

PROTECTED INNOCENCE INITIATIVE

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



ANALYSIS AND RECOMMENDATIONS IDAHO

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.*

Idaho's human trafficking law does not require force, fraud, or coercion if the person induced to perform the commercial sex act is under the age of 18. Idaho Code Ann. § 18-8602(1) (Human trafficking defined) defines "human trafficking" in part as "[s]ex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age."

Idaho Code Ann. § 18-8603 (Penalties) states,

Notwithstanding any other law to the contrary, on and after July 1, 2006, any person who commits a crime as provided for in the following sections, and who, in the commission of such crime or crimes, also commits the crime of human trafficking, as defined in section 18-8602 [Human trafficking defined], Idaho Code, shall be punished by imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by law: 18-905 (aggravated

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

assault), 18-907 (aggravated battery), 18-909 (assault with intent to commit a serious felony), 18-911 (battery with intent to commit a serious felony), 18-913 (felonious administering of drugs), 18-1501(1) (felony injury to child), 18-1505(1) (felony injury to vulnerable adult), 18-1505(3) (felony exploitation of vulnerable adult), 18-1505B (sexual abuse and exploitation of vulnerable adult), 18-1506 (sexual abuse of a child under the age of sixteen years), 18-1506A (ritualized abuse of child), 18-1507 (sexual exploitation of child), 18-1508A (sexual battery of minor child sixteen or seventeen years of age), 18-1509A (enticing of children over the internet), 18-1511 (sale or barter of child), 18-2407(1) (grand theft), 18-5601 through 18-5614 (prostitution), or 18-7804 (racketeering).

1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*

The following laws criminalize CSEC in Idaho:

1. Idaho Code Ann. § 18-5609 (Inducing person under eighteen years of age into prostitution—Penalties) provides that “[e]very person who induces or attempts to induce a person under the age of eighteen (18) years to engage in prostitution shall be guilty of a felony.” A conviction under this statute is punishable as a felony 2 years to life imprisonment, a fine up to \$50,000, or both. Idaho Code Ann. § 18-5609.
2. Idaho Code Ann. § 18-1507(3)(a) (Sexual exploitation of a child) states, “A person commits sexual exploitation of a child² if, for any commercial purpose,³ he knowingly: (a) Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct.”⁴ A conviction under this statute is punishable as a felony by imprisonment up to 30 years in state prison, a fine not to exceed \$50,000, or both. Idaho Code Ann. § 18-1507(5).
3. Idaho Code Ann. § 18-1509A(1) (Enticing of children over the internet—Penalties—jurisdiction) provides,

A person aged eighteen (18) years or older shall be guilty of a felony if he or she knowingly uses the internet to solicit, seduce, lure, persuade or entice by words or actions, or both, a minor child under the age of sixteen (16) years or a person the defendant believes to be a minor child under the age of sixteen (16) years to engage in any sexual act with or against the child where such act is a violation of chapter 15 [Children and vulnerable adults], 61 [Rape] or 66 [Sex crimes], title 18, Idaho Code.

A conviction under this statute is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000.⁵ Idaho Code Ann. §§ 18-1509A (2), 18-112A.

Other laws, while not expressly commercial in nature, may apply to sexual exploitation of children, including the following:

1. Idaho Code Ann. § 18-1506(1) (Sexual abuse of a child under the age of sixteen years) states,

² Idaho Code Ann. § 18-1507(2)(b) defines “child” as “a person who is less than eighteen (18) years of age.”

³ Idaho Code Ann. § 18-1507(2)(c) defines “commercial purpose” as “the intention, objective, anticipation, or expectation of monetary gain or other material consideration, compensation, remuneration, or profit.” Furthermore, Idaho Code Ann. § 18-1507(4) states that “possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.”

⁴ Idaho Code Ann. § 18-1507(2)(f) defines “explicit sexual conduct” as “sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.”

⁵ Where no fine is otherwise provided for an offense that is punishable as a felony, Idaho Code Ann. § 18-112A (Fine authorized) authorizes the court to impose a fine up to \$50,000.

It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

- (a) Solicit⁶ a minor child under the age of sixteen (16) years to participate in a sexual act;
- (b) Cause or have sexual contact⁷ with such minor child, not amounting to lewd conduct as defined in section 18-1508 [Lewd conduct with minor child under sixteen], Idaho Code;
- (c) Make any photographic or electronic recording of such minor child; or
- (d) Induce, cause or permit a minor child to witness an act of sexual conduct.⁸

A conviction under this statute is punishable as a felony by imprisonment up to 25 years in the state prison and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1506 (5), 18-112A.

2. Idaho Code Ann. § 18-1508 (Lewd conduct with minor child under sixteen) states that it is a crime to

commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of sixteen (16) years, including but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or [to] involve such minor child in any act of bestiality or sado-masochism as defined in section 18-1507 [Sexual exploitation of a child], Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or third party

A conviction under this statute is punishable as a felony by up to life imprisonment in state prison and a possible fine not to exceed \$50,000. Idaho Code Ann. §§ 18-1508, 18-112A.

3. Idaho Code Ann. § 18-1508A(1) (Sexual battery of a minor child sixteen or seventeen years of age—Penalty) provides,

It is a felony for any person at least five (5) years of age older than a minor child who is sixteen (16) or seventeen (17) years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to:

- (a) Commit any lewd or lascivious act or acts upon or with the body or any part or any member thereof of such minor child including, but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of explicit sexual conduct as defined in section 18-1507 [Lewd conduct with minor child under sixteen],⁹ Idaho Code; or
- (b) Solicit¹⁰ such minor child to participate in a sexual act; or

⁶ Idaho Code Ann. § 18-1506(2) defines “solicit” as

any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

⁷ Idaho Code Ann. § 18-1506(3) defines “sexual contact” as “any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.”

⁸ Idaho Code Ann. § 18-1506(4) defines “sexual conduct” as

human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

⁹ See *supra* note 4 for the definition of “explicit sexual conduct.”

¹⁰ Idaho Code Ann. § 18-1508A(2) defines “solicit” as

(c) Cause or have sexual contact¹¹ with such minor child, not amounting to lewd conduct as defined in paragraph (a) of this subsection; or

.....

A conviction under subsection (1)(a) of this statute is punishable as a felony by up to life imprisonment in the state prison and a possible fine up to \$50,000, and a conviction under Idaho Code Ann. § 18-1508A(1)(b)–(d) is punishable as a felony by imprisonment up to 25 years in state prison and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1508A(4), (5), 18-112A.

4. Idaho Code Ann. § 18-1511 (Sale or barter of child for adoption or other purpose penalized —Allowed expenses) states that “[a]ny person or persons who shall sell or barter any child for adoption or for any other purpose, shall be guilty of a felony.” A conviction under this statute is punishable by up to 14 years in the state penitentiary, a fine up to \$5,000, or both. Idaho Code Ann. § 18-1511.

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

None of Idaho’s CSEC statutes refer to Idaho Code Ann. § 18-8602(1) (Human trafficking defined).

- 1.3.1 Recommendation: Amend CSEC laws to refer to Idaho Code Ann. § 18-8602(1) (Human trafficking defined).

any written, verbal or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

¹¹ Idaho Code Ann. § 18-1508A(3) defines “sexual contact” as “any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have self contact.”

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.*

Idaho Code Ann. § 18-8602(1) (Human trafficking defined) includes “[s]ex trafficking . . . in which the person induced to perform such act has not attained eighteen (18) years of age.” Idaho Code Ann. § 18-8602(1). Pursuant to Idaho Code Ann. § 18-8603, predicate crimes for determining penalties include the following: Idaho Code Ann. § 18-905 (Aggravated assault), § 18-907 (Aggravated battery), § 18-909 (Assault with intent to commit a serious felony), § 18-911 (Battery with intent to commit a serious felony), § 18-1501(1) (Felony injury to child), § 18-1506 (Sexual abuse of a child under the age of sixteen years), § 18-1506A (Ritualized abuse of child), § 18-1507 (Sexual exploitation of child), § 18-1508A (Sexual battery of minor child sixteen or seventeen years of age), § 18-1509A (Enticing of children over the internet), § 18-1511 (Sale or barter of child), §§ 18-5601 to -5614 (Prostitution), or § 18-7804 (Racketeering). This is evidence of intent to implicate buyers of commercial sex acts with minors as sex traffickers.

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

Idaho’s CSEC laws do not appear to specifically punish the buyers of sex with minors. Instead, it is more likely for Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute), which is age-neutral, to be used to convict a buyer. Idaho Code Ann. § 18-5614(1) makes it a crime when a person

- (a) Pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual conduct¹² or sexual contact,¹³
- (b) Enters or remains in a house of prostitution¹⁴ for the purpose of engaging in sexual conduct or sexual contact.

¹² Idaho Code Ann. § 18-5613(3)(a) (Prostitution) defines “sexual conduct” as “sexual intercourse or deviate sexual intercourse.”

¹³ Idaho Code Ann. § 18-5613(3)(b) (Prostitution) defines “sexual contact” as “any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.”

A first or second conviction under this statute is punishable as a misdemeanor by imprisonment for up to 6 months in county jail, a fine up to \$1,000, or both. Idaho Code Ann. §§ 18-5614(2), 18-113(1). A subsequent conviction is punishable as a felony by imprisonment up to 5 years in state prison, a fine up to \$50,000, or both. Idaho Code Ann. §§ 18-5614(2), 18-112.

Several sexual offense statutes could be used to prosecute certain buyers of commercial sex acts with a minor, but they 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 Idaho Code Ann. § 18-8602(1) (Human trafficking defined).¹⁵

- 2.2.1 Recommendation: Enact a law separately criminalizing the buying of sex with a minor or amend Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) to impose enhanced penalties when a buyer purchases sex with a minor.

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

Idaho's solicitation law does not differentiate between buying sex with an adult and buying sex with a minor. Instead, Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) is age-neutral, stating that "[a] person is guilty of patronizing a prostitute when he or she . . . [p]ays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual conduct or sexual contact."¹⁶ A first or second conviction under this statute is punishable as a misdemeanor by imprisonment up to 6 months in county jail, a fine up to \$1,000, or both. Idaho Code Ann. §§ 18-5614(2), 18-113(1). A subsequent conviction under this statute is punishable as a felony by imprisonment up to 5 years in state prison, a fine up to \$50,000, or both. Idaho Code Ann. §§ 18-5614(2), 18-112.

- 2.3.1 Recommendation: Enact a law separately criminalizing the buying of sex with a minor or amend Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) to impose enhanced penalties when a buyer purchases sex with a minor.

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

Idaho Code Ann. § 18-8602(1) (Human trafficking defined) is punishable by imprisonment up to 25 years "unless a more severe penalty is otherwise prescribed by law." Idaho Code Ann. § 18-8603. If not identified as a sex trafficking crime, a buyer's first or second conviction under Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) is punishable as a misdemeanor by imprisonment up to 6 months in county jail, a fine up to \$1,000, or both. Idaho Code Ann. §§ 18-5614(2), 18-113(1). A subsequent conviction under Idaho Code Ann. § 18-5614(1) is punishable as a felony by imprisonment up to 5 years in state prison, a fine up to \$50,000, or both. Idaho Code Ann. §§ 18-5614(2), 18-112.

Several sexual offenses that do not criminalize commercial sexual exploitation specifically may be applicable to the criminal actions of a buyer of commercial sex acts with a minor. These carry high sentences and fines.¹⁷

In comparison, if the victim is under the age of 14, a conviction under the federal Trafficking Victims Protection Act¹⁸ for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed

¹⁴ Idaho Code Ann. § 18-5613(3)(c) (Prostitution) defines "house of prostitution" as "a place where prostitution or promotion of prostitution is regularly carried on by one (1) or more persons under the control, management or supervision of another."

¹⁵ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

¹⁶ See *supra* Section 2.2 for the provisions of Idaho Code Ann. § 18-5614.

¹⁷ See *supra* section 1.2 for a list of relevant sexual offenses.

\$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 offense¹⁹ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²⁰ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²¹

2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*

Although it is not expressly commercial, Idaho Code Ann. § 18-1509A(1) (Enticing of children over the internet) may be used to convict buyers who use the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor. Idaho Code Ann. § 18-1509A(1) states,

A person aged eighteen (18) years or older shall be guilty of a felony if he or she knowingly uses the internet to solicit, seduce, lure, persuade or entice by words or actions, or both, a minor child under the age of sixteen (16) years or a person the defendant believes to be a minor child under the age of sixteen (16) years to engage in any sexual act with or against the child where such act is a violation of chapter 15 [Children and vulnerable adults], 61 [Rape] or 66 [Sex crimes], title 18, Idaho Code.

A conviction under this statute is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1509A(2), 18-112A.

2.5.1 Recommendation: Amend Idaho Code Ann. § 18-1509A (Enticing of children over the internet) to clarify that its provisions apply to buyers.

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

Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and Idaho’s CSEC statutes are silent on the availability of a defense based on age mistake. Moreover, the defense of age mistake is irrelevant to a violation of Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) because the illegality of the conduct criminalized under that statute does not depend on the age of the prostituted victim.

2.6.1 Recommendation: Amend Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and Idaho’s CSEC statutes to expressly prohibit the defense of age mistake.

¹⁸ 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.).

¹⁹ 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).

²⁰ 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).

²¹ 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both.); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

Idaho Code Ann. § 18-8602(1) (Human trafficking definition) does not apply different penalties if the trafficking victim is a child instead of an adult.²² Instead, a conviction under Idaho Code Ann. § 18-8603 (Penalties) is punishable as a felony by “imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by law,” and a possible fine of \$50,000 regardless of whether the person trafficked is a child or an adult. Idaho Code Ann. §§ 18-8603, 18-112A.

However, Idaho’s other CSEC laws, also likely inapplicable to buyers, do not stagger their penalties based on the minor victim’s age. Idaho Code Ann. § 18-5609 (Inducing person under eighteen years of age into prostitution) and § 18-1507(3) (Sexual exploitation of a child) apply for all minor victims under 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 may have to pay fines and restitution. Idaho Code Ann. § 18-8603 (Penalties) provides the penalties for human trafficking offenses and includes a possible fine of \$50,000. Idaho Code Ann. §§ 18-8603, 18-112A. If a purchase of sex with a minor is not identified as sex trafficking, then a buyer’s first or second conviction under Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) may be punishable by a possible fine up to \$1,000, while a buyer’s third or subsequent conviction may be punishable by a possible fine up to \$50,000. Idaho Code Ann. §§ 18-5614(2), 18-113, 18-112. A buyer convicted under Idaho Code Ann. § 18-1509A(1) (Enticing of children over the internet), a felony, also may be required to pay a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1509A (2), 18-112A. Additionally, Idaho Code Ann. § 72-1025(1) (Fines—reimbursements—priority—disposition) provides that persons convicted of any crime also have to pay an additional fine or reimbursement²³ of at least \$75.00 per felony count, \$37.00 per misdemeanor count, and at least \$300.00 per sex offense count.²⁴ Idaho Code Ann. § 72-1025(1)(a)–(c).

A buyer convicted of any crime also may be required to make restitution to the victim. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) states,

Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime²⁵ which results in an economic loss²⁶ to the victim²⁷ to make restitution to the victim. An order of restitution shall be a separate written order in addition to

²² See *supra* Section 1.1 for the provisions of Idaho Code Ann. § 18-8602 and § 18-8603.

²³ Idaho Code Ann. § 72-1025(1) states that the court shall impose these fines unless “the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court.”

²⁴ Pursuant to Idaho Code Ann. § 72-1025(1)(c), the \$300 fine applies to “any sex offense, including, but not limited to, offenses pursuant to sections 18-1506 [Sexual abuse of a child under the age of sixteen years], 18-1507 [Sexual exploitation of a child], 18-1508 [Lewd conduct with minor child under sixteen], 18-1508A [Sexual battery of a minor child sixteen or seventeen years of age], 18-6101 [Rape defined], 18-6108 [Male rape], 18-6605 [Crime against nature—Punishment] and 18-6608 [Forcible sexual penetration by use of foreign object], Idaho Code.”

²⁵ Idaho Code Ann. § 19-5304(1)(b) defines “found guilty of any crime” as “a finding by a court that a defendant has committed a criminal act and shall include an entry of a plea of guilty, an order withholding judgment, suspending sentence, or entry of judgment of conviction for a misdemeanor or felony.”

²⁶ Idaho Code Ann. § 19-5304(1)(a) states,

“Economic loss” includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.

²⁷ Idaho Code Ann. § 19-5304(1)(e)(i) defines a “victim” in part as “[t]he directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant’s criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases.”

any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction; however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim's loss shall not absolve the defendant of the obligation to pay restitution.

Asset forfeiture is generally not an available remedy in Idaho. Instead, Idaho Code Ann. § 18-314 (Property of convict not forfeited) provides,

No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this state, in the nature of a deodand, or where any person shall flee from justice, are abolished.

Neither Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) nor § 18-1509A(1) (Enticing of children over the internet) expressly authorizes forfeiture of a defendant's property.

- 2.8.1 Recommendation: Amend Idaho Code Ann. § 18-8603 (Penalties) for sex trafficking offenses, § 18-5614(1) (Patronizing a prostitute) and § 18-1509A(1) (Enticing of children over the internet) to expressly require buyers to forfeit property used in or acquired by committing the crime.

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

Idaho prohibits the possession of child pornography. Idaho Code Ann. § 18-1507A(2) (Possession of sexually exploitative material for other than a commercial purpose) makes it a crime when a person “knowingly and willfully has in his possession any sexually exploitative material²⁸ . . . for other than a commercial purpose.” A conviction under this statute is punishable as a felony by imprisonment up to 10 years in the state prison and a fine up to \$10,000. Idaho Code Ann. § 18-1507A(2).

In comparison, a federal conviction for possession of child pornography²⁹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁰ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³¹

²⁸ Idaho Code Ann. § 18-1507(2)(k) defines “sexually exploitative material” means “any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.”

²⁹ 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).

³⁰ 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).

³¹ 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

Idaho Code Ann. § 18-8306(2), (3) (Notice of duty to register and initial registration) provides,

(2) A person convicted of an offense identified in section 18-8304, Idaho Code, and released on probation without a sentence of incarceration in a county jail or correctional facility, including release pursuant to a withheld judgment or release from any mental institution, shall be notified by the sentencing court of the duty to register pursuant to the provisions of this chapter and the offender shall register in accordance with this chapter no later than two (2) working days after sentence is imposed or judgment is withheld. . . .

(3) With respect to an offender convicted of a sexual offense identified in section 18-8304, Idaho Code, and sentenced to a period of immediate incarceration in a jail or correctional facility and subsequently released, placed on probation, or paroled, the department of correction or jail shall provide, prior to release from confinement, written notification of the duty to register and the offender shall register prior to his or her release. . . .

Idaho Code Ann. § 18-8304(1)(a) (Application of chapter—rulemaking authority) states,

The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section . . . 18-1506 (sexual abuse of a child under sixteen years of age), . . . 18-1507A (possession of sexually exploitative material for other than a commercial purpose), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child over the internet), . . . or 18-8602(1), Idaho Code, (sex trafficking).

Buyers convicted under Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) are not required to register as sex offenders, even when the person with whom sex is purchased is a minor.

2.10.1 Recommendation: Amend Idaho Code Ann. § 18-8304(1)(a) (Application of chapter—rulemaking authority) to include, as one of the offenses to which the chapter applies, Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) where sex with a minor is purchased.

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.

A trafficker who commits human trafficking³² while violating Idaho Code Ann. § 18-1507 (Sexual exploitation of a child), § 18-1509A (Enticing of children over the internet), § 18-1511 (Sale or barter of child for adoption or other purpose penalized), § 18-7804 (Prohibited activities), or any of the crimes in Idaho Code Ann. chapter 56 (Prostitution) of title 18 “shall be punished by imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by law.” Idaho Code Ann. § 18-8603.

A trafficker also may be punished under Idaho’s CSEC laws. A conviction under Idaho Code Ann. § 18-5609 (Inducing person under eighteen years of age into prostitution) is a felony conviction punishable by 2 years to life imprisonment, a fine up to \$50,000, or both; a conviction under Idaho Code Ann. § 18-1507(3) (Sexual exploitation of a child) is punishable as a felony by imprisonment up to 30 years in state prison, a fine up to \$50,000, or both; and a conviction under Idaho Code Ann. § 18-1509A(1) (Enticing of children over the internet) is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-5609, 18-1507(5), 18-1509A(1), (2), 18-112A.

Traffickers who “sell or barter any child for adoption or for any other purpose” may be convicted under Idaho Code Ann. § 18-1511 (Sale or barter of child for adoption or other purpose penalized). A conviction under this statute is punishable as a felony by imprisonment up to 14 years in the state penitentiary, a fine up to \$5,000, or both. Idaho Code Ann. § 18-1511.

Traffickers also may face prosecution under Idaho Code Ann. title 18, chapter 78 (Racketeering act). Idaho Code Ann. § 18-7804(a)–(d) (Prohibited activities—penalties) provides,

- (a) It is unlawful for any person who has received any proceeds derived directly or indirectly from a pattern of racketeering activity³³ in which the person has participated, to use or invest, directly or

³² See *supra* Section 1.1 for the definition of “human trafficking” in Idaho Code Ann. § 18-8602.

³³ Idaho Code Ann. § 18-7803(d) defines a “pattern of racketeering activity” as

engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.

indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any interest in, or the establishment or operation of, any enterprise³⁴ or real property. . . .

(b) It is unlawful for any person to engage in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property. . . .

(c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of the affairs of such enterprise by engaging in a pattern of racketeering activity. . . .

(d) It is unlawful for any person to conspire to violate any of the provisions of subsections (a) through (c) of this section. . . .

Idaho Code Ann. § 18-7803(a) (Definitions) defines “racketeering activity” as “any act which is chargeable or indictable under,” among others, Idaho Code Ann. § 18-5601 (Interstate trafficking in prostitution), § 18-5602 (Procurement), § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5605 (Detention for prostitution), § 18-5606(1) (Accepting earnings of prostitute), § 18-5608 (Harboring prostitutes), and § 18-5609 (Inducing person under eighteen years of age into prostitution). A conviction under Idaho Code Ann. § 18-7804(a)–(d) is punishable as a felony by imprisonment up to 14 years in the Idaho penitentiary, a fine up to \$25,000, or both. Idaho Code Ann. § 18-7804(a)–(e).

Additionally, Idaho Code Ann. § 18-8201 (Money laundering and illegal investment—Penalty—Restitution) makes it illegal for a person to engage in a financial transaction that furthers racketeering, stating,

(1) It is unlawful for any person to knowingly or intentionally give, sell, transfer, trade, invest, conceal, transport, or make available anything of value that the person knows is intended to be used to commit or further a pattern of racketeering activity

(2) It is unlawful for any person to knowingly or intentionally direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known by that person to be derived from a pattern of racketeering activity

(3) It is unlawful for any person to knowingly or intentionally conduct a financial transaction involving proceeds known by that person to be derived from a pattern of racketeering activity . . . if the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, or to avoid a transaction reporting requirement under state or federal law.

A conviction under this statute is punishable as a felony by imprisonment up to 10 years, a fine up to of the greater of \$250,000 or “twice the value of the property involved in the transaction,” or both imprisonment and fine. Idaho Code Ann. § 18-8201(4).

Traffickers may be punished under Idaho Code Ann. title 18, chapter 85 (Idaho Criminal Gang Enforcement Act). Idaho Code Ann. § 18-8503(1), (2) (Punishment) states,

(1) An adult . . . who is convicted of any felony or misdemeanor enumerated in section 18-8502(3)[Definitions], Idaho Code, that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang³⁵ or criminal gang member,³⁶ in addition to the punishment provided for the commission of the underlying offense, shall be punished as follows:

³⁴ Idaho Code Ann. § 18-7803(c) defines an “enterprise” as “any sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or any group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.”

³⁵ Idaho Code Ann. § 18-8502(1) (Definitions) defines “criminal gang” as “an ongoing organization, association, or group of three (3) or more persons, whether formal or informal, that has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, having as one (1) of its primary activities the commission of one (1) or more of the criminal acts enumerated in subsection (3) of this section.”

³⁶ Idaho Code Ann. § 18-8502(2) defines a “criminal gang member” as

- (a) Any adult . . . who is convicted of a misdemeanor shall be punished by an additional term of imprisonment in the county jail for not more than one (1) year.
 - (b) Any adult . . . who is convicted of a felony shall be punished by an extended term of not less than two (2) years and not more than five (5) years in prison.
 - (c) If the underlying offense described in section 18-8502(3), Idaho Code, is a felony and committed on the grounds of, or within one thousand (1,000) feet of, a public or private elementary, secondary or vocational school during hours when the facility is open for classes or school-related programs or when minors are using the facility, the extended term shall be not less than two (2) years and not more than five (5) years in prison.
- (2) This section does not create a separate offense but provides an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed facts.

Included among the offenses listed in Idaho Code Ann. § 18-8502(3) (Definitions) are Idaho Code Ann. § 18-8602 (Human trafficking defined), § 18-5601 (Interstate trafficking in prostitution), § 18-5602 (Procurement), § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5605 (Detention for prostitution), § 18-5606(1) (Accepting earnings of prostitute), § 18-5608 (Harboring prostitutes), § 18-5609 (Inducing person under eighteen years of age into prostitution), § 18-5613 (Prostitution), § 18-5614 (Patronizing a prostitute), § 18-1507 (Sexual exploitation of a child), § 18-7804 (Prohibited activities), and § 18-8201 (Money laundering and illegal investment).

In some cases, a trafficker also may be convicted under Idaho Code Ann. § 18-8504(1) (Recruiting criminal gang members), which criminalizes, “(a) Knowingly soliciting, inviting, encouraging or otherwise causing a person to actively participate in a criminal gang; or (b) Knowingly using force, threats, violence or intimidation directed at any person, or by the infliction of bodily injury upon any person, to actively participate in a criminal gang.” A conviction under this statute is punishable by imprisonment up to 10 years. Idaho Code Ann. § 18-8504(2).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³⁷ 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 offense³⁸ against a minor.

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

Creating and distributing child pornography is illegal under Idaho Code Ann. § 18-1507(3) (Sexual exploitation of a child), which states,

-
- any person who engages in a pattern of criminal gang activity and who meets two (2) or more of the following criteria:
- (a) Admits to gang membership;
 - (b) Is identified as a gang member;
 - (c) Resides in or frequents a particular gang’s area and adopts its style of dress, its use of hand signs, or its tattoos, and associates with known gang members;
 - (d) Has been arrested more than once in the company of identified gang members for offenses that are consistent with usual gang activity;
 - (e) Is identified as a gang member by physical evidence such as photographs or other documentation; or
 - (f) Has been stopped in the company of known gang members four (4) or more times.

³⁷ See *supra* note 18.

³⁸ See *supra* note 19.

A person commits sexual exploitation of a child³⁹ if, for any commercial purpose,⁴⁰ he knowingly:
(a) Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct;⁴¹ or
(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses, or distributes any sexually exploitative material.⁴²

A conviction under this statute is punishable as a felony by imprisonment up to 30 years in state prison, a fine up to \$50,000, or both. Idaho Code Ann. § 18-1507(5).

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 offense⁴³ against a minor. Additionally, a federal conviction for distribution of child pornography⁴⁴ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴⁵ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁶

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.*

Idaho Code Ann. § 18-1509A(1) (Enticing of children over the internet) makes it a crime to use the Internet to lure or entice a minor to engage in a sexual act; however, the statute has limited applicability to traffickers, as it only applies to offenders who attempt to have the child “engage in any sexual act with or against the child where such act is a violation of chapter 15 [Children and vulnerable adults], 61 [Rape] or 66 [Sex crimes], title 18, Idaho Code.” This statute likely applies to traffickers who use the Internet with the intent to commit a violation of Idaho Code Ann. § 18-1507 (Sexual exploitation of a child). A conviction under Idaho Code Ann. § 18-1509A(1) is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1509A(1), (2), 18-112A.

3.3.1 Recommendation: Amend Idaho Code Ann. § 18-1509A(1) (Enticing of children over the internet) to include instances when traffickers use the Internet to attempt to solicit children to engage in acts in violation of chapters 56 (Prostitution) and 86 (Human trafficking).

³⁹ See *supra* note 2 for the definition of “child.”

⁴⁰ See *supra* note 3 for the definition of “commercial purpose.”

⁴¹ See *supra* note 4 for the definition of “explicit sexual conduct.”

⁴² See *supra* note 28 for the definition of “sexually exploitative material.”

⁴³ See *supra* note 19.

⁴⁴ 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).

⁴⁵ 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).

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

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

Traffickers may be subject to fines, restitution, forfeiture, and civil damages. A trafficker convicted under Idaho Code Ann. § 18-8602 (Human trafficking defined) or § 18-1509A(1) (Enticing of children over the internet) may be subject to a fine up to \$50,000. Idaho Code Ann. §§ 18-8603, 18-1509A(2), 18-112A. A trafficker convicted under Idaho Code Ann. § 18-5609 (Inducing person under eighteen years of age into prostitution) or § 18-1507(3) (Sexual exploitation of a child) may be required to pay a fine up to \$50,000. Idaho Code Ann. §§ 18-5609, 18-1507(5). A trafficker convicted under Idaho Code Ann. § 18-5601 (Interstate trafficking in prostitution), § 18-5602 (Procurement), § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5605 (Detention for prostitution), § 18-5606(1) (Accepting earnings of prostitute), or § 18-5608 (Harboring prostitutes) may be required to pay a fine of \$1,000–\$50,000. Idaho Code Ann. §§ 18-5601, to -5606, 18-5608. A trafficker convicted under Idaho Code Ann. § 18-1511 (Sale or barter of child for adoption or other purpose penalized) may be required to pay a fine up to \$5,000. Idaho Code Ann. § 18-1511. A trafficker convicted under Idaho Code Ann. § 18-7804(a)–(d) (Prohibited activities) may be required to pay a fine up to \$25,000, while one convicted under Idaho Code Ann. § 18-8201 (Money laundering and illegal investment) may be ordered to pay a fine up to the greater of \$250,000 or “twice the value of the property involved in the transaction.” Idaho Code Ann. §§ 18-7804(e), 18-8201(4). Additionally, Idaho Code Ann. § 72-1025(1) (Fines) provides that a trafficker convicted of any crime also may have to pay an additional fine or reimbursement of \$37.00 per misdemeanor count, at least \$75.00 per felony count, and at least \$300.00 per sex offense count.⁴⁷

A court may require traffickers to pay restitution to the victims of human trafficking. Idaho Code Ann. § 18-8604(1), (2) (Restitution—rehabilitation) provides,

- (1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of:
 - (a) The gross income or value to the defendant of the victim’s labor or services; or
 - (b) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.
- (2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

A trafficker convicted of any other crime also may be required to make restitution to the victims. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) requires the court to order a defendant to make restitution where the crime resulted in an economic loss⁴⁸ to the victim, unless restitution is determined to be “inappropriate or undesirable.”⁴⁹ Idaho Code Ann. § 18-8201(5) (Money laundering and illegal investment) further authorizes the court to “order restitution for all costs and expenses of prosecution and investigation,” where a trafficker is convicted under Idaho Code Ann. § 18-8201(1)–(3).

Idaho Code Ann. § 18-314 (Property of convict not forfeited)⁵⁰ limits the availability of asset forfeiture to where it is expressly authorized by law. Most of the laws under which traffickers may be prosecuted do not expressly authorize forfeiture; however, where a trafficker is convicted of racketeering under Idaho Code Ann. § 18-7804 (Prohibited activities), subsection (g) provides,

In addition to any other penalties prescribed by law, whoever violates any provisions of this act shall forfeit to the state of Idaho:

⁴⁷ See *supra* note 24 for the applicable sex offenses.

⁴⁸ See *supra* note 26 for the definition of “economic loss.”

⁴⁹ See *supra* section 2.8 for the provisions of Idaho Code Ann. § 19-5304(2) (Restitution for crime victims).

⁵⁰ See *supra* section 2.8 for the provisions of Idaho Code Ann. § 18-314 (Property of convict not forfeited).

- (1) Any interest acquired or maintained in violation of the racketeering act; and
- (2) Any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted or participated in the conduct of in violation of the provisions of the racketeering act.

Idaho Code Ann. § 52-406 (Right to possession of real property and personal property after hearing on the temporary injunction—Conditions for avoidance of temporary forfeiture) authorizes the court to “declare a temporary forfeiture of the use of the real property upon which [a] public nuisance is located and the personal property located therein” where allegations complaining of a moral nuisance⁵¹ are supported by clear and convincing evidence. Idaho Code Ann. § 52-104(F) (Moral nuisances—types) expressly declares that “[e]very place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur,” is a moral nuisance. Additionally, Idaho Code Ann. § 52-415 (Civil penalty—Forfeiture—Accounting—Lien as to expenses of abatement) states,

All personal property declared to be a moral nuisance . . . and all monies and other considerations declared to be a moral nuisance . . . are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such monies may be traced to and shall be recoverable from persons who, under section 52-405 [Notice of hearing on temporary injunction—Consolidation], Idaho Code, have knowledge of the nuisance at the time such monies are received by them.

Traffickers convicted of certain offenses may face civil liability. A trafficker who engages in a pattern of racketeering activity⁵² in violation of Idaho Code Ann. § 18-7804 (Prohibited activities) may be liable for civil damages up to 3 “times the actual damages proved and the cost of the suit, including reasonable attorney’s fees.” Idaho Code Ann. § 18-7805(a).

3.4.1 Recommendation: Enact a law requiring defendants to forfeit all assets used in connection with the commission of a commercial sexual exploitation of a child crime.

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

Idaho Code Ann. § 18-8306(2), (3) (Notice of duty to register and initial registration) requires those convicted of offenses listed in Idaho Code Ann. § 18-8304 (Applicability of chapter) to register as sex offenders.⁵³ Included among the offenses listed in Idaho Code Ann. § 18-8304(1)(a) are Idaho Code Ann. § 18-8602(1) (Human trafficking defined), § 18-5609 (Inducing person under eighteen years of age into prostitution), § 18-1507 (Sexual exploitation of a child), § 18-1509A(1) (Enticing of children over the internet), and § 18-5605 (Detention for prostitution).

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.*

Convictions under Idaho Code Ann. § 18-8602(1) (Human trafficking defined) or Idaho’s CSEC laws are not listed as grounds for terminating parental rights in Idaho. The only relevant provisions in Idaho Code Ann. § 16-2005(1)–(3) (Conditions under which termination may be granted) that may be used to terminate the relationship between a trafficker and a child include when it is in the child’s best interest and “[t]he parent has neglected or abused the child” or “has been incarcerated and is likely to remain incarcerated for a substantial

⁵¹ Idaho Code Ann. § 52-103(E) (Moral nuisance—definitions) defines a “moral nuisance” as “a nuisance which is injurious to public morals.”

⁵² See *supra* note 33 for the definition of a “pattern of racketeering activity.”

⁵³ See *supra* Section 2.10 for the provisions of Idaho Code Ann. § 18-8306.

period of time during the child’s minority.” Idaho Code Ann. § 16-2005(1)(b), (e). The court may presume it is in the best interests of the child to terminate the relationship if the parent has “subjected the child to sexual abuse.” Idaho Code Ann. § 16-2005(2)(b). Finally, pursuant to Idaho Code Ann. § 16-2005(3), “The court may grant an order terminating the relationship if termination is found to be in the best interest of the parent and child.”

- 3.6.1 Recommendation: Amend Idaho Code Ann. § 16-2005 (Conditions under which termination may be granted) to include a parent’s conviction for subjecting any child to trafficking under Idaho Code Ann. § 18-8602(1) (Human trafficking defined) or Idaho’s CSEC laws as grounds authorizing the termination of parental rights.

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.*

Idaho Code Ann. § 18-8602(1) (Human trafficking defined) does not expressly criminalize assisting, enabling, or financially benefitting from domestic minor sex trafficking, stating instead that “‘human trafficking’ means: (1) Sex trafficking . . . in which the person induced to perform such act has not attained eighteen (18) years of age.” Additionally, no CSEC laws include the acts of facilitators. However, other laws related to prostitution may be used to prosecute facilitators.

A facilitator may be convicted under several Idaho prostitution laws, all of which are punishable as felonies by imprisonment for 2–20 years, a \$1,000–\$50,000 fine, or both. Idaho Code Ann. §§ 18-5603, 18-5604, 18-5606, 18-5608. Idaho Code Ann. § 18-5603 (Receiving pay for procurement) applies to a facilitator “who knowingly receives money or any object of value to procure a prostitute.” Idaho Code Ann. § 18-5604 (Paying for procurement) applies to a facilitator “who pays another money or any object of value to procure a third person to engage in prostitution.” Idaho Code Ann. § 18-5606(1) (Accepting earnings of prostitute) applies to a facilitator “who shall knowingly accept or appropriate any money or item of value from the proceeds or earnings of any person engaged in prostitution as part of a joint venture⁵⁴ with such person.” Lastly, Idaho Code Ann. § 18-5608 (Harboring prostitutes) applies to a facilitator “maintaining, controlling or supporting a house of prostitution.”⁵⁵

⁵⁴ Idaho Code Ann. 18-5606(2) defines “joint venture” as “an undertaking by two (2) or more persons jointly to carry out a single business enterprise involving one or more transactions for profit. Such joint venture can be created by oral agreement or may be inferred from acts or conduct.”

⁵⁵ See *supra* note 14 for the definition of “house of prostitution.”

Facilitators also may face prosecution under Idaho Code Ann. title 18, chapter 78 (Racketeering act) to the extent that they receive and invest proceeds derived from a pattern of racketeering activity in violation of Idaho Code Ann. § 18-7804(a)–(d) (Prohibited activities).⁵⁶ As defined in Idaho Code Ann. § 18-7803(a) (Definitions), “racketeering activity” includes “any act which is chargeable or indictable under” Idaho Code Ann. § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5606(1) (Accepting earnings of prostitute), and § 18-5608 (Harboring prostitutes). A conviction under Idaho Code Ann. § 18-7804(a)–(d) is punishable as a felony by imprisonment up to 14 years in the Idaho penitentiary, a fine up to \$25,000, or both. Idaho Code Ann. § 18-7804(a)–(e).

Additionally, Idaho Code Ann. § 18-8201 (Money laundering and illegal investment) separately makes it illegal for a facilitator to knowingly engage in certain financial transactions that further racketeering.⁵⁷ A conviction under this statute is punishable as a felony by imprisonment up to 10 years, a fine of the greater of up to \$250,000 or “twice the value of the property involved in the transaction,” or both fine and imprisonment. Idaho Code Ann. § 18-8201(4).

Facilitators also may face additional punishment under Idaho Code Ann. title 18, chapter 85 (Idaho criminal gang enforcement act).⁵⁸ Included among the offenses listed in Idaho Code Ann. § 18-8502(3) (Definitions), to which Idaho Code Ann. § 18-8503 (Punishment) applies, are Idaho Code Ann. § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5606(1) (Accepting earnings of prostitute), § 18-5608 (Harboring prostitutes), § 18-1507 (Sexual exploitation of a child), § 18-7804 (Prohibited activities), and § 18-8201 (Money laundering and illegal investment).

4.1.1 Recommendation: Amend Idaho Code Ann. § 18-8602(1) (Human trafficking defined) to include anyone who knowingly assists, enables, or financially benefits from human trafficking.

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, restitution, forfeiture, and civil damages. A facilitator convicted under Idaho Code Ann. § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5606(1) (Accepting earnings of prostitute), or § 18-5608 (Harboring prostitutes) may be required to pay a fine of \$1,000–\$50,000. Idaho Code Ann. §§ 18-5604, 18-5603, 18-5606, 18-5608. A facilitator convicted under Idaho Code Ann. § 18-7804(a)–(d) (Prohibited activities) may be required to pay a fine up to \$25,000, while one convicted under Idaho Code Ann. § 18-8201(4) (Money laundering and illegal investment) may be ordered to pay a fine of the greater of up to \$250,000 or “twice the value of the property involved in the transaction.” Idaho Code Ann. §§ 18-7804(e), 18-8201(4). Additionally, Idaho Code Ann. § 72-1025(1) (Fines) provides that a facilitator convicted of any crime also may have to pay an additional fine or reimbursement of \$37.00 per misdemeanor count, at least \$75.00 per felony count, and at least \$300.00 per sex offense account.⁵⁹

Facilitators convicted of any crime may be required to make restitution to their victims. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) requires the court to order a defendant to make restitution when the crime resulted in an economic loss⁶⁰ to the victim, unless the court determines that restitution is “inappropriate or undesirable.”⁶¹ Idaho Code Ann. § 18-8201(5) (Money laundering and illegal investment) further authorizes the court to “order restitution for all costs and expenses of prosecution and investigation,” if a facilitator is convicted under Idaho Code Ann. § 18-8201(1)–(3).

⁵⁶ See *supra* Section 3.1 for the provisions of Idaho Code Ann. § 18-7804(a)–(d).

⁵⁷ See *supra* Section 3.1 for the provisions of Idaho Code Ann. § 18-8201.

⁵⁸ See *supra* Section 3.1 for the provisions of Idaho Code Ann. § 18-8503(1), (2).

⁵⁹ See *supra* note 24 for the applicable sex offenses.

⁶⁰ See *supra* note 26 for the definition of “economic loss.”

⁶¹ See *supra* Section 2.8 for the provisions of Idaho Code Ann. § 19-5304(2) (Restitution for crime victims).

Idaho Code Ann. § 18-314 (Property of convict not forfeited)⁶² limits the availability of asset forfeiture to when it is expressly authorized by law. Most of the laws under which facilitators may be prosecuted do not expressly authorize asset forfeiture; however, when a facilitator is convicted of racketeering under Idaho Code Ann. § 18-7804 (Prohibited activities), Idaho Code Ann. § 18-7804(g)(1) authorizes the forfeiture of certain property acquired as the result of the violation.⁶³ Additionally, Idaho Code Ann. § 52-406 (Right to possession of real property and personal property after hearing on the temporary injunction) authorizes the court to “declare a temporary forfeiture of the use of the real property upon which [a] public nuisance is located and the personal property located therein” if allegations complaining of a moral nuisance⁶⁴ are supported by “clear and convincing evidence.” Idaho Code Ann. § 52-104(F) (Moral nuisances—types) expressly declares that “[e]very place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur” is a moral nuisance. Additionally, Idaho Code Ann. § 52-415 (Civil penalty) states in part,

All personal property declared to be a moral nuisance . . . and all monies and other considerations declared to be a moral nuisance . . . are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such monies may be traced to and shall be recoverable from persons who, under section 52-405 [Notice of hearing on temporary injunction—consolidation], Idaho Code, have knowledge of the nuisance at the time such monies are received by them.

Facilitators convicted of some offenses also may face civil liability. Facilitators who engage in a pattern of racketeering activity⁶⁵ in violation of Idaho Code Ann. § 18-7804 (Prohibited activities) may be liable for civil damages. Pursuant to Idaho Code Ann. § 18-7805(a) “A person who sustains injury to his person, business or property by a pattern of racketeering activity may file an action in the district court for the recovery of three (3) times the actual damages proved and the cost of the suit, including reasonable attorney’s fees.”

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

Idaho does not specifically prohibit 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 offering, selling, or travel occurs in Idaho.

4.4 *Promoting and selling child pornography is illegal.*

Promoting and selling child pornography is illegal under Idaho Code Ann. § 18-1507(3)(b) (Sexual exploitation of a child), which states that “[a] person commits sexual exploitation of a child⁶⁶ if, for any commercial purpose,⁶⁷ he knowingly . . . [p]repare[s], arrange[s] for, publish[s], produce[s], promote[s], make[s], sell[s], finance[s], offer[s], exhibit[s], advertise[s], deal[s] in, possess[e]s, or distribute[s] any sexually exploitative material.⁶⁸ A conviction under this statute is punishable as a felony by imprisonment up to 30 years in state prison, a fine up to \$50,000, or both. Idaho Code Ann. § 18-1507(5).

⁶² See *supra* Section 2.8 for the provisions of Idaho Code Ann. § 18-314 (Property of convict not forfeited).

⁶³ See *supra* Section 3.4 for the provisions of Idaho Code Ann. § 18-7804(g)(2).

⁶⁴ See *supra* note 51 for the definition of “moral nuisance.”

⁶⁵ See *supra* note 33 for the definition of a “pattern of racketeering activity.”

⁶⁶ See *supra* note 2 for the definition of “child.”

⁶⁷ See *supra* note 3 for the definition of “commercial purpose.”

⁶⁸ See *supra* note 28 for the definition of “sexually exploitative material.”

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.*

Commercially sexually exploited children are not specifically defined as victims in the Idaho Code. However, they may still satisfy other requirements that would qualify them as victims under the existing definitions in the Idaho Code. For example, in the context of crime victims compensation, Idaho Code Ann. § 72-1003(8) (Definitions) defines a "victim" as "a person who suffers injury⁶⁹ or death as a result of: (a) Criminally injurious conduct; (b) His good faith effort to prevent criminally injurious conduct;⁷⁰ or (c) His good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

⁶⁹ "Injury" is defined in Idaho Code Ann. § 72-1003(7) as

actual bodily harm or disfigurement and, with respect to a victim, includes pregnancy, venereal disease, mental or nervous shock, or extreme mental distress. For the purposes of this chapter, 'extreme mental distress' means a substantial personal disorder of emotional processes, thought or cognition which impairs judgment, behavior or ability to cope with the ordinary demands of life.

⁷⁰ "Criminally injurious conduct" is defined in Idaho Code Ann. § 72-1003(4) as

intentional, knowing, or reckless conduct that:

- (a) Occurs or is attempted in this state or occurs outside the state of Idaho against a resident of the state of Idaho and which occurred in a state which does not have a crime victims compensation program for which the victim is eligible as eligibility is set forth in this statute;
- (b) Constitutes an act of terrorism as defined by 18 U.S.C. 2331, committed outside the United States against a resident of this state;
- (c) Results in injury or death; and

Additionally, for the purposes of restitution under Idaho Code Ann. § 19-5304(e)(i) (Restitution for crime victims), a “victim” includes “[t]he directly injured victim which means a person or entity, who suffers economic loss⁷¹ or injury as the result of the defendant’s criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases.”

With respect to rights afforded to victims during the investigation and prosecution of a case, Idaho Code Ann. § 19-5306(5)(a) (Rights of victim during investigation, prosecution, and disposition of the crime) defines a “victim” as “an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime⁷² or juvenile offense.”

5.1.1 Recommendation: Amend the Idaho Code to expressly define commercially sexually exploited children as victims.

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.*

Idaho Code Ann. § 18-1507(1) (Sexual exploitation of a child) states that “a child below the age of eighteen (18) years is incapable of giving informed consent to the use of his or her body for a commercial purpose.” However, Idaho Code Ann. § 18-8602(1) (Human trafficking defined), § 18-5609 (Inducing person under eighteen years of age into prostitution), and § 18-1509A(1) (Enticing of children over the internet) do not refer to Idaho Code Ann. § 18-1507(1) nor do they expressly prohibit a perpetrator from using the consent of a minor to a commercial sex act as a defense to the crime, although it appears from these statutes’ language that a consent defense would be inconsistent with these statutes.

5.2.1 Recommendation: Amend Idaho Code Ann. § 18-8602(1) (Human trafficking defined) to expressly eliminate a consent defense.

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

Idaho Code Ann. § 18-5613 (Prostitution) is not limited in applicability to adults and therefore does not make minors immune from prosecution. Idaho Code Ann. § 18-5613(1) states instead,

A person is guilty of prostitution when he or she:

- (a) engages in or offers or agrees to engage in sexual conduct,⁷³ or sexual contact⁷⁴ with another person in return for a fee; or
- (b) is an inmate of a house of prostitution;⁷⁵ or
- (c) loiters in or within view of any public place for the purpose of being hired to engage in sexual conduct or sexual contact.

(d) Is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. . . .

⁷¹ “Economic loss” is defined in Idaho Code Ann. § 19-5304(1)(a) as including, not exclusively, “the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.”

⁷² “Criminal offense” is defined in Idaho Code Ann. § 19-5306(5)(b) as “any charged felony or a misdemeanor involving physical injury, or the threat of physical injury, or a sexual offense.”

⁷³ See *supra* note 12 for the definition of “sexual conduct.”

⁷⁴ See *supra* note 13 for the definition of “sexual contact.”

⁷⁵ See *supra* note 14 for the definition of “house of prostitution.”

A first or second conviction under this statute is a misdemeanor punishable by imprisonment up to 6 months in county jail, a fine up to \$1,000, or both. Idaho Code Ann. §§ 18-5613(2), 18-113(1). A third or subsequent conviction is punishable as a felony by imprisonment up to 5 years in the state prison, a fine up to \$50,000, or both. Idaho Code Ann. §§ 18-5613(2), 18-112.

5.3.1 Recommendation: Amend Idaho Code Ann. § 18-5613 (Prostitution) to apply only to adults, making minors immune from prosecution. Refer any case of a minor involved in prostitution to Idaho Code Ann. § 18-8602(1) (Human trafficking defined).

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.*

Idaho Code Ann. § 16-1605 (Reporting of abuse, abandonment or neglect) requires medical professionals, school employees, social workers, and any other persons “having reason to believe that a child under the age of eighteen (18) years has been abused,⁷⁶ abandoned or neglected or who observes” such conduct to report the incident to law enforcement or the department of health and welfare. According to Idaho Code Ann. § 16-1608(1)(a) (Emergency removal),

A child may be taken into shelter care⁷⁷ by a peace officer without [a court] order . . . only where the child is endangered in his surroundings and prompt removal is necessary to prevent serious physical or mental injury⁷⁸ to the child or where the child is an abandoned child pursuant to the provisions of chapter 82 [Idaho safe haven act], title 39 [Health and safety], Idaho Code.

Idaho Code Ann. § 16-1609(1) requires the law enforcement officer taking custody of the child to notify the court and the child’s parents and to place the child in a “place of shelter” for no more than 48 hours, during which a “shelter care hearing” must take place. At the shelter care hearing, the court will determine whether the child will continue to be held in custody. Idaho Code Ann. § 16-1615(1). Idaho Code Ann. § 16-1615(5) states,

If, upon the completion of the shelter care hearing, it is shown that:

- (a) A petition has been filed; and
- (b) There is reasonable cause to believe the child comes within the jurisdiction of the court under this chapter⁷⁹ and either:
 - (i) The department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful; or
 - (ii) The department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventive services; and
- (c) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and
- (d) It is contrary to the welfare of the child to remain in the home; and
- (e) It is in the best interests of the child to remain in temporary shelter care pending the conclusion of the adjudicatory hearing; or

⁷⁶ Idaho Code Ann. § 16-1602(1)(b) (Definitions) defines “abused” to include situations where a child has been subjected to “[s]exual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child’s health or welfare or mental injury to the child.”

⁷⁷ Idaho Code Ann. § 16-1602(32) defines “shelter care” as “places designated by the department for temporary care of children pending court disposition or placement.”

⁷⁸ Idaho Code Ann. § 16-1602(24) defines “mental injury” as “a substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance and/or behavior, for short or long terms.”

⁷⁹ Pursuant to Idaho Code Ann. § 16-1603(1) (Jurisdiction of the courts), a child comes within the court’s jurisdiction if the child is “neglected, abused or abandoned,” homeless, or if the child’s “parents or other legal custodian fails to provide a stable home environment.”

(f) There is reasonable cause to believe that the child comes within the jurisdiction of the court under this chapter, but a reasonable effort to prevent placement of the child outside the home could be affected by a protective order safeguarding the child’s welfare and maintaining the child in his present surroundings;
the court shall issue, within twenty-four (24) hours of such hearing, an order of temporary legal custody and/or a protective order. . . .

If the court retains custody over the child, an adjudicatory hearing will be held within 30 days of the date the petition was filed. Idaho Code Ann. § 16-1615(6). As long as the child is adjudicated to come within the court’s jurisdiction,⁸⁰ pursuant to Idaho Code Ann. § 16-1619(5) (Adjudicatory hearing), the court at the adjudicatory hearing may

- (a) Place the child under protective supervision in his own home for an indeterminate period not to exceed the child’s eighteenth birthday; or
- (b) Vest legal custody in the department or other authorized agency subject to residual parental rights and subject to full judicial review by the court of all matters relating to the custody of the child by the department or other authorized agency.

If the court decides to grant custody to the department, pursuant to Idaho Code Ann. § 16-1619(6), it must

make detailed written findings based on facts in the record, that . . . continuation of residence in the home would be contrary to the welfare of the child and that vesting legal custody with the department or other authorized agency would be in the best interests of the child. . . . [and that] the department made reasonable efforts to prevent the placement of the child in foster care

Despite these protections, domestic minor sex trafficking victims also may be dealt with under the provisions of Idaho Code Ann. title 20 (State prison and county jails), chapter 5 (Juvenile corrections act).

Idaho Code Ann. § 20-516(1) (Apprehension and release of juveniles—Detention) authorizes a peace officer to take a juvenile into custody without a court order

- (a) When he has reasonable cause to believe that the juvenile has committed an act which would be a misdemeanor or felony if committed by an adult; or
- (b) When in the presence of a peace officer or private citizen the juvenile has violated any local, state or federal law or municipal ordinance; or
- (c) When there are reasonable grounds to believe the juvenile has committed a status offense. Status offenses are truancy, running away from or being beyond the control of parents, guardian, or legal custodian and curfew violations. Status offenders shall not be placed in any jail facility but instead may be placed in juvenile shelter care facilities,⁸¹ except in the case of runaways, when there is a specific detention request from a foreign jurisdiction to hold the juvenile pending transportation arrangements.

Depending on whether the child has any prior convictions under Idaho Code Ann. § 18-5613 (Prostitution), a commercially sexually exploited child could be considered to have committed either a misdemeanor or felony prostitution offense and may be taken into custody under Idaho Code Ann. § 20-516(1).⁸² Idaho Code Ann. § 20-516(2) also authorizes a peace officer to take a juvenile into custody pursuant to a court order or warrant. An officer must release a juvenile taken into custody “to his parent or other responsible adult upon written promise . . . to bring the juvenile to court at a stated time,” unless the court orders otherwise or it appears to the

⁸⁰ See *supra* note 79 for cases in which the court has jurisdiction.

⁸¹ See *supra* note 77 for the definition of “shelter care.”

⁸² See *supra* section 5.3 for the provisions of Idaho Code Ann. § 18-5613.

officer that releasing the juvenile would not be in the juvenile’s or society’s best interests. Idaho Code Ann. § 20-516(2).

If the child is not released, the court must hold a “detention hearing to determine where the juvenile will be placed until the next hearing” within 24 hours. Idaho Code Ann. § 20-516(4). Placement options include parents, relatives, a foster or group home, a juvenile detention facility, or a “community-based diversion program.” Idaho Code Ann. § 20-516(4).

Idaho Code Ann. § 20-510 (Information—Investigation—Petition) provides that the prosecuting attorney or a peace officer may file a petition with the court alleging the facts that bring the juvenile within the court’s jurisdiction. Before any petition is filed, however, the prosecuting attorney may refer the case directly “to the county probation officer or a community-based diversion program for informal probation and counseling” if the prosecutor decides court action is not required. Idaho Code Ann. § 20-511(1) (Diversion or informed disposition of the petition). Even if a petition is filed, if the juvenile admits the petition’s allegations, “the court may decide to make an informal adjustment of the petition.” Idaho Code Ann. § 20-511(2). Pursuant to Idaho Code Ann. § 20-511(2),

Informal adjustment can include, but is not limited to:

- (a) Reprimand of the juvenile;
- (b) Informal supervision with the probation department;
- (c) Community service work;
- (d) Restitution to the victim;
- (e) Participation in a community-based diversion program.

For juveniles who are detained, the detention facilities must meet the standards set out in Idaho Code Ann. § 20-518 (Standards for detention), which provides, among other things,

(1) Juvenile detention facilities must be so constructed and/or maintained as to keep juveniles segregated from adult offenders with there to be no contact as to sight and/or sound between the two (2) classes. Those juveniles being treated as adult offenders pursuant to section 20-508 [Waiver of jurisdiction and transfer to other courts] or 20-509 [Violent offenses, controlled substances violations near schools and offenders], Idaho Code, may be housed in a juvenile detention center if so ordered by the court. Such juveniles may be housed in the general juvenile population without sight and sound separation if it is determined by the detention administration that the safety and security of the other juveniles would not be at risk.

(2) Juvenile detention facilities must provide supervision and observation of juveniles sufficient to protect the physical and mental health of the detainees.

....

If the juvenile denies the petition’s allegations, the court will hold an evidentiary hearing pursuant to Idaho Code Ann. § 20-519 (Evidentiary hearing), and if the court determines that the juvenile falls within the court’s jurisdiction,⁸³ Idaho Code Ann. § 20-520(1) (Sentencing) authorizes the court to hold a sentencing hearing where it may

(a) Place the juvenile on formal probation for a period not to exceed three (3) years from the date of the order, except the court may place a juvenile on formal probation for a period not to exceed the juvenile’s twenty-first birthday if the court finds that the juvenile has committed a crime of a sexual nature;

....

⁸³ See *supra* note 79 for the provisions of Idaho Code Ann. § 20-505, which describes the types of juveniles over which the court has jurisdiction.

(c) Commit the juvenile to a period of detention, pursuant to this act, for a period of time not to exceed ninety (90) days for each unlawful or criminal act the juvenile is found to have committed, if the unlawful or criminal act would be a misdemeanor if committed by an adult, or where the juvenile has been adjudicated as an habitual status offender;

(d) If the juvenile has committed an unlawful or criminal act which would be a felony if committed by an adult, the court may commit the juvenile to detention for a period not to exceed one hundred eighty (180) days for each unlawful or criminal act;

....

(f) Commit the juvenile to detention and suspend the sentence on specific probationary conditions;

....

(r) Commit the juvenile to the legal custody of the department of juvenile corrections for an indeterminate period of time not to exceed the juvenile's nineteenth birthday, unless the custody review board determines that extended time in custody is necessary to address competency development, accountability, and community protection; provided however, that no juvenile shall remain in the custody of the department beyond the juvenile's twenty-first birthday. . . .

(s) Notwithstanding any other provision of this section, a court may not commit a juvenile offender under the age of ten (10) years to a period of detention or to the custody of the department of juvenile corrections for placement in secure confinement.

5.4.1 Recommendation: Establish a mandatory response law directing any minor involved in prostitution or pornography and who is a victim of human trafficking under Idaho Code Ann. § 18-8602(1) (Human trafficking defined) away from the criminal justice system and into a child protective services system.

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

Idaho Code Ann. § 16-1602(1)(b) (Definitions) identifies commercial sexual exploitation as child abuse. Idaho Code Ann. § 16-1602(1)(b) specifies that “[s]exual conduct, including . . . prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, or other similar forms of sexual exploitation harming or threatening the child’s health or welfare or mental injury to the child” is considered abuse.

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

Under Idaho Code Ann. title 16, chapter 16 (Child protective act), Idaho’s definition of “custodian” is too narrow to include a trafficker or pimp who has custody or control of a child. Idaho Code Ann. § 16-1602(12) (Definitions) defines a “custodian” as “a person, other than a parent or legal guardian, to whom legal or joint legal custody of the child has been given by court order.”

5.6.1 Recommendation: Define “custodian” to include a person who has control over a child, allowing a trafficked child to fall within the purview 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.*

Crime victims compensation is not specifically available to victims of domestic minor sex trafficking, but under the Crime Victims Compensation Act, such victims still may receive compensation.

Idaho Code Ann. § 72-1002 (Legislative purpose and intent) explains that, in enacting the Crime Victims Compensation Act, it was the legislature’s intent to assist and compensate “those persons within the state who

are innocent victims of criminal acts and who suffer injury or death. To this end, it is the legislature’s intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.” As defined in Idaho Code Ann. § 72-1003(8)(a) (Definitions), a “victim” is “a person who suffers injury or death as a result of . . . [c]riminally injurious conduct.” Idaho Code Ann. § 72-1003(4) defines “criminally injurious conduct” as

intentional, knowing, or reckless conduct that:

- (a) Occurs or is attempted in this state or occurs outside the state of Idaho against a resident of the state of Idaho and which occurred in a state which does not have a crime victims compensation program for which the victim is eligible as eligibility is set forth in this statute;
- (b) Constitutes an act of terrorism as defined by 18 U.S.C. 2331, committed outside the United States against a resident of this state;
- (c) Results in injury or death; and
- (d) Is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. . . .

The Crime Victims Compensation Act contains ineligibility criteria that could bar a domestic minor sex trafficking victim’s claim for compensation. Idaho Code Ann. § 72-1018 (Award of compensation) provides,

- (1) The commission shall award compensation benefits under this chapter, if satisfied by a preponderance of the evidence that the requirements for compensation have been met.
- (2) An award may be made whether or not any person is prosecuted or convicted. . . .
- (3) The commission may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under section 72-1017 [Tentative award of compensation], Idaho Code.

However, a victim will not receive compensation unless the crime was reported to law enforcement within 72 hours and an application for compensation was filed within 1 year of the crime’s occurrence, unless in either case good cause is shown. Idaho Code Ann. § 72-1016(1), (3). Nothing in Idaho Code Ann. § 72-1016 clarifies what is sufficient to constitute good cause.

Idaho Code Ann. § 72-1016(4) (Limitations on awards) further requires victims to fully cooperate with law enforcement “in the apprehension and prosecution of the offender.” Additionally, if a domestic minor sex trafficking victim is convicted under Idaho Code Ann. § 18-5613 (Prostitution) and sentenced to imprisonment, the minor will be unable to receive compensation, as Idaho Code Ann. § 72-1016(6) prohibits incarcerated persons from receiving compensation. Additionally, victims who are deemed to have “contributed to the infliction of death or injury with respect to which the claim is made” may have the amount of compensation they are eligible to receive reduced “in proportion to what the commission finds to be the victim’s contribution.” Idaho Code Ann. § 72-1016(7)(a). Finally, a child convicted for a third or subsequent violation of Idaho Code Ann. § 18-5613 may face a 50% reduction in the award for having “engaged in a felony.” Idaho Code Ann. § 72-1016(7)(b).

5.7.1 Recommendation: Amend Idaho Code Ann. § 72-1016 (Limitations on awards) to create exceptions for domestic minor sex trafficking victims to the listed criteria.

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

Idaho does not specifically afford extra protections to domestic minor sex trafficking victims in its criminal justice procedures; however, domestic minor sex trafficking victims may avail themselves of protections available to crime victims generally.

Idaho Code Ann. § 18-8601 (Legislative intent) declares that the legislature intended to “assist and direct victims of such trafficking to available community resources.” Idaho Code Ann. § 18-8605 (Human trafficking victim protection) provides,

(1) The attorney general, in consultation with the department of health and welfare and the United States attorney’s office, shall, no later than July 1, 2007, issue a report outlining how existing victim and witness laws respond to the needs of human trafficking victims, and suggesting areas of improvement and modification.

(2) The department of health and welfare, in consultation with the attorney general, shall, no later than July 1, 2007, issue a report outlining how existing social service programs respond or fail to respond to the needs of human trafficking victims, and the interplay of such existing programs with federally-funded victim service programs, and suggesting areas of improvement or modification. Such inquiry shall include, but not be limited to, the ability of state programs and licensing bodies to recognize federal T nonimmigrant status for the purposes of benefits, programs and licenses.

Children who are crime victims or witnesses receive some special protections under Idaho’s laws. The Uniform Child Witness Testimony by Alternative Methods Act protects a child witness “under the age of thirteen (13) years who has been or will be called to testify in” any criminal or noncriminal case. Idaho Code Ann. §§ 9-1802(2), 9-1803. Idaho Code Ann. § 9-1805(1) (Standards for determining whether child witness’ testimony may be presented by alternative method) explains that in a criminal proceeding, a child witness may give testimony via an “alternative method”⁸⁴ only in certain circumstances. Idaho Code Ann. § 9-1805(1) states,

(a) A child witness’ testimony may be taken otherwise than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child’s ability to communicate with the finder of fact if required to testify in the open forum.

(b) A child witness’ testimony may be taken other than in a face-to-face confrontation between the child and a defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child’s ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

In noncriminal proceedings, the child may give testimony via an alternative method where the “presiding officer finds by a preponderance of the evidence that presenting the testimony of the child by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact.” Idaho Code Ann. § 9-1805(2).

Idaho Code Ann. § 19-3023 (Child summoned as witness) further provides that where

a child is summoned as a witness in . . . any criminal matter, . . . parents, a counselor, friend or other person having a supportive relationship with the child shall be allowed to remain in the courtroom at the witness stand with the child during the child’s testimony unless . . . the court finds that the defendant’s constitutional right to a fair trial will be unduly prejudiced.

Other protections that are generally afforded to crime victims may be available to domestic minor sex trafficking victims. Idaho Code Ann. § 19-5306(1) (Rights of victim during investigation, prosecution, and

⁸⁴ Idaho Code Ann. § 9-1802(1) (Definitions) defines “alternative method” as

a method by which a child witness testifies which does not include all of the following:

- (a) Having the child present in person in an open forum;
- (b) Having the child testify in the presence and full view of the finder of fact and presiding officer; and
- (c) Allowing all of the parties to be present, to participate and to view and be viewed by the child.

disposition of the crime) enumerates the rights of crime victims.⁸⁵ Idaho Code Ann. § 19-5306(1) provides crime victims the rights to be

- (a) Treated with fairness, respect, dignity and privacy throughout the criminal justice process;
- (b) Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings;
- (c) Entitled to a timely disposition of the case;
- (d) Given prior notification of trial court, appellate, probation and parole proceedings and, upon request, to information about the sentence, incarceration, placing on probation or release of the defendant;
- (e) Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result;
- (f) Afforded the opportunity to communicate with the prosecution in criminal or juvenile offenses, and be advised of any proposed plea agreement by the prosecuting attorney prior to entering into a plea agreement in criminal or juvenile offenses involving crimes of violence, sex crimes or crimes against children;
- (g) Allowed to refuse an interview, ex parte contact or other request by the defendant or any other person acting on behalf of the defendant, unless such request is authorized by law;
- (h) Consulted by the presentence investigator during the preparation of the presentence report and have included in that report a statement of the impact which the defendant's criminal conduct had upon the victim and shall be allowed to read, prior to the sentencing hearing, the presentence report relating to the crime. The victim shall maintain the confidentiality of the presentence report, and shall not disclose its contents to any person except statements made by the victim to the prosecuting attorney or the court;
- (i) Assured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence;
- (j) Notified whenever the defendant or suspect is released or escapes from custody. . . .

5.8.1. Recommendation: Amend the Uniform Child Witness Testimony by Alternative Methods Act to protect children over the age of 12.

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.*

Idaho Code Ann. § 20-525A(1)–(3) (Expungement of record) provides,

- (1) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a felony offense or having been committed to the department of juvenile corrections may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the court, or, in case the juvenile was committed to the juvenile corrections center, five (5) years from the date of his release from the juvenile corrections center, or after reaching age eighteen (18), whichever occurs last, petition the court for the expungement of his record. . . .
- (2) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed misdemeanor or status offenses only and not having been committed to the department of juvenile corrections may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. . . .

⁸⁵ Idaho Code Ann. § 19-5306(5)(a) (Rights of victim during investigation, prosecution, and disposition of the crime) defines “victim” as “an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense.”

(3) In any case where the prosecuting attorney has elected to utilize the diversion process or the court orders an informal adjustment pursuant to section 20-511, Idaho Code, the person may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record. . . .

Under Idaho Code Ann. § 20-525A(5),

If the court finds after hearing that the petitioner . . . has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court's jurisdiction or his release from the juvenile corrections center, and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds to its satisfaction that the petitioner has been held accountable, is developing life skills necessary to become a contributing member of the community and that the expungement of the petitioner's record will not compromise public safety, it shall order all records in the petitioner's case . . . sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public. However, a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of a court of competent jurisdiction. . . . Upon the entry of the order the proceedings in the petitioner's case shall be deemed never to have . . . occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter be permitted only by the court upon petition by the person who is the subject of the records or by any other court of competent jurisdiction, and only to persons named in the petition.

In regards to court records involving a child taken into custody under the Child Protective Act or adjudicated as an abused, neglected, or abandoned child,⁸⁶ Idaho Code Ann. § 16-1626 (Court records) provides,

The court shall keep a record of all court proceedings under this chapter. The records shall be available only to parties to the proceeding, persons having full or partial custody of the subject child and authorized agencies providing protective supervision or having legal custody of the child. Any other person may have access to the records only upon permission by the court and then only if it is shown that such access is in the best interests of the child; or for the purpose of legitimate research. If the records are released for research purposes, the person receiving them must agree not to disclose any information which could lead to the identification of the child.

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

Idaho Code Ann. § 18-8604 (Restitution—Rehabilitation) specifically requires the court to order an offender convicted of a human trafficking violation to make restitution. Idaho Code Ann. § 18-8604 states,

- (1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of:
 - (a) The gross income or value to the defendant of the victim's labor or services; or
 - (b) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.
- (2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

⁸⁶ See *supra* note 79 for the provisions of Idaho Code Ann. § 16-1603 describing the jurisdiction of courts.

More generally, offenders convicted of other crimes also may be required to make restitution to their victims. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) states,

Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime⁸⁷ which results in an economic loss⁸⁸ to the victim⁸⁹ to make restitution to the victim. An order of restitution shall be a separate written order in addition to any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction; however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim's loss shall not absolve the defendant of the obligation to pay restitution.

Commercially sexually exploited minors may also be able to pursue civil remedies for “any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding,” even if they are not specifically articulated in the code. Idaho Code Ann. § 18-103.

Additionally, children may pursue a tort claim where they have been victims of Idaho Code Ann. § 18-1507 (Sexual exploitation of a child) or certain other non-CSEC sexual offenses. Idaho Code Ann. § 6-1701. Specifically, Idaho Code Ann. § 6-1703 (Damages—Attorneys' fees) explains that child victims of Idaho Code Ann. § 18-1507 may be able to receive damages that

consist of compensation for past and future damages and may consist of emotional and physical pain and suffering, mental anguish, disability, loss of society and companionship, expenses for past and future therapy, and punitive damages where the claimant proves malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.

Also, “The prevailing party in a child abuse tort action shall be entitled to costs and reasonable attorneys' fees.” Idaho Code Ann. § 6-1703.

Lastly, commercially sexually exploited children whose offenders engage in a pattern of racketeering activity⁹⁰ in violation of Idaho Code Ann. § 18-7804 (Prohibited activities) may be liable for civil damages up to 3 “times the actual damages proved and the cost of the suit, including reasonable attorney's fees.” Idaho Code Ann. § 18-7805(a).

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.

Idaho Code Ann. § 19-401 (No statute of limitations for certain felonies) provides that no statute of limitations apply to prosecutions for violations of Idaho Code Ann. § 18-1506 (Sexual abuse of a child under the age of sixteen years) and § 18-1508 (Lewd conduct with minor child under sixteen). Most other felonies, including violations of Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and Idaho's CSEC laws, are subject to 5-year statutes of limitations. Idaho Code Ann. § 19-402. Finally, there is a 1-year statute of limitations for

⁸⁷ See *supra* note 25 for the definition of “found guilty of a crime.”

⁸⁸ See *supra* note 26 for the definition of “economic loss.”

⁸⁹ See *supra* note 27 for the definition of “victim.”

⁹⁰ See *supra* note 33 for the definition of a “pattern of racketeering activity.”

prosecutions of misdemeanors, except where the misdemeanor is failure to report child abuse, in which case a 4-year statute of limitations applies. Idaho Code Ann. § 19-403(1), (2).

Idaho Code Ann. § 6-1704(1) (Statute of limitations) provides that child abuse tort actions, such as those related to Idaho Code Ann. § 18-1507 (Sexual exploitation of a child) have a 5-year statute of limitations from the date the child reaches the age of 18 “or, after the child reaches the age of eighteen (18) years, within five (5) years of the time the child discovers or reasonably should have discovered the act, abuse or exploitation and its causal relationship to an injury or condition suffered by the child, whichever occurs later.” Idaho Code Ann. § 5-218(1) (Statutory liabilities, trespass, trover, replevin, and fraud) establishes a 3-year statute of limitations for causes of action “created by statute, other than a penalty or forfeiture,” such as an action brought pursuant to Idaho Code Ann. § 18-7805(a) (Racketeering—civil remedies). However, Idaho Code Ann. § 5-230 (Persons under disabilities—Other than for real property) provides for tolling of the statute of limitations until the child reaches the age of majority, “provided however, that the time limited for the commencement of an action shall not be tolled for a period of more than six (6) years on account of minority.”

- 5.11.1 Recommendation: Amend Idaho Code Ann. § 19-401 (No statute of limitations for certain felonies) to eliminate statutes of limitations for prosecutions involving violations of Idaho’s CSEC laws and for prosecutions of those crimes listed in Idaho Code Ann. § 18-8603 (Penalties) where in the commission of such crimes the offender also commits human trafficking as defined in Idaho Code Ann. § 18-8602(1) (Human trafficking defined).

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.*

Idaho encourages law enforcement to receive training on human trafficking and domestic minor sex trafficking but does not specifically mandate such training. Idaho Code Ann. § 18-8601 (Legislative intent) states in part,

In addition to the other provisions enumerated in this chapter, the legislature finds that it may also be appropriate for members of the law enforcement community to receive training from the respective training entities in order to increase awareness of possible human trafficking cases occurring in Idaho and to assist and direct victims of such trafficking to available community resources.

Despite the legislative intent to have law enforcement trained in human trafficking, such training is not mandated under Idaho Code Ann. § 19-5109 (Powers of the council—Standards of training, education and employment of peace officers). However, Idaho Code Ann. § 19-5109(1)(a) requires the Peace Officers Standards and Training Council (Council) to establish basic training requirements for peace officers, which must include “a course in the investigation of and collection of evidence in cases involving an allegation of

sexual assault or battery.” Additionally, Idaho Code Ann. § 19-5109(6) separately allows the Council to establish basic training requirements “for juvenile detention officers, juvenile probation officers, and employees of the Idaho department of juvenile corrections who are engaged in the direct care and management of juveniles.”

- 6.1.1 Recommendation: Amend Idaho Code Ann. § 19-5109 (Powers of the council—standards of training, education and employment of peace officers) to require that law enforcement receive training on human trafficking and domestic minor sex trafficking.

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

Idaho permits single party consent to audiotaping. Under Idaho Code Ann. § 18-6702(2)(c), (d) (Interception and disclosure of wire, electronic or oral communications prohibited),

(c) It is lawful under this chapter for a law enforcement officer or a person acting under the direction of a law enforcement officer to intercept a wire, electronic or oral communication when such person is a party to the communication or one (1) of the parties to the communication has given prior consent to such interception.

(d) It is lawful under this chapter for a person to intercept a wire, electronic or oral communication when one (1) of the parties to the communication has given prior consent to such interception.

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

Although wiretapping in sex trafficking investigations is not expressly authorized, law enforcement is probably able to use wiretapping, pursuant to Idaho Code Ann. § 18-6706 (Authorization for interception of wire, electronic or oral communications), when investigating violations of Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and Idaho’s CSEC laws. Idaho Code Ann. § 18-6706 authorizes the issuance of an order authorizing wiretapping where

such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one (1) year, or any conspiracy to commit any of the foregoing offenses.

Idaho Code Ann. § 18-8602 (Human trafficking defined) and Idaho’s CSEC laws are each punishable by imprisonment for more than 1 year and could be considered crimes that are “dangerous to life, limb, or property.”

- 6.3.1 Recommendation: Amend Idaho Code Ann. § 18-6706 (Authorization for interception of wire, electronic or oral communications) to expressly authorize the use of wiretapping in investigating violations of Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and Idaho’s CSEC laws.

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.*

Neither Idaho’s CSEC laws, nor Idaho Code Ann. § 18-8602(1) (Human trafficking defined) expressly authorizes the use of a decoy by law enforcement in investigating prostitution or domestic minor sex trafficking; however, other laws, such as Idaho Code Ann. § 18-1509A(3) (Enticing of children over the internet), expressly provide that “[i]t shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.”

6.4.1 Recommendation: Enact a law explicitly permitting the use of a decoy in investigating violations of Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and related crimes.

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

Idaho Code Ann. § 18-1509A(3) (Enticing of children over the internet) implicitly authorizes law enforcement to use the Internet when investigating buyers and traffickers. This statute applies to a person who “knowingly uses the internet to solicit, seduce, lure, persuade or entice by words or actions, or both, a minor child under the age of sixteen (16) years or a person the defendant believes to be a minor child under the age of sixteen (16) years to engage in” certain sexual acts. Idaho Code Ann. §18-1509A(1). Furthermore, Idaho Code Ann. § 18-1509A(3) states that “[i]t shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.”

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

Idaho Code Ann. § 18-4509(1) (Missing child reports—Law enforcement agencies—Duties) requires law enforcement agencies to enter information about a missing child into the national crime information center computer immediately after receiving a report of a missing or runaway child and further states, “Law enforcement agencies having direct access to the national crime information center computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the system.”

If the law enforcement agency has reason to believe the child is a student at an Idaho school, it will notify the child’s school. Idaho Code Ann. §18-4509(2). A school notified of a missing or runaway child, pursuant to Idaho Code Ann. § 18-4511(1) (School duties), is required to flag the child’s records and report any requests made regarding the flagged records to law enforcement. Idaho Code Ann. § 18-4510(1) (Birth records of missing children) imposes similar requirements on the state registrar to flag a child’s birth certificate records and report any inquiries made regarding the flagged records.

Additionally, Idaho Code Ann. § 18-4512(1) (Missing persons clearinghouse) establishes a missing persons clearinghouse “as a resource center of information and assistance regarding missing and unidentified persons.”

When a missing or runaway child is returned, Idaho Code Ann. § 18-4509(5) states that “the law enforcement agency having jurisdiction over the investigation shall clear the entry from the national crime information center computer.”

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