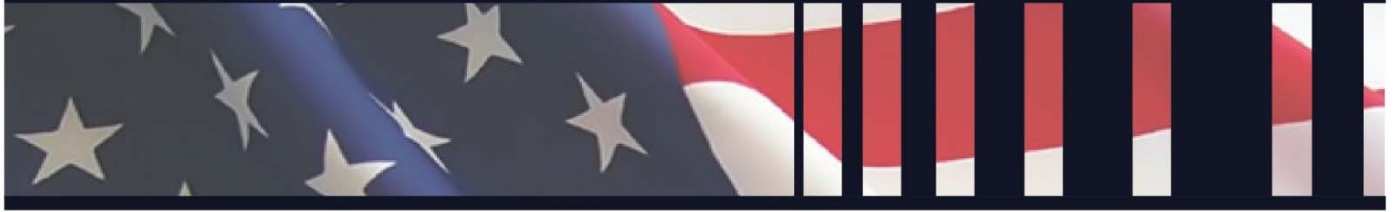


PROTECTED INNOCENCE INITIATIVE

Creating A Uniform Standard Across States to Combat Domestic Minor Sex Trafficking



ANALYSIS AND RECOMMENDATIONS ARIZONA

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.*

Arizona has distinguished sex trafficking from other forms of human trafficking by enacting a stand-alone sex trafficking law. Arizona Revised Statutes Annotated (Ariz. Rev. Stat. Ann.) § 13-1307(B) (Sex trafficking) makes it a crime “to traffic another person who is under eighteen years of age with either of the following: 1. The intent to cause the other person to engage in any prostitution or sexually explicit performance.² 2. The knowledge that the other person will engage in any prostitution or sexually explicit performance.” Ariz. Rev. Stat. Ann. § 13-1307(E)(4) defines “traffic” as “to entice, recruit, harbor, provide, transport or otherwise obtain another person.”

¹ Unless otherwise specified, all references to Arizona statutes were taken from Arizona Revised Statutes (LEXIS through the Fiftieth Legislature), and all federal statutes were taken from the United States Code (LEXIS through PL 112-54, approved 11/12/11).

² Ariz. Rev. Stat. Ann. § 13-1307(E)(3) defines “sexually explicit performance” as “a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interest of patrons.”

Sex trafficking is a Class 2 felony³ with penalty enhancements (Dangerous crimes against children) for trafficking a minor under 15. Ariz. Rev. Stat. Ann. §§ 13-1307(D), 13-705(C)

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.*⁴

The following state laws create separate and specific crimes of commercial sexual exploitation of children:

1. Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) criminalizes the sale and purchase of sex with a minor.⁵ It states in part,

A. A person commits child prostitution by knowingly:

1. Causing any minor to engage in prostitution.
2. Using any minor for the purposes of prostitution.
3. Permitting a minor who is under the person's custody or control to engage in prostitution.
4. Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution.
5. Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor.
6. Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor.
7. Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.

B. A person who is at least eighteen years of age commits child prostitution by knowingly:

1. Engaging in prostitution with a minor who is under fifteen years of age.
2. Engaging in prostitution with a minor who the person knows is fifteen, sixteen or seventeen years of age.
3. Engaging in prostitution with a minor who is fifteen, sixteen, or seventeen years of age.

...

2. Ariz. Rev. Stat. Ann. § 13-3206 (Taking child for purpose of prostitution) makes it a crime if one "takes away any minor from the minor's father, mother, guardian or other person having the legal custody of the minor, for the purpose of prostitution" A conviction is punishable as a Class 4 felony, unless the minor is under 15, which makes a conviction punishable as a Class 2 felony since it is a dangerous crime against a child under Ariz. Rev. Stat. Ann. § 13-705(C).

3. Ariz. Rev. Stat. Ann. § 13-3552 (Commercial sexual exploitation of a minor) is a Class 2 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3552(B), 13-705(D). The law states in part,

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 conduct⁶ for the purpose of producing any

³ Here and elsewhere in this report that felony classifications are mentioned, they result in the following imprisonment ranges pursuant to Ariz. Rev. Stat. Ann. § 13-702: Class 2 is punishable by imprisonment of 4-10 years (presumptive 5 years), Class 3 is punishable by imprisonment of 2.5 to 7 years (presumptive 3.5 years), Class 4 is punishable by imprisonment of 1.5 to 3 years (presumptive 2.5 years), Class 5 is punishable by imprisonment of .75 to 2 years (presumptive 1.5 years), and Class 6 is punishable by .5 to 1.5 years (presumptive 1 year). These penalties are listed without consideration of aggravating or mitigating factors, which increase or reduce the penalties respectively, according to the guidelines given in Ariz. Rev. Stat. Ann. § 13-702.

All classes of felonies are punishable by possible fines up to \$150,000. Ariz. Rev. Stat. Ann. § 13-801.

⁴ See *infra* Sections 2.4 and 3.1 for charts outlining the relevant penalty provisions for offenses listed in this section.

⁵ Ariz. Rev. Stat. Ann. § 13-3212 has a complicated penalty structure, which is set out below under Section 2.4.

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.

....

Other sexual exploitation laws that may apply in cases of commercial sexual exploitation of a child although they do not specify commercial exchanges include the following:

1. Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) states that a person commits a crime by knowingly "1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct. 2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct." Violating Ariz. Rev. Stat. Ann. § 13-3553 is a Class 2 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3553(C), 13-705(D).
2. Ariz. Rev. Stat. Ann. § 13-3554 (Luring a minor for sexual exploitation) makes "offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor" a crime. The statute is a Class 3 felony with sentence enhancements if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3554(C), 13-705(E).
3. Ariz. Rev. Stat. Ann. § 13-3560(A), (C) (Aggravated luring a minor for sexual exploitation) makes the following actions a Class 2 felony, with sentence enhancements under Ariz. Rev. Stat. Ann. § 13-705(D) if the minor is under 15:

A. A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors⁷ for the

⁶ Ariz. Rev. Stat. Ann. § 13-3551, which provides the definitions for chapter 35.1, states in subsection (9),

9. "Sexual conduct" means actual or simulated:

- (a) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.
- (b) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
- (c) Sexual bestiality.
- (d) Masturbation, for the purpose of sexual stimulation of the viewer.
- (e) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
- (f) Defecation or urination for the purpose of sexual stimulation of the viewer.

⁷ Ariz. Rev. Stat. Ann. § 13-3560(E)(2) refers to § 13-3501 for the definition of "harmful to minors." Ariz. Rev. Stat. Ann. § 13-3501 states,

1. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:

- (a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:
 - (i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of

purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.

2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

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

The CSEC statutes (listed above) do not refer to Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking).

1.3.1 Recommendation: Add specific references to Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) in the CSEC statutes to clarify the application of Ariz. Rev. Stat. Ann. § 13-1307 in order to properly identify victims.

its intended and probable recipient group or in the trier of fact.

(ii) Portrays the description or representation in a patently offensive way.

(b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

Legal Components:

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

Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) could apply to buyers of sex from victims of domestic minor sex trafficking through the term “obtain.” Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),⁸ have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”⁹ a person under 18 to engage in commercial sex.¹⁰ It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in Arizona’s trafficking statute may be similarly applied, and could, therefore, implicate buyers for sex trafficking.

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

Ariz. Rev. Stat. Ann. § 13-3212(B) (Child prostitution) does include the crime of buying sex with a minor by stating,

- B. A person who is at least eighteen years of age commits child prostitution by knowingly:
 1. Engaging in prostitution¹¹ with a minor who is under fifteen years of age.
 2. Engaging in prostitution with a minor who the person knows is fifteen, sixteen or seventeen years

⁸ 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.).

⁹ 18 U.S.C. § 1591(a).

¹⁰ 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>.

¹¹ Ariz. Rev. Stat. Ann. § 13-3211 states, “‘Prostitution’ means engaging in or agreeing or offering to engage in sexual conduct under a fee arrangement with any person for money or any other valuable consideration.”

of age.

3. Engaging in prostitution with a minor who is fifteen, sixteen, or seventeen years of age.

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

Ariz. Rev. Stat. Ann. § 13-1002 defines the crime of solicitation as follows: “A person . . . commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other’s complicity in its commission.” Solicitation of prostitution is a Class 3 misdemeanor,¹² since the crime of prostitution is a misdemeanor. Ariz. Rev. Stat. Ann. §§ 13-1002(B)(7), 13-3214. However, Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) specifically makes it illegal to sell or to purchase sex with a minor with a more severe penalty than solicitation under § 13-1002. Solicitation of Ariz. Rev. Stat. Ann. § 13-3212 under § 13-1002 would be a Class 4 felony for the Class 2 felony offenses and a Class 2 misdemeanor for the Class 6 felony offense.¹³ Ariz. Rev. Stat. Ann. §§ 13-1002(B)(2), (6), 13-1212(E)–(G), (H).

2.3.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-3214 (Prostitution) to refer to § 13-3212 (Child prostitution) in cases where the buying of sex with a minor is involved to ensure that buyers are charged with the correct crime and penalized more severely.

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

Sentences for CSEC, sex trafficking, and non-commercial sex offenses that apply to buyers of commercial sex with minors are included here as they potentially could be applied to prosecute a buyer of sex with a minor. The sentences are enhanced if the victim is under the age of 15.

Offense	Crime classification	Sentence (first felony offense) pursuant to Ariz. Rev. Stat. Ann. § 13-702 (except where noted differently)	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children (first felony offense) – applies when victim is under 15 years old	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children enhancement (person “previously convicted of one predicate felony”)
Ariz. Rev. Stat. Ann. § 13-1307: Sex trafficking	Class 2 felony	3–12.5 years Presumptive 5 years	13–27 years Presumptive 20 years	23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-3212: Child prostitution ¹⁴	1) Class 2 felony if involves a minor under 15 (Ariz. Rev. Stat. Ann. §13-3212(F)) 2) Class 2 felony if the defendant knew the minor is 15, 16,	1) N/A 2) 7–21 years Presumptive 10.5 years (Ariz. Rev. Stat. Ann. § 13-3212(G)) ¹⁵ 3) .33–2 years Presumptive 1 year	1) 13–27 years Presumptive 20 years	1) 23–37 years Presumptive 30 years

¹² Here and elsewhere in this report that misdemeanor classifications are mentioned, they result in the following imprisonment ranges pursuant to Ariz. Rev. Stat. Ann. § 13-707: Class 1 misdemeanors are punishable by imprisonment up to 6 months, Class 2 misdemeanors are punishable by imprisonment up to 4 months, and Class 3 misdemeanors are punishable by imprisonment up to 30 days. Misdemeanors also face possible fines in the following amounts pursuant to Ariz. Rev. Stat. Ann. § 13-802: Class 1 misdemeanors face a possible fine up to \$2,500, Class 2 misdemeanors face a possible fine up to \$750, and Class 3 misdemeanors face a possible fine up to \$500.

¹³ See *supra* note 3.

	<p>or 17 (Ariz. Rev. Stat. Ann. § 13-3212(G))</p> <p>3) Class 6 felony if minor is 15, 16 or 17 (Ariz. Rev. Stat. Ann. § 13-3212(H))</p>	<p>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. If the offender meets certain requirements, the court has discretion to suspend 90 days of the sentence.</p>		
<p>Ariz. Rev. Stat. Ann. § 13-1405: Sexual conduct with a minor</p>	<p>1) Class 2 felony if under 15</p> <p>2) Class 6 felony if the minor is at least 15</p> <p>3) Class 2 felony if committed by someone who is or was a “parent, step-parent, adoptive parent, legal guardian or foster parent or the minor’s teacher or clergyman or priest”</p>	<p>1) N/A</p> <p>2) .33–2 years Presumptive 1 year</p> <p>3) 3–12.5 years Presumptive 5 years</p>	<p>1) 13–27 years Presumptive 20 years (However, under (B) for “sexual conduct with a minor who is under twelve years of age,” certain defendants may be sentenced to life.)</p>	<p>1) 23–37 years Presumptive 30 years</p>
<p>Ariz. Rev. Stat. Ann. § 13-1417: Continuous sexual abuse of a child under 14 years of age</p>	<p>Class 2 felony</p>	<p>N/A</p>	<p>13–27 years Presumptive 20 years</p>	<p>23–37 years Presumptive 30 years</p>
<p>Ariz. Rev. Stat. Ann. § 13-1410: Molestation of a child under 15</p>	<p>Class 2 felony</p>	<p>N/A</p>	<p>10–24 years Presumptive 17 years</p>	<p>21–35 years Presumptive 28 years</p>

¹⁴ The 2011 amendments added (D), which had previously been repealed. It states that “[n]otwithstanding any other law, a sentence imposed on a person for a violation of subsection A or subsection B, paragraph 2 of this section involving a minor who is fifteen, sixteen or seventeen years of age shall be consecutive to any other sentence imposed on the person at any time.”

¹⁵ Under Ariz. Rev. Stat. Ann. § 13-3212(G),

G. . . .

2. The term for a defendant who has one historical prior felony conviction for a violation of this section is as follows:

Minimum	Presumptive	Maximum
14 years	15.75 years	28 years

3. The term for a defendant who has two or more historical prior felony convictions for a violation of this section is as follows:

Minimum	Presumptive	Maximum
21 years	28 years	35 years

Ariz. Rev. Stat. Ann. § 13-3553: Sexual exploitation of a minor	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3560: Aggravated luring a minor for sexual exploitation	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3554: Luring a minor for sexual exploitation	Class 3 felony	2–8.75 years Presumptive 3.5 years	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release	8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release
Ariz. Rev. Stat. Ann. § 13-3561: Unlawful age misrepresentation	Class 3 felony	2–8.75 years Presumptive 3.5 years	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release	8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release

In addition, a fine may be imposed as part of the sentence requiring the felon to “pay an amount fixed by the court not more than one hundred fifty thousand dollars.” Ariz. Rev. Stat. Ann. § 13-801.

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

¹⁶ Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

an offense under section 1591 [18 USCS § 1591] (relating to sex trafficking of children), 2241 [18 USCS § 2241] (relating to aggravated sexual abuse), 2242 [18 USCS § 2242] (relating to sexual abuse), 2244(a)(1) [18 USCS § 2244(a)(1)] (relating to abusive sexual contact), 2245 [18 USCS § 2245] (relating to sexual abuse resulting in death), 2251 [18 USCS § 2251] (relating to sexual exploitation of children), 2251A [18 USCS § 2251A] (relating to selling or buying of children), 2422(b) [18 USCS § 2422(b)] (relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).

¹⁷ 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

¹⁸ 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(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).

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.*

Using the Internet to accomplish a sexual offense is a separate crime resulting in serious penalties for buyers. The provisions do not specifically apply to commercial sexual exploitation of a child but do apply to any sexual exploitation of a child. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) states,

A. A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.
2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

Ariz. Rev. Stat. Ann. § 13-3560 is a Class 2 felony, with sentence enhancements under Ariz. Rev. Stat. Ann. § 13-705 if the minor is under 15. Ariz. Rev. Stat. Ann. § 13-3560(C).

In addition, Ariz. Rev. Stat. Ann. § 13-3561 (Unlawful age misrepresentation) makes it a crime to misrepresent age in electronic communications with minors for the purpose of luring them into sexual conduct. Subsection A states,

A. A person commits unlawful age misrepresentation if the person is at least eighteen years of age, and knowing or having reason to know that the recipient of a communication is a minor, uses an electronic communication device to knowingly misrepresent the person's age for the purpose of committing any sexual offense involving the recipient that is listed in section 13-3821 [Persons required to register on the sex offender registry].

Ariz. Rev. Stat. Ann. § 13-3561 is a Class 3 felony and subject to the sentencing provisions in § 13-705 if the victim is under 15. Ariz. Rev. Stat. Ann. § 13-3561(D).

- 2.5.1 Recommendation: Establish a law that expressly criminalizes using the Internet to purchase commercial sex acts with a minor under the age of 18.

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

The repeal of Ariz. Rev. Stat. Ann. § 13-3213 (Defense) in the 2010 legislative session removed the mistake of age defense for older minors in a prosecution under Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution). Currently, Ariz. Rev. Stat. Ann. § 13-3212 provides strict liability for a person who “[e]ngag[es] in prostitution with a minor who is under fifteen years of age.” 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, while a person who “[e]ngag[es] in prostitution with a minor who is fifteen, sixteen, or seventeen years of age” when the defendant's knowledge of the age of the minor cannot be proven is guilty of a Class 6 felony.

Ariz. Rev. Stat. Ann. § 13-1407(B) states, “It is a defense to a prosecution pursuant to sections 13-1404 [Sexual abuse] and 13-1405 [Sexual conduct with a minor] in which the victim's lack of consent is based on incapacity to consent because the victim was fifteen, sixteen or seventeen years of age if at the time the defendant engaged in the conduct constituting the offense the defendant did not know and could not reasonably have known the age of the victim.”

- 2.6.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) and Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) to prohibit a mistake of age defense if the victim of the crime is a minor under the age of 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.*

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 who is under fifteen years of age" commits a Class 2 felony and is subject to punishment pursuant to Ariz. Rev. Stat. Ann. § 13-705. Ariz. Rev. Stat. Ann. § 13-3212(B)(1), (F). 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. Ariz. Rev. Stat. Ann. § 13-3212(B)(2), (G). 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. Ariz. Rev. Stat. Ann. § 13-3212(B)(3), (H).

Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking), if determined applicable to a buyer, applies to situations of purchasing sex from any minor under 18, with a penalty enhancement if the minor is under 15. The base penalty is a presumptive 5 year sentence and a possible fine up to \$150,000. Ariz. Rev. Stat. Ann. §§ 13-702, 13-801. Sentence enhancements for a minor under 15 bring the presumptive penalty to 20 years for the first offense. Ariz. Rev. Stat. Ann. § 13-705.

- 2.7.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) to raise the base penalty for all minors, regardless of the offender's knowledge of the victim's age, to a Class 2 felony carrying a sentence of 7–21 years.

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.*

Ariz. Rev. Stat. Ann. § 13-801 permits the court to impose up to a \$150,000 fine as part of a sentence for a felony conviction. In addition, asset and property forfeiture are available.

Ariz. Rev. Stat. Ann. § 13-3557 (Equipment; forfeiture)¹⁹ states, "On the conviction of a person for a violation of section 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation] or 13-3560 [Aggravated luring a minor for sexual exploitation], the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed."

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property "subject to forfeiture under this chapter" pursuant to a seizure warrant, or without a court order under certain conditions, and with probable cause established. Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions), while allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, does state, "All property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture." Therefore, forfeiture may not be available for sex trafficking and commercial sexual exploitation of children offenses because neither of those offenses appears to be specifically designated in a statute providing for forfeiture.

¹⁹ Statute is codified in Chapter 35.1 entitled, "Sexual Exploitation of Children."

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

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) makes it illegal for one to engage in “[r]ecording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct” as well as the “[d]istributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” Sexual exploitation of a minor is a Class 2 felony (presumptive 5 year sentence) with a sentence enhancement under § 13-705 if the minor is under 15 (presumptive 17 year sentence for first offense).

In comparison, a federal conviction for possession of child pornography²⁰ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²¹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²²

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

Convicted buyers of sex with minors are required to register as sex offenders. Ariz. Rev. Stat. Ann. § 13-3821 (Persons required to register) lists the crimes for which an offender must register as a sex offender. They include the following crimes: “3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age. 4. Sexual conduct with a minor pursuant to section 13-1405. 5. Sexual assault pursuant to section 13-1406. . . . 10. Child prostitution pursuant to section 13-3212 subsection A or subsection B, paragraphs 1 or 2. . . . 12. Sexual exploitation of a minor pursuant to section 13-3553. . . . 14. Sex trafficking of a minor pursuant to section 13-1307.” Additionally, subsection C states, “Notwithstanding subsection A of this section, the judge who sentences a defendant for any violation of chapter 14²³ or 35.1²⁴ of this title or for an offense for which there was a finding of sexual motivation pursuant to section 13-118²⁵ may require the person who committed the offense to register pursuant to this section.”

²⁰ 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).

²¹ 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).

²² 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).

²³ Chapter 14 is entitled, “Sexual Offenses.”

²⁴ Chapter 35.1 is entitled, “Sexual Exploitation of Children.”

²⁵ Ariz. Rev. Stat. Ann. § 13-118 (Sexual motivation special allegation; procedures; definition) states,

A. In each criminal case involving an offense other than a sexual offense, the prosecutor may file a special allegation of sexual motivation if sufficient admissible evidence exists that would justify a finding of sexual motivation by a reasonable and objective finder of fact.

B. If the prosecutor files a special allegation of sexual motivation, the state shall prove beyond a reasonable doubt that the defendant committed the offense with a sexual motivation. The trier of fact shall find a special verdict as to whether the defendant committed the offense with a sexual motivation.

C. For purposes of this section “sexual motivation” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

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.

Arizona has a series of laws directed at the trafficker in a crime of prostitution or commercial sexual exploitation of a child, including the following:

Offense	Crime classification	Sentence (first felony offense) pursuant to Ariz. Rev. Stat. Ann. §13-702 (except where noted differently)	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children (first felony offense)—applies when victim is under 15 years old	Ariz. Rev. Stat. Ann. § 13-705 Dangerous Crimes Against Children enhancement (person “previously convicted of one predicate felony”)
Ariz. Rev. Stat. Ann. § 13-1307(B): Sex trafficking of a minor	Class 2 felony	3–12.5 years Presumptive 5 years	13–27 years Presumptive 20 years	23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-3206: Taking a child for the purpose of prostitution	1) Class 4 felony 2) Class 2 felony if under 15 years old	1) 1–3.75 years Presumptive 2.5 years 2) N/A	2) 13–27 years Presumptive 20 years	2) 23–37 years Presumptive 30 years

Ariz. Rev. Stat. Ann. § 13-3212: Child prostitution ²⁶	<p>1) Class 2 felony if involves a minor under 15 (Ariz. Rev. Stat. Ann. § 13-3212(F))</p> <p>2) Class 2 felony if the defendant knew the minor is 15, 16, or 17 (Ariz. Rev. Stat. Ann. § 13-3212(G))</p> <p>3) Class 6 felony if minor is 15, 16, or 17 (Ariz. Rev. Stat. Ann. § 13-3212(H))</p>	<p>1) N/A</p> <p>2) 7–21 years Presumptive 10.5 years (Ariz. Rev. Stat. Ann. § 13-3212(G))²⁷</p> <p>3) .33–2 years Presumptive 1 year 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. If the offender meets certain requirements, the court has discretion to suspend 90 days of the sentence.</p>	1) 13–27 years Presumptive 20 years	1) 23–37 years Presumptive 30 years
Ariz. Rev. Stat. Ann. § 13-3552: Commercial sexual exploitation of a minor (pornography)	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3553: Sexual exploitation of a minor	Class 2 felony	3–12.5 years Presumptive 5 years	10–24 years Presumptive 17 years	21–35 years Presumptive 28 years
Ariz. Rev. Stat. Ann. § 13-3554: Luring a minor for sexual exploitation	Class 3 felony	2–8.75 years Presumptive 3.5 years Possibility of probation if child is over 15	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release	8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release
Ariz. Rev. Stat. Ann. § 13-3561: Unlawful age misrepresentation	Class 3 felony	2–8.75 years Presumptive 3.5 years	5–15 years Presumptive 10 years Possibility of suspension of sentence, probation, pardon or release	8–22 years Presumptive 15 years Not eligible for suspension of sentence, probation, pardon or release

Additionally, Arizona has a range of laws prohibiting conduct centered on promoting prostitution. They include the following: Ariz. Rev. Stat. Ann. § 13-3201 (Enticement of persons for purpose of prostitution), § 13-3202 (Procurement by false pretenses of person for purpose of prostitution), § 13-3203 (Procuring or placing persons in house of prostitution), § 13-3204 (Receiving earnings of prostitute), § 13-3207 (Detention of persons in

²⁶ See *supra* note 14.

²⁷ See *supra* note 15.

house of prostitution for debt), § 13-3208 (Keeping or residing in house of prostitution; employment in prostitution), and § 13-3209. These provisions are either Class 5 or Class 6 felonies.²⁸

Traffickers also face penalties under the money laundering provisions. Ariz. Rev. Stat. Ann. § 13-2317 (A)–(E) states,

- A. A person is guilty of money laundering in the first degree if the person does any of the following:
 - 1. Knowingly initiates, organizes, plans, finances, directs, manages, supervises or is in the business of money laundering in violation of subsection B of this section.
 -
- B. A person is guilty of money laundering in the second degree if the person does any of the following:
 - 1. Acquires or maintains an interest in, transacts, transfers, transports, receives or conceals the existence or nature of racketeering proceeds knowing or having reason to know that they are the proceeds of an offense.
 - 2. Makes property available to another by transaction, transportation or otherwise knowing that it is intended to be used to facilitate racketeering.
 - 3. Conducts a transaction knowing or having reason to know that the property involved is the proceeds of an offense and with the intent to conceal or disguise the nature, location, source, ownership or control of the property or the intent to facilitate racketeering.
 -
-
- D. In addition to any other criminal or civil remedy, if a person violates subsection A or B of this section as part of a pattern of violations that involve a total of one hundred thousand dollars or more in any twelve month period, the person is subject to forfeiture of substitute assets in an amount that is three times the amount that was involved in the pattern, including conduct that occurred before and after the twelve month period.
- E. Money laundering in the third degree is a class 6 felony. Money laundering in the second degree is a class 3 felony. Money laundering in the first degree is a class 2 felony.

Traffickers can be convicted under the racketeering provisions. Ariz. Rev. Stat. Ann. § 13-2301(D)(4) lists Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a child) and § 13-2317 (Money laundering) as racketeering offenses. Ariz. Rev. Stat. Ann. § 13-2312 states,

- A. A person commits illegal control of an enterprise if such person, through racketeering or its proceeds, acquires or maintains, by investment or otherwise, control of any enterprise.
- B. A person commits illegally conducting an enterprise if such person is employed by or associated with any enterprise and conducts such enterprise's affairs through racketeering or participates directly or indirectly in the conduct of any enterprise that the person knows is being conducted through racketeering.
- C. A person violates this section if the person hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this section.
- D. A knowing violation of subsection A or B is a class 3 felony. A knowing violation of subsection C is a class 2 felony and the person is not eligible for probation, pardon, suspension of sentence or release on any basis until the person has served the sentence imposed by the court or the sentence is commuted.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)²⁹ 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.

²⁸ See *supra* note 3.

²⁹ See *supra* note 8.

§§ 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 offense³⁰ against a minor.

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

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) makes it illegal for one to engage in “[r]ecording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct” as well as the “[d]istributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.” A conviction is punishable as a Class 2 felony with a sentence enhancement under Ariz. Rev. Stat. Ann. § 13-705 if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3553(C), 13-705(D).

In comparison, 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 offense³¹ against a minor. Additionally, a federal conviction for distribution of child pornography³² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁴

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.*

Using the Internet to accomplish a sexual offense is a separate crime resulting in serious penalties for buyers. The provisions do not specifically apply to commercial sexual exploitation of a child but do apply to any sexual exploitation of a child. Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) states,

A. A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors³⁵ for the

³⁰ See *supra* note 16.

³¹ See *supra* note 16.

³² 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).

³³ 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).

³⁴ 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).

³⁵ Ariz. Rev. Stat. Ann. § 13-3560 refers to the definition of “harmful to minors” in Ariz. Rev. Stat. Ann. § 13-3501. Ariz. Rev. Stat. Ann. § 13-3501 states,

purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.

2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

Ariz. Rev. Stat. Ann. § 13-3560 is a Class 2 felony, with sentence enhancements under if the minor is under 15. Ariz. Rev. Stat. Ann. §§ 13-3560(C), 13-705(D).

In addition, Ariz. Rev. Stat. Ann. § 13-3561 (Unlawful age misrepresentation) makes it a crime to misrepresent age in electronic communications with minors for the purpose of luring them into sexual conduct. Subsection A states,

A. A person commits unlawful age misrepresentation if the person is at least eighteen years of age, and knowing or having reason to know that the recipient of a communication is a minor, uses an electronic communication device to knowingly misrepresent the person's age for the purpose of committing any sexual offense involving the recipient that is listed in section 13-3821 [Persons required to register on the sex offender registry], subsection A.

Ariz. Rev. Stat. Ann. § 13-3561 is a Class 3 felony and subject to the sentencing provisions in Ariz. Rev. Stat. Ann. § 13-705 if the victim is under 15. Ariz. Rev. Stat. Ann. § 13-3561(D).

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

Traffickers convicted of sex trafficking, other CSEC felonies, racketeering, or money laundering face a possible fine up to \$150,000 imposed by the court as part of the sentence for sex trafficking. Ariz. Rev. Stat. Ann. § 13-801.

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property "subject to forfeiture under this chapter" pursuant to a seizure warrant or without a court order under certain conditions and with probable cause. While allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions) does state that "[a]ll property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture." Therefore, forfeiture may not be available for sex trafficking and commercial sexual exploitation of children offenses because these offenses do not appear to be specifically designated in a forfeiture provision.

Arizona's organized crime provisions may provide for forfeiture in some instances. Ariz. Rev. Stat. Ann. § 13-2301(D)(4) (Definitions) states in part,

D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315, unless the context otherwise requires:

....

4. "Racketeering" means any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or country in which the act occurred and, if the

1. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual activity, sexual conduct, sexual excitement, or sadomasochistic abuse, when both:

(a) To the average adult applying contemporary state standards with respect to what is suitable for minors, it both:

- (i) Appeals to the prurient interest, when taken as a whole. In order for an item as a whole to be found or intended to have an appeal to the prurient interest, it is not necessary that the item be successful in arousing or exciting any particular form of prurient interest either in the hypothetical average person, in a member of its intended and probable recipient group or in the trier of fact.
- (ii) Portrays the description or representation in a patently offensive way.

(b) Taken as a whole does not have serious literary, artistic, political, or scientific value for minors.

act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

....

(b) Any of the following acts if committed for financial gain:

....

(xxi) Obscenity.

(xxii) Sexual exploitation of a minor.

(xxiii) Prostitution.

....

(xxvii) Obscene or indecent telephone communications to minors for commercial purposes.

....

(xxx) Smuggling of human beings.

Ariz. Rev. Stat. Ann. § 13-2301(D)(6) states, “‘Remedy racketeering’ means to enter a civil judgment pursuant to this chapter or chapter 39³⁶ of this title against property or a person who is subject to liability, including liability for injury to the state that is caused by racketeering or by actions in concert with racketeering.”

Ariz. Rev. Stat. Ann. § 13-2314 (Racketeering; civil remedies by this state) states,

A. The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312. If the person against whom a racketeering claim has been asserted, including a forfeiture action or lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim. . . .

B. The superior court has jurisdiction to prevent, restrain, and remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 after making provision for the rights of any person who sustained injury to his person, business or property by the racketeering conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Prior to a determination of liability such orders may include, but are not limited to, issuing seizure warrants, entering findings of probable cause for in personam or in rem forfeiture, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to forfeiture, damages or other remedies or restraints pursuant to this section as the court deems proper.

D. Following a determination of liability such orders may include, but are not limited to:

....

4. Ordering the payment of treble damages to those persons injured by racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.

....

6. In personam forfeiture pursuant to chapter 39 of this title to the general fund of the state or county as appropriate, to the extent that forfeiture is not inconsistent with protecting the rights of any person who sustained injury to his person, business or property by the racketeering conduct, of the interest of a person in:

³⁶ Chapter 39 is entitled, “Forfeiture.”

- (a) Any property or interest in property acquired or maintained by the person in violation of section 13-2312.
- (b) Any interest in, security of, claims against or property, office, title, license or contractual right of any kind affording a source of influence over any enterprise or other property which the person has acquired or maintained an interest in or control of, conducted or participated in the conduct of in violation of section 13-2312.
- (c) All proceeds traceable to an offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 and held by the person and all monies, negotiable instruments, securities and other property used or intended to be used by the person in any manner or part to facilitate commission of the offense and that the person either owned or controlled for the purpose of that use.
- (d) Any other property up to the value of the subject property described in subdivision (a), (b) or (c) of this paragraph.

....

G. In addition to or in lieu of an action under this section the attorney general or a county attorney may file an in rem action pursuant to chapter 39 of this title for forfeiture, to the extent that forfeiture is not inconsistent with protecting the rights of any person who sustained injury to his person, business or property by the racketeering conduct, of:

- 1. Any property or interest in property acquired or maintained by a person in violation of section 13-2312.
- 2. Any interest in, security of, claims against or property, office, title, license or contractual right of any kind affording a source of influence over any enterprise or other property which a person has acquired or maintained an interest in or control of, conducted or participated in the conduct of in violation of section 13-2312.
- 3. All proceeds traceable to an offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 and all monies, negotiable instruments, securities and other property used or intended to be used in any manner or part to facilitate the commission of the offense.

....

In cases of commercial sexual exploitation of a child for child pornography and live performance, Ariz. Rev. Stat. Ann. § 13-3557 (Equipment; forfeiture)³⁷ states, “On the conviction of a person for a violation of section 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation] or 13-3560 [Aggravated luring a minor for sexual exploitation], the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.”

3.4.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) to allow for asset forfeiture.

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

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:

- 3. Sexual abuse pursuant to section 13-1404 if the victim is under eighteen years of age.
- 4. Sexual conduct with a minor pursuant to section 13-1405.
- 5. Sexual assault pursuant to section 13-1406.
- 6. Sexual assault of a spouse if the offense was committed before August 12, 2005.
- 7. Molestation of a child pursuant to section 13-1410.

³⁷ Statute is codified in Chapter 35.1 entitled, “Sexual Exploitation of Children.”

8. Continuous sexual abuse of a child pursuant to section 13-1417.
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.
15. A second or subsequent violation of indecent exposure to a person under fifteen years of age pursuant to section 13-1402.
-
20. Unlawful age misrepresentation.
21. Aggravated luring a minor for sexual exploitation pursuant to section 13-3560.

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.*

Under Ariz. Rev. Stat. Ann. § 8-863(B) (Hearing to terminate parental rights), “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,

B. Evidence 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:

1. That the parent has abandoned the child.
2. That the parent has neglected or willfully [sic] abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.
-

Ariz. Rev. Stat. Ann. § 8-201, which provides definitions for title 8, “unless the context otherwise requires,” defines “abuse” in relevant part as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child.” According to the definition, this includes the following: “Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.”

- 3.6.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 8-201 (Definitions) to add Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) to the list of offenses against a child that constitute “abuse” in order to make it a ground for termination of parental rights pursuant to Ariz. Rev. Stat. Ann. § 8-863.

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*

The act of assisting or facilitating in some manner the crime of sex trafficking is prohibited in the state trafficking law. Ariz. Rev. Stat. Ann. § 13-1308 (Trafficking of persons for forced labor or services) makes it a crime to “[k]nowingly benefit, financially or by receiving anything of value, from participation in a venture that has engaged in an act in violation of section 13-1306 [Unlawfully obtaining labor or services], section 13-1307 [Sex trafficking] or this section.”

The acts of facilitators are prohibited in other commercial sexual exploitation of a minor provisions. Ariz. Rev. Stat. Ann. § 13-3210 (Transporting persons for purpose of prostitution or other immoral purpose) is a Class 5 felony and prohibits a person from “knowingly transporting by any means of conveyance, through or across this state, any other person for the purposes of prostitution or concubinage, or for any other immoral purposes” Ariz. Rev. Stat. Ann. § 13-3208 (Keeping or residing in house of prostitution; employment in prostitution) makes it illegal if a person “knowingly operates or maintains a house of prostitution or prostitution enterprise” This offense is also a Class 5 felony.³⁸

Ariz. Rev. Stat. Ann. § 13-305(A) (Criminal liability of enterprises) states,

- A. Notwithstanding any other provisions of law, an enterprise commits an offense if:
 - 1. The conduct constituting the offense consists of a failure to discharge a specific duty imposed by law; or
 - 2. The conduct undertaken in behalf of the enterprise and constituting the offense is engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the enterprise in any manner or by a high managerial agent acting within the scope of employment; or
 - 3. The conduct constituting the offense is engaged in by an agent of the enterprise while acting within the scope of employment and in behalf of the enterprise; and
 - (a) The offense is a misdemeanor or petty offense; or
 - (b) The offense is defined by a statute which imposes criminal liability on an enterprise.

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor) states,

- A. A person commits sexual exploitation of a minor by knowingly:
 - 1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
 - 2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically

³⁸ See *supra* note 3.

transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.³⁹

Facilitators could also be convicted under the state racketeering and money laundering provisions.⁴⁰ A racketeering conviction, if a minor is involved, is punishable as a class 2 felony and a possible fine up to \$150,000. Ariz. Rev. Stat. Ann. §§ 13-2312(D), 13-801. A money laundering conviction is punishable as either a class 2, 3, or 6 felony (depending on degree) and a possible fine up to \$150,000. Ariz. Rev. Stat. Ann. §§ 13-2317(E), 13-801.

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.*

Facilitators of sex trafficking face a possible fine up to \$150,000 imposed by the court as part of the sentence for sex trafficking and felony CSEC violations. Ariz. Rev. Stat. Ann. § 13-801.

Ariz. Rev. Stat. Ann. § 13-4305 (Seizure of property) permits the seizure of property “subject to forfeiture under this chapter” pursuant to a seizure warrant, or without a court order under certain conditions and with probable cause. Ariz. Rev. Stat. Ann. § 13-4304 (Property subject to forfeiture; exemptions), while allowing for vehicle forfeiture when used in the commission of the crime with some exceptions, does state that “[a]ll property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture.” Therefore, forfeiture may not be available for sex trafficking and commercial sexual exploitation of children offenses because these offenses do not appear to be specifically designated in a statute providing for forfeiture.

Arizona’s organized crime provisions may provide for forfeiture in some instances. Ariz. Rev. Stat. Ann. § 13-2301(D)(4) (Definitions) states in part,

D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315, unless the context otherwise requires:

....

4. “Racketeering” means any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or country in which the act occurred and, if the act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

....

(b) Any of the following acts if committed for financial gain:

....

(xxi) Obscenity.

(xxii) Sexual exploitation of a minor.

(xxiii) Prostitution.

....

(xxvii) Obscene or indecent telephone communications to minors for commercial purposes.

....

(xxx) Smuggling of human beings.

³⁹Ariz. Rev. Stat. Ann. § 13-3559 (Reporting suspected visual depictions of sexual exploitation of a minor; immunity) provides a defense to those that may otherwise be viewed as facilitators by stating in subsection (C), “It is an affirmative defense to a prosecution for a violation of section 13-3553 that on discovery a person in good faith reports the discovery of unsolicited suspected visual depictions involving the sexual exploitation of a minor.”

⁴⁰ See *supra* Section 3.1 for relevant provisions.

Ariz. Rev. Stat. Ann. § 13-2301(D)(6) states, “‘Remedy racketeering’ means to enter a civil judgment pursuant to this chapter or chapter 39⁴¹ of this title against property or a person who is subject to liability, including liability for injury to the state that is caused by racketeering or by actions in concert with racketeering.”

Ariz. Rev. Stat. Ann. § 13-2314 (Racketeering; civil remedies by this state) provides for seizure and forfeiture of all assets associated with racketeering activity. It states in part,

A. The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering [Ariz. Rev. Stat. Ann. § 13-2301(D)(4)] or by a violation of section 13-2312 [Illegal control of an enterprise; illegally conducting an enterprise] for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering [Ariz. Rev. Stat. Ann. § 13-2301(D)(4)] or a violation of section 13-2312. . . .

B. The superior court has jurisdiction to prevent, restrain, and remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 after making provision for the rights of any person who sustained injury to his person, business or property by the racketeering conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

. . . .

G. In addition to or in lieu of an action under this section the attorney general or a county attorney may file an in rem action pursuant to chapter 39 of this title for forfeiture, to the extent that forfeiture is not inconsistent with protecting the rights of any person who sustained injury to his person, business or property by the racketeering conduct, of:

1. Any property or interest in property acquired or maintained by a person in violation of section 13-2312.
2. Any interest in, security of, claims against or property, office, title, license or contractual right of any kind affording a source of influence over any enterprise or other property which a person has acquired or maintained an interest in or control of, conducted or participated in the conduct of in violation of section 13-2312.
3. All proceeds traceable to an offense included in the definition of racketeering in [Ariz. Rev. Stat. Ann. 13-2301(D)(4)] and all monies, negotiable instruments, securities and other property used or intended to be used in any manner or part to facilitate the commission of the offense.

. . . .

In cases of commercial sexual exploitation of a child for child pornography and live performance, Ariz. Rev. Stat. Ann. § 13-3557 (Equipment; forfeiture) states, “On the conviction of a person for a violation of section 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation] or 13-3560 [Aggravated luring a minor for sexual exploitation], the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.”

- 4.2.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-307 (Sex trafficking) to include a forfeiture provision.

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

There is no specific provision in the Arizona code prohibiting child sex tourism.

⁴¹ Chapter 39 is entitled, “Forfeiture.”

- 4.3.1 Recommendation: 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 or prostitution of a minor, if the travel is occurring in Arizona.

4.4 *Promoting and selling child pornography is illegal.*

Ariz. Rev. Stat. Ann. § 13-3553 (Sexual exploitation of a minor), a Class 2 felony, makes it illegal if

- A. A person commits sexual exploitation of a minor by knowingly:
1. Recording, filming, photographing, developing or duplicating any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.
 2. Distributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.

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 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 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 actions 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.*

The code provides no definitive statement that a commercially sexually exploited child is a victim. Neither the sex trafficking law nor the range of CSEC laws state that a minor exploited through these crimes is a victim for purposes of protections and services. Ariz. Rev. Stat. Ann. § 13-4401, the definitions provision for the chapter on "Crime Victims' Rights," defines "victim" in relevant part as "a person against whom the criminal offense"⁴² has been committed, including a minor."

However, paragraph (C) of the Arizona Crime Victims' Bill of Rights found in Arizona's Constitution, art. II, sec. 2.1, could operate as a barrier to the identification of domestic minor sex trafficking victims as victims, since they are frequently held culpable and sometimes detained for crimes committed during their victimization, such as prostitution or drug possession. Paragraph (C) states,

(C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

⁴² "Criminal offense" is defined in Ariz. Rev. Stat. Ann. § 13-4401(6) as "conduct that gives a peace officer or prosecutor probable cause to believe that one of the following has occurred: (a) A felony. (b) A misdemeanor involving physical injury, the threat of physical injury or a sexual offense."

5.1.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) to specify that victims of the crime of sex trafficking are not culpable for crimes committed as part of their exploitation.

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.*

Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking), Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution), and Ariz. Rev. Stat. Ann. § 13-3552 (Commercial sexual exploitation of a minor) 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.

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

Ariz. Rev. Stat. Ann. § 13-3214 (Prostitution) contains age-neutral provisions. However, Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution) specifically applies to cases in which minors are prostituted.

5.3.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-3214 so it cannot be applied to minors under 18 and add a reference to § 13-1307 (Sex trafficking) to clarify that the minor is a sex trafficking victim.

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.*

The sex trafficking, child prostitution, and CSEC laws do not refer to a specific protective response for child victims. Intervention is possible through Ariz. Rev. Stat. Ann. § 8-821 (Taking into temporary custody), which states in part,

B. A child may be taken into temporary custody by a peace officer or a child protective services worker if temporary custody is clearly necessary to protect the child because probable cause exists to believe that the child is either:

1. A victim or will imminently become a victim of abuse⁴³ or neglect.
2. Suffering serious physical⁴⁴ or emotional injury⁴⁵ that can only be diagnosed by a medical doctor or psychologist.

⁴³ Ariz. Rev. Stat. Ann. § 8-201(2) defines “abuse” as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child.” According to a relevant part of the definition, “Abuse includes: (a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.”

⁴⁴ Ariz. Rev. Stat. Ann. § 8-201(30) defines “serious physical injury” as “an injury that is diagnosed by a medical doctor and that does any one or a combination of” several things, including, “the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.”

⁴⁵ Ariz. Rev. Stat. Ann. § 8-201(29) states,

29. “Serious emotional injury” means an injury that is diagnosed by a medical doctor or a psychologist and that does any one or a combination of the following:

.....

(c) Is the result of sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, child prostitution pursuant to section 13-3212, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553 or incest pursuant to section 13-3608.

....
....
....
....

D. A person who takes a child into custody pursuant to subsection B, paragraph 2 of this section shall immediately have the child examined by a medical doctor or psychologist. After the examination the person shall release the child to the custody of the parent or guardian of the child unless the examination reveals abuse or neglect. Temporary custody of a child taken into custody pursuant to subsection B, paragraph 2 of this section shall not exceed twelve hours.

E. A child who is taken into temporary custody pursuant to this article shall not be detained in a police station, jail or lockup where adults charged with or convicted of a crime are detained.

F. A child shall not remain in temporary custody for more than seventy-two hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed.

Ariz. Rev. Stat. Ann. § 8-824(A) (Preliminary protective hearing) states, “The court shall hold a preliminary protective hearing to review the taking into temporary custody of a child pursuant to section 8-821 not fewer than five days nor more than seven days after the child is taken into custody, excluding Saturdays, Sundays and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party or for other good cause shown, the court may grant one continuance that does not exceed five days.” Ariz. Rev. Stat. Ann. § 8-824(F) explains that “[t]he petitioner has the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition.” Ariz. Rev. Stat. Ann. § 8-824(J) states,

At the hearing, if the child is not returned to the parent or guardian, the court shall:

1. Enter orders regarding the placement of the child pending the determination of the dependency petition and visitation, if any.
2. If a relative is identified as a possible placement for the child, notify the relative of the right to be heard in any proceeding to be held with respect to the child.
3. Determine if the tasks and services set forth in the case plan are reasonable and necessary to carry out the case plan.

A domestic minor sex trafficking victim may also enter the system through child protective services (CPS). Under Ariz. Rev. Stat. Ann. § 8-800 (Purpose of child protective services), “The primary purposes of child protective services are to protect children by investigating allegations of abuse and neglect, promoting the well-being of the child in a permanent home and coordinating services to strengthen the family and prevent, intervene in and treat abuse and neglect of children.” Ariz. Rev. Stat. Ann. § 8-304(B) (Investigation of alleged acts of delinquency, dependency and incorrigibility) states,

B. A child protective services specialist of the department shall have the responsibility for the complete investigation of all complaints of alleged dependency, and a criminal conduct allegation shall be investigated in cooperation with the appropriate law enforcement agencies and according to the protocols established pursuant to section 8-817. The department shall be responsible for the disposition of such child unless the matter requires the intervention of the court. . . .

Ariz. Rev. Stat. Ann. § 8-801 defines “criminal conduct allegation” as “an allegation of conduct by a parent, guardian or custodian of a child that, if true, would constitute any of the following: (a) A violation of section 13-3623 involving child abuse.⁴⁶ (b) A felony offense that constitutes domestic violence as defined in section 13-3601. (c) A violation of section 13-1404 [Sexual abuse] or 13-1406 [Sexual assault] involving a minor. (d) A violation of section 13-1405 [Sexual conduct with a minor], 13-1410 [Molestation of a child] or 13-1417 [Continuous sexual abuse of a child]. (e) Any other act of abuse that is classified as a felony.” Ariz. Rev. Stat. Ann. § 13-3623 (Child or vulnerable adult abuse) states,

⁴⁶ See *supra* note 43 for the definition of “abuse.”

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 4 felony.
2. If done recklessly, the offense is a class 5 felony.
3. If done with criminal negligence, the offense is a class 6 felony.

....

F. For the purposes of this section:

1. "Abuse", when used in reference to a child, means abuse as defined in section 8-201, except for those acts in the definition that are declared unlawful by another statute of this title

....

2. "Child" means an individual who is under eighteen years of age.

....

The protective custody provisions and the child protective provisions above may not prevent a criminal justice response from being employed in the case of a domestic minor sex trafficking victim. If a child is identified as a delinquent for the offense of prostitution (misdemeanor), a prostitution-related offense, or an offense committed while being prostituted or used in pornography, rather than identified as a victim of abuse or a victim of a crime, the court could enter a disposition order for probation or detention pursuant to Ariz. Rev. Stat. Ann. § 8-341 (Disposition and commitment). Alternatively, subject to some exceptions, Ariz. Rev. Stat. Ann. § 8-321 (Referrals; diversions; conditions; community based alternative programs) permits the county attorney to divert the juvenile prior to any court disposition to either a "community based alternative program" or to a "diversion program administered by the juvenile court."

Ariz. Rev. Stat. Ann. § 8-321 gives sole discretion to the county attorney to decide whether to divert to the juvenile court diversion program or defer prosecution of a minor charged with a delinquency offense in favor of a community based alternative program. The juvenile court diversion may include, among other things, "2. Participation in a counseling program that is approved by the court and that is designed to strengthen family relationships and to prevent repetitive juvenile delinquency. 3. Participation in an education program that is approved by the court and that has as its goal the prevention of further delinquent behavior. 4. Participation in an education program that is approved by the court and that is designed to deal with ancillary problems experienced by the juvenile, such as alcohol or drug abuse. [or] 5. Participation in a nonresidential program of rehabilitation or supervision that is offered by the court or offered by a community youth serving agency and approved by the court." Ariz. Rev. Stat. Ann. § 8-321(F). Diversion provides the opportunity to avoid adjudication and the resulting criminal record so long as the juvenile successfully completes the program. The community-based alternative program is a contract between the juvenile, the parents, and the county prosecutor. If all conditions are satisfied, the case is never pursued, and if they are not satisfied, the county prosecutor may refer the case to the juvenile court for further action. Ariz. Rev. Stat. Ann. § 8-321.

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

Ariz. Rev. Stat. Ann. § 8-201(2) defines "abuse" in part as

the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse includes:

(a) Inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212.

....

Ariz. Rev. Stat. Ann. § 8-201(22) defines “neglect” or “neglected” as

(e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in section 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as defined in section 13-1401, bestiality as prescribed in section 13-1411 or explicit sexual materials as defined in section 13-3507.

(f) Any of the following acts committed by the child’s parent, guardian or custodian with reckless disregard as to whether the child is physically present:

- (i) Sexual contact as defined in section 13-1401.
- (ii) Oral sexual contact as defined in section 13-1401.
- (iii) Sexual intercourse as defined in section 13-1401.
- (iv) Bestiality as prescribed in section 13-1411.

5.5.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 8-201(2)(a) to include Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) in the list of commercial sexual offenses that constitute “abuse.”

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 protection of child protective services.*

Ariz. Rev. Stat. Ann. § 8-304(B) (Investigation of alleged acts of delinquency, dependency and incorrigibility) states in part that “[a] child protective services specialist of the department shall have the responsibility for the complete investigation of all complaints of alleged dependency, and a criminal conduct allegation shall be investigated in cooperation with the appropriate law enforcement agencies and according to the protocols established pursuant to section 8-817.” As noted above, “criminal conduct allegation” is defined in Ariz. Rev. Stat. Ann. § 8-801 to be “an allegation of conduct by a parent, guardian or custodian of a child” “Custodian” is defined in Ariz. Rev. Stat. Ann. § 8-201 as “a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.” Therefore, the definition of “custodian” seems unlikely to include traffickers.

With regard to dependency, Ariz. Rev. Stat. Ann. § 8-201(13) states in part,

13. “Dependent child”:

(a) Means a child who is adjudicated to be:

- (i) In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.
- (ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.
- (iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

....

5.6.1 Recommendation: Amend the definition of “custodian” in Ariz. Rev. Stat. Ann. § 8-201 to include persons in control or custody of a minor or a person that provides food, shelter, and necessities as a

parent would for an extended period of time as a trafficker would for a victim, which would allow CPS to act on allegations of criminal conduct perpetrated by a trafficker.

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

Ariz. Rev. Stat. Ann. § 41-2407 (Victim compensation and assistance fund; subrogation) establishes a victim compensation and assistance fund administered by the Arizona criminal justice commission. The fund's operational details are set forth in Arizona's Administrative Code (Ariz. Admin. Code). The Administrative Code contains ineligibility criteria that could operate to bar a domestic minor sex trafficking victim's claim for compensation. According to a state website, "The maximum award of any single claim is \$20,000."⁴⁷ Ariz. Admin. Code § R10-4-108 (Compensation Award Criteria) outlines the expenses for which a claim may be made, including medical expenses, mental health counseling and care, work loss expenses, funeral expenses, and crime scene cleanup expenses.

Ariz. Admin. Code § R10-4-106 (Prerequisites for a compensation award) states in part, "The Board shall make a compensation award only if it determines that," among other things, "[t]he victim of the criminally injurious conduct or act of international terrorism was not: a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death" The Board must also determine that the victim was not "[c]onvicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court." Ariz. Admin. Code § R10-4-106(A)(3)(e).

Additionally, under Ariz. Admin. Code § R10-4-106(A)(4), (5), (7), among other things, the board must determine that the crime was "reported to an appropriate law enforcement authority within 72 hours after its discovery," that the victim "cooperated with law enforcement agencies," and that the claim "was submitted to the operational unit within two years after discovery of the criminally injurious conduct" However, under Ariz. Admin. Code § R10-4-106(B), "The Board shall extend the time limits under subsections (A)(4) [the 72 hour limit] and (A)(7) [the two year limit] if the Board determines there is good cause for a delay."

Ariz. Admin. Code § R10-4-107(B)(1), (5) (Submitting a claim) prohibits acceptance of a claim from "[t]he perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death," or for a person "[c]onvicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court."

Ariz. Admin. Code § R10-4-108(E) (Compensation award criteria) requires the board to "deny or reduce" the award if, among other things, "The Board determines that the victim's physical injury, medical condition, extreme mental distress, or death was due in part to the victim's: a. Negligence, b. Intentional unlawful conduct that occurred at the time of the incident of criminally injurious conduct, or c. Conduct that intentionally provoked or aggravated the criminally injurious conduct."

Finally, Ariz. Admin. Code § R10-4-108(G) (Compensation award criteria) requires denial of a claim in total if

1. The Board determines that the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial health or safety risk.

⁴⁷*Victim Compensation*, ARIZONA CRIMINAL JUSTICE COMMISSION <http://azcjc.gov/ACJC.Web/victim/VictComp.aspx> (last visited Nov. 30, 2011).

The Board shall use the following criteria to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:

- a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct or act of international terrorism or failed to appear as a witness for the prosecution;
- b. The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct or act of international terrorism escaped prosecution or the prosecution of the suspect was negatively affected; or
- c. A law enforcement authority indicates to the Board that the victim or claimant delayed giving information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities;

....

5.7.1 Recommendation: Amend the crime victims' compensation rules to stipulate an exception to the ineligibility criteria noted above for victims of CSEC crimes, including Ariz. Rev. Stat. Ann. § 13-3206 (Taking child for purpose of prostitution), § 13-3212 (Child prostitution), § 13-3552 (Commercial sexual exploitation of a minor), § 13-3553 (Sexual exploitation of a minor), and § 13-1307 (Sex trafficking) 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.*

Ariz. Rev. Stat. Ann. § 13-1421(A) (Evidence relating to victim's chastity; pretrial hearing) provides protection to victims of sexual offenses who wish to testify against their perpetrators. This provision, however, appears to be limited to Chapter 14 (Sexual offenses). It states in part that "[e]vidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence" falls into one of five categories, including "[e]vidence of the victim's past sexual conduct with the defendant" and "[e]vidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma."

Ariz. Rev. Stat. Ann. § 13-4253(A) (Out of court testimony; televised; recorded) provides authority for the court to order "the testimony of the minor [under 15⁴⁸] be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding." Also, subsection (B)⁴⁹ permits the court to "order that the testimony of the minor be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding." In either case, "[T]he minor shall not be required to testify in court at the proceeding for which the testimony was taken." Ariz. Rev. Stat. Ann. § 13-4253(C).

⁴⁸ Ariz. Rev. Stat. Ann. § 13-4251(B).

⁴⁹ In *State v. Vincent*, 768 P.2d 150, 161 (Ariz. 1989), the Supreme Court of Arizona strictly limited the applicability of this provision: "Thus, we hold, section 13-4253(B) requires the trial judge to condition the substitution of videotaped testimony for live testimony upon an individualized showing of necessity." With regard to the question of whether "even an individualized showing of probable trauma to a child witness justify[ed] abridgment of the defendant's constitutional right to a face-to-face courtroom encounter," *id.*, the court held that "[a]n exception [to face-to-face testimony] exists . . . under both the state and federal constitutions, where the state sustains its burden of proving by an individualized showing to the trial court that face-to-face testimony would so traumatize a child witness as to prevent the child from reasonably communicating." *Id.* at 164. Even though the case focused on subsection (B), it is likely that the court's reasoning would also apply to subsection (A), since subsection (A) also denies face-to-face confrontation.

Ariz. Rev. Stat. Ann. § 13-4252 (Recording of testimony) also allows for the admissibility of recorded statements by a minor under 15 or a person who is developmentally disabled. However, the minor must still be available to testify. If the recording is admitted, “[E]ither party may call the minor to testify and the opposing party may cross-examine the minor.”⁵⁰

Under Ariz. Rev. Stat. Ann. § 13-4251, the article on child witnesses, which contains § 13-4252 and § 13-4253, “applies to the testimony or statements of a minor in criminal proceedings involving acts committed against the minor or involving acts witnessed by the minor whether or not those acts are charged and in civil proceedings including proceedings involving a dependency or a termination of parental rights.”

A court appointed special advocate program is established in Ariz. Rev. Stat. Ann. § 8-523. Ariz. Rev. Stat. Ann. § 8-221(I) states in part that “[i]n all juvenile court proceedings in which the dependency petition includes an allegation that the juvenile is abused or neglected, the court shall appoint a guardian ad litem to protect the juvenile’s best interests. This guardian may be an attorney or a court appointed special advocate.”

5.8.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-1421 (Evidence relating to victim’s chastity; pretrial hearing) to permit application of the “rape shield law” to cases in which a victim of sex trafficking of a minor under Ariz. Rev. Stat. Ann. § 13-1307(B) or under Ariz. Rev. Stat. Ann. § 13-3552 (Commercial sexual exploitation of a minor), § 13-3553 (Sexual exploitation of a minor), § 13-3212 (Child prostitution), or § 13-3206 (Taking child for purpose of prostitution) is testifying against the trafficker.

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.*

Ariz. Rev. Stat. Ann. § 8-349(A) (Destruction of juvenile records; electronic research records) permits “[a] person who has been referred to juvenile court [to] apply for destruction of the person’s juvenile court and department of juvenile corrections records” under certain conditions. For records that “concern a referral or citation that did not result in further action or that resulted in diversion, placement in a community based alternative program or an adjudication for an offense other than an offense listed in section 13-501, subsection A or B⁵¹ or title 28, chapter 4 [Driving Under the Influence],” the person must “certify under oath” that she is at

⁵⁰ In *State v. Taylor*, 2 P.3d 674, 677 (Ariz. Ct. App. 1999) (citation omitted), an Arizona Court of Appeals held Ariz. Rev. Stat. Ann. § 13-4252 “constitutional only if it can be construed as being consistent with the court’s rules.” In analyzing the statute, the court stated, “The statute creates additional procedural requirements for the admissibility of statements that would otherwise be admissible under the supreme court’s rules and makes admissible statements that are excluded by the rules. Because § 13-4252 expands on, conflicts with, and engulfs the court’s rules, it is unconstitutional.” *Id.* at 678.

⁵¹ Ariz. Rev. Stat. Ann. § 13-501 (Persons under eighteen years of age; felony charging) states,

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. First degree murder in violation of section 13-1105.
2. Second degree murder in violation of section 13-1104.
3. Forcible sexual assault in violation of section 13-1406.
4. Armed robbery in violation of section 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection.

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. A class 1 felony.
2. A class 2 felony.
3. A class 3 felony in violation of any offense in chapters 10 through 17 or chapter 19 or 23 of this title.

least 18, “has not been convicted of a felony offense or adjudicated delinquent for an offense that would be an offense listed in section 13-501, subsection A or B or title 28, chapter 4,” does not have a criminal charge pending, “has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan,” and has paid in full all “restitution and monetary assessments.” If the juvenile court finds all of the above to be true, and that “[t]he destruction of the records is in the interests of justice” and it “would further the rehabilitative process of the applicant,” the juvenile court may order the records destroyed.

If, however, “the records concern a referral that resulted in an adjudication of delinquency for an offense not subject to” the provisions set out above, the person must “certify under oath” that she is at least 25, “has not been convicted of a felony,” does not have a criminal charge pending, “has successfully completed all of the terms and conditions of court ordered probation or been discharged from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan,” and has paid in full all “restitution and monetary assessments.” “The juvenile court may order the destruction of records . . . if the county attorney does not object within ninety days after the date of the notice and the court finds” the above conditions to be true and that “[t]he destruction of the records is in the interests of justice” and the destruction of the records “would further the rehabilitative process of the applicant.”

Minor victims may be found guilty of crimes committed in the course of their victimization through prostitution, pornography, or sexual performance. Pursuant to Ariz. Rev. Stat. Ann. § 13-921 (Probation for defendants under eighteen years of age; dual adult juvenile probation), with certain exceptions, “If the court places a defendant on probation pursuant to this section, . . . [and] if the defendant successfully completes the terms and conditions of probation, the court may set aside the judgment of guilt, dismiss the information or indictment, expunge the defendant’s record and order the person to be released from all penalties and disabilities resulting from the conviction.”

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

Restitution is specifically available in cases of sex trafficking through Ariz. Rev. Stat. Ann. § 13-1309 (Restitution), which states that “[t]he court shall order restitution for any violation of section 13-1306 [Unlawfully obtaining labor or services], 13-1307 [Sex trafficking] or 13-1308 [Trafficking of persons for forced labor or services], including the greater of either the gross income or value to the defendant of the victim’s labor or services or the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the fair labor standards act of 1938.” Furthermore, under Ariz. Rev. Stat. Ann. § 13-807,

A defendant convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding brought by the victim or this state against the criminal defendant the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas. An order of restitution in favor of a person does not preclude that person from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order.

Under the racketeering provisions of Ariz. Rev. Stat. Ann. § 13-2314(A) (Racketeering; civil remedies by this state), “The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain, or remedy racketeering” Subsection (D) states that “[f]ollowing a determination of liability” the court can issue orders, including “[o]rdering the payment of treble damages to those persons injured by racketeering as defined by section 13-2301, subsection D, paragraph

4. A class 3, 4, 5 or 6 felony involving a dangerous offense.
5. Any felony offense committed by a chronic felony offender.
6. Any offense that is properly joined to an offense listed in this subsection.

4 or a violation of section 13-2312.” Furthermore, “A civil action authorized by this section, including proceedings pursuant to chapter 39 of this title, is remedial and not punitive and does not limit and is not limited by any other previous or subsequent civil or criminal action under this title or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.” Ariz. Rev. Stat. Ann. § 13-2314(L).

Ariz. Rev. Stat. Ann. § 13-2314.04(A) (Racketeering; unlawful activity; civil remedies by private cause of action) states in part,

A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity,⁵² or by a violation of section 13-2312 involving a pattern of racketeering activity, may file an action in superior court for the recovery of up to treble damages and the costs of the suit, including reasonable attorney fees for trial and appellate representation.

The Arizona Crime Victims’ Bill of Rights located in the State Constitution, art. II, sec. 2.1 includes in its list of victims’ rights the right “[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.” However, as noted above, paragraph (C) of this section could operate as a barrier to identification of domestic minor sex trafficking victims as victims. It states, “(C) ‘Victim’ means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person’s spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.”

5.10.1 Recommendation: Add a specific civil remedy for domestic minor sex trafficking and CSEC victims.

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 actions and legal remedies.*

Ariz. Rev. Stat. Ann. § 13-2314(I) states in part, “[I]nitiation of civil proceedings related to violations of any offense included in the definition of racketeering in section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312, including procedures pursuant to chapter 39 of this title, shall be commenced within seven years after actual discovery of the violation.”

Ariz. Rev. Stat. Ann. § 13-2314.04 states in part, “Notwithstanding any law prescribing a lesser period but subject to subsection A of this section, the initiation of civil proceedings pursuant to this section shall be commenced within three years from the date the violation was discovered, or should have been discovered with reasonable diligence, and ten years after the events giving rise to the cause of action, whichever comes first.”

⁵² Ariz. Rev. Stat. Ann. § 13-2314.04(T)(3) states,

3. “Pattern of racketeering activity” means either:

(a) At least two acts of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (iv), (v), (vi), (vii), (viii), (ix), (x), (xiii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiv) or (xxvi) that meet the following requirements:

(i) The last act of racketeering activity that is alleged as the basis of the claim occurred within five years of a prior act of racketeering.

(ii) The acts of racketeering that are alleged as the basis of the claim were related to each other or to a common external organizing principle, including the affairs of an enterprise. Acts of racketeering are related if they have the same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics.

(iii) The acts of racketeering that are alleged as the basis of the claim were continuous or exhibited the threat of being continuous.

(b) A single act of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (i), (ii), (iii), (xi), (xii), (xiv), (xxi), (xxii), (xxiii), (xxv), (xxvii) or (xxviii).

Ariz. Rev. Stat. Ann. § 12-502 (Effect of minority or insanity) states that “[i]f a person entitled to bring an action other than those set forth in article 2 [Real actions] of this chapter is at the time the cause of action accrues either under eighteen years of age or of unsound mind, the period of such disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others.” Under Ariz. Rev. Stat. Ann. § 12-542 (Injury to person; injury when death ensues), “Except as provided in section 12-551 [Product liability] there shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following actions: 1. For injuries done to the person of another including causes of action for medical malpractice as defined in section 12-561. 2. For injuries done to the person of another when death ensues from such injuries, which action shall be considered as accruing at the death of the party injured. . . .” Under Ariz. Rev. Stat. Ann. 12-550 (General limitation), “Actions other than for recovery of real property for which no limitation is otherwise prescribed shall be brought within four years after the cause of action accrues and not afterward.” Finally, Ariz. Rev. Stat. Ann. § 12-511 states in part, “Notwithstanding sections 12-505 and 12-542, if a defendant is charged by a criminal complaint or indictment the statute of limitations for any civil cause of action that is brought by a victim against the defendant for criminal conduct against the victim is extended for one year from the final disposition of the criminal proceedings, regardless of whether the defendant is convicted of criminal conduct against the victim.” The provision defines “criminal conduct” to include “any act, including all preparatory offenses, in violation of section . . . 13-1304 [Kidnapping], 13-1404 [Sexual abuse], 13-1405 [Sexual conduct with a minor], 13-1406 [Sexual assault], 13-1410 [Molestation of a child], 13-1417 [Continuous sexual abuse of a child], 13-2314.04 [Racketeering], . . . 13-3552 [Commercial sexual exploitation of a minor], 13-3553 [Sexual exploitation of a minor], 13-3554 [Luring a minor for sexual exploitation], . . . 13-3601 [Domestic violence] or 13-3601.02 [Aggravated domestic violence].”

Ariz. Rev. Stat. Ann. § 13-107 (Time limitations) outlines statutes of limitations for prosecution of any crime. Under subsection A, “A prosecution for any homicide, any offense that is listed in chapter 14 [Sexual offenses] or 35.1 [Sexual exploitation of children] of this title and that is a class 2 felony, any violent sexual assault pursuant to section 13-1423, . . . or any attempt to commit an offense listed in this subsection may be commenced at any time.” Under subsection (B), the statute of limitations for class 2 to class 6 felonies is seven years. The statute of limitations for misdemeanors is one year. Subsection (F) states that “[t]he time limitation within which a prosecution of a class 6 felony shall commence shall be determined pursuant to subsection B, paragraph 1 of this section, irrespective of whether a court enters a judgment of conviction for or a prosecuting attorney designates the offense as a misdemeanor.”

- 5.11.1 Recommendation: Add chapter 13 (Kidnapping) offenses that are Class 2 felonies and chapter 32 (Prostitution) offenses that are Class 2 felonies to Ariz. Rev. Stat. Ann. § 13-107(A) to provide for prosecutions of these offenses at any time.

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.*

No specific law requires training for law enforcement on human trafficking or sex trafficking. Ariz. Rev. Stat. Ann. § 41-1781 (Training and education)⁵³ establishes a division of training and education for law enforcement personnel. Although training is not mandated, it is available through the Arizona Department of Public Safety/Arizona Law Enforcement Academy (ALEA), according to an ALEA representative. According to the basic curriculum guide for post-academy training, one of the stated objectives is to be able to identify examples of various crimes against children, including commercial sexual exploitation of a minor, sexual exploitation of a minor, dangerous crimes against children, child abuse, child neglect, public sexual indecency to a minor, sexual conduct with a minor, and child molestation.⁵⁴

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

Ariz. Rev. Stat. Ann. § 13-3005 (Interception of wire, electronic and oral communications; installation of pen register or trap and trace device) prohibits the interception of communications without consent of a party who is present at the communication. However, Ariz. Rev. Stat. Ann. § 13-3012(9) (Exemptions) expressly permits the interception of communications where a single party who is “a party to the communication or a person who is present during the communication” consents thereto, which allows law enforcement to intercept such communications outside the typically required court order. Ariz. Rev. Stat. Ann. § 13-3012(1) also exempts, among other things, the “interception of wire, electronic or oral communications, . . . the providing of information, facilities or technical assistance to an investigative or law enforcement officer pursuant to a subpoena or an ex parte order granted pursuant to sections 13-3010, 13-3015, 13-3016, 13-3017 and 13-3018 or an emergency interception made in good faith pursuant to section 13-3015, including any of the foregoing acts by a communication service provider or its officers, agents or employees.”

Ariz. Rev. Stat. Ann. § 13-3010 provides procedures for an ex parte order for interception, stating in subsection A,

A. On application of a county attorney, the attorney general or a prosecuting attorney whom a county attorney or the attorney general designates in writing, any justice of the supreme court, judge of the court of appeals or superior court judge may issue an ex parte order for the interception of wire, electronic or oral communications if there is probable cause to believe both:

⁵³ Ariz. Rev. Stat. Ann. § 41-1781 is scheduled to be repealed on January 1, 2013.

⁵⁴ ARIZONA PEACE OFFICER STANDARDS & TRAINING BOARD, BASIC TRAINING CURRICULUM 23, available at http://www.aleaonline.org/docs/basic_training_2005.pdf (April 2004).

1. A crime has been, is being or is about to be committed.
2. Evidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.

“Crime” is defined in Ariz. Rev. Stat. Ann. § 13-3010(P) as meaning “murder, gaming, kidnapping, robbery, bribery, extortion, theft, an act in violation of chapter 23 of this title [Organized crime, fraud and terrorism], dealing in narcotic drugs, marijuana or dangerous drugs, sexual exploitation of children in violation of chapter 35.1 of this title or any felony that is dangerous to life, limb or property. Crime includes conspiracy to commit any of the offenses listed in this subsection.”

Ariz. Rev. Stat. Ann. § 13-3015(A) (Emergency interception), states in part,

Notwithstanding any other provision of this chapter, if the attorney general or a county attorney or such prosecuting attorneys as they may designate in writing reasonably determines that an emergency situation exists involving immediate danger of death or serious physical injury to any person, and that such death or serious physical injury may be averted by interception of wire, electronic or oral communications before an order authorizing such interception can be obtained, the attorney general or a county attorney or his designee may specially authorize a peace officer or law enforcement agency to intercept such wire, electronic or oral communications.

If this provision is used, the person authorizing the emergency interception must apply “for an order authorizing the interception, in accordance with the provisions of section 13-3010. The application shall be made as soon as practicable, and in no event later than forty-eight hours after commencement of the emergency interception.” Ariz. Rev. Stat. Ann. § 13-3015(B).

- 6.2.1 Recommendation: Amend Ariz. Rev. Stat. Ann. § 13-3010(P) definition of “crime” to expressly include Ariz. Rev. Stat. Ann. § 13-1307 (Sex trafficking) and Ariz. Rev. Stat. Ann. § 13-3212 (Child prostitution).

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

Ex parte orders for intercepting communications require probable cause that “[a] crime has been, is being or is about to be committed” and that “[e]vidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.” Ariz. Rev. Stat. Ann. § 13-3010(A). Evidence gathered through an emergency interception may be admissible, although Ariz. Rev. Stat. Ann. § 13-3015(C) (Emergency interception) requires the prosecutor to request authorization within 48 hours of the emergency interception by stating, “If the prosecuting attorney fails to obtain an authorization within forty-eight hours after commencement of the emergency interception, or if authorization to intercept communications is denied, the interception shall immediately terminate and any communications intercepted without judicial authorization may not be used as evidence in any criminal or civil proceeding against any person.”

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.*

Ariz. Rev. Stat. Ann. § 13-3212(A)(4), (C) (Child prostitution) states that a person who, among other things, knowingly causes a minor to engage in prostitution, “[r]eceive[s] any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution, or who 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.”

Similar prohibitions on using such a defense to the prosecution of a trafficker or buyer of sex with a minor are

found in Ariz. Rev. Stat. Ann. § 13-3560(B) (Aggravated luring a minor for sexual exploitation) and Ariz. Rev. Stat. Ann. § 13-3554(B) (Luring a minor for sexual exploitation). Ariz. Rev. Stat. Ann. § 13-3560(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.” Ariz. Rev. Stat. Ann. § 13-3554(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor.”

These methods of investigation are distinguished from entrapment by Ariz. Rev. Stat. Ann. § 13-206(C) (Entrapment), which states in part that “[a] person does not establish entrapment if the person was predisposed to commit the offense and the law enforcement officers or their agents merely provided the person with an opportunity to commit the offense. It is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identity.”

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

Ariz. Rev. Stat. Ann. § 13-3560(A) (Aggravated luring a minor for sexual exploitation) makes it a crime when a person “[k]nowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor” and “[b]y means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.” Ariz. Rev. Stat. Ann. § 13-3560(B) states, “It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.”

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

Ariz. Rev. Stat. Ann. § 8-810 (Missing children; notification; entry into databases) mandates reporting certain missing children by CPS, stating in relevant part in subsection A, “If child protective services receives a report made pursuant to section 13-3620⁵⁵ or receives information during the course of providing services that indicates a child is at risk of serious harm and the child’s location is unknown, child protective services shall notify the appropriate law enforcement agency and provide the information required to make the record entry into the Arizona crime information center and the national crime information center missing person databases.” Under subsection (B), “The appropriate law enforcement agency shall immediately enter the information provided by child protective services pursuant to subsection A of this section into the Arizona crime information center and the national crime center missing persons database.”

⁵⁵ Ariz. Rev. Stat. Ann. § 13-3620 (Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions) states,

A. Any person [as defined later in the statute] who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature . . . shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. . . .

. . . .
. . . .

P. For purposes of this section:

. . . .

4. “Reportable offense” means any of the following:

(a) Any offense listed in chapters 14 [Sexual offenses] and 35.1 [Sexual exploitation of children] of this title or section 13-3506.01 [Furnishing harmful items to minors; internet activity].

. . . .

(c) Child prostitution pursuant to section 13-3212.

(d) Incest pursuant to section 13-3608.

Ariz. Rev. Stat. Ann. § 15-829 (Missing child; notification of school; flagging records) requires that upon receiving a missing child⁵⁶ report from parents or guardians, law enforcement shall notify the missing child's school or, if home-schooled, the county school superintendant. The school is then required to flag the records of the missing child. The law enforcement agency reporting to the school must also notify the school or county school superintendent if the missing child is recovered in order to have the flag on the child's record removed. A similar process is required under Ariz. Rev. Stat. Ann. § 36-339 (Missing children; notification; flagging birth certificate records) with respect to notification by the receiving law enforcement agency in Arizona of a missing child report to the state registrar in the child's birth state who is then required to flag the child's birth certificate. If the missing child is found, the law enforcement agency that reported the child missing must notify the state registrar so they can remove the flag from the child's registered birth certificate.

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⁵⁶ Ariz. Rev. Stat. Ann. § 15-829(D)(2) defines "missing child" as "a person who is under the age of eighteen years, whose temporary or permanent residence is in this state or is believed to be in this state, whose location has not been determined and who has been reported as missing to a law enforcement agency."