

PROTECTED INNOCENCE INITIATIVE

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



ANALYSIS AND RECOMMENDATIONS FLORIDA

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.*

Florida law specifically prohibits sex trafficking in its chapter related to prostitution. Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) states, “Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking”

A conviction under Fla. Stat. Ann. § 796.045 is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 796.045, 775.082(3)(c), 775.083(1)(b).² If

¹ Unless otherwise specified, all references to Florida statutes were taken from Florida Statutes Annotated (LEXIS through Act 2011-269 of the 2011 Reg. Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-54, approved 11/12/11).

² Pursuant to Fla. Stat. Ann. § 775.084 (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms), an offender may be subject to enhanced penalties if the offender is classified as a “habitual felony offender,” “habitual violent felony offender,” “three-time violent felony offender,” or a “violent career criminal.” Offenders may also be subject to enhanced penalties provided under Fla. Stat. Ann. § 775.082(9)(a)(3), which states,

the victim is under the age of 14 or the crime results in death, a conviction is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 796.045, 775.082(3)(b), 775.083(1)(b).

Fla. Stat. Ann. § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties) prohibits

[a]ny parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking

A conviction under this statute is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 796.035, 775.082(3)(b), 775.083(1)(b).

Additionally, Fla. Stat. Ann. § 847.0145(1) (Selling or buying of minors; penalties) makes it a crime if

[a]ny parent, legal guardian, or other person having custody or control of a minor³ who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either:

- (a) With knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;⁴ or
- (b) With intent to promote either:

If the state attorney determines that a defendant is a prison releasee reoffender . . . the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant . . . must be sentenced as follows:

- a. For a felony punishable by life, by a term of imprisonment for life;
- b. For a felony of the first degree, by a term of imprisonment of 30 years;
- c. For a felony of the second degree, by a term of imprisonment of 15 years; and
- d. For a felony of the third degree, by a term of imprisonment of 5 years.

Pursuant to Fla. Stat. Ann. § 775.082(9)(a)(1),

“Prison releasee reoffender” means any defendant who commits, or attempts to commit:

. . .
d. Sexual battery;

. . .
i. Kidnapping;

. . .
o. Any felony that involves the use or threat of physical force or violence against an individual;

. . . [or]

r. Any felony violation of s. 790.07 [Persons engaged in criminal offense, having weapons], s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], s. 827.03 [Abuse, aggravated abuse, and neglect of a child; penalties], s. 827.071 [Sexual performance by a child; penalties], or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties];

within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

Prison release reoffenders “shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release” and “must serve 100 percent of the court-imposed sentence.” Fla. Stat. Ann. § 775.082(9)(b).

³ Pursuant to Fla. Stat. Ann. § 847.001(8) (Definitions), “Minor” means any person under the age of 18 years.”

⁴ Pursuant to Fla. Stat. Ann. § 847.001(16) (Definitions),

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

....

Fla. Stat. Ann. § 847.0145(2) also makes it a crime if a person

purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor, either:

- (a) With knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;
- (b) With intent to promote either:
 1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

....

A conviction under this statute is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 847.0145, 775.082(3)(b), 775.083(1)(b).

Florida’s human trafficking statute does not specifically address sex trafficking. Fla. Stat. Ann. § 787.06(2)(c) (Human trafficking) defines “human trafficking” as “transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.” Fla. Stat. Ann. § 787.06(3) states,

- (3) Any person who knowingly:
 - (a) Engages, or attempts to engage, in human trafficking with the intent or knowledge that the trafficked person will be subjected to forced labor or services;⁵ or
 - (b) Benefits financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services.

1.1.1 Recommendation: Amend Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) to remove the requirement of force, fraud or coercion, if the victim is a minor under the age of 18.⁶

clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

⁵ Pursuant to Fla. Stat. Ann. § 787.06(2)(b),

“Forced labor or services” means labor or services obtained from a person by:

1. Using or threatening to use physical force against that person or another person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine that person or another person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by that person or another person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of that person or another person;
5. Causing or threatening to cause financial harm to any person; or
6. Fraud or coercion.

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.*

Florida has several statutes that specifically criminalize CSEC, including the following:

1. Fla. Stat. Ann. § 800.04(4) (Lewd or lascivious battery) makes it a crime if a person

- (a) Engages in sexual activity⁷ with a person 12 years of age or older but less than 16 years of age; or
- (b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

A conviction under Fla. Stat. Ann. § 800.04(4) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 800.04(4), 775.082(3)(c), 775.083(1)(b).

2. Fla. Stat. Ann. § 787.01(3)(a) (Kidnapping; kidnapping of child under age 13, aggravating circumstances) makes it a crime if a person

commits the offense of kidnapping⁸ upon a child under the age of 13 and who, in the course of committing the offense, commits one or more of the following:

- 1. Aggravated child abuse, as defined in s. 827.03;
- 2. Sexual battery, as defined in chapter 794 , against the child;
- 3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties];
- 4. A violation of s. 796.03 [Procuring person under age of 18 for prostitution] or s. 796.04 [Forcing, compelling, or coercing another to become a prostitute], relating to prostitution, upon the child; or
- 5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151 [Hiring and employing; infliction of pain or suffering; penalty],

.....

A conviction under Fla. Stat. Ann. § 787.01(3)(a) is punishable as a life felony by imprisonment up to life and a possible fine not to exceed \$15,000.⁹ Fla. Stat. Ann. §§ 787.01(3)(a), 775.082(3)(a)(3), 775.083(1)(a).

⁶ Subsequent recommendations in this report referring to Fla. Stat. Ann. § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties) or § 796.045 (Sex trafficking; penalties) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

⁷ Pursuant to Fla. Stat. Ann. § 800.04(1)(a), “Sexual activity” means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.”

⁸ Pursuant to Fla. Stat. Ann. § 787.01(1)(a),

The term “kidnapping” means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

- 1. Hold for ransom or reward or as a shield or hostage.
- 2. Commit or facilitate commission of any felony.
- 3. Inflict bodily harm upon or to terrorize the victim or another person.
- 4. Interfere with the performance of any governmental or political function.

⁹ For punishments of life felonies prior to July 1, 1995 see Fla. Stat. Ann. § 775.082(3)(a)(1)–(3).

3. Fla. Stat. Ann. § 787.02(3)(a) (False imprisonment; false imprisonment¹⁰ of child under age 13, aggravating circumstances) states,

A person who commits the offense of false imprisonment upon a child under the age of 13 and who, in the course of committing the offense, commits any offense enumerated in subparagraphs 1–5, commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

1. Aggravated child abuse, as defined in s. 827.03;
2. Sexual battery, as defined in chapter 794, against the child;
3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5);
4. A violation of s. 796.03 or s. 796.04, relating to prostitution, upon the child; or
5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151 [Hiring and employing; infliction of pain or suffering; penalty].

A conviction under Fla. Stat. Ann. § 787.02(3)(a) is punishable as a first degree felony by imprisonment up to 30 years, or when the statute permits “a term of years not exceeding life imprisonment” and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(b), 775.083(1)(b).

4. Fla. Stat. Ann. § 827.071(2), (3) (Sexual performance by a child; penalties [Effective October 1, 2011]) states,

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance¹¹ or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes¹² any performance which includes sexual conduct¹³ by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 827.071(2), (3) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

¹⁰ Fla. Stat. Ann. § 787.02(1) (False imprisonment; false imprisonment of child under age 13, aggravating circumstances) states,

(a) The term “false imprisonment” means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

¹¹ Fla. Stat. Ann. § 827.071(1)(i) states, “‘Sexual performance’ means any performance or part of thereof which includes sexual conduct by a child of less than 18 years of age.” Fla. Stat. Ann. § 827.071(1)(c) defines “performance” as “any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.”

¹² Fla. Stat. Ann. § 827.071(1)(d) states, “‘Promote’ means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or to agree to do the same.”

¹³ Fla. Stat. Ann. § 827.071(1)(h) states,

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. . . .

5. Fla. Stat. Ann. § 796.03 (Procuring person under age of 18 for prostitution) states, “A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla. Stat. Ann. § 796.03 is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

6. Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) makes it a crime if a person

(2) . . .

(a) Knowingly compiles, enters into, or transmits by use of computer;

(b) Makes, prints, publishes, or reproduces by other computerized means;

(c) Knowingly causes or allows to be entered into or transmitted by use of computer; or

(d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Sexual offense laws that are not expressly commercial but that may apply in cases of CSEC include:

1. Fla. Stat. Ann. § 787.025(2) (Luring or enticing a child) states,

(a) A person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person 18 years of age or older who, having been previously convicted of a violation of paragraph (a), intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, s. 800.04, or s. 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 787.025(2)(a) is punishable as a first degree misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$1,000. Fla. Stat. Ann. §§ 775.082(4)(a), 775.083(1)(d). A conviction under Fla. Stat. Ann. § 787.025(b), (c) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

2. Fla. Stat. Ann. § 847.0135(3)–(4) (Computer pornography; traveling to meet minor; penalties) makes it unlawful to use a computer or other similar device to solicit a minor for illegal sexual acts and states in part,

(3) Certain uses of computer services or devices prohibited.—Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800 [Lewdness; Indecent exposure], or chapter 827 [Abuse of children], or to otherwise engage in any unlawful sexual conduct¹⁴ with a child or with another person believed by the person to be a child; or

(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

(4) Traveling to meet a minor.—Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child; or

(b) Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0135(3), (4) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b). In some circumstances, a conviction under Fla. Stat. Ann. § 847.0135(3) may be punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

3. Fla. Stat. Ann. § 847.012(4) (Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty) states, “A person may not knowingly use a minor in the production of any material described in subsection (3),¹⁵ regardless of whether the material is intended for distribution to minors or is

¹⁴ Fla. Stat. Ann. § 847.001(16) (Definitions) provides the same definition of sexual conduct as the definition that appears in Fla. Stat. Ann. § 827.071(h). See *supra* note 4, for the definition of sexual conduct.

¹⁵ Fla. Stat. Ann. § 847.012(3) states,

A person may not knowingly sell, rent, or loan for monetary consideration to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or

actually distributed to minors.” A conviction under Fla. Stat. Ann. § 847.012(5), is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

4. Fla. Stat. Ann. § 794.05(1) (Unlawful sexual activity with certain minors) states in part, “A person 24 years of age or older who engages in sexual activity¹⁶ with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla. Stat. Ann. § 794.05(1) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).
5. Fla. Stat. Ann. § 800.04(5), (6) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) states,

(5) *Lewd or lascivious molestation.*

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in s. 775.082(3)(a)4.

(c) . . .

2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .

(6) *Lewd or lascivious conduct.*

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
 2. Solicits a person under 16 years’ of age to commit a lewd or lascivious act
- commits lewd or lascivious conduct.

(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .

An offender’s first conviction under Fla. Stat. Ann. § 800.04(5)(b) is punishable as a life felony by “(I) A term of imprisonment for life; or (II) A split sentence that is a term of not less than 25 years’ imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person’s natural life”¹⁷ Fla. Stat. Ann. § 775.082(3)(a)4.a. A subsequent conviction under Fla. Stat. Ann. § 800.04(5)(b) is punishable as a life felony by life imprisonment.¹⁸ Fla. Stat. Ann. § 775.082(3)(a)4.b. A conviction under Fla. Stat. Ann. § 800.04(6)(b) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in s. 847.001 [Definitions], explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and that is harmful to minors.

¹⁶ “As used in this section, ‘sexual activity’ means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose.” Fla. Stat. Ann. § 794.05(1).

¹⁷ For punishments of life felonies prior to September 1, 2005 see Fla. Stat. Ann. § 775.082(3).

¹⁸ For punishments of life felonies prior to July 1, 2008 see Fla. Stat. Ann. § 775.082(3).

- 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 Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties).

- 1.3.1 Recommendation: Amend CSEC statutes to specifically refer to Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) to ensure CSEC victims are identified as sex trafficking victims.

FRAMEWORK ISSUE 2: CRIMINAL PROVISIONS FOR DEMAND

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.*

Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),¹⁹ have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”²⁰ a person under 18 to engage in commercial sex.²¹ It is unsettled whether the courts will uphold this interpretation of the TVPA. Although Fla. Stat. Ann. § 787.06(2)(c) uses the word “obtain” in its definition of “human trafficking,” the full phrase is “obtaining another person for transport,” making “obtain” clearly inapplicable to buyers. Furthermore, an offense under Fla. Stat. Ann. § 787.06(3) must be committed “knowingly” and “with the intent or knowledge that the trafficked person will be subjected to forced labor or services.” Similarly, Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) includes the word “obtain,” but it also requires that the person “know[] that force, fraud, or coercion will be used to cause that person to engage in prostitution”

¹⁹ 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.).

²⁰ 18 U.S.C. § 1591(a).

²¹ 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>.

2.1.1 Recommendation: Amend Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) to clarify that the statute is applicable to buyers of commercial sex with minors.

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

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), in part, may reach some buyers, stating,

(4) Lewd or lascivious battery.—A person who:

...
(b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits lewd or lascivious battery, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Several other sexual offense statutes could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of the child and do not refer to the human trafficking statute.²²

2.2.1 Recommendation: Amend Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) to refer any case of commercial sexual exploitation of a child to § 796.045 (Sex trafficking of minors; penalties) for prosecution.

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

Fla. Stat. Ann. § 796.07(2)(f) (Prohibiting prostitution, etc.; evidence; penalties; definitions) does not distinguish between the offense of soliciting a minor and the offense of soliciting an adult for commercial sex acts. Fla. Stat. Ann. § 796.07(2)(f) states, “It is unlawful . . . (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.”

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), in part, may reach solicitation of minors under 16 by buyers, stating, “A person who: . . . (b) Encourages, forces, or entices any person less than 16 years of age to engage in . . . prostitution . . . commits lewd or lascivious battery.”

2.3.1 Recommendation: Amend Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) to make the solicitation of a minor under 18 for prostitution or other commercial sex acts a crime under Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) to ensure that buyers of commercial sex acts with minors are charged with the crime of sex trafficking and penalized more severely.

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

If applicable to buyers, Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) is a second degree felony punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b). Additionally, a conviction under Fla. Stat. Ann. § 847.0135(2) or (3) (Computer pornography; traveling to meet minor; penalties)²³ is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c). A conviction under subsection (4) of the

²² See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

²³ See discussion of relevant provisions *supra* Section 1.2.

previous statute, which addresses traveling to meet a minor, is punishable as a second degree by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) may be used to prosecute buyers who buy “any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of . . . soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.” A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Several other sexual offenses could be used to prosecute buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of human trafficking under Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties).²⁴

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 offense²⁵ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²⁶ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁷

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.*

Fla. Stat. Ann. § 847.0135(2)(d) (Computer pornography; traveling to meet minor; penalties),²⁸ applies to buyers who buy “any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor. . .” Fla. Stat. Ann. § 847.0135(2)(d) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000, and is subject to enhanced penalties for repeat offenders pursuant to Fla. Stat. Ann. § 775.084 (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders;

²⁴ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

²⁵ 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).

²⁶ 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).

²⁷ 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).

definitions; procedure; enhanced penalties or mandatory minimum prison terms). Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Although not expressly commercial, Fla. Stat. Ann. § 847.0135(3) (Computer pornography; traveling to meet minor; penalties) reaches the conduct of buyers who use the Internet to solicit or purchase sex with minors.²⁹ Fla. Stat. Ann. § 847.0135(3)(a) states, “Any person who knowingly uses a computer online service [or] Internet service . . . [to] [s]educ[e], solicit, lure, or entice” or attempt to do the foregoing to secure a child “to commit any illegal act described in chapter 794 [Sexual battery], chapter 800 [Lewdness; Indecent exposure], or chapter 827 [Abuse of children], or to otherwise engage in any unlawful sexual conduct” A conviction under Fla. Stat. Ann. § 847.0135(3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c). However, pursuant to Fla. Stat. Ann. § 847.0135(3), “[a]ny person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree,” punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

Pursuant to Fla. Stat. Ann. § 847.0135(4)(a),³⁰ it is a second degree felony for a person to travel in or to Florida to engage in certain illegal acts after initially attempting to solicit the child via the Internet or through other specified electronic methods.

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

Fla. Stat. Ann. § 794.021 (Ignorance or belief as to victim’s age no defense) states, “When, in this chapter [Sexual battery], the criminality of conduct depends upon the victim’s being below a certain specified age, ignorance of the age is no defense. Neither shall misrepresentation of age by such person nor a bona fide belief that such person is over the specified age be a defense.” Fla. Stat. Ann. § 847.011(1)(d) (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states, “A person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution for one or more violations of . . . subsection (2).”

Although the following provisions may not be applicable to buyers, Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties), § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties), and § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) do not expressly prohibit a defense based on mistake of age.

- 2.6.1 Recommendation: Amend Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties), § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties), and § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) to expressly prohibit buyers of commercial sex with children from asserting a mistake in age as a defense.

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

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)³¹ only applies to CSEC crimes against children under 16. However, Fla. Stat. Ann. § 847.0135 (Computer pornography; traveling to meet minor; penalties)³² applies the same penalties if the victim is any minor under 18 years of age.

²⁹ See discussion of relevant provisions *supra* Section 1.2.

³⁰ See discussion of relevant provisions *supra* Section 1.2.

³¹ See discussion of relevant provisions *supra* Section 1.2.

³² See discussion of relevant provisions *supra* Section 1.2.

2.6.2 Establish a law that addresses the buying of sex with minors who are 16–17 years of age and provides sufficiently high penalties for all minors under the age of 18.

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.*

Buyers are subject to fines, restitution, and asset forfeiture for many of the offenses for which they can be prosecuted. The one CSEC offense that is applicable to buyers carries significant fines. If convicted under Fla. Stat. Ann. § 800.04(4)(b) (Lewd and lascivious offenses committed upon or in the presence of persons less than 16 years of age), the offender faces a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 775.083(1)(b), 800.04(4)(b). A violation of Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minors; penalties) is subject to a fine not to exceed \$5,000. Fla. Stat. Ann. § 775.083(1)(b).

Buyers convicted of sexual offenses that are not expressly commercial also may be required to pay fines.³³

Additionally, Fla. Stat. Ann. §§ 932.701–932.706 (Florida Contraband Forfeiture Act) can be used to impose significant penalties on the buyer of commercial sex acts with minors if the buyer is charged with a felony. Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions) defines “contraband” in part to mean the following:

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

...

Pursuant to Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property),

It is unlawful:

- (1) To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.
- (2) To conceal or possess any contraband article.
- (3) To use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.
- (4) To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.
- (5) To acquire real or personal property by the use of proceeds obtained in violation of the Florida Contraband Forfeiture Act.

Subject to the provisions in Fla. Stat. Ann. § 932.703 (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

³³ See discussion of relevant provisions *supra* Section 1.2.

Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

Pursuant to Fla. Stat. Ann. § 794.09 (Forfeiture of retirement benefits),

The retirement benefits of a person convicted of a felony committed on or after October 1, 2008, under this chapter [sexual battery] are subject to forfeiture in accordance with s. 112.3173 or s. 121.091 if the person is a public officer or employee when the offense occurs; the person commits the offense through the use or attempted use of power, rights, privileges, duties, or position of the person's public office or employment position; and the victim is younger than 18 years of age when the offense occurs.

Fla. Stat. Ann. § 775.089(1)(a) (Restitution) states in part,

In addition to any punishment, the court shall order the defendant to make restitution to the victim³⁴ for:

1. Damage or loss caused directly or indirectly by the defendant's offense; and
2. Damage or loss related to the defendant's criminal episode,

unless it finds clear and compelling reasons not to order such restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with s. 948.03. . . .

Pursuant to subsection (2),

(a) When an offense has resulted in bodily injury to a victim, a restitution order entered under subsection (1) shall require that the defendant:

1. Pay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing.
2. Pay the cost of necessary physical and occupational therapy and rehabilitation.
3. Reimburse the victim for income lost by the victim as a result of the offense.
4. In the case of an offense which resulted in bodily injury that also resulted in the death of a victim, pay an amount equal to the cost of necessary funeral and related services.

(b) When an offense has not resulted in bodily injury to a victim, a restitution order entered under subsection (1) may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.

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

Fla. Stat. Ann. § 827.071(5) (Sexual performance by a child; penalties [Effective October 1, 2011]) states in part,

It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense.

³⁴ Fla. Stat. Ann. § 775.089(1)(c) defines "victim" for this section and "any provision of law relating to restitution" as "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense."

A violation of this statute is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

In addition, Fla. Stat. Ann. § 847.0137(2), (3) (Transmission of pornography by electronic device or equipment prohibited; penalties) states,

(2) Notwithstanding ss. 847.012 [Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty] and 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty], any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001,³⁵ to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0137(2) or (3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847 (Possession or promotion of certain images of child pornography; reclassification), reclassifies violations of Fla. Stat. Ann. § 827.071, § 847.0135 (Computer pornography; traveling to meet minor; penalties), § 847.0137, or § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) to the next highest felony degree if,

(2) (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.
2. Sadoomasochistic abuse involving a child.
3. Sexual battery involving a child.
4. Sexual bestiality involving a child.
5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

....

In comparison, a federal conviction for possession of child pornography³⁶ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁷ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁸

³⁵ Fla. Stat. Ann. § 847.001(3) defines “child pornography” as “any image depicting a minor engaged in sexual conduct.”

³⁶ 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).

³⁷ 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).

³⁸ 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

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

Some convicted buyers of sex with minors, if they are convicted under the right statute, are required to register under Fla. Stat. Ann. § 775.21 (The Florida Sexual Predators Act). Pursuant to Fla. Stat. Ann. § 775.21(4)(a),

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

- a. A capital, life, or first-degree felony violation, or any attempt thereof, of . . . s. 794.011 [Sexual battery], s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age], or a violation of a similar law of another jurisdiction; or
- b. Any felony violation, or any attempt thereof, of . . . s. 787.025(2)(c) [Luring or enticing a child], where the victim is a minor and the defendant is not the victim’s parent or guardian; . . . s. 794.011, excluding s. 794.011(10); s. 794.05 [Unlawful sexual activity with certain minors]; . . . s. 800.04; . . . or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of . . . s. 787.025(2)(c) , where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; . . . s. 800.04 ; . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6); . . . or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any post conviction proceeding.

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).

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.

There are many crimes within the Florida statutes that may be applicable to traffickers. For ease of reading, these criminal provisions and corresponding penalties have been organized into a chart. Many of the crimes are subject to enhanced penalties.³⁹

Offense ⁴⁰	Crime classification	Penalty (under Fla. Stat. Ann. § 775.082)
Fla. Stat. Ann. § 787.01(3)(a) (Kidnapping; kidnapping of child under age 13, aggravating circumstances)	Life felony	“a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment”
Fla. Stat. Ann. § 787.02(3)(a) (False imprisonment; false imprisonment of child under age 13, aggravating circumstances)	First Degree Felony punishable by life imprisonment	Imprisonment up to 30 years “or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment”
Fla. Stat. Ann. § 787.06(3) (Human trafficking)	Second Degree Felony	Imprisonment up to 15 years
Fla. Stat. Ann. § 796.03 (Procuring person under age of 18 for prostitution)	Second Degree Felony	Imprisonment up to 15 years
Fla. Stat. Ann. § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties)	First Degree Felony	Imprisonment up to 30 years
Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties)	1) First Degree Felony (victim under 14 or death results) 2) Second Degree Felony	1) Imprisonment up to 30 years 2) Imprisonment up to 15 years

³⁹ See *supra* note 2.

⁴⁰ See discussion of relevant provisions *supra* Sections 1.1, 1.2.

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)	Second Degree Felony	Imprisonment up to 15 years
Fla. Stat. Ann. § 827.071(2)–(4) (Sexual performance by a child; penalties)	Second Degree Felony	Imprisonment up to 15 years
Fla. Stat. Ann. § 847.012(4), (5) (Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty)	Third Degree Felony	Imprisonment up to 5 years
Fla. Stat. Ann. § 847.0135(2)–(4) (Computer pornography; traveling to meet minor; penalties)	1) Second Degree Felony 2) Third Degree Felony	1) Imprisonment up to 15 years 2) Imprisonment up to 5 years

Traffickers may also be punished under Florida’s Racketeering Influenced and Corrupt Organization (RICO) statute. Fla. Stat. Ann. § 895.02(1) defines “racketeering activity” in part as the following:

to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

....

26. Chapter 787, relating to kidnapping or human trafficking.

....

29. Section 796.03 , s. 796.035, s. 796.04 [Forcing, compelling, or coercing another to become a prostitute], s. 796.045 , s. 796.05 [Deriving support from the proceeds of prostitution], or s. 796.07 [Prohibiting prostitution, etc.; evidence; penalties; definitions], relating to prostitution and sex trafficking.

....

43. Section 847.011 [Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty], s. 847.012, s. 847.013 [Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations], s. 847.06 [Obscene matter; transportation into state prohibited; penalty], or s. 847.07 [Wholesale promotion of obscene materials; penalties], relating to obscene literature and profanity.

“Pattern of racketeering activity” is defined in Fla. Stat. Ann. § 895.02(4) as,

[E]ngaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct..

Under Fla. Stat. Ann. § 895.03 (Prohibited activities and defense),

(1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real

property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

Pursuant to Fla. Stat. Ann. § 895.04(1) (Criminal penalties and alternative fine), “[a]ny person convicted of engaging in activity in violation of the provisions of s. 895.03 is guilty of a felony of the first degree and shall be punished as provided in s. 775.082, s. 775.083, or s. 775.084.” Instead of a traditional fine, a person convicted under Fla. Stat. Ann. § 895.03 who “derived pecuniary value” or “caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.” Fla. Stat. Ann. § 895.04(2).

Similarly, traffickers may also be punished pursuant to Fla. Stat. Ann. § 896.101(3) (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity) if they engage in money laundering by doing the following:

(3) It is unlawful for a person:

(a) Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity,⁴¹ to conduct or attempt to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity⁴²:

1. With the intent to promote the carrying on of specified unlawful activity; or
2. Knowing⁴³ that the transaction is designed in whole or in part:
 - a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
 - b. To avoid a transaction reporting requirement or money transmitters’ registration requirement under state law.

(b) To transport or attempt to transport a monetary instrument or funds:

1. With the intent to promote the carrying on of specified unlawful activity; or
2. Knowing that the monetary instrument⁴⁴ or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such

⁴¹ Fla. Stat. Ann. § 896.101(2)(a) provides,

“Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (g).

⁴² Pursuant to Fla. Stat. Ann. § 896.101(2)(g), “specified unlawful activity” means “any ‘racketeering activity’ as defined in s. 895.02.”

⁴³ Pursuant to Fla. Stat. Ann. § 896.101(2)(h), “knowing” means,

[T]hat a person knew; or, with respect to any transaction or transportation involving more than \$10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

⁴⁴ Pursuant to Fla. Stat. Ann. § 896.101(2)(e), “monetary instruments” means “coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.”

transportation is designed in whole or in part:

- a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
- b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law.

(c) To conduct or attempt to conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer, or someone acting under such officer's direction, represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with the intent:

1. To promote the carrying on of specified unlawful activity; or
2. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds or property believed to be the proceeds of specified unlawful activity; or
3. To avoid a transaction reporting requirement under state law.

Pursuant to Fla. Stat. Ann. § 896.101(5), a conviction of laundering between \$300–\$19,999.99 in the course of a year is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 896.101(5)(a), 775.082(3)(d), 775.083(1)(c). A conviction of laundering between \$20,000–\$99,999.99 in the course of a year is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 896.101(5)(b), 775.082(3)(c), 775.083(1)(b). A conviction of laundering \$100,000 or more in the course of a year is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 896.101(5)(c), 775.082(3)(b), 775.083(1)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁴⁵ 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 offense⁴⁶ against a minor.

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

Creating or distributing child pornography is illegal in Florida under several statutes. Fla. Stat. Ann. § 827.071(2), (Sexual performance by a child [Effective October 1, 2011]) makes it illegal for a trafficker, “knowing the character and content thereof,” to employ, authorize, or induce a child in “to engage in a sexual performance,”⁴⁷ or, if the offender is the child's parent, to consent “to the participation by such child in a sexual performance.” Fla. Stat. Ann. § 827.071(3) additionally criminalizes when a trafficker “produces, directs, or promotes⁴⁸ any performance which includes sexual conduct⁴⁹ by a child less than 18 years of age,” while Fla. Stat. Ann. § 827.071(4) makes it illegal for a person to possess 3 or more copies of child pornography “with the intent to promote the child pornography.”⁵⁰ A conviction under Fla. Stat. Ann. § 827.071(2)–(4) is punishable as a second degree felony by imprisonment up to 15 years and a possible not to exceed \$10,000. Fla. Stat. Ann. §§ 827.071(2)–(4), 775.082(3)(c), 775.083(1)(b).

⁴⁵ See *supra* note 19.

⁴⁶ See *supra* note 25 for the definition of “federal sex offense.”

⁴⁷ See *supra* note 11.

⁴⁸ See *supra* note 12.

⁴⁹ See *supra* note 13.

⁵⁰ See discussion of relevant provisions *supra* Sections 1.2.

Fla. Stat. Ann. § 847.011(1) (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states in part,

(1) (a) Except as provided in paragraph (c), any person . . . who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character [for obscene use, or purporting to be for obscene use or purpose]; . . . or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, commits a misdemeanor of the first degree

. . . .
(c) A person who commits a violation of paragraph (a) or subsection (2)⁵¹ which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors⁵² commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .
Fla. Stat. Ann. § 847.012(4) (Harmful materials; sale or distribution to minors or using minors in production prohibited) provides, “A person may not knowingly use a minor in the production of any material described in subsection (3),⁵³ regardless of whether the material is intended for distribution to minors or is actually distributed to minors.” A conviction under this section is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 847.012(5), 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847 (Possession or promotion of certain images of child pornography; reclassification) states,

⁵¹ Fla. Stat. Ann. § 847.011(2) states,

Except as provided in paragraph (1)(c), a person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, . . . photograph, motion picture film, film, . . . containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

⁵² Fla. Stat. Ann. § 847.001(6) (Definitions) states,

“Harmful to minors” means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (a) Predominantly appeals to a prurient, shameful, or morbid interest;
- (b) Is patently offensive to the prevailing standards in the adult community as a whole or with respect to what is suitable material or conduct for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political or scientific value for minors.

⁵³ Fla. Stat. Ann. § 847.012(3) states,

A person may not knowingly sell, rent or loan for monetary consideration to a minor:

- (a) Any picture, photography, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, bestiality, or sadomachistic abuse and which is harmful to minors; or
- (b) Any book pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct that is harmful to minors.

- (2) A violation of s. 827.071, s. 847.0135, s. 847.0137. . . shall be reclassified to the next higher degree . . . if:
- (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and
 - (b) The content of at least one image contains one or more of the following:
 1. A child who is younger than the age of 5.
 2. Sadomasochistic abuse involving a child.
 3. Sexual battery involving a child.
 4. Sexual bestiality involving a child.
 5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

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 offense⁵⁴ against a minor. Additionally, a federal conviction for distribution of child pornography⁵⁵ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵⁶ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁷

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.*

Under Fla. Ann. Stat. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) it is a crime if

[a] person who:

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
- (d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082 [Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison], s. 775.083 [Fines], or s. 775.084 [Violent career criminals; habitual felony

⁵⁴ See *supra* note 25 for the definition of “federal sex offense.”

⁵⁵ 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).

⁵⁶ 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).

⁵⁷ 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).

offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms]. . . .

A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 847.0135(3)(a), prohibits any person from, among other things, knowingly using a computer or any type of Internet service to do the following:

Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.

A violation of this statute is punishable as a third degree felony. Any person who misrepresents his or her age in the course of violating this subsection may be convicted of a second degree felony punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

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

The trafficking, CSEC and sex offense statutes under which traffickers may be prosecuted carry possible fines ranging from \$5,000 to \$15,000.⁵⁸

In addition to the fines set out in Fla. Stat. Ann. § 775.083, if the trafficker is convicted of laundering money in violation of Fla. Stat. Ann. § 896.101 (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity), he may be fined up to “\$ 250,000 or twice the value of the financial transactions, whichever is greater” for a first time violation and “up to \$ 500,000 or quintuple the value of the financial transactions, whichever is greater” for any subsequent violation. Fla. Stat. Ann. § 896.101(6). Also, the trafficker who violates the money laundering statute may be “liable for a civil penalty of not more than the value of the financial transactions involved or \$ 25,000, whichever is greater.” Fla. Stat. Ann. § 896.101(7).

Additionally, Fla. Stat. Ann. §§ 932.701–932.706 (Florida Contraband Forfeiture Act) can be used to impose significant penalties including forfeiture of contraband⁵⁹ on traffickers charged with felonies.⁶⁰ Subject to certain provisions in Fla. Stat. Ann. § 932.703 (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act,⁶¹ or in, upon, or by means of which

⁵⁸ See *supra* penalties chart in Section 3.1.

⁵⁹ See *supra* Section 2.8 for the definition of “contraband” pursuant to Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions).

⁶⁰ Among the statutes for which a trafficker could be charged with a felony are the following: Fla. Stat. Ann. § 787.06 (Human trafficking); § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties); § 796.03 (Procuring person under age of 18 for prostitution); § 827.071 (Sexual performance by a child; penalties); § 787.01 (Kidnapping; kidnapping of child under age 13, aggravating circumstances); § 787.02 (False imprisonment; false imprisonment of child under age 13, aggravating circumstances); § 787.025 (Luring or enticing a child); § 796.045 (Sex trafficking; penalties); § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); § 827.04 (Contributing to the delinquency or dependency of a child; penalty); § 827.071 (Sexual performance by a child; penalties); § 847.0145 (Selling or buying of minors; penalties).

⁶¹ See *supra* Section 2.8 for the text of Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property), which describes ways that an offender may violate the Florida Contraband Forfeiture Act.

any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)⁶² provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim⁶³ for . . .” loss or damage caused or related to the trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution. . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Traffickers convicted under the racketeering statute also face stiff penalties. Fla. Stat. Ann. § 895.04(2) (Criminal penalties and alternative fine) states in part,

(2) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of s. 895.03 [Prohibited activities and defenses], through which the person derived pecuniary value,⁶⁴ or by which he or she caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

In addition to fines for racketeering violations, traffickers who violate Fla. Stat. Ann. § 895.03 are subject to civil forfeiture pursuant to Fla. Stat. Ann. § 895.05(2)(a) (Civil remedies), which states, “All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01–895.05 is subject to civil forfeiture to the state.”

Furthermore, Fla. Stat. Ann. § 895.05(6) (Civil remedies) vests any aggrieved person with standing to seek “injunctive relief from threatened loss or damage in other civil cases,” under subsection (1) and grants the circuit court authority to enjoin a defendant’s racketeering violations without a “showing of special or irreparable damage.”

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

Perpetrators of domestic minor sex trafficking are required to register under Fla. Stat. Ann. § 775.21 (The Florida Sexual Predators Act). Pursuant to Fla. Stat. Ann. § 775.21(4),

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

- a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances] or s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances], where the victim is a minor and the defendant is not the victim’s parent or guardian, or . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’

⁶² See discussion of relevant provisions *supra* Section 2.8.

⁶³ See *supra* note 34.

⁶⁴ Pecuniary value is defined in Fla. Stat. Ann. § 895.04(4) for the purposes of subsection (2) as “(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or (b) Any other property or service that has a value in excess of \$ 100.”

of age], or s. 847.0145 [Selling or buying of minors; penalties], or a violation of a similar law of another jurisdiction; or

b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c) [Luring or enticing a child],⁶⁵ where the victim is a minor and the defendant is not the victim's parent or guardian. . . s. 796.03 [Procuring person under age of 18 for prostitution]; s. 796.035 [Selling or buying of minors into sex trafficking or prostitution; penalties]; s. 800.04; . . . s. 827.071; . . . s. 847.0145; . . . or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; . . . s. 796.03; s. 796.035; s. 800.04; . . . s. 827.071 [Sexual performance by a child; penalties]; s. 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty]; s. 847.0135 [Computer pornography; traveling to meet minor; penalties], . . . or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and

3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

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.*

Fla. Stat. Ann. § 39.806 (Grounds for termination of parental rights) states in part,

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

....

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated in a state or federal correctional institution and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084,⁶⁶ a habitual violent felony offender as defined in s. 775.084,⁶⁷ or a sexual

⁶⁵ Fla. Stat. Ann. § 787.025(2)(c) specifies, "A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, s. 800.04, or s. 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose"

⁶⁶ Pursuant to Fla. Stat. Ann. § 775.084(d), the defendant is a violent career criminal when,

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:

....

c. Aggravated child abuse, as described in s. 827.03(2);

....

e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04 or s. 847.0135(5) [Computer pornography; traveling to meet minors; penalties];

....

predator as defined in s. 775.21,⁶⁸ has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011;⁶⁹ or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term “substantially similar offense” means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. . . .

2. The parent or parents have materially breached the case plan. . . .

(f) The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child’s sibling.

...

2. As used in this subsection, the term “egregious conduct” means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

2. The defendant has been incarcerated in a state prison or a federal prison.

3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

⁶⁷ Pursuant to Fla. Stat. Ann. § 775.084(b), the defendant is a habitual violent felony offender when,

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

...

b. Sexual battery;

...

d. Kidnapping;

e. Aggravated child abuse;

...

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.

4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

⁶⁸ See *supra* Section 3.5 for the criteria that defines a sexual predator.

⁶⁹ See *supra* Section 1.2 for details on the sexual batteries that result in capital, life, or first degree felonies.

(g) The parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

.....

FRAMEWORK ISSUE 4: CRIMINAL PROVISIONS FOR FACILITATORS

Legal Components:

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

Legal Analysis:

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

The act of assisting or facilitating the crime of sex trafficking is criminalized by the state human trafficking law. Fla. Stat. Ann. § 787.06(3) (Human trafficking) states, “Any person who knowingly . . . (b) Benefits financially by receiving anything of value from participation in a venture that has subjected a person to forced labor or services” is guilty of a second degree felony. A conviction under this section is punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b). However, under this provision, the victim would need to be subjected to “forced labor or services,” which may limit its applicability to facilitators of domestic minor sex trafficking.

Additionally, Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) covers some facilitators by stating in part, “Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla. Stat. Ann. § 796.045 is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b). If the victim is under 14 or the offense results in death, then a conviction is punishable as a first degree felony. Fla. Stat. Ann. § 796.045. A first degree felony is punishable by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(b), 775.083(1)(b). There is, however, still a force requirement.

A facilitator may also be guilty of money laundering in violation of Fla. Stat. Ann. § 896.101(3) (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity). Depending on the amount of money the facilitator helped to conceal, the facilitator may be convicted of a first, second, or third degree felony. Fla. Stat. Ann. § 896.101(5). Additional and more substantial fines may be demanded of the facilitator convicted of money laundering. Fla. Stat. Ann. § 896.101(6), (7).⁷⁰

Facilitators may also be punished under Florida’s Racketeering Influenced and Corrupt Organization (RICO) statute for participating in the racketeering enterprise through a pattern of racketeering activity.⁷¹ Pursuant to Fla. Stat. Ann. § 895.04(1) (Criminal penalties and alternative fine), “Any person convicted of engaging in

⁷⁰ See *supra* Section 3.4 for a detailed explanation of the fines specifically applicable to money laundering.

⁷¹ See *supra* Section 3.1 for a detailed explanation of the racketeering provisions.

activity in violation of the provisions of s. 895.03 is guilty of a felony of the first degree and shall be punished as provided in s. 775.082, s. 775.083, or s. 775.084.”

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 may be subject to fines for convictions related to their activities. A second degree felony conviction under Fla. Stat. Ann. § 787.06 (Human trafficking) is punishable by a possible fine of up to \$10,000. Fla. Stat. Ann. § 775.083(1)(b). A violation of Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) is either a first or second degree felony, which are both punishable by a possible fine not to exceed \$10,000. Fla. Stat. Ann. § 775.083(1)(b).

Additionally, Fla. Stat. Ann. §§ 932.701–932.706 (Florida Contraband Forfeiture Act) can be used to impose significant penalties including forfeiture of contraband⁷² on facilitators charged with felonies. Subject to certain provisions in Fla. Stat. Ann. § 932.703 (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act,⁷³ or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)⁷⁴ provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim⁷⁵ for . . .” loss or damage caused or related to the trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution. . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Facilitators who allow their premises to be used for sex trafficking face loss of their property if it is declared a nuisance under Fla. Stat. Ann. § 823.05(1) (Places and groups engaged in criminal gang-related activity declared a nuisance; may be abated and enjoined), which states,

Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, or any house or place of prostitution, assignation, lewdness or place . . . or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in ss. 60.05⁷⁶ and 60.06.⁷⁷

⁷² See *supra* Section 2.8 for the definition of “contraband” pursuant to Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions).

⁷³ See *supra* Section 2.8 for the text of Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property), which describes ways that an offender may violate the Florida Contraband Forfeiture Act.

⁷⁴ See discussion of relevant provisions *supra* Section 2.8.

⁷⁵ See *supra* note 34.

⁷⁶ Fla. Stat. Ann. § 60.05(4) (Abatement of nuisances) states,

On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then on

Facilitators convicted under the racketeering statute also face stiff penalties. Fla. Stat. Ann. § 895.04(2) (Criminal penalties and alternative fine) states,

(2) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of s. 895.03 [Prohibited activities and defenses], through which the person derived pecuniary value,⁷⁸ or by which he or she caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

In addition to fines for racketeering violations, facilitators who violate Fla. Stat. Ann. § 895.03 are subject to civil forfeiture pursuant to Fla. Stat. Ann. § 895.05(2)(a) (Civil remedies), which states, “All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01–895.05 is subject to civil forfeiture to the state.”

Furthermore, Fla. Stat. Ann. § 895.05(6) (Civil remedies) vests any aggrieved person with standing to seek “injunctive relief from threatened loss or damage in other civil cases,” under subsection (1) and grants the circuit court authority to enjoin a defendant’s racketeering violations without a “showing of special or irreparable damage.”

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

There is no specific provision in the Florida statutes that prohibits child sex tourism. Fla. Stat. Ann. § 847.0135(4) (Computer pornography; traveling to meet minor) may apply where a person travels to or within Florida for the purpose of engaging in certain illegal sex acts with children, but does not specifically address sex tourism.

4.3.1 Recommendation: Enact a law that specifically 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 occurs in Florida.

4.4 *Promoting and selling child pornography is illegal.*

Promoting or selling child pornography is illegal in Florida under several statutes. Fla. Stat. Ann. § 847.011 (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states in part,

(1) (a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine,

the real estate occupied by the nuisance. No lien shall attach to the real estate of any other than said persons unless 5 days’ written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within said 5 days. In a proceeding abating a nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has been convicted of an offense under chapter 893 or s. 796.07, the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.

⁷⁷ Fla. Stat. Ann. § 60.06 (Abatement of nuisances; enforcement) states, “The court shall make such orders on proper proof as will abate all nuisances mentioned in s. 823.05, and has authority to enforce injunctions by contempt but the jurisdiction hereby granted does not repeal or alter s. 823.01.”

⁷⁸ See *supra* note 64.

periodical, pamphlet, newspaper, . . . picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; . . . commits a misdemeanor of the first degree

. . . .
(c) A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors⁷⁹ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .
(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree,

A conviction under Fla. Stat. Ann. § 847.011(1)(a), (4) is punishable as a first degree misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$1,000. Fla. Stat. Ann. §§ 775.082(4)(a), 775.083(1)(d). A conviction under Fla. Stat. Ann. § 847.011(1)(c), (4) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Facilitators could also be convicted of violating Fla. Stat. Ann. § 847.0135(2)⁸⁰ (Computer pornography; traveling to meet minor; penalties), which is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 847.0137 (Transmission of pornography by electronic device or equipment prohibited; penalties), states,

(2) Notwithstanding ss. 847.012 [Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty] and 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty], any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001,⁸¹ to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0137(2), (3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847(2) (Possession or promotion of certain images of child pornography; reclassification), reclassifies violations of Fla. Stat. Ann. § 827.071, § 847.0135 (Computer pornography; traveling to meet minor; penalties), § 847.0137, and § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) to the next highest felony degree if,

⁷⁹ See *supra* note 52.

⁸⁰ See discussion of relevant provisions *supra* Section 1.2.

⁸¹ See *supra* note 35.

- (2) (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and
- (b) The content of at least one image contains one or more of the following:
1. A child who is younger than the age of 5.
 2. Sadomasochistic abuse involving a child.
 3. Sexual battery involving a child.
 4. Sexual bestiality involving a child.
 5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

FRAMEWORK ISSUE 5: PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Legal Components:

- 5.1 *A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims' compensation and other victim benefits.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*
- 5.4 *Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*
- 5.5 *Commercial sexual exploitation 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.*

Fla. Stat. Ann. § 39.01(76) (Definitions) defines "victim" for the chapter on judicial proceedings related to children as "any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse,⁸² neglect, or abandonment, or child-on-child sexual abuse." Pursuant to Fla. Stat. Ann. § 39.01(67), "sexual abuse of a child" means, in part,

⁸² Fla. Stat. Ann. § 39.01(67) also describes non-commercial sexual offenses in its definition of "sexual abuse of a child," including the following:

- (a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

- (g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:
 - 1. Solicit for or engage in prostitution; or
 - 2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children].

For the purpose of the Florida Crimes Compensation Act, Fla. Stat. Ann. § 960.03(14) (Definitions) defines “victim” as

- (a) A person who suffers personal physical injury or death as a direct result of a crime;
- (b) A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or
- (c) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.

Under Fla. Stat. Ann. § 960.03(3), crime is defined as,

- (a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death. The term also includes any such criminal act which is committed within this state but which falls exclusively within federal jurisdiction.

-
- (d) Any violation of s. 827.071 [Sexual performance by a child; penalties], s. 847.0135 [Computer pornography; traveling to meet minor; penalties], s. 847.0137 [Transmission of pornography by electronic device or equipment prohibited; penalties], or s. 847.0138 [Transmission of material harmful to a minor by electronic device or equipment prohibited; penalties], related to online sexual exploitation and child pornography.

Furthermore, Fla. Stat. Ann. § 960.03(10) defines “identified victim of child pornography” as “any person who, while under the age of 18, is depicted in any image or movie of child pornography and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children’s Child Victim Identification Program.”

- 5.1.1 Recommendation: Amend the definition of “crime” in Fla. Stat. Ann. § 960.03(3) (Definitions) to include violations of Fla. Stat. Ann. § 787.06 (Human trafficking) or other CSEC so that the victims of these crimes are included in the definition of “victim” pursuant to Fla. Stat. Ann. § 960.03(14).

-
- (b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
 - (c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.
 - (d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:
 - 1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or
 - 2. Any act intended for a valid medical purpose.
 - (e) The intentional masturbation of the perpetrator’s genitals in the presence of a child.
 - (f) The intentional exposure of the perpetrator’s genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

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.*

Fla. Stat. Ann. § 800.04(2) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) explicitly precludes consent as a defense and states, “[n]either the victim’s lack of chastity nor the victim’s consent is a defense to the crimes proscribed by” the statute.

5.2.1 Recommendation: Enact a provision, within Fla. Stat. Ann. § 796.045 (Sex trafficking) and § 787.06 (Human trafficking), as well as CSEC laws, § 796.035 (Selling or buying of minors into sex trafficking or prostitution) and § 847.0145 (Selling or buying of minors), and the pornography offenses, § 847.011(d) (Prohibition of certain acts in connection with obscene, lewd, etc., materials), § 847.012(2) (Harmful materials; sale or distribution to minors or using minors in production prohibited), and § 847.013(2) (Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations) to specifically prohibit a defense to any commercial sexual offense against a minor under 18 based on the child’s consent to the sex act.

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

Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) does not exclude minors from prosecution for prostitution offenses.

5.3.1 Recommendation: Amend Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) to exclude minors under 18 and to refer cases of minors under 18 used in prostitution to Fla. Stat. Ann. § 787.06 (Human trafficking), § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties), and § 796.045 (Sex trafficking; penalties) for prosecution of the perpetrators in cases involving minors.

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.*

Pursuant to Fla. Stat. Ann. § 39.401(1)(b)(1) (Taking a child alleged to be a dependent into custody; law enforcement officers and authorized agents of the department),

A child may only be taken into custody:

...

(b) By a law enforcement officer, or an authorized agent of the department, if the officer or authorized agent has probable cause to support a finding:

1. That the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment.

Fla. Stat. Ann. § 39.402(1)(a) (Placement in a shelter) allows a child taken into custody to be placed in a shelter prior to a hearing when there is probable cause to believe that “(a) The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment” Fla. Stat. Ann. § 39.01(2) (Definitions) defines “abuse” in part as “any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.” “Harm” is defined in Fla. Stat. Ann. § 39.402(32) in part as the following:

“Harm” to a child’s health or welfare can occur when any person:

...

- (b) Commits, or allows to be committed, sexual battery, as defined in chapter 794 [Sexual battery], or lewd or lascivious acts, as defined in chapter 800 [Lewdness; indecent exposure], against the child.
- (c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:
 1. Solicit for or engage in prostitution; or
 2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children].
-
- (j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.
-

An exploited child may initially come to the attention of law enforcement as an abused and neglected child through the filing of a mandatory report of abuse pursuant to Fla. Stat. Ann. § 39.201(1)(a) (Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline), which provides,

Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

Once the child is taken into custody based on a finding that he or she has been abused or neglected, pursuant to Fla. Stat. Ann. § 39.401(1)(b)(1), the child must either be released to his or her parents or another responsible adult or delivered to an agent of the department to determine whether a shelter petition should be filed. Fla. Stat. Ann. § 39.401(2)(a), (b). Pursuant to Fla. Stat. Ann. § 39.401(3)(b),

If the facts are sufficient and the child has not been returned to the custody of the parent or legal custodian, the department shall file the petition and schedule a hearing, and the attorney representing the department shall request that a shelter hearing be held within 24 hours after the removal of the child. While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care or may release the child to a parent or legal custodian or responsible adult relative or the adoptive parent of the child’s sibling who shall be given priority consideration over a licensed placement, or a responsible adult approved by the department if this is in the best interests of the child. Placement of a child which is not in a licensed shelter must be preceded by a criminal history records check as required under s. 39.0138. In addition, the department may authorize placement of a housekeeper/homemaker in the home of a child alleged to be dependent until the parent or legal custodian assumes care of the child.

A victim of domestic minor sex trafficking might also be brought into custody and placed through the “[c]hild in need of services” procedures. Fla. Stat. Ann. § 984.03(9) (Definitions) defines a “child in need of services” as one who is found by the court to have persistently run away from home, habitually absent from school, or consistently disobedient to the reasonable demands of the parent or guardian. A “child in need of services” may not be the subject of an investigation regarding “abuse,⁸³ neglect, or abandonment,” may not have a pending

⁸³ Fla. Stat. Ann. § 984.03(2) defines “abuse” as,

[A]ny willful act that results in any physical, mental, or sexual injury that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Corporal discipline of a child by a parent or guardian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child as defined in s. 39.01.

referral that the child is delinquent, and cannot be under supervision “for an adjudication of dependency or delinquency.” Fla. Stat. Ann. § 984.03(9).

Pursuant to Fla. Stat. Ann. § 984.13 (Taking into custody a child alleged to be from a family in need of services or to be a child in need of services),

- (1) A child may be taken into custody:
 - (a) By a law enforcement officer when the officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or other legal custodian.
. . . .
 - (c) Pursuant to an order of the circuit court based upon sworn testimony before or after a petition is filed under s. 984.15.
 - (d) By a law enforcement officer when the child voluntarily agrees to or requests services pursuant to this chapter or placement in a shelter.

Under subsection (2),

The person taking the child into custody shall:

- (a) Release the child to a parent, guardian, legal custodian, or responsible adult relative or to a department-approved family-in-need-of-services and child-in-need-of-services provider if the person taking the child into custody has reasonable grounds to believe the child has run away from a parent, guardian, or legal custodian; is truant; or is beyond the control of the parent, guardian, or legal custodian; . . . or
- (b) Deliver the child to the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is from a family in need of services.

Pursuant to Fla. Stat. Ann. § 984.13(3),

If the child is taken into custody by, or is delivered to, the department, the appropriate representative of the department shall review the facts and make such further inquiry as necessary to determine whether the child shall remain in custody or be released. Unless shelter is required as provided in s. 984.14(1), the department shall:

- (a) Release the child to his or her parent, guardian, or legal custodian . . . or to a department-approved family-in-need-of-services and child-in-need-of-services provider; or
- (b) Authorize temporary services and treatment that would allow the child alleged to be from a family in need of services to remain at home.

Pursuant to Fla. Stat. Ann. § 984.14(1), children are not ordinarily placed in shelters prior to a hearing. However, placement in a shelter without a hearing is appropriate when it is determined that placement in a shelter is necessary because the “parent, custodian, or guardian is unavailable” or to give time to the child and family to agree to “conditions for the child’s return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement” Fla. Stat. Ann. § 984.14(1)(a). The child will be placed in a shelter “specifically for runaways and troubled youth” Fla. Stat. Ann. § 984.14(2). A child who has been involuntarily placed in a shelter must be given a hearing within 24 hours after being taken into custody, Fla. Stat. Ann. § 984.14(3), and must be released after 24 hours “unless an order so directing is made by the court after a shelter hearing finding that placement in a shelter is necessary based on the criteria in subsection (1) and that the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home.” Fla. Stat. Ann. § 984.14(4). The child may not

stay in the shelter longer than 35 days, unless permitted by Fla. Stat. Ann. § 984.225 (Powers of disposition; placement in a staff-secure shelter).⁸⁴ Fla. Stat. Ann. § 984.14(5).

Pursuant to § 984.15 (Petition for a child in need of services), “[a]ll proceedings seeking an adjudication that a child is a child in need of services shall be initiated by the filing of a petition,” which can be filed by a representative of the department or the child’s parent, legal custodian, or guardian as set out in the statute.

When the court adjudicates a child to be in need of services, the court may place the child under the supervision of the department and its program providers, “in the temporary legal custody of an adult willing to care for the child,” or with a licensed childcare agency. Fla. Stat. Ann. § 984.22. The court may even order community service. Fla. Stat. Ann. § 984.22(2)(d). When a child in need of services must be placed “with an adult willing to care for the child, a licensed child-caring agency, [or] the Department of Juvenile Justice, or the Department of Children and Family Services” pursuant to Fla. Stat. Ann. § 984.22(3) (Powers of disposition), “the court shall order the natural or adoptive parents of such child . . . to pay child support to the adult relative caring for the child, the licensed child-caring agency, the Department of Juvenile Justice, or the Department of Children and Family Services.”

Pursuant to Fla. Stat. Ann. § 984.225 (Powers of disposition; placement in a staff-secure shelter), a court may order that a child found to be in need of services be placed in a staff-secure shelter for up to 90 days if other less restrictive means have been exhausted and the parent or guardian will not provide for the needs of the child because of the child’s disruptive behavior, the child refuses to stay at home and repeatedly runs away, or the child “failed to successfully complete an alternative treatment program or comply with a court-ordered sanction”

The court may order an adjudicated child in need of services to be placed in a physically secure setting for up to 90 days when the child has failed to be present for placement in a shelter, failed to comply with a court order related to placement, been found in contempt of court, or has run away from a shelter. Fla. Stat. Ann. § 984.226(3).

Where a child is not identified as abused and neglected or as a child in need of services, and is instead taken into custody by law enforcement for a status offense or delinquency offense pursuant to Fla. Stat. Ann. § 985.101(1)–(3) (Taking a child into custody),

(1) A child may be taken into custody under the following circumstances:

- (a) Pursuant to an order of the circuit court issued under this chapter, based upon sworn testimony, either before or after a petition is filed.
- (b) For a delinquent act or violation of law, pursuant to Florida law pertaining to a lawful arrest. . . .

. . . .

Nothing in this subsection shall be construed to allow the detention of a child who does not meet the detention criteria in part V.

⁸⁴ Fla. Stat. Ann. § 984.225 states,

(1) Subject to specific legislative appropriation, the court may order that a child adjudicated as a child in need of services be placed for up to 90 days in a staff-secure shelter if:

- (a) The child’s parent, guardian, or legal custodian refuses to provide food, clothing, shelter, and necessary parental support for the child and the refusal is a direct result of an established pattern of significant disruptive behavior of the child in the home of the parent, guardian, or legal custodian;
- (b) The child refuses to remain under the reasonable care and custody of his or her parent, guardian, or legal custodian, as evidenced by repeatedly running away and failing to comply with a court order; or
- (c) The child has failed to successfully complete an alternative treatment program or to comply with a court-ordered sanction and the child has been placed in a residential program on at least one prior occasion pursuant to a court order under this chapter.

(2) This section applies after other alternative, less-restrictive remedies have been exhausted. . . .

. . . .

(2) Except in emergency situations, a child may not be placed into or transported in any police car or similar vehicle that at the same time contains an adult under arrest, unless the adult is alleged or believed to be involved in the same offense or transaction as the child.

(3) When a child is taken into custody as provided in this section, the person taking the child into custody shall attempt to notify the parent, guardian, or legal custodian of the child. The person taking the child into custody shall continue such attempt until the parent, guardian, or legal custodian of the child is notified or the child is delivered to a juvenile probation officer under ss. 985.14 and 985.145, whichever occurs first. If the child is delivered to a juvenile probation officer before the parent, guardian, or legal custodian is notified, the juvenile probation officer shall continue the attempt to notify until the parent, guardian, or legal custodian of the child is notified. . . .

Fla. Stat. Ann. § 985.101(4) states, “Taking a child into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence in conjunction therewith is lawful.”

Fla. Stat. Ann. § 985.125 (Prearrest or postarrest diversion programs) provides an opportunity for a child arrested for a delinquent act to avoid a record of delinquency by participating in a “prearrest or postarrest diversion program,” that “may, upon agreement of the agencies that establish the program, provide for the expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582.” Fla. Stat. Ann. § 985.125(3).

Pursuant to Fla. Stat. Ann. § 985.135(2) (Juvenile assessment centers),

The department shall work cooperatively with substance abuse programs, mental health providers, law enforcement agencies, schools, health service providers, state attorneys, public defenders, and other agencies serving youth to establish juvenile assessment centers. Each current and newly established center⁸⁵ shall be developed and modified through the local initiative of community agencies and local governments and shall provide a broad array of youth-related services appropriate to the needs of the community where the center is located.

When a child is adjudicated delinquent pursuant to Fla. Stat. Ann § 985.35 (Adjudicatory hearings; withheld adjudications; orders of adjudication), several dispositional outcomes are possible, including physically secure custody in a juvenile correctional facility or juvenile prison pursuant to Fla. Stat. Ann. § 985.465 (Juvenile correctional facilities or juvenile prison). Fla. Stat. Ann. § 985.433 (Disposition hearings in delinquency cases) states,

When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

-
- (7) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department . . .
- (a) The juvenile probation officer shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level⁸⁶ most appropriate for the child. . . .
 - (b) The court shall commit the child to the department at the restrictiveness level identified or may order placement at a different restrictiveness level. . . .

⁸⁵ Pursuant to Fla. Stat. Ann. § 985.135(1), “‘center’ means a juvenile assessment center comprising community operated facilities and programs which provide collocated central intake and screening services for youth referred to the department.”

⁸⁶ Under Fla. Stat. Ann. § 985.03(45) restrictiveness levels vary and could be minimum-risk nonresidential, low-risk residential, moderate-risk residential, high-risk residential, and maximum-risk residential. All of these programs vary in the level of access to the outside community that the juvenile receives and style of program.

(c) The court may also require that the child be placed in a probation program following the child's discharge from commitment. . . .

(8) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution in money or in kind, a curfew, revocation or suspension of the driver's license of the child, community service, and appropriate educational programs as determined by the district school board.

. . . .

5.4.1 Recommendation: Enact a law providing specialized multidisciplinary services for minor victims of sex trafficking that will divert them away from delinquency adjudication into child protective services.

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

Fla. Stat. Ann. § 39.01(2) (Definitions) defines "abuse" within the general provisions on judicial proceedings involving children, which includes provisions related to child protective investigations and abuse and neglect, as "any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired" Additionally, "harm" is defined in subsection (32) in part as the following:

"Harm" to a child's health or welfare can occur when any person:

. . . .

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794 [Sexual battery], or lewd or lascivious acts, as defined in chapter 800 [Lewdness; indecent exposure], against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children].

. . . .

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

. . . .

Moreover, Fla. Stat. Ann. § 39.01(67)(g) defines "sexual abuse of a child" to include "[t]he sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to: 1. Solicit for or engage in prostitution; or 2. Engage in a sexual performance, as defined by chapter 827."

Fla. Stat. Ann. § 984.03(2) (Definitions) similarly defines "abuse" for the purposes of the chapter on families and children in need of services in part as "any willful act that results in any physical, mental, or sexual injury that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired."

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.*

Fla. Stat. Ann. § 39.01(10) (Definitions)⁸⁷ defines “caregiver” for the purposes of judicial proceedings related to children as a “parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child’s welfare as defined in subsection (47).” Subsection (47) defines “other person responsible for a child’s welfare” in part as

the child’s legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child’s welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child’s care. . . .

5.6.1 Recommendation: Amend the definition of “other person responsible for a child’s welfare” in Fla. Stat. Ann. § 39.01(47) to include persons in control or custody of a minor, which would allow Child Protective Services to act on allegations of abuse 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.*

The Florida Crimes Compensation Act in Fla. Stat. Ann. §§ 960.01–960.28 authorizes the payment of compensation to victims of crime. Under Fla. Stat. Ann. § 960.03(3)(a), “crime” is defined in part as the following:

(a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death. The term also includes any such criminal act which is committed within this state but which falls exclusively within federal jurisdiction.

. . . .

(d) Any violation of s. 827.071 [Sexual performance by a child; penalties], s. 847.0135 [Computer pornography; traveling to meet minor; penalties], s. 847.0137 [Transmission of pornography by electronic device or equipment prohibited; penalties] or s. 847.0138 [Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties], related to online sexual exploitation and child pornography.

. . . .

For the purposes of the Florida Crimes Compensation Act, a “victim” is defined in subsection (14) as

- (a) A person who suffers personal physical injury or death as a direct result of a crime;
- (b) A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or
- (c) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.

⁸⁷ The Department of Children and Families does have operating procedure allowing child abuse investigations for minor victims of human trafficking when the alleged perpetrator is not a caregiver. These procedures, however, are not codified in Florida law. See *Intakes and Investigative Response to Human Trafficking of Children*, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (May 1, 2009), [http://www.dcf.state.fl.us/admin/publications/cfops/175%20Family%20Safety%20\(CFOP%20175-XX\)/CFOP%20175-14,%20Intakes%20and%20Investigative%20Response%20to%20Human%20Trafficking%20of%20Children.pdf](http://www.dcf.state.fl.us/admin/publications/cfops/175%20Family%20Safety%20(CFOP%20175-XX)/CFOP%20175-14,%20Intakes%20and%20Investigative%20Response%20to%20Human%20Trafficking%20of%20Children.pdf) (stating CF Operating Procedure No. 175-14).

Certain criteria in the Florida Crimes Compensation Act could disqualify domestic minor sex trafficking victims from receiving compensation. Pursuant to Fla. Stat. Ann. § 960.065(2) (Eligibility for awards), certain persons are ineligible for awards, including any person who “[c]ommitted or aided in the commission of the crime upon which the claim for compensation was based [or] . . . [w]as engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based.” Prostituted minors may be arrested and prosecuted for prostitution-related offenses committed in their trafficked condition, which could operate to disqualify them from compensation.

Fla. Stat. Ann. § 960.13(1)(a)(2)–(3) (Awards) require that before compensation may be awarded, that the “crime directly resulted in personal injury to, psychiatric or psychological injury to, or death of, the victim or intervenor,” and the “crime was promptly reported to the proper authorities.” Fla. Stat. Ann. § 960.13(b) provides,

In no case may an award be made when the record shows that such report was made more than 72 hours after the occurrence of such crime unless the department, for good cause shown, finds the delay to have been justified. The department, upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the department, may deny, reduce, or withdraw any award, as the case may be.

However, victims of child pornography receive special protection under Fla. Stat. Ann. § 960.03(10) and Fla. Stat. Ann. § 960.197 (Assistance to victims of online sexual exploitation and child pornography), which ensures that they receive compensation as victims of crime. Fla. Stat. Ann. § 960.03(10) defines “identified victim of child pornography” as “any person who, while under the age of 18, is depicted in any image or movie of child pornography and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children’s Child Victim Identification Program.” Pursuant to Fla. Stat. Ann. § 960.197,

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award compensation for counseling and other mental health services to treat psychological injury or trauma to:

(a) A child younger than 18 years of age who suffers psychiatric or psychological injury as a direct result of online sexual exploitation under any provision of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, and who does not otherwise sustain a personal injury or death; or

(b) Any person who, while younger than age 18, was depicted in any image or movie, regardless of length, of child pornography as defined in s. 847.001 [Definitions],⁸⁸ who has been identified by a law enforcement agency or the National Center for Missing and Exploited Children as an identified victim of child pornography, who suffers psychiatric or psychological injury as a direct result of the crime, and who does not otherwise sustain a personal injury or death.

(2) Compensation under this section is not contingent upon pursuit of a criminal investigation or prosecution.

Also, Fla. Stat. Ann. § 960.07(2) states in part that claims “must be filed not later than 1 year after: (a) The occurrence of the crime upon which the claim is based. . . [or] (b) The death of the victim or intervenor,” but that “for good cause the department may extend the time for filing for a period not exceeding 2 years after such occurrence.” This limit, however, can be extended under subsection (3)(b), which states,

Notwithstanding the provisions of subsection (2) and regardless of when the crime occurred, if the victim or intervenor was under the age of 18 at the time the crime upon which the claim is based occurred, a claim may be filed in accordance with this subsection.

⁸⁸ See *supra* note 35.

...
(b) When a victim or intervenor who was under the age of 18 at the time the crime occurred reaches the age of 18, the victim or intervenor has 1 year within which to file a claim.
....

Additionally, “[f]or good cause, the department may extend the time period allowed for filing a claim under paragraph (b) for an additional period not to exceed 1 year.” Fla. Stat. Ann. § 960.07(3).

5.7.1 Recommendation: Amend Fla. Stat. Ann. § 960.065(2) (Eligibility for awards) to remove listed ineligibility factors for compensation awards made pursuant to the Florida Crimes Compensation Act for commercially sexually exploited children.

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

Child victim witnesses are provided with certain protections throughout the judicial process. Pursuant to Fla. Stat. Ann. § 39.822 (Appointment of guardian ad litem for abused, abandoned, or neglected child), a guardian ad litem shall be appointed “by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.”

As an additional protection, the court may order that the testimony of a witness under the age of 16 be videotaped and shown in open court or taken outside of the courtroom and shown over the television, instead of live testimony, if the court finds that there is a “substantial likelihood” that testifying in open court, in the presence of the defendant, would cause the minor “at least moderate emotional or mental harm.” Fla. Stat. Ann. §§ 92.53(1), 92.54(1).

In determining whether to permit the witness or victim to testify outside of the courtroom by video feed or prerecorded video, the court considers, “[t]he age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant’s presence, and any other fact that the court deems relevant” Fla. Stat. Ann. § 92.55(2)(a). The court may also limit the number of interviews, prohibit depositions, require advance submission of questions, set conditions for the interview location, and determine who will attend the proceeding. Fla. Stat. Ann. § 92.55(3).

Under Fla. Stat. Ann. § 92.56(3) (Judicial proceedings and court records involving sexual offenses), the state may use a pseudonym to protect the victim’s identity in court proceeding involving a “victim of a crime described in chapter 794 [Sexual battery] or chapter 800 [Lewdness; indecent exposure], or of child abuse, aggravated child abuse, or sexual performance by a child under chapter 827 [Abuse of children], or any crime involving the production, possession, or promotion of child pornography as described in chapter 847 [Obscenity]”

In the event a minor is charged with prostitution, Fla. Stat. Ann. § 796.07(3)(a) (Prohibiting prostitution, etc.; evidence; penalties; definitions) states, “[i]n the trial of a person charged with a violation of this section, . . . testimony concerning the reputation of the defendant is admissible in evidence in support of the charge.”

However, if the buyer or trafficker is prosecuted under Fla. Stat. Ann. § 794.011 (Sexual battery), “[n]otwithstanding any other provision of law, reputation evidence relating to a victim’s prior sexual conduct or evidence presented for the purpose of showing that manner of dress of the victim at the time of the offense incited the sexual battery shall not be admitted into evidence in a prosecution under s. 794.011.” Fla. Stat. Ann. § 794.022(3). The victim of sexual battery receives additional protection pursuant to Fla. Stat. Ann. § 794.022 as “the testimony of the victim need not be corroborated.” Fla. Stat. Ann. § 794.022(1). Fla. Stat. Ann. § 794.022(2) states,

Specific instances of prior consensual sexual activity between the victim and any person other than the offender shall not be admitted into evidence in a prosecution under s. 794.011. However, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence may prove that the defendant was not the source of the semen, pregnancy, injury, or disease; or, when consent by the victim is at issue, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of the victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

5.8.1 Recommendation: Amend Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) to limit a defendant’s ability to cross-examine victims of sexual offenses, CSEC, and sex trafficking about their past sexual behavior.

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.*

Pursuant to Fla. Stat. Ann. § 943.0582(1) (Prearrest, postarrest, or teen court diversion program expunction), “the department [Department of Law Enforcement] may provide . . . for the expunction of any non-judicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors as authorized by Fla. Stat. Ann. § 985.125 [Prearrest or postarrest diversion programs].”

Expunctions are available for adults and minors who comply with the requirements set forth in Fla. Stat. Ann. § 943.0585 (Court-ordered expunction of criminal history records). An important prerequisite for expunction is obtaining a certificate of eligibility. Fla. Stat. Ann. § 943.0585(2)(a) provides that the department must issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates . . . [t]hat the criminal history record does not relate to a violation of . . . § 787.025 [Luring or enticing a child], chapter 794 [Sexual battery], § 796.03 [Procuring person under age of 18 for prostitution], § 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], . . . [or] § 847.0145[Selling or buying of minors; penalties]

Adults and minors that comply with the requirements of Fla. Stat. Ann. § 943.059 (Court-ordered sealing of criminal history records) become eligible to have their criminal record sealed. Similar to the process of expunction, an important prerequisite for sealing the criminal record is obtaining a certificate of eligibility. Fla. Stat. Ann. § 943.059(2) reads,

The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

. . . .

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

. . . .

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

Fla. Stat. Ann. § 772.102(1)(a)(15) (Definitions) defines “criminal activity” to include the offense of human trafficking and sex trafficking for the purpose of allowing victims of trafficking to obtain civil remedies for criminal offenses under Fla. Stat. Ann. § 772.104 (Civil cause of action).

Fla. Stat. Ann. § 772.104(2) provides,

[A]ny person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 [Prohibited activities]⁸⁹ due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of \$ 200 and reasonable attorney's fees and court costs in the trial and appellate courts.

However, Fla. Stat. Ann. § 772.104(3) prohibits an award of punitive damages.

Another remedy is provided in Fla. Stat. Ann. § 796.09(1) (Coercion; civil cause of action; evidence; defenses; attorney's fees), which states,

- (1) A person has a cause of action for compensatory and punitive damages against:
 - (a) A person who coerced that person into prostitution;
 - (b) A person who coerces that person to remain in prostitution; or
 - (c) A person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.⁹⁰

In any civil action for damages, Fla. Stat. Ann. § 796.09(5) prohibits defenses asserting that the plaintiff was paid for the prostitution, that the plaintiff committed prostitution before knowing the defendant, or that the plaintiff did not attempt to leave or stop associating with the defendant.

Furthermore, "[e]vidence of convictions for prostitution or prostitution-related offenses are inadmissible in a proceeding brought under this section for purposes of attacking the plaintiff's credibility." Fla. Stat. Ann. § 796.09(6).

Under Fla. Stat. Ann. § 796.09(4), victims and witnesses are protected from self-incrimination for the evidence or testimony they produce in the course of litigation. The victims and witnesses will face criminal prosecution only in the event that they perjure during the proceeding.

A specific remedy is provided in Fla. Stat. Ann. § 847.01357 (Exploited children's civil remedy) for certain victims of exploitation through child pornography. This provision states,

⁸⁹ Fla. Stat. Ann. § 772.103 (Prohibited activities) provides,

It is unlawful for any person:

- (1) Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- (2) Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- (4) To conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

⁹⁰ According to Fla. Stat. Ann. § 796.09(2), "prostitution" has the same meaning as in Fla. Stat. Ann. § 796.07(1)(a) (Prohibiting prostitution, etc.; evidence; penalties; definitions), which states, "'Prostitution' means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses." Pursuant to Fla. Stat. Ann. § 796.09(3), "[c]oercion" is defined as

[A]ny practice of domination, restraint, or inducement for the purpose of or with the reasonably foreseeable effect of causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution, and includes, but is not limited to:

-
- (o) Exploitation of human needs for food, shelter, safety, or affection.

(1) Any person who, while under the age of 18, was a victim of a sexual abuse crime listed in chapter 794 [Sexual Battery], chapter 800 [Lewdness; indecent exposure], chapter 827 [Abuse of children], or chapter 847 [Obscenity], where any portion of such abuse was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such images or movies, may bring an action in an appropriate state court against the producer, promoter, or possessor of such images or movies, regardless of whether the victim is now an adult. In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney's fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$ 150,000.⁹¹

Pursuant to Fla. Stat. Ann. § 847.01357(5), the Attorney General's office may pursue the lawsuit on behalf of the victim at the victim's request and all damages awarded will go to the victim. An action under Fla. Stat. Ann. § 847.01357 (Exploited children's civil remedy), must be filed within 3 years "of: (a) The conclusion of a related criminal case; (b) The notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of pornographic images; or (c) In the case of a victim younger than 18, within 3 years after the person reaches the age of 18." Fla. Stat. Ann. § 847.01357(2).

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)⁹² provides that "the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim⁹³ for . . ." loss or damage caused or related to the trafficker's criminal episode, "unless it finds clear and compelling reasons not to order such restitution. . . ." If the offense "resulted in bodily injury to a victim," the restitution shall include "the cost of necessary medical and related professional services" including services for therapy and rehabilitation, the victim's income lost as a result of the crime, and if the crime resulted in the victim's death, "the cost of necessary funeral and related services." Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution "may require that the defendant reimburse the victim for income lost by the victim as a result of the offense." Fla. Stat. Ann. § 775.089(2)(b).

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.

Fla. Stat. Ann. § 775.15 (Time limitations; general time limitations; exceptions) allows for a criminal prosecution to be commenced as follows:

- (1) A prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time. If the death penalty is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.
- (2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:
 - (a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.
 - (b) A prosecution for any other felony must be commenced within 3 years after it is committed.
 - (c) A prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed.

⁹¹ Fla. Stat. Ann. § 847.01357(4) states, "It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in any image of child pornography."

⁹² See discussion of relevant provisions *supra* Section 2.8.

⁹³ See *supra* note 34.

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

.....
(13)(a) If the victim of a violation of s. 794.011 [Sexual battery], . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], . . . or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties] is under the age of 18, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier. . . .

(b) If the offense is a first degree felony violation of s. 794.011 [Sexual battery] and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(c) If the offense is a violation of s. 794.011 [Sexual battery] and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2010.

.....
(16)(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence”

For civil remedies pursued under Fla. Stat. Ann. § 847.01357 (Exploited children’s civil remedy), Fla. Stat. Ann. § 847.01357(2) provides,

Notwithstanding any other provisions of law, any action commenced under this section must be filed within 3 years after the later of:

- (a) The conclusion of a related criminal case;
- (b) The notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of pornographic images; or
- (c) In the case of a victim younger than 18, within 3 years after the person reaches the age of 18.

Fla. Stat. Ann. § 95.11(3)(o) (Limitations other than for the recovery of real property), states that there is a four year limitation on asserting “[a]n action for assault, battery, . . . false imprisonment, or any other intentional tort, except as provided in subsections (4), (5), and (7)” or “[a]ny action not specifically provided for in these statutes.” Specifically, subsection 7 establishes the tolling procedure for abuse based intentional torts, stating, “An action founded on alleged abuse, as defined in s. 39.01 [Definitions],⁹⁴ . . . or s. 984.03 [Definitions],⁹⁵ . . . may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.” Fla. Stat. Ann. § 95.11(7). However, for victims of Fla. Stat. Ann. § 794.011 (Sexual battery), Fla. Stat. Ann. § 95.11(9) states, “An action related to an act constituting a violation of s. 794.011 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.”

Fla. Stat. Ann. § 95.051 (When limitations tolled) provides circumstances when the statute of limitations may be tolled. For example, when the person entitled to sue is a minor or incapacitated and lacks the aid of the

⁹⁴ See *supra* Section 5.5 for the definition of “abuse.”

⁹⁵ See *supra* Section 5.5 for the definition of “abuse.”

parent or guardian to sue, the statute is tolled for a maximum of seven years from the occurrence giving rise to the suit. Fla. Stat. Ann. § 95.051(i).

- 5.11.1 Recommendation: Amend Fla. Stat. Ann. § 775.15 (Time limitations; general time limitations; exceptions) to permit prosecution of offenses committed under Fla. Stat. Ann. § 796.045 (Sex trafficking of minors; penalties) at any time.

FRAMEWORK ISSUE 6: CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

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.*

Pursuant to Fla. Stat. Ann. § 787.06(4) (Human Trafficking), “[t]he Criminal Justice Standards and Training Commission shall establish standards for basic and advanced training programs for law enforcement officers in the subjects of investigating and preventing human trafficking crimes.” Also, “[a]fter January 1, 2007, every basic skills course required for law enforcement officers to obtain initial certification must include training on human trafficking crime prevention and investigation.” Fla. Stat. Ann. § 787.06(4). In addition, pursuant to Fla. Stat. Ann. § 943.041 (Crimes against children criminal profiling program) the legislature created a program within the law enforcement department to “perform investigative, intelligence, research, and training activities related to crimes against children.”

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

Florida requires two-party consent to audiotape conversations. Under Fla. Stat. Ann. § 934.03(1)(a) (Interception and disclosure of wire, oral, or electronic communications prohibited) it is a crime to “[i]ntentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication,” unless the chapter provides an exception. However, Fla. Stat. Ann. § 934.03(2)(c) states,

It is lawful under ss. 934.03–934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.⁹⁶

⁹⁶ The Florida Supreme Court has held, however, that “insofar as [Fla. Stat. Ann. § 934.03] authorizes the warrantless interception of a private conversation *conducted in the home*, it is unconstitutional and unenforceable.” *State v. Sarmiento*, 397 So. 2d 643, 645 (Fla. 1981).

Under (2)(d), “It is lawful under ss. 934.03–934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.”

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

Fla. Stat. Ann. § 934.03(1) (Interception and disclosure of wire, oral or, electronic communications prohibited) prohibits wiretaps performed by private parties acting outside of a police investigation unless, pursuant to subsection (2)(d), both parties consent.

Exceptions are located in Fla. Stat. Ann. § 934.07(1) (Authorization for interception of wire, oral, or electronic communications). Pursuant to Fla. Stat. Ann. § 934.07(1)(a), certain specified persons “may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with ss. 934.03–934.09 an order authorizing or approving the interception of, wire, oral, or electronic communications” by law enforcement for the purpose of investigating the commission of certain crimes, including “kidnapping, . . . [or] any violation of chapter 895 [Offenses concerning racketeering and illegal debts]; any violation of chapter 896 [Offenses related to financial transactions]; any violation of chapter 815 [Computer-related crimes]; any violation of chapter 847 [Obscenity]; any violation of s. 827.071 [Sexual performance by a child; penalties]; . . . or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes specifically enumerated in this paragraph.”

- 6.3.1 Recommendation: Amend Fla. Stat. Ann. § 934.07(1)(a) to include violations of Florida sex trafficking and CSEC laws as grounds for permitting wiretapping and admission of the resulting evidence.

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.*

Under Fla. Stat. Ann. § 796.07(2) (Prohibiting prostitution, etc.; evidence; penalties; definitions), it is unlawful to, among other things, “offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act,” “[t]o solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation,” or “[t]o purchase the services of any person engaged in prostitution.” Fla. Stat. Ann. § 796.07(3)(b) states, “Notwithstanding any other provision of law, a police officer may testify as an offended party in an action regarding charges filed pursuant to this section.” Additionally, Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), states, “The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.” To the extent decoys use the Internet to investigate suspected offenders, use of a decoy is permissible in investigating many potential offenses under subsection (3), which criminalizes use of the following:

[A] computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to . . . [s]educe, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827.

Fla. Stat. Ann. § 847.0135(3)(a). Additionally, subsection (4) (Travelling to meet a minor) uses the phrase “another person believed by the person to be a child,” indicating that decoys can be used. Similarly, under Fla. Stat. Ann. § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) the offender need only transmit material to a person “known by the defendant to be a minor” meaning that “the defendant had actual knowledge or believed that the recipient of the communication was a minor.” Fla. Stat. Ann. § 847.0138(1)(a). A decoy may also be used to obtain a

conviction under Fla. Stat. Ann. § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age).⁹⁷

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

Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), criminalizes buying, selling, receiving, exchanging or disseminating a “minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purposes of facilitating . . . or soliciting sexual conduct of or with any minor” The statute specifies that an undercover law enforcement officer involved in the detection and investigation of an offense of this statute is not a defense to a charge under this law. Additionally, subsections (3) and (4) use the phrase “another person believed by the person to be a child,” indicating that decoys can be used.

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

Under Fla. Stat. Ann. § 39.0141 (Missing children; report required),

Whenever the whereabouts of a child involved with the department become unknown, the department, the community-based care provider, or the sheriff’s office providing investigative services for the department shall make reasonable efforts, as defined by rule, to locate the child. If, pursuant to criteria established by rule, the child is determined to be missing, the department, the community-based care provider, or the sheriff’s office shall file a report that the child is missing in accordance with s. 937.021 [Missing child and missing adult reports].

Fla. Stat. Ann. § 937.025(5) (Missing children; student records; reporting requirements; penalties) requires any “employee of the state or a local governmental agency, a person who is employed under a contract with the state or a local governmental agency, or an employee of a public or private school within the state” to “promptly report to the local law enforcement agency and the Department of Law Enforcement any information received or possessed that could assist in . . .” finding the missing child, determining the identity of the person who has the missing child, or ascertaining “whether a missing child is in danger of physical injury or death.” Fla. Stat. Ann. § 937.025(5).

Under Fla. Stat. Ann. § 937.021(1) (Missing child and missing adult reports) law enforcement agencies are directed to adopt policies and procedures to be used to promptly investigate missing children reports. Specifically, Fla. Stat. Ann. § 937.021(1) states,

- (1) Law enforcement agencies in this state shall adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults. The policies must ensure that cases involving missing children and adults are investigated promptly using appropriate resources. The policies must include:
- (a) Requirements for accepting missing child and missing adult reports;
 - (b) Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and
 - (c) Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the Florida Crime Information Center and the National Crime Information Center. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

⁹⁷ See *Hudson v. Florida*, 745 So. 2d 997 (Fla. Dist. Ct. App. 1999) (denying motion to dismiss charge of attempting to commit a lewd and lascivious act even though the victim was actually an adult police officer posing as a 14 year old boy).

Pursuant to Fla. Stat. Ann. § 937.021(4)(a)–(b), once a missing child report has been filed, within two hours all on-duty police officers will be notified and the report will be transmitted to “the Florida Crime Information Center and the National Crime Information Center databases.”

Fla. Stat. Ann. § 937.022 (Missing Endangered Persons Information Clearinghouse) creates a central repository for information regarding missing endangered persons.

Under Fla. Stat. Ann. § 937.023(1) (Department of education to compile list of missing Florida school children; forms; notification) the Department of Education must identify and locate missing Florida children who are enrolled in the public school districts.⁹⁸ “Missing Florida school child” is defined as “a child 18 years of age or younger whose whereabouts are unknown.” Fla. Stat. Ann. § 937.023(1).

Florida also has several mechanisms in place to help find missing children. Pursuant to Fla. Stat. Ann. § 937.025(1),

[U]pon notification by the Department of Law Enforcement that a child is listed or reported as a missing child, the school in which the [missing] child is currently enrolled, or was previously enrolled, shall flag the student records in such a manner that whenever a copy of or information concerning the records of the missing child is requested, the person authorized to provide such copy or information is alerted to the fact that the child has been listed or reported as missing.

Furthermore, Fla. Stat. Ann. § 937.024 (Birth records of missing children; registrars’ duties) directs the Office of Vital Statistics to collect a list of missing children from law enforcement each month, distill from that information a list of those children born in Florida, and flag the birth certificates of missing children. If a copy of a flagged birth certificate is requested, a supervisor shall be notified immediately and information regarding the person requesting the birth certificate shall be collected. Fla. Stat. Ann. § 937.024.

Under Fla. Stat. Ann. § 847.002 (Child pornography prosecutions), any law enforcement officer who “recovers images or movies of child pornography” must provide the images or movies to and request information from the law enforcement agency representative with the Child Victim Identification Program. Additionally, subsection (3) states, “In every filed case involving an identified victim of child pornography . . . the prosecuting agency shall enter [certain] information into the Victims in Child Pornography Tracking Repeat Exploitation database maintained by the Office of the Attorney General.”

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⁹⁸ Pursuant to Fla. Stat. Ann. § 937.023(1), the school must do the following:

- (a) Collect each month a list of missing Florida school children as provided by the Florida Crime Information Center. The list shall be designed to include such information as the department deems necessary for the identification of the missing school child.
- (b) Compile from the information collected pursuant to paragraph (a) a list of missing Florida school children, which list shall be distributed monthly to all public school districts admitting children to kindergarten through grade 12. The list shall include the names of all such missing children, together with such other information as the department deems necessary. Each school district shall distribute this information to the public schools in the district by whatever manner it deems appropriate.
- (c) Notify the appropriate local, state, or federal law enforcement authority as soon as any additional information is obtained or contact is made with respect to a missing Florida school child.