

PROTECTED INNOCENCE INITIATIVE

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



ANALYSIS AND RECOMMENDATIONS LOUISIANA

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.*

La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking) states,

A. It shall be unlawful:

- (1) For any person to knowingly recruit, harbor, transport, provide, solicit, obtain, or maintain the use of another person through fraud, force, or coercion² to provide services or labor.

¹ Unless otherwise specified, all references to statutes were taken from Louisiana Revised 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).

² La. Rev. Stat. Ann. § 14:46.2(C)(2) defines “fraud, force, or coercion” as

- (a) Causing or threatening to cause serious bodily injury;
- (b) Physically restraining or threatening to physically restrain another person;

- (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.
- (3) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.

A conviction under this statute is ordinarily punishable by imprisonment for up to 10 years at hard labor and a fine up to \$10,000. La. Rev. Stat. Ann. § 14:46.2(B)(1). A conviction “when the services include commercial sexual activity³ or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment for up to 20 years at hard labor and a fine up to \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, trafficking involving a person under 18 is punishable by imprisonment for 5–25 years at hard labor, 5 years of which “shall be without the benefit of parole, probation, or suspension of sentence,” and a fine up to \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Louisiana has enacted a separate statute making the sex trafficking of children a crime that does not require a showing of force, fraud, or coercion. La. Rev. Stat. Ann. § 14:46.3(A), (B) (Trafficking of children for sexual purposes) states,

A. It shall be unlawful:

- (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.
- (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.
- (3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section.
- (4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.
- (5) For any person to knowingly advertise any of the activities prohibited by this Section.

B. For purposes of this Section, “commercial sexual activity” means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.

A conviction under this statute is ordinarily punishable by imprisonment for 15–50 years at hard labor, a fine up to \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by a fine up to \$75,000 and imprisonment for 25–50 years at hard labor with no possibility of “probation, parole, or suspension of sentence” for at least 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b).

In addition, a convicted violator of La. Rev. Stat. Ann. § 14:46.3(A)(3) must “serve at least five years of the sentence imposed without the benefit of probation, parole, or suspension of sentence,” and if the victim is under 14, at least 10 years. La. Rev. Stat. Ann. § 14:46.3(D)(2).

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- (c) Intentionally destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; or
 - (d) Extortion as defined in R.S. 14:66.

³ La. Rev. Stat. Ann. § 14:46.2(C)(1) defines “commercial sexual activity” as “any sexual act performed or conducted when anything of value has been given, promised, or received by any person.”

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

1. La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses) makes it unlawful “[f]or any person over the age of seventeen to engage in sexual intercourse⁴ with any person under the age of seventeen who is practicing prostitution, and there is an age difference of greater than two years between the two persons.” A conviction under this statute is punishable by imprisonment for 2–10 years, “with or without hard labor,” a fine up to \$5,000, or both. La. Rev. Stat. Ann. § 14:82.1(C).

2. La. Rev. Stat. Ann. § 14:86(A) (Enticing persons into prostitution) states,

Enticing persons into prostitution is committed when any person over the age of seventeen entices, places, persuades, encourages, or causes the entrance of any other person under the age of twenty-one into the practice of prostitution, either by force, threats, promises, or by any other device or scheme. . . .

A conviction under this statute is punishable by imprisonment “with or without hard labor,” for 2–10 years. La. Rev. Stat. Ann. § 14:86(B)(1).

3. La. Rev. Stat. Ann. § 14:81.3(A)(1) (Computer-aided solicitation of a minor) states,

Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication,⁵ with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct⁶ or a crime of violence as defined in R.S. 14:2(B) [Definitions],⁷ or with the intent to engage or participate in sexual conduct in the presence of the person who

⁴ “Sexual intercourse” is defined in La. Rev. Stat. Ann. § 14:82.1(B) as “anal, oral, or vaginal sexual intercourse.”

⁵ “Electronic textual communication” is defined in La. Rev. Stat. Ann. § 14:81.3(D)(1) as “a textual communication made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or on-line messaging service.”

⁶ “Sexual conduct” is defined in La. Rev. Stat. Ann. § 14:81.3(D)(2) as “actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, lewd exhibition of the genitals, or any lewd or lascivious act.”

⁷ La. Rev. Stat. Ann. § 14:2(B) defines a “crime of violence” as

an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as “crimes of violence”:

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(42) Trafficking of children for sexual purposes
(43) Human trafficking
. . . .

has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen.

Subsection (2) states in part that it is a crime for a person as described above to communicate “for the purpose of or with the intent to arrange for any third party to engage in any of the conduct proscribed by the provisions of Paragraph (1) of this Subsection,” and subsection (3) ensures that the criminal liability attaches in cases where “the contact or communication is initially made through the use of electronic textual communication and subsequent communication is made through the use of any other form of communication.” La. Rev. Stat. Ann. § 14:81.3(A)(2), (3).

All convictions under La. Rev. Stat. Ann. § 14:81.3(A), unless specifically mentioned below, are punishable by imprisonment at hard labor “without benefit of parole, probation, or suspension of sentence” and a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). If the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and, if the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). If the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

4. La. Rev. Stat. Ann. § 14:81.1(A)(2) (Pornography involving juveniles) makes it a crime “for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.” A conviction under La. Rev. Stat. Ann. § 14:81.1(A)(2) is punishable by imprisonment for 5–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence,” and a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.1(E)(3).
5. La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) provides, “Crime against nature by solicitation is the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation.” Pursuant to La. Rev. Stat. Ann. § 14:89.2(B)(3), “Whoever violates the provisions of this Section, when the person being solicited is under the age of seventeen years, shall be fined not more than two thousand dollars, or imprisoned, with or without hard labor, for not more than five years, or both. Lack of knowledge of the age of the person being solicited shall not be a defense.”

Other laws that may apply in cases of commercial sexual exploitation of a child despite not specifically referring to commercial exchanges include,

1. La. Rev. Stat. Ann. § 14:42(A)(4) (Aggravated rape) states that aggravated rape occurs “where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed . . . [w]hen the victim is under the age of thirteen years.” If a capital verdict is

sought by the district attorney, a conviction is punishable by “death⁸ or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury.” La. Rev. Stat. Ann. § 14:42(D)(2)(a). If a capital verdict is not sought, a conviction is punishable “by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:42(D)(2)(b).

2. Pursuant to La. Rev. Stat. Ann. § 14:43.1(A) (Sexual battery),

Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, when any of the following occur:

- (1) The offender acts without the consent of the victim.
- (2) The act is consensual but the other person, who is not the spouse of the offender, has not yet attained fifteen years of age and is at least three years younger than the offender.

...

If the victim is 13–14 years old, a conviction under this statute is punishable by imprisonment for up to 10 years, “with or without hard labor, without benefit of parole, probation, or suspension of sentence;” however, where the victim is under 13 and the offender is 17 or older, a conviction is punishable by imprisonment for 25–99 years at hard labor, and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:43.1(C)(1), (2).

3. La. Rev. Stat. Ann. § 14:43.3(A) (Oral sexual battery) states,

Oral sexual battery is the intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender, or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim, when any of the following occur:

- (1) The victim, who is not the spouse of the offender, is under the age of fifteen years and is at least three years younger than the offender.

...

If the victim is 13–14 years old, a conviction under this statute is punishable by imprisonment for up to 10 years, “with or without hard labor, without benefit of parole, probation, or suspension of sentence;” however, if the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 25–99 years “at hard labor,” and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:43.3(C)(1), (2).

4. La. Rev. Stat. Ann. § 14:92(A)(7) (Contributing to the delinquency of juveniles) prohibits “the intentional enticing, aiding, soliciting, or permitting, by anyone over the age of seventeen, of any child under the age of seventeen . . . to: . . . (7) [p]erform any sexually immoral act.” A conviction under this statute is punishable by imprisonment for up to 2 years, “with or without hard labor,” a fine up to \$1,000, or both. La. Rev. Stat. Ann. § 14:92(D).

⁸ In *Kennedy v. Louisiana*, 554 U.S. 407, 412 (2008), the Supreme Court held that imposing the death sentence for child rape when the rape does not cause, or is not intended to cause, the child’s death violates the Eighth Amendment’s prohibition on cruel or unusual punishments.

5. La. Rev. Stat. Ann. § 14:80(A) (Felony carnal knowledge of a juvenile) states,

Felony carnal knowledge of a juvenile is committed when:

- (1) A person who is seventeen years of age or older has sexual intercourse,⁹ with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater; or
- (2) A person commits a second or subsequent offense of misdemeanor carnal knowledge of a juvenile, or a person who has been convicted one or more times of violating one or more crimes for which the offender is required to register as a sex offender under R.S. 15:542 [Registration of sex offenders and child predators] commits a first offense of misdemeanor carnal knowledge of a juvenile.

A conviction under this statute is punishable by imprisonment for up to 10 years, “with or without hard labor,” a fine up to \$5,000, or both, and “the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.” La. Rev. Stat. Ann. § 14:80(D)(1).

6. La. Rev. Stat. Ann. § 14:80.1(A) (Misdemeanor carnal knowledge of a juvenile) states,

Misdemeanor carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender, and when the difference between the age of the victim and age of the offender is greater than two years, but less than four years.

A conviction under this statute is punishable by imprisonment for up to 6 months, a fine up to \$1,000, or both. La. Rev. Stat. Ann. § 14:80(D).

7. La. Rev. Stat. Ann. § 14:81(A) (Indecent behavior with juveniles) states,

Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

- (1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. . . ; or
- (2) The transmission, delivery or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. . . .

If the victim is 13–17, a conviction under this statute is punishable by imprisonment for up to 7 years, “with or without hard labor,” a fine up to \$5,000, or both, and “the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.” La. Rev. Stat. Ann. § 14:81(H)(1). If the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 2–25 years at hard labor, at

⁹ “Sexual intercourse” is defined in La. Rev. Stat. Ann. § 14:80(B) as “anal, oral, or vaginal sexual intercourse.”

least 2 years of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81(H)(2).

8. La. Rev. Stat. Ann. § 14:106(A) (Obscenity) states, in part,

The crime of obscenity is the intentional:

(1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place open to public view . . . with the intent of arousing sexual desire or which appeals to the prurient interest or is patently offensive.

(2)(a) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct¹⁰ when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.

.....

(5) Solicitation or enticement of an unmarried person under the age of seventeen years to commit any act prohibited by Paragraphs (1), (2), or (3) above.

.....

A first conviction is punishable by imprisonment for 6 months–3 years, “with or without hard labor,” a fine of \$1,000–\$2,500, or both. La. Rev. Stat. Ann. 14:106(G)(1). A second conviction is punishable by imprisonment for 6 months–3 years, “with or without hard labor,” a fine of \$2,500–\$5,000, or both. La. Rev. Stat. Ann. 14:106(G)(2). Third and subsequent convictions are punishable by imprisonment for 2–5 years, “with or without hard labor,” a fine of \$5,000–\$10,000, or both. La. Rev. Stat. Ann. 14:106(G)(3). A conviction under subsection 1 or 2 of this statute is punishable by imprisonment for 2–5 years, “with or without hard labor,” but “without benefit of parole, probation, or suspension of sentence,” and a fine up to \$10,000 if committed “with or in the presence of an unmarried person under the age of seventeen years.” La. Rev. Stat. Ann. § 14:106(G)(4).

¹⁰ Pursuant to La. Rev. Stat. Ann. § 14:106(A)(2)(b), “hard core sexual conduct” is defined as

the public portrayal, for its own sake, and for ensuing commercial gain of:

(i) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being; or

(ii) Masturbation, excretory functions or lewd exhibition, actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples; or

(iii) Sadoomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or in the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed; or

(iv) Actual, simulated, or animated touching, caressing, or fondling of, or other similar physical contact with a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or

(v) Actual, simulated, or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured, or marketed for such purpose.

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

Louisiana’s CSEC statutes do not refer to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes).

- 1.3.1 Recommendation: Amend CSEC statutes to refer to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) to ensure CSEC victims are identified as sex trafficking victims.

FRAMEWORK ISSUE 2: CRIMINAL PROVISIONS FOR DEMAND

Legal Components:

- 2.1 *The state human trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under CSEC laws.*
- 2.3 *Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*
- 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
- 2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*
- 2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*
- 2.7 *Base penalties for buying sex acts with a minor are sufficiently high for all minors under 18 and not reduced for older minors.*
- 2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*
- 2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*
- 2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*

Legal Analysis:

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

La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) applies to buyers by making it illegal for a person to “knowingly. . . purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”¹¹

In addition, La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking) states in part, “It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, solicit, obtain, or maintain the use of another person through fraud, force, or coercion¹² to provide services or labor. (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section. . . .”¹³ Enhanced penalties for commercial sexual activity¹⁴

¹¹ See *supra* section 1.1 for a full description of the relevant provisions of La. Rev. Stat. Ann. § 14:46.3.

¹² See *supra* note 2.

¹³ See *supra* section 1.1 for a full description of the relevant provisions of La. Rev. Stat. Ann. § 14:46.2.

¹⁴ See *supra* note 3.

and for trafficking involving minors under 18 suggests that this law applies to domestic minor sex trafficking. La. Rev. Stat. Ann. § 14:46.2(B)(2), (3). Federal Prosecutors, under the Trafficking Victims Protection Act (TVPA)¹⁵ have applied the crime of human trafficking with minors to buyers by charging that those buyers attempted to “obtain”¹⁶ a person under 18 to engage in commercial sex.¹⁷ It is unsettled whether courts will uphold this interpretation of the TVPA. It is arguable, therefore, that “obtain” in La. Rev. Stat. Ann. § 14:46.2(A) may be similarly applied and would, therefore, implicate buyers. Even if applied, however, the placement of the word “obtain” in La. Rev. Stat. Ann. § 14:46.2(A) requires the use of force, fraud, or coercion in committing the crime.

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

Louisiana CSEC laws clearly identify the crime of buying sex acts with a minor under 17, but do not refer these crimes to the human trafficking or sex trafficking of a minor statutes for prosecution. La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses) makes it a crime “[f]or any person over the age of seventeen to engage in sexual intercourse with any person under the age of seventeen who is practicing prostitution, and there is an age difference of greater than two years between the two persons.” A conviction under this statute is punishable by imprisonment for 2–10 years, “with or without hard labor,” a fine up to \$5,000, or both. La. Rev. Stat. Ann. § 14:82.1(C). Additionally, La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) includes the crime of buying oral or anal sex with a minor, making “the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation” a crime. When the individual solicited is under 17, the crime is punishable by a heightened penalty of imprisonment for up to 5 years, “with or without hard labor,” a fine up to \$2,000, or both. La. Rev. Stat. Ann. § 14:89.2(B)(3).

Several sexual offense laws could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child and do not refer to a human trafficking law.¹⁸

- 2.2.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses) and § 14:89.2(B)(3) (Crime against nature by solicitation) to refer to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) in order to prosecute buyers under the sex trafficking law.

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

Louisiana’s solicitation laws distinguish between the crime of buying sex with an adult and buying sex with a minor under 17. A buyer who purchases sex with a minor under 17 will be guilty of La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under seventeen; additional offenses), which is punishable by imprisonment for 2–10 years, “with or without hard labor,” a fine up to \$5,000, or both. La. Rev. Stat. Ann. § 14:82.1(C). La. Rev. Stat. Ann. § 14:89.2(B)(3) (Crime against nature by solicitation) provides a heightened penalty of

¹⁵ Trafficking Victims Protection Act of 2000, Pub. L. No. 106–386, Division A, § 103(8)(9), 114 Stat. 1464 (2000) (codified at scattered sections of 18 U.S.C. and 22 U.S.C.).

¹⁶ 18 U.S.C. § 1591(a).

¹⁷ See, e.g., Indictment at 1, United States v. Oflyng, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

¹⁸ See *supra* section 1.2 for a full description of the sexual offenses laws that may be used to prosecute buyers.

imprisonment for up to 5 years, “with or without hard labor,” a fine up to \$2000, or both when a minor under 17 is solicited for oral or anal sex. La. Rev. Stat. Ann. § 14:89.2(B)(3).

In contrast, La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes), which is age-neutral, states “[s]oliciting for prostitutes is the soliciting, inviting, inducing, directing or transporting a person to any place with the intention of promoting prostitution.” A violation is punishable by imprisonment for up to 6 months, a fine up to \$500, or both. La. Rev. Stat. Ann. § 14:83.

2.3.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under seventeen; additional offenses) to make it a crime to buy sex with all minors under 18, consistent with the age listed in La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes). Amend La. Rev. Stat. Ann. § 14:89.2(B)(3) (Crime against nature by solicitation) to extend the heightened penalty to soliciting any minors under 18.

2.3.2 Recommendation: Amend La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes) to refer any person charged with soliciting sex with a minor under 18 to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) for prosecution to ensure heightened punishment.

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

A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) generally is punishable by imprisonment for 15–50 years at hard labor, a fine up to \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a fine up to \$75,000, with no eligibility for parole, probation, or suspension of sentence for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b). A conviction under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) “when the services include commercial sexual activity¹⁹ or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment for up to 20 years at hard labor and a fine up to \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, a conviction involving a person under 18 is punishable by imprisonment for up to 5–25 years at hard labor, “without the benefit of parole, probation, or suspension of sentence” for at least five years, and a fine up to \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

If prosecuted under the solicitation laws, a conviction under La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under seventeen; additional offenses) is punishable by imprisonment for 2–10 years, “with or without hard labor,” a fine up to \$5,000, or both. La. Rev. Stat. Ann. § 14:82.1(C). A conviction under La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) when the person solicited is under 17 is punishable by imprisonment for up to 5 years, “with or without hard labor,” a fine not to exceed \$2,000, or both. La. Rev. Stat. Ann. § 14:89.2(B)(3). When the victim is 17, however, a buyer could be prosecuted under Louisiana’s age-neutral solicitation statute, La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes), and punished upon conviction by imprisonment for up to 6 months, a fine not to exceed \$500, or both. La. Rev. Stat. Ann. § 14:83. Similarly, a buyer prosecuted under La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) when the person solicited is 17 or older is punishable upon conviction of a first offense by imprisonment for up to 6 months, a fine up to \$500, or both. La. Rev. Stat. Ann. § 14:89.2(B)(1).

In contrast, if the victim is under the age of 14, a conviction under the TVPA²⁰ 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

¹⁹ See *supra* note 3.

²⁰ See *supra* note 15.

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 offense²¹ against a minor. To the extent buyers can be prosecuted under other federal CSEC laws,²² a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²³

2.4.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under seventeen; additional offenses) and § 14:89.2(B)(3) (Crime against nature by solicitation) to raise the penalties to the same penalties provided under La. Rev. Stat. Ann. § 14:46.3(A) (Trafficking of children for sexual purposes) in recognition that these crimes are the same as sexual trafficking of children.

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.*

It is a crime in Louisiana to use the Internet to solicit a minor to engage in sex acts. Pursuant to La. Rev. Stat. Ann. § 14:81.3(A) (Computer-aided solicitation of a minor),

(1) Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication,²⁴ with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct²⁵ or a crime of violence as defined in R.S. 14:2(B),²⁶ or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen.

(2) It shall also be a violation of the provisions of this Section when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to arrange for any third party to engage in any of the conduct proscribed by the provisions of Paragraph (1) of this Subsection.

²¹ Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

²² 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).

²³ 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).

²⁴ See *supra* note 5.

²⁵ See *supra* note 6.

²⁶ See *supra* note 7.

All convictions under La. Rev. Stat. Ann. § 14:81.3(A), unless specifically mentioned below, are punishable by imprisonment at hard labor that is “without benefits of parole, probation, or suspension of sentence” and are subject to a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). Where the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and where the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). Where the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

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

Several of Louisiana’s CSEC statutes specifically state that no age mistake defense is permitted for a buyer of commercial sex acts with a minor. La. Rev. Stat. Ann. § 14:46.3(C)(2) (Trafficking of children for sexual purposes) states, “Lack of knowledge of the victim’s age shall not be a defense.” La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses) states, “Lack of knowledge of the latter person’s age shall not be a defense.” Finally, La. Rev. Stat. Ann. § 14:89.2(B)(3) (Crime against nature by solicitation) provides, “Lack of knowledge of the age of the person being solicited shall not be a defense.”

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

La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) provides a substantial base penalty for sex trafficking of minors under 18 and provides an enhanced penalty for buyers of sex acts with minors under 14, paralleling the federal Trafficking Victims Protection Act.²⁷ A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) is generally punishable by imprisonment for 15–50 years at hard labor, a fine up to \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a fine up to \$75,000, with no parole eligibility for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b).

La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under seventeen; additional offenses) applies a single penalty for solicitation of all minors under 17, which is imprisonment for 2–10 years, “with or without hard labor,” a fine up to \$5,000, or both; however, this crime does not apply when a buyer purchases a commercial sex act with a 17 year old. La. Rev. Stat. Ann. § 14:82.1(A)(1). Instead, these buyers would be prosecuted under Louisiana’s age-neutral solicitation statute, La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes), under which a conviction is punishable by imprisonment for up to 6 months, a fine up to \$500, or both. La. Rev. Stat. Ann. § 14:83. Similarly, the operable statute regarding purchasing oral or anal sex acts with a minor, La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation), punishes convictions by imprisonment for up to 5 years, “with or without hard labor,” a fine not to exceed \$2,000, or both. La. Rev. Stat. Ann. § 14:89.2(B)(3). In contrast, if the minor is 17, a conviction is punishable by imprisonment for up to 6 months, a fine up to \$500, or both for a first offense and imprisonment for up to two years, with or without hard labor, a fine of \$200–\$2,000, or both for a subsequent offense. La. Rev. Stat. Ann. § 14:89.2(B)(1), (2).

²⁷ See *supra* note 15.

- 2.7.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under seventeen; additional offenses) and § 14:89.2(B)(3) (Crime against nature by solicitation) to make the heightened punishment apply to buyers of sex with any minor under 18.
- 2.7.2 Recommendation: Amend La. Rev. Stat. Ann. § 14:82.1 and § 14:89.2(B)(3) to provide penalties as high as those provided for violating La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) in recognition that these crimes are also trafficking crimes.

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.*

Various fines ranging from \$500 to \$75,000 are in place for buyers of commercial sex with minors. A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) is punishable by a possible fine up to \$50,000, or a fine up to \$75,000 if the victim was under 14. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). A conviction under La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under seventeen; additional offenses) carries a possible fine up to \$5,000, while a person convicted under La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes) for soliciting a 17 year old may face a fine up to \$500. La. Rev. Stat. Ann. §§ 14:82.1(C), 14:83. Additionally, a person convicted under La. Rev. Stat. Ann. § 14:89.2 (Crime against nature by solicitation), when the victim is under 17, may face a possible fine up to \$2,000, whereas if the victim is 17 or older, a first offense is punishable by a possible fine up to \$500, and a subsequent offense by a fine of \$200–\$2,000. La. Rev. Stat. Ann. §§ 14:89.2(B)(1), (2), (3). Lastly, a conviction under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) is punishable by a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.3(B)(1).

Asset forfeiture provisions may also apply to buyers. Convictions under La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) may be punishable by asset forfeiture under La. Rev. Stat. Ann. § 14:46.3(D)(3), which states,

(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1 [Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property].

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

Likewise, La. Rev. Stat. Ann. § 14:81.3(B)(4)(b) (Computer-aided solicitation of a minor) provides,

The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

Buyers convicted under La. Rev. Stat. Ann. § 14:81.1 (Pornography involving juveniles) or § 14:86 (Enticing persons into prostitution) also may have any “personal property used in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale.” La. Rev. Stat. Ann. §§ 14:86(B)(2),

14:81.1(E)(5)(c). La. Rev. Stat. Ann. § 15:539.1(A) (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property) states,

When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (Human trafficking), R.S. 14:46.3 (Trafficking of children for sexual purposes), R.S. 14:80 (Felony carnal knowledge of a juvenile), R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.2 (Molestation of a juvenile), R.S. 14:81.3 (Computer-aided solicitation of a minor), and R.S. 14:86 (Enticing persons into prostitution), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public.

Buyers also may be required to make restitution.²⁸ La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim) provides, “In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.”

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

Possession of child pornography is illegal under La. Rev. Stat. Ann. § 14:81.1(A)(1) (Pornography involving juveniles), which states that “[i]t shall be unlawful for a person to . . . possess . . . pornography involving juveniles.”²⁹ A conviction under this statute generally is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a fine up to \$10,000; however, if the victim is under 13 and the offender is at least 17, a conviction is punishable by “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment provided” (thus, 5–20 years), which also will “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(1), (E)(5)(a). Convicted violators also will have any “personal property used in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale or public auction by the district attorney.”³⁰ La. Rev. Stat. Ann. § 14:81.1(E)(5)(c).

Additionally, La. Rev. Stat. Ann. § 14:73.8(A) (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) states that “[u]nauthorized use of a wireless router system is the accessing or

²⁸ La. Rev. Stat. Ann. § 46:1844(M) (Basic rights for victim and witness) states,

(1) If the defendant is found guilty, the court or parole board shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the court or parole board may require the defendant to perform community service work in an amount and according to a schedule determined by the court.

(2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the parole board. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.

(3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.

²⁹ “Pornography involving juveniles” is defined in La. Rev. Stat. Ann. § 14:81.1(B)(5) as “any photograph, videotape, film, or other reproduction, whether electronic or otherwise, of any sexual performance involving a child under the age of seventeen.”

³⁰ La. Rev. Stat. Ann. § 14:81.1(E)(5)(d) states,

The personal property made subject to seizure and sale pursuant to Subparagraph (c) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

causing to be accessed of any computer, computer system, computer network, or any part thereof via any wireless router system for the purposes of uploading, downloading, or selling of pornography involving juveniles as defined in R.S. 14:81.1[Pornography involving juveniles].”³¹ If the victim is 13–17 years old, a violation is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a fine up to \$10,000. La. Rev. Stat. Ann. § 14:73.8(C). However, if the victim is under 13, a violation is punishable by imprisonment for 25–99 years at hard labor, to “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(D).

In contrast, a federal conviction for possession of child pornography³² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁴

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

Some buyers of sex with minors convicted under Louisiana’s human trafficking and CSEC laws are required to register as sex offenders under La. Rev. Stat. Ann. § 15:542 (Registration of sex offenders and child predators). La. Rev. Stat. Ann. § 15:542(A)(1) states,

A. The following persons shall be required to register and provide notification as a sex offender or child predator in accordance with the provisions of this Chapter:

(1) Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or any conspiracy to commit either of the following:

(a) A sex offense as defined in R.S. 15:541 [Definitions],³⁵ with the exception of those convicted of felony carnal knowledge of a juvenile as provided in Subsection F of this Section;

³¹ La. Rev. Stat. Ann. § 14:73.8(B) defines “wireless router system” as “a device in a wireless local area network that determines the next network point to which a unit of data is routed between an origin and a destination on the Internet.”

³² 18 U.S.C. §§ 2252(a)(2), (a)(4)(A) (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).

³³ 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).

³⁴ 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (b)(1), 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 (b)(1) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years).

³⁵ La. Rev. Stat. Ann. § 15:541(24)(a) (Definitions) defines “sex offense” as

deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration of or conspiracy to commit human trafficking when prosecuted under the provisions of R.S. 14:46.2(B)(2) or (3), R.S. 14:46.3 (trafficking of children for sexual purposes), . . . R.S. 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator and student), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), . . . R.S. 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), . . . R.S. 14:42 (aggravated rape) . . . committed on or after June 18, 1992

(b) A criminal offense against a victim who is a minor as defined in R.S. 15:541.³⁶

Therefore, buyers convicted under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes), § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses), and, when the victim is under 17, § 14:89.2(A) (Crime against nature by solicitation) will be required to register as sex offenders; however, those buyers convicted under La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes), even where the person solicited is 17, will not be required to register as sex offenders.

FRAMEWORK ISSUE 3: CRIMINAL PROVISIONS FOR TRAFFICKERS

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.*

La. Rev. Stat. Ann. § 14:46.3(A) (Trafficking of children for sexual purposes) makes it a crime for a person to “knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”³⁷ A conviction under this statute is punishable by imprisonment for 15–50 years at hard labor, a fine up to \$50,000, or both; however, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a fine up to \$75,000, with no eligibility for “probation, parole, or suspension of sentence” for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). In addition, a trafficker could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking).³⁸ A conviction “when the services include commercial sexual activity³⁹ or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment for up to 20 years at hard labor and a fine up to \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, a conviction when the victim is under 18 is punishable by imprisonment for 5–25 years at hard labor, “which shall be without the benefit of parole, probation, or suspension of sentence” for 5 years, and a fine up to \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

³⁶ La. Rev. Stat. Ann. § 15:541(12)(b) (Definitions) defines “criminal offense against a victim who is a minor” in part as a “conviction for the perpetration or attempted perpetration of or conspiracy to commit . . . (b) A violation of any of the following provisions when the victim is under eighteen years of age: R.S. 14:82.1 [Prostitution; persons under seventeen; additional offenses], 84(1), (3), (5), or (6) [Pandering], or 86 [Enticing persons into prostitution], or R.S. 23:251(A)(4) [Minors under sixteen; prohibited employments or occupations; penalty—In any illegal, indecent, or immoral exhibition or practice].

³⁷ See *supra* Section 1.1 for a full description of the applicable provisions of La. Rev. Stat. Ann. § 14:46.3.

³⁸ See *supra* Section 1.1 for a full description of the applicable provisions of La. Rev. Stat. Ann. § 14:46.2.

³⁹ See *supra* note 3.

Traffickers may also be convicted of prostitution-related offenses. La. Rev. Stat. Ann. § 14:86(A) (Enticing persons into prostitution) makes it a crime when someone over 17 “entices, places, persuades, encourages, or causes the entrance of any other person under the age of twenty-one into the practice of prostitution, either by force, threats, promises, or by any other device or scheme.” The crime is punishable by imprisonment for 2–10 years, “with or without hard labor.” La. Rev. Stat. Ann. §§ 14:86(B)(2), 15:303.

A parent-trafficker may be convicted under La. Rev. Stat. Ann. § 14:81.1(A)(2) (Pornography involving juveniles), which makes it unlawful “for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.” A conviction for violating La. Rev. Stat. Ann. § 14:81.1(A)(2) is punishable by imprisonment for 5–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence,” and a fine up to \$10,000; however, if the victim is under 13, the parent-trafficker will receive a sentence of “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment [otherwise] provided,” here, 10–40 years, “without benefit of probation, parole, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(3), (E)(5)(a).

Traffickers may also be prosecuted under La. Rev. Stat. Ann. § 14:230(B) (Money laundering; transactions involving proceeds of criminal activity) if they

- (1) Conduct, supervise, or facilitate a financial transaction involving proceeds known to be derived from criminal activity,⁴⁰ when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or the control of proceeds known to be derived from such violation or to avoid a transaction reporting requirement under state or federal law.
- (2) Give, sell, transfer, trade, invest, conceal, transport, maintain an interest in, or otherwise make available anything of value known to be for the purpose of committing or furthering the commission of any criminal activity.
- (3) Direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of criminal activity.
- (4) Receive or acquire proceeds derived from any violation of criminal activity, or knowingly or intentionally engage in any transaction that the person knows involves proceeds from any such violations.
- (5) Acquire or maintain an interest in, receive, conceal, possess, transfer, or transport the proceeds of criminal activity.
- (6) Invest, expend, or receive, or offer to invest, expend, or receive, the proceeds of criminal activity.

Because criminal activities include convictions under La. Rev. Stat. Ann. § 14:46.3(A)(1), (2), (4), or (5) (Trafficking of children for sexual purposes), § 14:83.2(A) (Promoting prostitution), and § 14:86(A) (Enticing persons into prostitution), persons convicted would be subject to the provisions of La. Rev. Stat. Ann. § 14:230. Punishments for convictions under La. Rev. Stat. Ann. § 14:230 vary based on the value of the funds derived, invested, spent, or received in the violation. If the value is less than \$3,000, a conviction is punishable by imprisonment for up to 6 months, a fine up to \$1,000, or both; if the value is \$3,000–\$19,999.99, a conviction is punishable by imprisonment for 2–10 years and a fine up to \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by imprisonment for 2–20 years at hard labor and a fine up to \$20,000; if the value is \$100,000 or more, a conviction is punishable by imprisonment for 5–99 years and a fine up to \$50,000. La. Rev. Stat. Ann. § 14:230(E).

⁴⁰ “Criminal activity” is defined in La. Rev. Stat. Ann. § 14:230(A)(1) as “any offense, including conspiracy and attempt to commit the offense, that is classified as a felony under the laws of this state or the United States or that is punishable by confinement for more than one year under the laws of another state.” Further, a “felony” is defined in La. Rev. Stat. Ann. § 14:2(4) (Definitions) as “any crime for which an offender may be sentenced to death or imprisonment at hard labor.”

The Louisiana Racketeering Act, codified at La. Rev. Stat. Ann. Title 15 (Criminal procedure), Chapter 11 (Drug racketeering and related organizations) provides greater financial penalties through criminal fines and civil remedies. La. Rev. Stat. Ann. § 15:1352(A) (Definitions) defines “racketeering activity” as “committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime which is punishable under the following provisions of Title 14 of the Louisiana Revised Statutes of 1950: . . . (17) R.S. 14:230 [Money laundering; transactions involving proceeds of criminal activity] . . .”

La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) states,

- A. It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise.
- B. It is unlawful for any person, through a pattern of racketeering activity, knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or immovable property.
- C. It is unlawful for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.
- D. It is unlawful for any person to conspire or attempt to violate any of the provisions of Subsections A, B, or C of this Section.

A conviction under La. Rev. Stat. Ann. § 15:1353 is punishable by imprisonment for up to 50 years at hard labor, a fine up to \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred,” or both. La. Rev. Stat. Ann. § 15:1354(A), (B).

Traffickers may also face actions for civil damages from their victims, pursuant to La. Rev. Stat. Ann. § 15:1356(A)(1) (Civil remedies), which states,

All property, immovable or movable, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of R.S. 15:1353 [Prohibited activities] is subject to civil forfeiture to the state. Any injured person shall have an in rem right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds. The state shall dispose of all forfeited property as soon as commercially feasible.

Under La. Rev. Stat. Ann. § 15:1356(I), “The application of one civil remedy under any provision of this Chapter shall not preclude the application of any other remedy, civil or criminal”

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁴¹ 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 offense⁴² against a minor.

⁴¹ See *supra* note 15.

⁴² See *supra* note 21.

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

La. Rev. Stat. Ann. § 14:81.1(A) (Pornography involving juveniles) states,

(1) It shall be unlawful for a person to produce,⁴³ distribute,⁴⁴ possess, or possess with the intent to distribute pornography involving juveniles.⁴⁵

(2) It shall also be a violation of the provision of this Section for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.

Distributing child pornography is punishable by imprisonment for 5–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence” and a fine up to \$10,000; however, where the victim is under 13 and the offender is at least 17, the trafficker can receive a sentence of “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment [otherwise] provided,” which, in this case, is 5–20 years. La. Rev. Stat. Ann. § 14:81.1(E)(2), (E)(5)(a).

The production of child pornography is punishable by imprisonment for 10–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence” and a fine up to \$15,000; however, if the victim is under 13 and the offender is at least 17, the trafficker can receive a sentence of imprisonment for 25–99 years at hard labor, at least 25 of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(4), (E)(5)(b).

Traffickers who sell or upload child pornography by using a computer also may be prosecuted under La. Rev. Stat. Ann. § 14:73.8 (Unauthorized use of a wireless router system; pornography involving juveniles; penalty).⁴⁶ If the victim is 13–17, a conviction under this statute is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a fine up to \$10,000; however, if the victim is under 13, a conviction is punishable by imprisonment for 25–99 years at hard labor, 25 years of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(C), (D).

In contrast, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense⁴⁷ against a minor. Additionally, a federal conviction for distribution of child pornography⁴⁸

⁴³ La. Rev. Stat. Ann. § 14:81.1(B)(6) defines “produce” as “to photograph, videotape, film, or otherwise reproduce pornography involving juveniles, or to solicit, promote, or coerce any child for the purpose of pornography involving juveniles.”

⁴⁴ La. Rev. Stat. Ann. § 14:81.1(B)(3) defines “distribute” as “to issue, sell, give, provide, lend, mail, deliver, transfer, transmute, distribute, circulate, or disseminate by any means.”

⁴⁵ La. Rev. Stat. Ann. § 14:81.1(B)(5) defines “pornography involving juveniles” as “any photograph, videotape, film, or other reproduction, whether electronic or otherwise, of any sexual performance involving a child under the age of seventeen.”

⁴⁶ See *supra* section 2.9 for a more complete description of relevant provisions of La. Rev. Stat. Ann. § 14:73.8.

⁴⁷ See *supra* note 21.

⁴⁸ 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3)(B), (4)(A) (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) (Obscene visual representations of the sexual abuse of children).

is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴⁹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁰

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.*

It is a crime in Louisiana for a person at least 17 years old to use the Internet to communicate with a minor under 17 who is at least two years younger for the purpose of persuading that person to engage in or arranging for a third party to engage in sex acts (not necessarily commercial in nature) under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor).⁵¹ All convictions under La. Rev. Stat. Ann. § 14:81.3, unless specifically mentioned below, are punishable by imprisonment at hard labor that is “without benefit of parole, probation, or suspension of sentence” and are subject to a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). If the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and, if the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). If the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

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

Several statutes impose significant financial penalties for trafficking a child for sexual exploitation, including fines, asset forfeiture, restitution and potential civil damages. A trafficker convicted under La. Rev. Stat. Ann. § 14:46.3(A)(1), (A)(2), (A)(4), or (A)(5) (Trafficking of children for sexual purposes), if the victim is 14–17, may be required to pay a fine up to \$50,000, and, if the victim is under 14, a trafficker is required to pay a fine up to \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (1)(b). A trafficker could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking). A conviction “when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” is punishable by a fine up to \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). When the victim is under 18, the fine is up to \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3). A trafficker who produces child pornography faces a fine up to \$15,000, while one who distributes child pornography is required to pay a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.1(E)(2), (E)(4). A person convicted under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) is subject to a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). A conviction under La. Rev. Stat. Ann. § 14:73.8 (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) is also punishable by a fine up to \$10,000. La. Rev. Stat. Ann. § 14:73.8(D).

⁴⁹ 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) or (a)(3) 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).

⁵⁰ 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (b)(1), 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 (b)(1) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years).

⁵¹ *See supra* sections 1.2 and 2.5 for more complete descriptions of relevant provisions of La. Rev. Stat. Ann. § 14:81.3.

Prostitution laws may also subject traffickers to fines. A conviction under La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes) is punishable by a possible fine up to \$500, while a conviction under La. Rev. Stat. Ann. § 14:83.2 (Promoting prostitution) is punishable by a possible fine up to \$5,000. La. Rev. Stat. Ann. §§ 14:83; 14:83.2(B). A conviction under La. Rev. Stat. Ann. § 14:104 (Keeping a disorderly place) is punishable by a possible fine up to \$500, while a conviction under La. Rev. Stat. Ann. § 14:282 (Operation of places of prostitution prohibited; penalty) is punishable by a possible fine of \$25–\$500. La. Rev. Stat. Ann. §§ 14:104, 14:383.

Convicted traffickers of certain crimes may face asset forfeiture. Specifically, the “personal property used in the commission of” La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) may be “seized and impounded” and, after conviction, sold at public sale or public auction. La. Rev. Stat. Ann. § 14:46.3(D)(3)(a). Traffickers convicted under La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution) or § 14:81.1 (Pornography involving juveniles) also may have any “personal property used in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale or public auction.” La. Rev. Stat. Ann. §§ 14:86(B)(2), 14:81.1(E)(5)(c). La. Rev. Stat. Ann. § 15:539.1(A) (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property) states,

When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (Human trafficking), R.S. 14:46.3 (Trafficking of children for sexual purposes), R.S. 14:80 (Felony carnal knowledge of a juvenile), R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.2 (Molestation of a juvenile), R.S. 14:81.3 (Computer-aided solicitation of a minor), and R.S. 14:86 (Enticing persons into prostitution), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public.

Fines for convictions under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by a possible fine up to \$1,000; if the value is \$3,000–\$19,999.99, a conviction is punishable by a possible fine up to \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by a possible fine up to \$20,000; if the value is \$100,000 or more, a conviction is punishable by a possible fine up to \$50,000. La. Rev. Stat. Ann. § 14:230(E). Lastly, those traffickers convicted under La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) may be required to pay a fine up to \$1,000,000 or up to “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred.” La. Rev. Stat. Ann. § 15:1354(A), (B).

Traffickers may be liable to their victims for civil damages. Specifically, civil remedies are made available to victims of La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) by La. Rev. Stat. Ann. § 15:1356(A)(1), (2) (Civil remedies), which states,

All property, immovable or movable, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of R.S. 15:1353 [Prohibited activities] is subject to civil forfeiture to the state. Any injured person shall have an in rem right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds. The state shall dispose of all forfeited property as soon as commercially feasible.

To the extent that a victim suffers “an actual pecuniary loss” or incurs costs “in connection with a criminal prosecution,” a trafficker also will be required to make restitution to the victim pursuant to La. Code Crim.

Proc. Art. 883.2(A) (Restitution to victim).⁵²

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

Traffickers convicted under certain statutes will be required to register under La. Rev. Stat. Ann. § 15:542(A) (Registration of sex offenders and child predators).⁵³ Specifically, those traffickers convicted under La. Rev. Stat. Ann. § 14:46.2(B)(3) (Human trafficking), § 14:46.3 (Trafficking of children for sexual purposes), § 14:81.1 (Pornography involving juveniles), § 14:81.3 (Computer-aided solicitation of a minor), or § 14:86(A) (Enticing persons into prostitution) will be required to register. La. Rev. Stat. Ann. §§ 15:541(12), (24), 15:542(A)(1). However, traffickers convicted under La. Rev. Stat. Ann. § 14:83.2 (Promoting prostitution), § 14:83 (Soliciting for prostitutes), or § 14:282 (Operation of places of prostitution prohibited; penalty) are not expressly required to register as sex offenders under La. Rev. Stat. Ann. § 15:542.

3.5.1 Recommendation: Amend La. Rev. Stat. Ann. § 15:542(A) or the definitions of “criminal offense against a victim who is a minor” and “sex offense” in La. Rev. Stat. Ann. § 15:541(12), (24) to expressly require a person convicted under La. Rev. Stat. Ann. §§ 14:83.2, 14:83, or 14:282, when the victim is a minor, to register as a sex offender.

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 La. Rev. Stat. Ann. § 14:46.2 (Human trafficking), § 14:46.3(A)(1), (2), (4), or (5) (Trafficking of children for sexual purposes) or any of Louisiana’s CSEC laws are not expressly provided as grounds for terminating parental rights under La. Child. Code Ann. art. 1015 (Grounds). Instead, the grounds provided in La. Child. Code Ann. art. 1015 include, in part,

(3) Misconduct of the parent toward this child or any other child of the parent or any other child in his household which constitutes extreme abuse,⁵⁴ cruel and inhuman treatment,⁵⁵ or grossly negligent behavior⁵⁶ below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

.....
(h) A felony that has resulted in serious bodily injury.⁵⁷

(i) Abuse⁵⁸ or neglect⁵⁹ which is chronic, life threatening, or results in gravely disabling physical or psychological injury or disfigurement.

⁵² See *supra* section 2.8 for the provisions of La. Code Crim. Proc. Art. 883.2(A) and La. Rev. Stat. Ann. § 46:1844 (Basic rights for victim and witness).

⁵³ See *supra* section 2.10 for the relevant provisions of La. Rev. Stat. Ann. § 15:542(A).

⁵⁴ “Extreme abuse” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

⁵⁵ “Cruel and inhuman treatment” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

⁵⁶ “Grossly negligent behavior” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

⁵⁷ “Serious bodily injury” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

⁵⁸ “Abuse” is defined in La. Child. Code Ann. art. 1003(1) (Definitions) as

any of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

(a) The infliction or attempted infliction, or, as a result of inadequate supervision, the allowance or toleration of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.

(b) The exploitation or overwork of a child by a parent or any other person.

(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child’s sexual involvement with any other person or of the child’s involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

(j) Abuse or neglect after the child is returned to the parent’s care and custody while under department supervision, when the child had previously been removed for his safety from the parent pursuant to a disposition judgment in a child in need of care proceeding.

....
(l) Sexual abuse, which shall include, but is not limited to acts which are prohibited by R.S. 14: 43.1 [Sexual battery], 43.2 [Second degree sexual battery], 80 [Felony carnal knowledge of a juvenile], 81 [Indecent behavior with juveniles], 81.1 [Pornography involving juveniles], 81.2 [Molestation of a juvenile], 89 [Crime against nature] and 89.1 [Aggravated crime against nature].
....

3.6.1. Recommendation: Amend La. Child. Code Ann. art. 1015 (Grounds) to expressly add the crimes of La. Rev. Stat. Ann. § 14:46.3 (Trafficking children for sexual purposes) and § 14:46.2 (Human trafficking) to the list of grounds for terminating 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.*

La. Rev. Stat. Ann. § 14:46.3(A)(2), (4) (Trafficking of children for sexual purposes) makes it unlawful to “knowingly benefit from” trafficking or “to knowingly facilitate . . . by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.”⁶⁰ A conviction under this statute is punishable by imprisonment for 15–50 years at hard labor, a fine up to \$50,000, or both; however, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor, 25 years of which must be “served without benefit of probation, parole, or suspension of sentence,” and a fine up to \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b).

In addition, a facilitator could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking), which makes it unlawful for a person to knowingly “benefit from activity prohibited by the provisions of this Section” or “facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to

⁵⁹ “Neglect” is defined in La. Child. Code Ann. art. 1003(10) (Definitions) in part as “the refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child’s physical, mental, or emotional health and safety is substantially threatened or impaired.”

⁶⁰ See *supra* section 1.1 for the substantive provisions of La. Rev. Stat. Ann. § 14:46.3.

or received by the person.” La. Rev. Stat. Ann. § 14:46.2(A)(2), (3). A conviction “when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment for up to 20 years at hard labor and a fine up to \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, a conviction when the victim is under 18 is punishable by imprisonment for 5–25 years at hard labor, “which shall be without the benefit of parole, probation, or suspension of sentence” for 5 years, and a fine up to \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Facilitators also may face penalties for convictions under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity).⁶¹ Punishments under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by imprisonment for up to 6 months, a fine up to \$1,000, or both; if the value is \$3,000–\$19,999.99, a conviction is punishable by imprisonment for 2–10 years and a fine up to \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by imprisonment for 2–20 years and a fine up to \$20,000; if the value is \$100,000 or more, a conviction is punishable by imprisonment for 5–99 years and a fine up to \$50,000. La. Rev. Stat. Ann. § 14:230(E).

Additionally, the Louisiana Racketeering Act, codified at La. Rev. Stat. Ann. Title 15 (Criminal procedure), Chapter 11 (Drug racketeering and related organizations) allows for greater penalties through criminal fines and civil remedies for facilitators who have “knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity” and used or invested those proceeds for certain purposes. La. Rev. Stat. Ann. § 15:1353(A). Pursuant to La. Rev. Stat. Ann. § 15:1354(A), (B) (Penalties), any person convicted of violating any of the provisions in La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) will receive imprisonment for up to 50 years at hard labor, a fine up to \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred,” or both.

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 face fines ranging from \$25–\$1,000,000. A facilitator convicted under La. Rev. Stat. Ann. § 14:46.3(A)(2), (4) (Trafficking of children for sexual purposes), if the victim is 14–17, may be required to pay a fine up to \$50,000, and if the victim is under 14, a facilitator will be required to pay a fine up to \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). If force, fraud, or coercion is involved in commission of the offense, a facilitator convicted under La. Rev. Stat. Ann. § 14:46.2 faces up to a fine up to \$15,000 when the services include “commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” and a fine up to \$25,000 when the victim is under 18. La. Rev. Stat. Ann. § 14:46.2(B)(2), (3).

In contrast, possible fines related to facilitating prostitution include up to \$1,000 for a conviction under La. Rev. Stat. Ann. § 14:83.1(A) (Inciting prostitution), up to \$500 for a conviction under La. Rev. Stat. Ann. § 14:85 (Letting premises for prostitution), and \$25–\$500 for a conviction under La. Rev. Stat. Ann. § 14:282 (Operation of places of prostitution prohibited; penalty). La. Rev. Stat. Ann. §§ 14:83.1(B), 14:85, 14:282. Fines applicable to facilitators convicted under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by a possible fine up to \$1,000; if the value is \$3,000–\$19,999.99, a conviction is punishable by a fine of up to \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by a fine up to \$20,000; if the value is \$100,000 or more, a conviction is punishable by

⁶¹ See *supra* section 3.1 for the substantive provisions of La. Rev. Stat. Ann. § 14:230.

a fine up to \$50,000. La. Rev. Stat. Ann. § 14:230(E). Lastly, a facilitator convicted under La. Rev. Stat. Ann. § 15:1353 may be required to pay a fine up to \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred.” La. Rev. Stat. Ann. § 15:1354(A), (B).

Facilitators also may be required to forfeit property used in committing certain crimes. Specifically, “personal property used in the commission of” La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) may be “seized and impounded,” and, after conviction, sold to the public. La. Rev. Stat. Ann. § 14:46.3(D)(3)(a). A facilitator convicted under La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution) or § 14:81.1 (Pornography involving juveniles) also may have any “personal property use in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale.” La. Rev. Stat. Ann. §§ 14:86(B)(2), 14:81.1(E)(5)(c). La. Rev. Stat. Ann. § 15:539.1(A) (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property) states,

When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (Human trafficking), R.S. 14:46.3 (Trafficking of children for sexual purposes), R.S. 14:80 (Felony carnal knowledge of a juvenile), R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.2 (Molestation of a juvenile), R.S. 14:81.3 (Computer-aided solicitation of a minor), and R.S. 14:86 (Enticing persons into prostitution), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public.

Lastly, to the extent that a victim suffers “an actual pecuniary loss” or incurs costs “in connection with a criminal prosecution,” a facilitator will be required to make restitution to the victim pursuant to La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim).⁶²

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

There is no separate statute in the Louisiana Code prohibiting child sex tourism; however, La. Rev. Stat. Ann. § 14:46.3(A)(5) (Trafficking of children for sexual purposes) makes it unlawful “[f]or any person to knowingly advertise any of the activities prohibited by this Section.”

- 4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor or prostitution of a minor if the travel is sold in or occurs in Louisiana.

4.4 *Promoting and selling child pornography is illegal.*

Promoting or selling child pornography is illegal in Louisiana. La. Rev. Stat. Ann. § 14:81.1(A)(1) (Pornography involving juveniles) states, “It shall be unlawful for a person to produce, distribute,⁶³ possess, or possess with the intent to distribute pornography involving juveniles.” A conviction under this statute for distributing or possessing with intent to distribute is punishable by imprisonment for 5–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a fine up to \$10,000. La. Rev. Stat. Ann. § 14:81.1(E)(2). However, if the victim is under 13, and the facilitator is at least 17, a conviction is punishable “by imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term

⁶² See *supra* section 2.8.

⁶³ La. Rev. Stat. Ann. § 14:81.1(B)(3) defines “distribute” as “to issue, sell, give, provide, lend, mail, deliver, transfer, transmute, distribute, circulate, or disseminate by any means.”

of imprisonment” otherwise provided, which, in this case, is 5–20 years. La. Rev. Stat. Ann. § 14:81.1(E)(5)(a), (E)(2).

Additionally, La. Rev. Stat. Ann. § 14:73.8(A) (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) makes the “[u]nauthorized use of a wireless router system . . . for the purposes of . . . selling . . . pornography involving juveniles” unlawful. If the victim is 13–17 years old, a conviction under this statute is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a fine up to \$10,000. La. Rev. Stat. Ann. § 14:73.8(C). However, if the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 25–99 years at hard labor, and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(D).

Legal Components:

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

Legal Analysis:

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

Pursuant to La. Child. Code Ann. art. 116 (9.1) (Definitions), a "juvenile crime victim" is defined as "a person, under the age of seventeen, against whom a felony offense⁶⁴ against the person has been committed." La. Child. Code Ann. art. 811.3(1) (Definitions),⁶⁵ defines a "victim" as "a person against whom an offense that is a felony-grade delinquent act⁶⁶ has been committed."

For the purposes of Title 46, Chapter 21-B (Rights of crime victims and witnesses), La. Rev. Stat. Ann. § 46:1842 (Definitions) defines the following:

⁶⁴ Pursuant to La. Code Crim. Proc. Ann. art. 933(3) (Offenses), a "felony" is defined as "an offense that may be punished by death or by imprisonment at hard labor."

⁶⁵ Chapter 3-A (Rights of the Victim).

⁶⁶ La. Child. Code Ann. art. 804(5) (Definitions) defines "felony-grade delinquent act" as "an offense that if committed by an adult, may be punished by death or by imprisonment at hard labor."

(1.1) “Crime victim who is a minor” means a person under the age of eighteen against whom any of the following offenses have been committed:

- (a) Any homicide or any felony offense defined or enumerated in R.S. 14:2(B) [Definitions].⁶⁷
- (b) Any sexual offense.

....
(9) “Victim” means a person against whom any of the following offenses have been committed:

- (a) Any homicide, or any felony offense defined or enumerated in R.S. 14:2(B) [Definitions].
 - (b) Any sexual offense.
-

The inclusion of the offenses enumerated in La. Rev. Stat. Ann. § 14:2(B) in the definitions of “crime victim who is a minor” and “victim” clarifies that trafficked children are defined as victims for purposes of the rights afforded under La. Rev. Stat. Ann. Title 46, Chapter 21-B (Rights of crime victims and witnesses).

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.*

La. Rev. Stat. Ann. § 14:46.3(C)(1) (Trafficking of children for sexual purposes) expressly states that the “[c]onsent of the minor shall not be a defense to a prosecution pursuant to the provisions of this Section.”

Furthermore La. Rev. Stat. Ann. § 14:42(A) (Aggravated rape), § 14:80.1(A) (Misdemeanor carnal knowledge of a juvenile), and § 14:80(A)(1) (Felony carnal knowledge of a juvenile) make the minor’s consent to sexual acts immaterial to the commission of the crime. However, La. Rev. Stat. Ann. § 14:81.1 (Pornography involving juveniles), § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses), § 14:86(A) (Enticing persons into prostitution), § 14:81.3(A)(1) (Computer-aided solicitation of a minor), and § 14:89.2(A) (Crime against nature by solicitation) are silent on the materiality of the minor’s consent to the commercial sex act. While it is unlikely that consent would be a defense to prosecutions under these statutes, specifically prohibiting any consent defense would make it clear that consent is not a defense.

- 5.2.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:81.1(Pornography involving juveniles), § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses), § 14:86(A) (Enticing persons into prostitution), § 14:81.3(A)(1) (Computer-aided solicitation of a minor), and § 14:89.2(A) (Crime against nature by solicitation) to prohibit a defense to prosecution based on the minor’s consent to the commercial sex act.

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

La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement) is age-neutral and does not exclude minors from prosecution for prostitution offenses. A first conviction under this statute is punishable by imprisonment for up to 6 months, a fine up to \$500, or both. La. Rev. Stat. Ann. § 14:82(C)(1). A second conviction is punishable by imprisonment for up to 2 years, “with or without hard labor,” a fine of \$250–\$2000, or both, and any subsequent convictions are punishable by imprisonment for 2–4 years and a fine of \$500–\$4,000. La. Rev. Stat. Ann. § 14:82 (C)(2), (3). However, La. Rev. Stat. Ann. § 14:46.3(E) (Trafficking of children for sexual purposes) states that “[n]o victim of trafficking as defined by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked.”

⁶⁷ La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) is one of the offenses enumerated. La. Rev. Stat. Ann. § 14:2(B)(42). *See supra* note 7.

5.3.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement) to make it inapplicable to minors under 18 and to refer cases of minors under 18 used in prostitution to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) for prosecution of the perpetrators and protection of the minor from prosecution.

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.*

Under Louisiana Children’s Code, Title 6 (Child in need of care), children can be taken into custody with a court order pursuant to La. Child. Code Ann. art. 619 (Instant orders of custody). La. Child. Code Ann. art. 619(A)(1) states, “A peace officer, district attorney, or employee of the local child protection unit of the department may file a verified complaint alleging facts showing that there are reasonable grounds to believe that the child is in need of care and that emergency removal is necessary to secure the child’s protection.” La. Child. Code Ann. art. 606(A) (Grounds; child in need of care) explains that a child will be deemed a “child in need of care” when

(1) The child is the victim of abuse⁶⁸ perpetrated, aided, or tolerated by the parent or caretaker, by a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker, or by a person living in the same residence with the parent or caretaker as a spouse whether married or not, and his welfare is seriously endangered if he is left within the custody or control of that parent or caretaker.

(4) As a result of a criminal prosecution, the parent has been convicted of a crime against the child who is the subject of this proceeding, or against another child of the parent, and the parent is now unable to retain custody or control or the child’s welfare is otherwise endangered if left within the parent’s custody or control.

(5) The conduct of the parent, either as principal or accessory, constitutes a crime against the child or against any other child of that parent.

If, “[u]pon presentation of the verified complaint,” the court determines that removal is absolutely necessary, the court must immediately direct the child to the “custody of a suitable relative or other individual capable of protecting the health and safety of the child or taken into the custody of the state.” La. Child. Code Ann. art. 619(C).

Children also can be taken into custody without a court order under La. Child. Code Ann. art. 621(A) (Taking child into custody without a court order), which states, “A peace officer or probation officer of the court may take a child into custody without a court order if he has reasonable grounds to believe that the child’s surroundings are such as to endanger his welfare and immediate removal appears to be necessary for his

⁶⁸ La. Child. Code Ann. art. 603(1) (Definitions) defines “abuse” as

any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

(a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.

(b) The exploitation or overwork of a child by a parent or any other person.

(c) The involvement of the child in any sexual act with a parent or any other person, the aiding or toleration by the parent or the caretaker of the child’s sexual involvement with any other person or of the child’s involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

protection.” A child who is taken into custody will, in order of preference, be placed “[i]n the home of a suitable relative” of majority age or otherwise in the home of a suitable individual of majority age, or in foster care “until further orders of the court.” La Child. Code Ann. art. 622(B). The court must hold a hearing within 3 days to determine whether there is “a ground for continued custody pursuant to Article 626 [Grounds for continued custody; reasonable efforts].” La. Child. Code Ann. art. 624(A), (D). After the continued custody hearing the court may return the child to his or her parents or “place the child in the custody of a suitable relative, other suitable individual, or the department.” La. Child. Code Ann. art. 627(A).

In some cases involving a child in custody, an informal process may be used that avoids a formal adjudication of the child as in need of care. La. Child Code Ann. art. 628, art. 630. La. Child. Code Ann. art. 630(B) (Effect of an agreement) explains,

An informal adjustment agreement suspends the proceedings on the acts alleged in the child in need of care petition. If any of the terms of the agreement are violated, the case may proceed to an adjudication hearing on the allegations. If the parent satisfies the terms of the agreement, he shall be discharged from further supervision, and the pending complaint or petition shall be dismissed with prejudice.

When no informal adjustment agreement is entered, and a child is in continued custody pursuant to La. Child. Code Ann. art. 627 (Continued custody order; special provisions; appointments), an adjudication hearing must begin within 45 days of filing the petition. La. Child. Code Ann. art. 659(A). If the child is not in continued custody, an adjudication hearing must begin within 105 days. La. Child. Code Ann. art. 659(A).

La. Child. Code Ann. art. 681 (Dispositional alternatives) provides that if the court determines a child to be in need of care, the court may

- (1) Place the child in the custody of a parent or such other suitable person on such terms and conditions as deemed in the best interest of the child including but not limited to the issuance of a protective order pursuant to Article 618.
- (2) Place the child in the custody of a private or public institution or agency.
- (3) Commit a child found to be mentally ill to a public or private institution for the mentally ill.
- (4) Grant guardianship of the child to a nonparent.
- (5) Make such other disposition or combination of the above dispositions as the court deems to be in the best interest of the child.

Additionally, La. Child. Code Ann. art. 681(B) provides that “[a] child in need of care shall not be committed to the Department of Public Safety and Corrections, nor shall such department accept a child in need of care.”

Despite these protective provisions, in some cases, commercially sexually exploited children may be taken into custody and detained for committing “a delinquent act.” La. Child. Code Ann. art. 804(3) (Definitions) defines a “delinquent act” as “an act committed by a child of ten years of age or older which if committed by an adult is designated an offense under the statutes or ordinances of this state, or of another state if the offense occurred there, or under federal law, except traffic violations.” Under this definition, a commercially sexually exploited child could be considered a delinquent for participating in a commercial sex act in violation of Louisiana’s age-neutral prostitution statute, La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement).

La. Child. Code Ann. art. 813(A)(1) (Taking child into custody with a court order; filing of verified complaint; execution) permits the court to issue an order authorizing that a child be taken into custody if there is “a written statement of facts . . . alleging facts showing that there is probable cause to believe . . . that: (1) The child has committed a delinquent act.” A child also may be taken into custody without a court order if “a peace officer or

probation officer . . . has probable cause to believe that the child has committed a delinquent act.” La. Child. Code Ann. art. 814(A). Once the child is taken into custody, the officer must “[c]ounsel and release the child to the care of his parents upon their written promise to bring the child to court” or take the child to a juvenile detention center if taken into custody for a “felony-grade delinquent act”⁶⁹ or a “misdemeanor-grade delinquent act”⁷⁰ based upon an offense against the person of another.” If the child has been taken into custody for “any other misdemeanor-grade delinquent act, the officer may take the child to either a shelter care facility or a juvenile detention center.” La. Child. Code Ann. arts. 814(B), 815(B), (C). La. Child. Code Ann. art. 815(D) reiterates,

Notwithstanding any other provision of this Code or other provision of law to the contrary, no judge shall order that a youth taken into custody for a felony-grade delinquent act or for a misdemeanor-grade delinquent act based upon an offense against the person of another be placed in a shelter care facility.

A hearing must be held within 3 days of the child’s detention. La. Child. Code Ann. art. 819. After the hearing, “the court may order a child . . . continued in custody in a licensed public or private facility for juveniles . . . or in a private home subject to the supervision of the court or in a juvenile detention center.” La. Child. Code Ann. art. 822(A). La. Child. Code Ann. art. 822(B) (Place of continued custody prior to adjudication) prohibits the court from placing “a child alleged to be delinquent in the custody of either the department of Children and Family Services or the department of Public Safety and Corrections prior to adjudication,” and La. Child. Code Ann. art. 822(C) further provides that “[n]o child subject to the jurisdiction of the juvenile court shall be held in an adult jail or lockup.”

Similar to the informal adjustment proceedings provided under Title 6 (Child in need of care), an informal adjustment agreement is available under La. Child. Code Ann. art. 839 (Availability of an informal adjustment agreement). La. Child. Code Ann. art. 841(B) (Effect of agreement) explains that

[a]n informal adjustment agreement suspends the proceedings on the delinquent acts charged in the complaint or petition. If any of the terms of the agreement are violated, the case may proceed to an adjudication hearing on the charges. If the child satisfies the terms of the agreement, he shall be discharged from further supervision, and the pending complaint or petition shall be dismissed with prejudice.

Pursuant to La. Child. Code Ann. art. 886 (Continued custody pending disposition; bail; places of detention), when a hearing is held to determine if the child is delinquent,

(A) At the conclusion of the hearing if the child has been adjudicated delinquent, the court shall consider whether the child should be released or held in custody pending a disposition hearing.

. . . .

(D) If the child is held in custody, the court may place him in a juvenile detention center, in a public or private facility for juveniles, in a private home subject to the supervision of the court, or in any other suitable facility for juveniles authorized by the court.

⁶⁹ La. Child. Code Ann. art. 804(5) (Definitions) defines a “felony-grade delinquent act” as “an offense that if committed by an adult, may be punished by death or by imprisonment at hard labor.” A second or subsequent conviction under La. Rev. Stat. Ann. § 14:82 would be considered a felony-grade delinquent act.

⁷⁰ La. Child. Code Ann. art. 804(8) (Definitions) defines a “misdemeanor-grade delinquent act” as “any offense which if committed by an adult is other than a felony and includes the violation of an ordinance providing a penal sanction.” A first conviction under La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement) would be considered a “misdemeanor-grade delinquent act.”

In entering a dispositional order for a child adjudicated delinquent, La. Child. Code Ann. art. 901 (Disposition guidelines; generally) states in part,

A. In considering dispositional options, the court shall not to remove a child from the custody of his parents unless his welfare or the safety and protection of the public cannot, in the opinion of the court, be adequately safeguarded without such removal.

B. The court should impose the least restrictive disposition authorized by Articles 897 through 900 of this Title⁷¹ consistent with the circumstances of the case, the needs of the child, and the best interest of society.

C. Commitment of the child to the custody of the Department of Public Safety and Corrections may be appropriate if any of the following exists:

- (1) There is an undue risk that during the period of a suspended commitment or probation the child will commit another crime.
- (2) The child is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment.
- (3) A lesser disposition will deprecate the seriousness of the child's delinquent act.
- (4) The delinquent act involved the illegal carrying, use, or possession of a firearm.

....

Special provisions may apply to some domestic minor sex trafficking victims under Louisiana's Runaway and Homeless Youth Law,⁷² which gives some runaway minors the option to seek shelter in an approved runaway and homeless youth facility. La. Rev. Stat. Ann. § 46:1354(A) (Powers and duties of approved program or facility; alternative living arrangements) authorizes approved runaway programs or facilities to

- (1) Provide assistance to any runaway⁷³ or homeless youth.⁷⁴
- (2) Attempt to determine the cause for the youth's runaway or homeless status.
- (3) Explain to the runaway or homeless youth the rights, options of services, or other assistance available to the youth.
- (4) Work towards reuniting such runaway or homeless youth with his parent, guardian, or legal custodian as soon as practicable.
- (5) Assist in arranging services for runaway or homeless youth, and where appropriate, their families, including but not limited to food, shelter, clothing, medical care, and individual and family counseling.
- (6) Consent, through the director or his designee, for the delivery of medical, assessment, or social services to any runaway youth in the program or facility.

La. Rev. Stat. Ann. § 46:1353 further provides, in part,

(D) A runaway youth over the age of eleven admitted to an approved runaway and homeless youth residential program or facility licensed by the Department of Children and Family Services shall be provided seventy-two hours of safe harbor unless otherwise designated by order of a court exercising

⁷¹ This includes La. Child Code Ann. art. 897 (Disposition after adjudication of a felony-grade delinquent act), art. 897.1 (Disposition after adjudication of certain felony-grade delinquent acts), art. 898 (Duration of a disposition based on a felony-grade adjudication), art. 899 (Disposition after adjudication of a misdemeanor-grade delinquent act), and art. 900 (Duration of a disposition based on a misdemeanor-grade adjudication).

⁷² La. Rev. Stat. 46:1351 et. seq.

⁷³ "Runaway youth" is defined in La. Rev. Stat. Ann. § 46:1352(5) as "a person under the age of eighteen years who is absent from his legal residence without the consent of his parent, guardian, or legal custodian."

⁷⁴ "Homeless youth" is defined in La. Rev. Stat. Ann. § 46:1352(4) as "a person under the age of twenty-one who is without a place of shelter where supervision and care are available."

juvenile jurisdiction regarding custody of the runaway youth, or unless the child is in the custody of a state agency which may elect to remove the child earlier without a court order.

.....
(F) In instances where the parent, guardian, or legal custodian cannot be located within seventy-two hours following a runaway youth's admission into the facility or program, the staff shall continue to make reasonable efforts to contact the parent, guardian, or legal custodian. The facility or program is authorized to provide care for the youth, for a period not to exceed twenty-one days, until the parent, guardian, or legal custodian is contacted and gives oral or written consent

(G) Whenever a report has been filed by the facility or program in accordance with the provisions in R.S. 14:403 [Abuse of children; reports; waiver of privilege], the facility or program shall be legally authorized to provide care for the runaway youth pending a determination by the Department of Children and Family Services or a court exercising juvenile jurisdiction regarding custody of the runaway youth.

- 5.4.1 Recommendation: Amend the definition of “child in need of care” in La. Child. Code Ann. art. 606(A) to clarify that sexually exploited children come within dependency actions.
- 5.4.2 Recommendation: Amend La. Child. Code Ann. art. 804(3) and (5) to expressly exclude from the definitions of “delinquent act” and “felony-grade delinquent act” any violation of La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement) by a minor and to refer to subsection (E) of La. Rev. Stat. Ann. § 14.46.3 (Trafficking of children for sexual purposes) in such cases, to avoid the criminalization of victims of domestic minor sex trafficking.

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

The definitions of the terms “abuse” and “neglect” are identical in La. Child. Code Ann. art. 502(1), (5)⁷⁵ (Definitions) and art. 603(1), (16) (Definitions).⁷⁶ The definitions of “abuse” include some forms of commercial sexual exploitation of a child. La. Child. Code Ann. art. 502(1)⁷⁷ states,

“Abuse” means any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child⁷⁸:

- (a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.
- (b) The exploitation or overwork of a child by a parent or any other person.
- (c) The involvement of the child in any sexual act with a parent or any other person, the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person, the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

La. Child. Code Ann. art. 502(5)⁷⁹ states,

⁷⁵ Title 5 (Services to families).

⁷⁶ Title 6 (Child in Need of Care).

⁷⁷ An identical definition of “abuse” is found in La. Child. Code Ann. art. 603(1).

⁷⁸ La. Child. Code Ann. art. 502(2) (Definitions) defines a “child” as “a person under the age of eighteen years who has not been judicially emancipated by marriage as provided by law.” La. Child. Code Ann. art. 603(5) defines child very similarly.

⁷⁹ Identical definition of “neglect” is found in La. Child. Code Ann. art. 603(16).

“Neglect” means the unreasonable refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child’s physical, mental, or emotional health and safety is substantially threatened or impaired. . . .

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

As used in Title 6 (Child in need of care), La. Child. Code Ann. art. 603(3) (Definitions) defines “caretaker” as “any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, an operator or employee of a registered family child day care home, or other person providing a residence for the child.”

Additionally, as used in Title 7 (Families in need of services), a “caretaker” is “any person providing a residence for the child or any person legally obligated to provide or secure adequate care for the child, including a parent, tutor, guardian, or legal custodian.” La. Child. Code Ann. art. 728(1).

The definition of caregiver under La. Child Code. Ann. art. 728(1) applies to persons who provide a residence for a child or those legally obligated to care for the child. Thus, La. Child Code. Ann. art. 728(1) may be sufficiently broad to cover a trafficker who has custody or control of a child. The definition of caregiver in La. Child. Code Ann. art. 603(3) could be read in the same way, although it is not as clear.

- 5.6.1 Recommendation: Amend the definition of caregiver in La. Child. Code Ann. art. 603(3) and art. 728(1) to also include persons in control of a minor, which would allow child protective services to act on allegations of criminal conduct perpetrated by a trafficker.

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

Domestic minor sex trafficking victims may be eligible to receive compensation under Louisiana’s Crime Victims Reparations Act. La. Rev. Stat. Ann. § 46:1804 (Eligibility to apply for reparations) states,

A person who believes he is a victim of a crime enumerated in R.S. 46:1805 [Crimes to which chapter applies],⁸⁰ or his legal representative, or in the case of death, a dependent or the legal representative of a dependent, or the rightful claimant as defined in R.S. 46:1802(4) [Definitions], shall be eligible to make application to the board for reparations and shall be eligible for an award of reparations in accordance with the provisions of this Chapter.

As used in La. Rev. Stat. Ann. § 46:1804, a “victim” includes “[a]ny person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by this Chapter.” La. Rev. Stat. Ann. § 46:1802(10)(a). However, certain requirements under La. Rev. Stat. Ann. § 46:1806 (Application; requirements; confidentiality) may hinder the ability of commercially sexually exploited children to obtain compensation. Under La. Rev. Stat. Ann. § 46:1806(A), an application for compensation

⁸⁰ La. Rev. Stat. Ann. § 46:1805(A) (Crimes to which Chapter applies) allows the board to award reparations for pecuniary loss for “personal injury, death, or catastrophic property loss resulting from any act or omission to act that is defined as a misdemeanor under any local ordinance or as a crime under state or federal law and involves the use of force or the threat of the use of force.”

shall be valid only if the act resulting in the personal injury, death, or catastrophic property loss was reported to the appropriate law enforcement officers within seventy-two hours after the date of the personal injury . . . or within such longer period as the board determines is justified by the circumstances.

Also, La. Rev. Stat. Ann. § 46:1809(B)(3), (4) (Criteria for making awards; prohibitions; authority to deny or reduce awards) states,

- (3) No award of reparations shall be made if the board finds that:
 - (a) The crime was not reported within the time specified by R.S. 46:1806(A) [Application; requirements; confidentiality].
 - (b) The claimant failed or refused to cooperate substantially with the reasonable requests of appropriate law enforcement officials.
 -
 - (d) The claimant was the offender or an accessory, or that an award to the claimant would unjustly benefit any of them.
 - (e) The claim was not filed timely, as provided by R.S. 46:1806(A).
 -
- (4) The board may deny or reduce an award:
 - (a) If it finds that the behavior of the victim at the time of the crime giving rise to the claim was such that the victim bears some measure of responsibility for the crime that caused the physical injury, death, or catastrophic property loss or for the physical injury, death, or catastrophic property loss.
 -

5.7.1 Recommendation: Amend La. Rev. Stat. Ann. § 46:1809 (Criteria for making awards; prohibitions; authority to deny or reduce awards) to create an exception for victims of human trafficking, sex trafficking of children, and commercial sexual exploitation of children.

5.8 *Victim-friendly procedures and protections are provided in the trial process.*

Child victim witnesses are provided with certain protections through the trial process. La. Rev. Stat. Ann. § 14:46.3(F) (Trafficking of children for sexual purposes) specifically provides that “the multidisciplinary team approach” applies to child victims of trafficking.

La. Child. Code Ann. art. 507 (Purpose) explains that the purpose of the multidisciplinary team approach

is to protect children whose physical or mental health and welfare is substantially at risk of harm by sexual abuse, other physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing a formal, comprehensive, integrated, multidisciplinary response to the investigation and disposition of cases of child abuse; by expediting and improving the validation or invalidation of such allegations for the benefit of the child, his family and any accused perpetrator; by encouraging the use of collaborative decision making and case management thereby reducing to a minimum the number of times a child victim is questioned and examined, thus preventing further trauma to the child; by coordinating a therapeutic services program thereby providing safety and treatment for a child victim and his family; by developing communication and case coordination among community professionals and agencies who are involved in child protection; by collecting data needed to continually improve cooperative interagency investigations; and, by maintaining the confidentiality

of agency records, to ensure the protection of the privacy of the child, his family and any accused perpetrator.

La. Child. Code Ann. art. 510(A) (Contents of protocols; formal requirements) mandates certain protocols for the “multidisciplinary investigation of allegations of child abuse,” including,

(4) Procedures for ensuring that interviews of the child victim are conducted in a neutral, legally sound manner and by a qualified forensic interviewer, except when the circumstances of the particular case justify the assignment of another interviewer.

(5) Procedures for reducing the risk of harm to child victims, including ensuring that the child is in a safe surrounding, and when necessary the removal of the alleged perpetrator.

(6) Procedures for reducing the number of interviews of the child victim and the use, if available, of a child advocacy center.

(7) Procedures for developing a service and treatment plan for the child victim and his family.

(8) Procedures for respecting the confidentiality of agency records and information, and a policy identifying the conditions for the sharing of information.

....

(10) Any other procedures to avoid duplication of fact-finding efforts and interviews of the child.

Additionally, under La. Rev. Stat. Ann. § 15:283 (Protected person; testimony taken outside courtroom), victims of La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) and Louisiana’s CSEC laws who are under 17 years of age, may give testimony via closed circuit television. Specifically, La. Rev. Stat. Ann. § 15:283 states in part,

A. On its own motion or on the motion of the attorney for any party, a court may order that the testimony of a protected person⁸¹ who may have been a witness to or victim of a crime be taken in a room other than the courtroom and be simultaneously televised by closed circuit television to the court and jury, when the court makes a specific finding of necessity based upon both of the following:

(1) Expert testimony that the protected person would be likely to suffer serious emotional distress if forced to give testimony in open court.

(2) Expert testimony that, without such simultaneous televised testimony, the protected person cannot reasonably communicate his testimony to the court or jury.

B. The court shall ensure that the protected person cannot see or hear the accused unless such viewing or hearing is requested for purposes of identification. However, the court shall ensure that the accused is afforded the ability to consult with his attorney during the testimony of the protected person.

C. The only persons who may be present in the room with the protected person are the person or persons operating the audio-video equipment, the presiding judge, the attorneys for the state, the attorneys for the defendant, and any person, other than a relative of the protected person, whose presence is determined by the court to be necessary to the welfare and well-being of the protected person during his testimony. . . .

D. Only the attorneys, or the presiding judge as authorized by law, may question the protected person.

....

La. Rev. Stat. Ann. § 15:469.1 (Receipt of testimony from victims of certain crimes who are fifteen years of age or younger; closed session of court or in chambers; procedure) provides,

⁸¹ Pursuant to La. Rev. Stat. Ann. § 15:283(E)(1), “protected person” is defined as “a person who is the victim of a crime or a witness in a criminal prosecution who is . . . [u]nder the age of seventeen years.”

In cases of simple rape, attempted simple rape, aggravated rape, attempted aggravated rape, forcible rape, attempted forcible rape, or carnal knowledge of a juvenile in which the victim is a child of fifteen years of age or younger, the court, upon its own motion or that of the defendant or state, may order that the testimony of such victim be heard either in closed session of court or in the judge's chambers, in the presence of the judge or jury, the defendant, counsel for the defendant, the family of the defendant, the parents or parent of the victim, the attorney for the state, a reasonable but limited number of members of the public which the court may allow in its discretion under these circumstances, and any other party which the court determines has a valid interest in the proceedings.

Additional protections apply to domestic minor sex trafficking victims for cases involving sexual assault. Specifically, La. Code Evid. Ann. art. 412(A) (Victim's past sexual behavior in sexual assault cases) states that "[w]hen an accused is charged with a crime involving sexually assaultive behavior, reputation or opinion evidence of the past sexual behavior of the victim is not admissible." Exceptions under La. Code Evid. Ann. art. 412(B) include evidence "upon the issue of whether or not the accused was the source of semen or injury" and "upon the issue of whether or not the victim consented to the sexually assaultive behavior."

La. Rev. Stat. Ann. § 46:1845(A) (Protection of privacy of a victim when evidence pertains to child pornography, video voyeurism, or obscenity) affords special protection for children used in child pornography, video voyeurism, or obscenity "by limiting access to child pornography evidence, video voyeurism evidence, or involuntary obscenity evidence obtained in the investigation of the offense. The victim may request the district attorney to file the motion. The court may order the hearing on its own motion."

For child victims who are involved in dependency cases, La. Child. Code Ann. art. 424.1(A) (CASA; appointment) authorizes the court in a child in need of care proceeding to appoint a special advocate.

5.9 *Expungement or sealing of juvenile arrest or criminal records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*

Pursuant to La. Child. Code Ann. art. 917 (Expungement; generally), "A person seventeen years of age or older may move for expungement of records of juvenile criminal conduct pursuant to this Chapter [Expungement]." La. Child. Code Ann. art. 918 (Grounds) sets out the grounds for expungement, stating,

- A. Records concerning conduct or conditions that did not result in adjudication may be expunged.
- B. Records concerning conduct or conditions that resulted in a misdemeanor adjudication may be expunged only if two or more years have elapsed since the person satisfied the most recent judgment against him.
- C. Records concerning conduct or conditions that resulted in a felony adjudication may be expunged only if:
 - (1) The adjudication was not for murder, manslaughter, any sexual crime, kidnapping, or armed robbery.
 - (2) Five or more years have elapsed since the person satisfied the most recent judgment against him.
 - (3) The person has no criminal court felony convictions and no criminal court convictions for misdemeanors involving a weapon.
 - (4) The person has no outstanding indictment or bill of information charging him.

According to La. Child. Code Ann. art. 922 (Expungement order; effect), “Except for the limited purposes stated in Articles 920 [Order of expungement; court records]⁸² and 921 [Order of expungement; agency records],⁸³ upon an order of expungement, the conduct and conditions expunged are considered nonexistent and are to be treated as such upon inquiry.”

- 5.9.1 Recommendation: Amend La. Child. Code Ann. art. 918 (Grounds) to make the expungement of criminal records resulting from arrests for offenses perpetrated as a result of, or in the course of, the commercial sexual exploitation of a minor automatic.

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

Louisiana has not enacted any statute that expressly allows victims of domestic minor sex trafficking to pursue a civil remedy; however, victims can pursue civil remedies against persons convicted under the Louisiana Racketeering Act.⁸⁴ Specifically, civil remedies are available pursuant to La. Rev. Stat. Ann. § 15:1356 (Civil remedies), which states in part,

(A) (1) All property, immovable or movable, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of R.S. 15:1353 [Prohibited activities] is subject to civil forfeiture to the state. Any injured person shall have an in rem right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds. . . .

E. Any person who is injured by reason of any violation of the provisions of R.S. 15:1353 [Prohibited activities] shall have a cause of action against any person engaged in racketeering activity who violates a provision of R.S. 15:1353. Such injured person shall be entitled to recover three times the actual damages sustained or ten thousand dollars, whichever is greater. Such person shall also recover attorney fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

La. Rev. Stat. Ann. § 15:1356(I) provides that this civil remedy will not preclude the application of other remedies.

Victims also have the right to seek restitution under La. Rev. Stat. Ann. § 46:1844(M)(1)–(3) (Basic rights for victim and witness), which states,

⁸² La. Child. Code Ann. art. 920 states,

A. An order for the expungement of juvenile court records must be in writing and, except as hereinafter provided, must require that the clerk of court destroy all records relating to the conduct or conditions referred to in the motion for expungement, including but not limited to pleadings, exhibits, reports, minute entries, correspondence, and all other documents.

B. References, documents, recordings, or other materials that cannot be destroyed may be maintained. Under no circumstances may any undestroyed information be released.

C. The court may maintain a confidential record, such as a minute entry, of the fact of an adjudication. This information may be released only upon written motion of a court exercising criminal jurisdiction over the person whose record is sought and then only for the purposes authorized by the Code of Criminal Procedure.

⁸³ La. Child. Code Ann. art. 921(D) states, “A copy of the judgment ordering destruction may be maintained by the custodian of reports and records of the agency or office. However, the custodian must not disclose the fact that such judgment is maintained or that the destroyed reports or records previously existed to anyone except upon written order of the court.”

⁸⁴ See *supra* section 3.1 for the provisions of the Louisiana Racketeering Act.

- (1) If the defendant is found guilty, the court or parole board shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the court or parole board may require the defendant to perform community service work in an amount and according to a schedule determined by the court.
- (2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the parole board. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.
- (3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.

Additionally, La. Code Crim. Proc. Ann. art. 883.2 (Restitution to victim) provides,

- A. In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.
- B. Additionally, if the defendant agrees as a term of a plea agreement, the court shall order the defendant to provide restitution to other victims of the defendant's criminal conduct, although those persons are not the victim of the criminal charge to which the defendant pleads. Such restitution to other persons may be ordered pursuant to Article 895 [Conditions of probation] or 895.1 [Probation; restitution; judgment for restitution; fees] or any other provision of law permitting or requiring restitution to victims.
- C. The court shall order that all restitution payments be made by the defendant to the victim through the court's designated intermediary, and in no case shall the court order the defendant to deliver or send a restitution payment directly to a victim, unless the victim consents.

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

La. Civ. Code Ann. art. 3499 (Personal actions) states, "Unless otherwise provided by legislation, a personal action is subject to a liberative prescription⁸⁵ of ten years."

For various sexual offenses, La. Code Crim. Proc. Ann. art. 571.1 (Time limitation for certain sex offenses) states,

Except as provided by Article 572 of this Chapter, the time within which to institute prosecution of the following sex offenses: sexual battery (R.S. 14:43.1), second degree sexual battery (R.S. 14:43.2), oral sexual battery (R.S. 14:43.3), felony carnal knowledge of a juvenile (R.S. 14:80), indecent behavior with juveniles (R.S. 14:81), molestation of a juvenile . . . (R.S. 14:81.2), crime against nature (R.S. 14:89), aggravated crime against nature (R.S. 14:89.1), incest (R.S. 14:78), or aggravated incest (R.S. 14:78.1) which involves a victim under seventeen years of age, regardless of whether the crime involves force, serious physical injury, death, or is punishable by imprisonment at hard labor shall be thirty years. This thirty-year period begins to run when the victim attains the age of eighteen.

⁸⁵ Pursuant to La. Civ. Code Ann. art. 3447, a "[l]iberative prescription is a mode of barring of actions as a result of inaction for a period of time."

For noncapital offenses, La. Code Crim. Proc. Ann. art. 572 (Limitation of prosecution of noncapital offenses) sets out the time frames for commencing criminal prosecutions. La. Code Crim. Proc. Ann. art. 572(A) states,

Except as provided in Articles 571 and 571.1, no person shall be prosecuted, tried, or punished for an offense not punishable by death or life imprisonment, unless the prosecution is instituted within the following periods of time after the offense has been committed:

- (1) Six years, for a felony necessarily punishable by imprisonment at hard labor.
- (2) Four years, for a felony not necessarily punishable by imprisonment at hard labor.
- (3) Two years, for a misdemeanor punishable by a fine, or imprisonment, or both.
- (4) Six months, for a misdemeanor punishable only by a fine or forfeiture.

Because convictions under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking), § 14:46.3(A) (Trafficking of children for sexual purposes), § 14:81.1 (Pornography involving juveniles), § 14:89.2(A) (Crime against nature by solicitation), § 14:82.1 (Prostitution; persons under seventeen; additional offenses), and § 14:86(A) (Enticing persons into prostitution) are felonies punishable by imprisonment but are not included in La. Code Crim. P. Ann. art. 571.1, they are subject to either a 6-year or 4-year statute of limitations, depending on whether a conviction is necessarily punishable by imprisonment at hard labor. No general tolling applies to offenses against minors; however, La. Code Crim. Proc. Ann. art. 573 (Running of time limitations; exception) specifies that the time limitations found in La. Code Crim. Proc. Ann. art. 572 will not start to run “until the relationship or status involved has ceased to exist when: The offense charged is aggravated battery (R.S. 14:34) and the victim is under seventeen years of age.”

5.11.1 Recommendation: Eliminate or substantially lengthen statutes of limitations for prosecutions for violations of La. Rev. Stat. Ann. § 14:46.2 (Human Trafficking), § 14:46.3 (Trafficking of children for sexual purposes), § 14:81.1 (Pornography involving juveniles), § 14:89.2(A) (Crime against nature by solicitation), § 14:82.1 (Prostitution; persons under seventeen; additional offenses), and § 14:86(A) (Enticing persons into prostitution) in order to ensure sufficient time for these crimes to be discovered and the victims to recover sufficiently to pursue justice.

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 and resulting evidence.*
 - 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
 - 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.*
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Legal Analysis:

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

Louisiana law does not specifically mandate training on human trafficking and domestic minor sex trafficking for law enforcement agencies. However, La. Rev. Stat. Ann. § 40:2405(A)(1) (Peace officer training requirements; reimbursement by peace officer) requires law enforcement to “successfully complete a certified training program approved by the council and successfully pass a council-approved comprehensive examination within one calendar year from the date of initial employment.”

- 6.1.1 Recommendation: Amend La. Rev. Stat. Ann. § 40:2405 (Peace officer training requirements; reimbursement by peace officer) to specifically require domestic minor sex trafficking training for law enforcement officers.

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

Louisiana allows single party consent to audiotaping. La. Rev. Stat. Ann. § 15:1303(C)(4) (Interception and disclosure of wire, electronic, or oral communications) states,

It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the state or for the purpose of committing any other injurious act.

- 6.3 *Domestic minor sex trafficking investigations may use wiretapping and resulting evidence.*

La. Rev. Stat. Ann. § 15:1303(A)(1) (Interception and disclosure of wire, electronic, or oral communications) makes it illegal to “[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire or oral communication.” Although La. Rev. Stat. Ann. § 15:1308(A) (Authorization for interception of wire or oral communications) allows a judge to issue an order authorizing wiretapping for the investigation of specified crimes, including in part, aggravated kidnapping and money

laundering, La. Rev. Stat. Ann. § 15:1308(A) does not allow wiretapping in investigating violations of La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) or any of Louisiana’s CSEC laws.

6.3.1. Recommendation: Amend La. Rev. Stat. Ann. § 15:1308(A) (Authorization for interception of wire or oral communications) to allow wiretaps, and make resulting evidence admissible in investigations of domestic minor sex trafficking under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) and § 14:46.3 (Trafficking of children for sexual purposes).

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.*

No statute expressly permits the use of a decoy by law enforcement.

6.4.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:46.2 (Human trafficking), § 14:46.3 (Trafficking of children for sexual purposes), § 14:82.1(A)(1) (Prostitution; persons under seventeen; additional offenses), § 14:89.2(B)(3) (Crime against nature by solicitation), and § 14:86(A) (Enticing persons into prostitution) to expressly prohibit a defense to prosecution based on the intended victim being a law enforcement officer or agent of law enforcement.

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

The use of the Internet to investigate buyers and traffickers appears to be permissible under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor). The language in the statute specifically carves out an exception allowing law enforcement to use the Internet to investigate buyers and traffickers by disallowing a defense based on the fact that the “victim” was actually a law enforcement officer using the Internet as an investigative tool. La. Rev. Stat. Ann. § 14:81.3(C).

La. Rev. Stat. Ann. § 14:81.3(C) expressly states, “It shall not constitute a defense to a prosecution brought pursuant to this Section that the person reasonably believed to be under the age of seventeen is actually a law enforcement officer or peace officer acting in his official capacity.” Additionally, because La. Rev. Stat. Ann. § 14:81.3 applies when a person “knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen . . . or a person reasonably believed to have not yet attained the age of seventeen . . . for the purpose of or with the intent to persuade, induce, entice or coerce the person to engage or participate in sexual conduct,” it appears to contemplate and permit the use of the Internet in investigations. La. Rev. Stat. Ann. § 14:81.3(A)(1).

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

La. Rev. Stat. Ann. § 46:1431(A), (B) (Missing and Exploited Children Information Clearinghouse; establishment; definitions) creates “a Missing and Exploited Children Information Clearinghouse within the Department of Public Safety and Corrections, office of state police” to serve “as a central repository of information regarding missing and/or exploited children.” La. Rev. Stat. Ann. § 46:1431(B) expressly requires that information regarding missing or exploited children “be collected and disseminated to assist in the location of missing children and the reporting of exploited children to the proper agency.”

La. Rev. Stat. Ann. § 46:1432(A) (Duties of the clearinghouse) requires the clearinghouse to

- (1) Establish a system of intrastate communication of information relating to children determined, by the parent, guardian, or legal custodian of the child, or by a law enforcement agency, to be missing and/or exploited.
- (2) Provide a centralized file for the exchange of information on missing children within the state.
- (3) Interface with the National Crime Information Center for the exchange of information on children suspected of interstate travel.

Furthermore, the clearinghouse also must “collect, process, maintain, and disseminate information on missing and/or exploited children and shall strive to maintain or disseminate only accurate and complete information.” La. Rev. Stat. Ann. § 46:1432(C).

La. Rev. Stat. Ann. § 40:2521 (Law enforcement agency receiving report of missing child; duty) requires the law enforcement agency that receives an initial report of a missing child to

immediately report the missing child to national law enforcement agencies and the state law enforcement agencies of neighboring states. This notification shall include entry of the child’s name into the National Crime Information Center registry. These reports shall be made for each reported missing child without regard to whether the child is believed to be missing due to stranger abduction, parental abduction, or any other cause.

La. Rev. Stat. Ann. § 14:403.3(A) (Reports of missing children; procedures; false reports or communications; penalties) similarly requires,

- (1) Any state or local law enforcement agency receiving a report of a missing child and having reasonable grounds to believe such report is accurate shall within forty-eight hours after the date of receipt of the report notify each of the following of the fact and contents of such report:
 - (a) The Department of Health and Human Resources.
 - (b) The Department of Public Safety and Corrections, if it did not originally receive the report.
 - (c) The office of the sheriff for the parish in which such report was received, if it did not originally receive the report.
 - (d) The office of the sheriff for all parishes adjacent to the parish in which such report was received.
 - (e) The National Crime Information Computer System.
- (2) The law enforcement agency may also notify any other appropriate local, state, or federal agency of the fact and contents of such report.

Under the Missing Children Identification Act, La. Rev. Stat. Ann. Title 40 (Public health and safety), Chapter 24 (Missing children identification act), schools must maintain identification cards “to assist with the finding and identification of missing children and only with parental permission.” La. Rev. Stat. Ann. §§ 40:2512, 40:2515(3). In the event a child is suspected to be missing, the principal “may release the child identification card of any child to a law enforcement agency or other public agency or entity” with the written permission of the parents, or without the parents’ permission “for good cause shown,” after a hearing. La. Rev. Stat. Ann. § 40:2518(D).

La. Rev. Stat. Ann. § 46:1433 (Notification of location of missing and/or exploited child) requires a “parent, guardian, or legal custodial responsible for notifying the clearinghouse or a law enforcement agency of a missing and/or exploited child” to “immediately notify such agency or the clearinghouse of any child whose location has been determined.”

- 6.6.1 Recommendation: Add a requirement to report rescued children in each of the databases to ensure law enforcement information is accurate and current and repeat missing children can be identified and tracked.

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