § 165.543(1) (Interception of communications) states, “Except as provided in ORS 133.724 [Application for ex parte order; evidence; required contents of order; reports] or as provided in ORS 165.540 (2)(a) [Obtaining whole or part of communication], any person who willfully intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept any wire or oral communication where such person is not a party to the communication and where none of the parties to the communication has given prior consent to the interception, is guilty of a Class A misdemeanor.”	
South Carolina	
S.C. Code Ann. § 17-30-30(B) (Interception by employee of Federal Communications Commission, by person acting under color or law, and where party has given prior consent) permits single party consent to audiotaping. S.C. Code Ann. § 17-30-30(B) states, “It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.” Subsection (C) states, “It is lawful under this chapter for a per	

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Point	Domestic minor sex trafficking investigations may use wiretapping to investigate the crime.
The Legislative Solution	A serious challenge in any prosecution of domestic minor sex trafficking is producing corroborating evidence at trial. Recorded phone conversations or text messages between a victim and a buyer or trafficker are important incriminating pieces of evidence. Wiretapping is largely permitted in cases of murder, arson, terrorism and often other serious felonies involving danger to life or limb. Child sex trafficking should be recognized as a serious crime involving these dangers to a child, and therefore necessitating wiretapping as an investigative tool. States should carve out an exemption for investigations of sex trafficking cases in their wiretapping laws to allow law enforcement officers to investigate and obtain evidence to substantiate their cases against buyers and traffickers while protecting victims who have a difficult time testifying. This investigative tool will lead to more and better arrests and prosecutions, and help to alleviate reliance on the child victim-witness' testimony.

Select Statute Highlights

Illinois

Ill. Comp. Stat. Ann. § 720 ILCS 5/14–2(a) (Elements of the offense; affirmative defense) makes it a crime for any person who “(1) Knowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts, retains, or transcribes electronic communication . . .” However, Ill. Comp. Stat. Ann. § 720 ILCS 5/14–3 (Exemptions) specifically allows for court-ordered interceptions for investigations relating to a felony offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services.

Maryland

Md. Code Ann. Crim. Proc. § 10-402(c)(2) (Wiretapping—unlawful interception of communications) provides in part, “(ii) It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence: “(1) Of the commission of: . . . O. A Human trafficking offense under § 11–303 of the 10 Criminal Law Article; P. Sexual solicitation of a minor under § 3–324 of the Criminal 12 Law Article;. . . R. Sexual abuse of a minor under § 3–602 of the Criminal Law 16 Article.”

Pennsylvania

18 Pa. Cons. Stat. § 5708(1), (2) permits certain law enforcement officers to make a written application for “an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses,” which includes 18 Pa. Cons. Stat. § 911 (Corrupt organizations), § 3002 (Trafficking of persons), § 5902 (Prostitution and related offenses) (“where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year”), and § 6318 (Unlawful contact with minor).

Texas

Tex. Code Crim. Proc. art. 18.20 §4 (Bases for an application for a court order to intercept wire communications) provides, “A judge of competent jurisdiction may issue an order authorizing interception of wire, oral, or electronic communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of . . . (1) a felony under Section . . . 43.26, Penal Code [Possession or promotion of child pornography]; . . . (4) an offense under Chapter 20A, Penal Code [Trafficking of persons]; . . .”

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Point	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.
The Legislative Solution	Law enforcement struggle to investigate the prostitution of children due to the inability to use a real minor as an undercover investigator and the inevitable defense to a prosecution that the “minor” solicited for prostitution was in fact an adult, undercover police officer. State laws that permit law enforcement to pose as minor decoys in investigations of domestic minor sex trafficking cases and explicitly prohibit a defense to prosecution that the decoy not, in fact, a minor are essential to impact this crime. Use of a decoy by law enforcement to investigate commercial sexual exploitation of children, especially through prostitution, is an effective way to proactively locate and investigate buyers of sex acts with children and potentially lead to identification of traffickers. Frequently encountered in statutes prohibiting the use of electronic communications to lure a child for commercial sexual exploitation, the same investigative tool is needed to investigate street prostitution and outcall services using minors in prostitution.

Select Statute Highlights	
<div style="background-color: #d3d3d3; padding: 2px; margin-bottom: 5px; text-align: center;">Arizona</div> <p>Ariz. Rev. Stat. Ann. § 13-3212(C) (Child prostitution) provides that a person who, among other things, knowingly causes a minor to engage in prostitution, receives any benefit from prostitution of a child, or knowingly engages in prostitution with a minor under 15 years of age or with a minor known to be 15, 16, or 17 years of age is prohibited from using as a defense “that the other person is a peace officer posing as a minor or a person assisting a peace officer posing as a minor.”</p>	<div style="background-color: #d3d3d3; padding: 2px; margin-bottom: 5px; text-align: center;">Maryland</div> <p>Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) provides, “A person may not, with the intent to commit a violation of . . . § 11-305 [Abduction of child under 16], or § 11-306 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under . . . § 11-305, or § 11-306 of this article.”</p>
<div style="background-color: #d3d3d3; padding: 2px; margin-bottom: 5px; text-align: center;">D.C.</div> <p>D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child) allows for the prosecution of those who arrange for sexual contact with a real or fictitious child. The statute states in subsection (a), “[i]t is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.”</p>	<div style="background-color: #d3d3d3; padding: 2px; margin-bottom: 5px; text-align: center;">Pennsylvania</div> <p>18 Pa. Cons. Stat. § 6318 (Unlawful contact with minor) permits a law enforcement decoy to investigate situations of commercial sexual exploitation of children. 18 Pa. Cons. Stat. § 6318(a) states, “A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth: . . . (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses). (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances). . . . 6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).”</p>

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Point	Using the Internet to investigate buyers and traffickers is a permissible investigative technique.
The Legislative Solution	The growing use of the Internet to accomplish crimes of domestic minor sex trafficking necessitates new investigative techniques and tools for law enforcement. Laws establishing a separate or enhanced penalty for using the Internet to commit an underlying offense, and the express inclusion of CSEC or sex trafficking of a minor as such an offense, are critical. Also critical is prohibiting a defense that the prohibited contact made online was with a law enforcement officer acting as a decoy rather than a minor. Internet crimes against children are committed against minors of all ages and any state law prohibiting this conduct should protect all minors under 18 from the crime.

Select Statute Highlights

The following statutes prohibit the use of the Internet to commit a commercial sexual offense against a child and prohibit a defense based on the “minor” being law enforcement.

Alabama

Ala. Code § 13A-6-122 (Electronic solicitation of a child) provides that “an undercover operative or law enforcement officer’s [involvement in] . . . the detection and investigation of an offense” is not a defense to prosecution.

Georgia

Ga. Code Ann. § 16-12-100.2(g) clarifies 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 [Computer or electronic pornography and child exploitation prevention] shall not constitute a defense to prosecution under this Code section.”

Kentucky

Ky. Rev. Stat. Ann. § 510.155(1) (Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities) states, “It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer

is a minor or is wanton or reckless in that belief, for any activity in violation of . . . KRS 529.100 [Human trafficking] where that offense involves commercial sexual activity, or 530.064(1)(a) [Unlawful transaction with a minor in the first degree], or KRS Chapter 531 [Pornography].”

Louisiana

La. Stat. Ann. § 14:81.3(C), states, “It shall not constitute a defense to a prosecution brought pursuant to this Section [Computer-aided solicitation of a minor] that the person reasonably believed to be under the age of seventeen is actually a law enforcement officer or peace officer acting in his official capacity.”

Michigan

Mich. Comp. Laws § 750.145d(1)(a) (Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions) makes it illegal for a defendant to, “use the internet or a computer, [etc.] . . . for the purpose of . . . Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], 145c [child pornography] . . . in which the victim or intended victim is . . . believed by that person to be a minor.”

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Point	Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.
The Legislative Solution	<p>Many children are reported missing each year. Unfortunately, there is a strong corollary between missing and runaway children and domestic minor sex trafficking as children removed from the stability of a home and supervision have heightened vulnerabilities that are identified and exploited within days if not hours by traffickers. State laws that mandate the reporting of missing and found children can lead to data to assist in the tracking of these children and ultimately provide a tool for law enforcement and child welfare to identify the repeat runaways and frequent missing children who are at high-risk for exploitation through sex trafficking and commercial sexual exploitation. Integrated reporting requirements between law enforcement, schools and child welfare agencies can help to close gaps that interfere with identification and reporting of missing children who become victims of sex trafficking.</p>

Select Statute Highlights	
California	<p>copy of or information concerning the records of the missing child is requested, the person authorized to provide such copy or information is alerted to the fact that the child has been listed or reported as missing.”</p>
<p>Cal. Penal Code § 14205 (Missing person reports; persons under 16 and persons at risk) requires local police and sheriffs’ departments to report missing and runaway children. Cal. Penal Code § 14201.5 (Missing and exploited children’s recovery network) provides for the creation of the Missing and Exploited Children’s Recovery Network, which consists of an automated computerized system that transmits to all state and local law enforcement agencies and media services a missing child’s personal information. Cal. Penal Code § 14201.6(a)(2) requires the California Department of Justice must “maintain a publicly accessible computer internet directory of information relating to . . . [c]ritical missing children.” Cal. Penal Code § 14207(a) (Report of finding missing person) requires the law enforcement agency that locates the missing person to “immediately report that information to the Attorney General.</p>	
Nevada	
Florida	<p>Pursuant to Nev. Rev. Stat. Ann. § 432.200(1) (Duties of law enforcement agency receiving report of missing child; request for and use of identifying information; notification that child is found or returned), “1. A law enforcement agency shall accept every report of a missing child which is submitted to the agency, including, but not limited to, a report made by telephone. Upon receipt of such a report, the agency shall immediately conduct a preliminary investigation and classify the cause of the disappearance of the child as “runaway,” “abducted by the parent of the child,” “abducted by a stranger” or “cause of disappearance unknown,” and shall:(a) Transmit all available information about the child to the Clearinghouse within 36 hours after the report is received; (b) Immediately notify such persons and make such inquiries concerning the missing child as the agency deems necessary; . . . (d) Enter into the National Crime Information Center’s Missing Person File, as miscellaneous information, any person reasonably believed to have unlawfully abducted or detained the missing child, or aided or abetted the unlawful abduction or detention.” Nev. Rev. Stat. Ann. § 432.200(4) requires the law enforcement agency to transmit information of a recovered child to the national Crime Information Center and Clearinghouse.</p>
Florida	<p>Fla. Stat. § 937.025(1) (Missing children; student records; reporting requirements; penalties) states that “upon notification by the Department of Law Enforcement that a child is listed or reported as a missing child, the school in which the child is currently enrolled, or was previously enrolled, shall flag the student records in such a manner that whenever a</p>

Report Cards



Summary

Nevada's human trafficking law, called involuntary servitude, does not expressly include sex trafficking and requires force, fraud, or coercion for all victims. Limited prosecution options and weak penalties fail to deter demand and few protective provisions exist for children exploited through commercial sex acts.



CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Nevada law requires “forced labor or services” for all cases of human trafficking and does not include sex trafficking of minors as a specific form of trafficking. The state commercial sexual exploitation of children (CSEC) laws include: soliciting prostitution from a minor under 18, pandering of a minor, employing or exhibiting minor in certain immoral activities, and unlawful use of a minor in producing pornography or as subject of sexual portrayal in performance. These laws do not refer to the human trafficking law or identify a victim as a sex trafficking victim.

§ CRIMINAL PROVISIONS ADDRESSING DEMAND

The absence of sex trafficking as a form of human trafficking in the law coupled with the lack of language directing application of the law to buyers of commercial sex with minors makes application of the law to buyers unlikely. CSEC laws include the crime of buying sex with a minor. The solicitation for prostitution statute establishes a felony for buying sex with a minor but a convicted buyer may be given probation as a sentence. A potential exists for avoiding the felony charge of soliciting sex with a minor due to the lack of a prohibition on a mistake of age defense, an assertion of which would require proof of knowledge of age. The statute penalizing communications with a child with the intent to persuade or lure the child to engage in sexual conduct might apply to buyers using the Internet to contact victims. Buyers may be ordered to pay restitution, and victims of child pornography have a civil cause of action against buyers. Convictions for child pornography require sex offender registration, and buyers convicted of offenses involving a sexual act may be required to register, except in cases where the sexual act is with a minor over 12 who is not more than four years younger than the offender.



CRIMINAL PROVISIONS FOR TRAFFICKERS

Traffickers convicted of human trafficking, which would also apply to sex trafficking, may be sentenced to 5–20 years imprisonment (or 1–15 years for recruiting) and a possible fine up to \$50,000, and could be in violation of racketeering and money laundering laws. Convictions for pandering carry a 1–10 year sentence and possible fines up to \$100,000 if the victim is 14–17 or up to \$500,000 if the victim is under 14. Using a minor in pornography carries up to a life sentence and a possible fine up to \$100,000. Traffickers are subject to asset forfeiture. A trafficker may be ordered to pay victim restitution, and victims of child pornography offenses under 16 may bring a civil claim against a trafficker. The statute on communicating with a child with the intent to persuade or lure the child to engage in sexual conduct provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. Traffickers convicted of CSEC and child pornography offenses must register for crimes against a child and as sex offenders, and those convicted of a crime involving a sexual act may be required to register, except when the victim is over 12 and not more than 4 years younger than the offender. A conviction for human trafficking is grounds for terminating parental rights.

DEMAND | SELECTED COMMERCIAL SEX CRIMES*

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Solicitation for prostitution of a minor (§201.354(3))	Category E felony	1–4 years (can be suspended in favor of probation)	Max. \$5,000	○
Offer or agree to engage in act of prostitution (§ 207.030(1))	Misdemeanor	Max. 6 months	Max. \$1,000	○
Possessing child pornography – child under 16 (§ 200.730)	Category B felony	1–6 years	Max. \$5,000	●
Using the Internet with intent to view child pornography – child under 16 (§ 200.727)	Category C felony	1–5 years	Max. \$10,000	●

* All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.
 ** For a full discussion, see the analysis and recommendations report at www.sharedhope.org/reportcards.aspx



2.5
7.5



13
25



13.5
15



6.5
10



12.5
27.5



10
15

FINAL SCORE:

58

PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Domestic minor sex trafficking victims are vulnerable due to gaps in Nevada’s laws. The definition of a victim for crime victim’s compensation expressly includes only victims of pornography, not other forms of commercial sexual exploitation of children. Involuntary servitude and CSEC offenses do not prohibit a defendant from asserting a defense that the minor consented to the commercial sex acts. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking, leaving open the possibility of a victim being arrested and charged with the delinquency of prostitution with no protective provisions statutorily mandated. The definition of abuse or neglect includes sexual exploitation through prostitution or pornography, but child protective services is limited from responding in a case of a trafficker controlled child unless the trafficker is an adult “continually or regularly found in the same household as the child.” Only victims suffering a physical injury and those exploited through production of pornography are eligible for state crime victims’ compensation, and they may be adversely affected by requirements to file a claim within one year (or before turning 21 if a victim of child pornography) and to report the crime within five days of when a report could have reasonably been made unless “the interests of justice so require;” furthermore, they may have their claim reduced or denied due to contributory misconduct. Few victim-friendly criminal justice procedures exist. Testifying child sex trafficking and CSEC victims are not protected from the trauma of cross-examination by a “rape shield” law, and only children under 14 may testify through an “alternative method,” such as closed circuit television. Juvenile records are automatically sealed once the minor reaches 21 and a child may petition at an earlier time. Though not mandatory, a court may award restitution in any criminal sentence. Victims under 16 exploited through child pornography have a specific civil action against buyers, traffickers, and facilitators and the action may be filed by the later of reaching 21 or within three years of a conviction in the criminal case. Criminal statutes of limitations (three years for felonies, two years for gross misdemeanors, and one year for misdemeanors) are not extended or eliminated for child sex trafficking and CSEC crimes.

CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTION

Nevada law mandates training on sexual exploitation of minors, but does not define sexual exploitation or mandate training on sex trafficking. Nevada requires both parties to consent to audiotaping over the telephone, but allows single party consent to in-person communications. Wiretapping is not expressly authorized in sex trafficking or CSEC investigations, denying a critical tool to law enforcement. No specific statutory language allows law enforcement to use a decoy in domestic minor sex trafficking investigations, although the crime of luring a child under 16 for sexual acts may use a decoy because the offender need only to have believed the child to be under 16, foreclosing the argument that the intended victims was not in fact a child. Similarly, law enforcement may utilize the Internet to investigate cases where the offender believes the law enforcement officer is under 16. Reporting missing and exploited children and recovered children is required by law.



CRIMINAL PROVISIONS FOR FACILITATORS

The state human trafficking law includes the crime of benefitting from participation in human trafficking, a felony punishable by 1–15 years imprisonment and a possible fine up to \$50,000. Given the lack of sex trafficking in the human trafficking law, CSEC laws that include offenses of facilitation may be more applicable. Facilitators may be guilty of pandering, punishable by 1–10 years imprisonment and fines up to \$100,000 if the victim is 14–17 and up to \$500,000 if the victim is under 14. Promoting a sexual performance by a minor is a felony punishable by a possible fine not to exceed \$100,000 and imprisonment up to life with parole eligibility only after 10 years if the victim is under 14, and 5 years if the victim is 14–17. Advertising or distributing child pornography is a felony punishable by 1–15 years imprisonment and/or a fine up to \$15,000. Facilitators’ criminal activities may also lead to racketeering and money laundering prosecutions. Convicted facilitators of CSEC and child pornography offenses are subject to asset forfeiture action. Though not mandatory, a court could order a facilitator to pay restitution, and a facilitator could face a civil cause of action for violations related to child pornography offenses. No laws in Nevada address sex tourism.

13 YRS OLD

THAT'S THE AVERAGE AGE CHILDREN ARE FORCED
INTO PROSTITUTION



In 2009-2010, Shared Hope International hosted awareness campaigns in Las Vegas, Chicago, and D.C. where these signs were prominently displayed as billboards, metro transit ads, and more. This was done in partnership with the Frederick Douglass Family Foundation, D.C. Task Force and local advocates.

