

# PROTECTED INNOCENCE INITIATIVE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS MINNESOTA

### 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 Analysis<sup>1</sup>:*

- 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.*

Minnesota addresses sex trafficking of a minor, without the need to show force, fraud, or coercion, through Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking). Subsection (a) states,

Whoever, while acting other than as a prostitute<sup>2</sup> or patron,<sup>3</sup> intentionally does any of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$50,000, or both:

<sup>1</sup> Unless otherwise specified, all references to statutes were taken from Minnesota Statutes Annotated (LEXIS current through 2010 2d Spec. Sess.), and all federal statutes were taken from United States Code (LEXIS current through PL 112-54, approved 11/12/11). The statutory hierarchy used in Minnesota Statutes Annotated uses numbered subdivisions followed by numbers in parentheses for further subsections. For clarity, this report will place the numbered provision pincite in parentheses in citations to distinguish it from the statute number.

<sup>2</sup> “Prostitute” is defined as “an individual who engages in prostitution by being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.” Minn. Stat. Ann. § 609.321(8). The text of Minn. Stat. Ann. § 609.324(2) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Sess. 2011 Minn. Laws 1, available at

- (1) solicits or induces an individual under the age of 18 years to practice prostitution;<sup>4</sup>
- (2) promotes the prostitution of an individual under the age of 18 years;
- (3) receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual under the age of 18 years; or
- (4) engages in the sex trafficking of an individual under the age of 18 years.

Minn. Stat. Ann. § 609.321(7) defines “promotes the prostitution of an individual” as an action by a person who knowingly does the following:

- (1) solicits or procures patrons for a prostitute;
- (2) provides, leases or otherwise permits premises or facilities owned or controlled by the person to aid the prostitution of an individual;
- (3) owns, manages, supervises, controls, keeps, or operates, either alone or with others, a place of prostitution to aid the prostitution of an individual;
- (4) owns, manages, supervises, controls, operates, institutes, aids, or facilitates, either alone or with others, a business of prostitution to aid the prostitution of an individual;
- (5) admits a patron to a place of prostitution to aid the prostitution of an individual; or
- (6) transports an individual from one point within this state to another point either within or without this state, or brings an individual into this state to aid the prostitution of the individual.

“Sex trafficking” is defined as “(1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or (2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).” Minn. Stat. Ann. § 609.321(7a).<sup>5</sup>

A conviction under Minn. Stat. Ann. § 609.322(1)(a) is punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Minn. Stat. Ann. § 609.322(1)(a). However, a defendant may receive imprisonment up to 25 years or a fine not to exceed \$60,000 if at least one of the following aggravating factors listed in Minn. Stat. Ann. § 609.322(1)(b) is present:

- (1) the offender has committed a prior qualified human trafficking-related offense;
- (2) the offense involved a sex trafficking victim who suffered bodily harm during the commission of the offense;
- (3) the time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or
- (4) the offense involved more than one sex trafficking victim.

Also, Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) states,

Unless the person’s conduct constitutes a violation of section 609.282 [Labor trafficking], a person who knowingly destroys, conceals, removes, confiscates, or possesses, any actual or purported passport or

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[https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective August 1, 2011).

<sup>3</sup> “Patron” is defined as “an individual who engages in prostitution by hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact.” Minn. Stat. Ann. § 609.321(4).

<sup>4</sup> “Prostitution” is defined as “hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact, or being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.” Minn. Stat. Ann. § 609.321(9).

<sup>5</sup> Pursuant to Minn. Stat. Ann. § 609.322(1b), “a minor who is dependent on an individual acting as a prostitute and who may have benefited from or been supported by the individual’s earnings derived from prostitution,” and “a parent over the age of 55 who is dependent on an individual acting as a prostitute” who has been similarly supported, may not be convicted under Minn. Stat. Ann. § 609.322(1)(a).

other immigration document, or any other actual or purported government identification document, of another person:

- (1) in the course of a violation of section . . . 609.322 [Solicitation, inducement and promotion of prostitution; sex trafficking];
  - (2) with intent to violate section . . . 609.322; or
  - (3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, a person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a violation of section . . . 609.322;
- is guilty of a crime . . . .

If the victim is under the age of 18, a conviction for violating Minn. Stat. Ann. § 609.283(1) may be punished by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 609.283(2)(1).

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

The following laws treat CSEC as distinct crimes.

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

Additionally, Minn. Stat. Ann. § 609.324(1a) states,

Any person, other than one related by blood, adoption, or marriage to the minor, who permits a minor to reside, temporarily or permanently, in the person's dwelling without the consent of the minor's parents or guardian, knowing or having reason to know that the minor is engaging in prostitution may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; except that, this subdivision does not apply to residential placements made, sanctioned, or supervised by a public or private social service agency.

2. Minn. Stat. Ann. § 617.246(2) (Use of minors in sexual performance prohibited) states in part, "It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage

minors in posing or modeling alone or with others in any sexual performance<sup>6</sup> or pornographic work<sup>7</sup> if the person knows or has reason to know that the conduct intended is a sexual performance or a pornographic work . . . .” A conviction under Minn. Stat. Ann. § 617.246(2) is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000 for a first offense or a fine not to exceed \$40,000 for a second offense, or both imprisonment and a fine.

Several other laws, while not expressly commercial, may also apply to cases of commercial sexual exploitation of a child. These include the following statutes:

1. Minn. Stat. Ann. § 609.342(1) (Criminal sexual conduct in the first degree) states in part,

A person who engages in sexual penetration<sup>8</sup> with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c),<sup>9</sup> is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

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<sup>6</sup> Under Minn. Stat. Ann. § 617.246(1)(d) “sexual performance,” includes, “any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that uses a minor to depict actual or simulated sexual conduct as defined by clause (e).” Minn. Stat. Ann. § 617.246(1)(e), defines “sexual conduct” as

[A]ny of the following:

- (1) an act of sexual intercourse, normal or perverted, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;
- (2) sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;
- (3) masturbation;
- (4) lewd exhibitions of the genitals; or
- (5) physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

<sup>7</sup> Minn. Stat. Ann. § 617.246(1)(f) defines a “pornographic work” as the following:

- (1) an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor; or
- (2) any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means that:
  - (i) uses a minor to depict actual or simulated sexual conduct;
  - (ii) has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct; or
  - (iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

<sup>8</sup> Minn. Stat. Ann. § 609.341(12) defines “Sexual penetration” as

[A]ny of the following acts committed without the complainant’s consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

- (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or
- (2) any intrusion however slight into the genital or anal openings:
  - (i) of the complainant’s body by any part of the actor’s body or any object used by the actor for this purpose;
  - (ii) of the complainant’s body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or
  - (iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

<sup>9</sup> Minn. Stat. Ann. § 609.341(11)(c) defines “sexual contact with a person under 13” as “the intentional touching of the complainant’s bare genitals or anal opening by the actor’s bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant’s bare genitals or anal opening of the actor’s or another’s bare genitals or anal opening with sexual or aggressive intent.”

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

....

A conviction under Minn. Stat. Ann. § 609.342(1) is punishable by imprisonment up to 30 years, a fine not to exceed \$40,000, or both. Offenders are also subject to "conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release]." Minn. Stat. Ann. § 609.342(2)(c). Additionally, "Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section." Minn. Stat. Ann. § 609.342(2)(b).

2. Minn. Stat. Ann. § 609.343(1)(a) (Criminal sexual conduct in the second degree) states,

A person who engages in sexual contact<sup>10</sup> with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced.

A conviction under Minn. Stat. Ann. § 609.343(1)(a) is punishable by imprisonment up to 25 years, a fine not to exceed \$35,000, or both. Offenders are also "subject to conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release]." Minn. Stat. Ann. § 609.343(2)(a), (c).

3. Minn. Stat. Ann. § 609.344(1)(b) (Criminal sexual conduct in the third degree) states,

A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

....

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense.

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<sup>10</sup> Minn. Stat. Ann. § 609.341(11)(a) states:

(a) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (o), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant's intimate parts, or
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or
- (iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a position of authority, or
- (iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts, or
- (v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.

A conviction under Minn. Stat. Ann. § 609.344(1) may be punished by imprisonment up to 15 years, a fine not to exceed \$30,000, or both, except as provided under Minn. Stat. Ann. § 609.344(1)(b) for defendants who are 24–48 months older than the victim. Minn. Stat. Ann. § 609.344(2). Offenders are also “subject to conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release].” Minn. Stat. Ann. § 609.344(2).

4. Minn. Stat. Ann. § 609.345(1)(b) (Criminal sexual conduct in the fourth degree) states,

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

. . .

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant’s age shall not be a defense.

A conviction under Minn. Stat. Ann. § 609.345(1) is punishable by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Offenders are also “subject to conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release].” Minn. Stat. Ann. § 609.345(2).

5. Minn. Stat. Ann. § 609.352(2) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children) makes it illegal if a person age 18 or older “solicits<sup>11</sup> a child or someone the person reasonably believes is a child to engage in sexual conduct<sup>12</sup> with intent to engage in sexual conduct . . . .” Additionally, Minn. Stat. Ann. § 609.352(2a) states,

A person 18 years of age or older who uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:

- (1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;
- (2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or
- (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

For purposes of Minn. Stat. Ann. § 609.352, a “child” includes only minors “15 years of age or younger.” Minn. Stat. Ann. § 609.352(1)(a). Convictions for violating both Minn. Stat. § 609.352(2) and (2a) are punishable as felonies by imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Minn. Stat. Ann. § 609.352(4).

<sup>11</sup> Minn. Stat. Ann. § 609.352(1)(c) defines “solicit” as “commanding, entreating, or attempting to persuade a specific person in person, by telephone, by letter, or by computerized or other electronic means.”

<sup>12</sup> Minn. Stat. Ann. § 609.352(1)(b) defines “sexual conduct” as “sexual contact of the individual’s primary genital area, sexual penetration as defined in section 609.341, or sexual performance as defined in section 617.246.” See *supra* notes 6 & 8 for the definitions of “sexual performance” and “sexual penetration.”

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

Both Minn. Stat. Ann. § 609.283 (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) and Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) refer to Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking). Minn. Stat. Ann. § 617.246(2) (Use of minors in sexual performance prohibited), however, does not refer to Minn. Stat. Ann. § 609.322.

- 1.3.1 Recommendation: Amend Minn. Stat. Ann. § 617.246(2) (Use of minors in sexual performance prohibited) to refer to Minn. Stat. Ann. § 609.322 (Solicitation, inducement and promotion of prostitution; sex trafficking) to clarify the victim's status as a domestic minor sex trafficking victim.

## FRAMEWORK ISSUE 2: CRIMINAL PROVISIONS ADDRESSING DEMAND

### **Legal Components:**

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

### **Legal Analysis:**

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

Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking) does not apply to the buyer of sex with a victim of domestic minor sex trafficking. Minn. Stat. Ann. § 609.322(1)(a) expressly states that its provisions only apply to a person who solicits a minor to practice prostitution if the person is “acting other than as a prostitute or patron.”

- 2.1.1 Recommendation: Amend Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking) to include language that reaches buyers of commercial sex acts with minors.

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

Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) makes it a crime to buy sex with a minor. If the minor is 16–17, a buyer convicted under the statute may receive imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Minn. Stat. Ann. § 609.324(1)(c). If the minor is 13–15, a buyer convicted under the statute may receive imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 609.324(1)(b). Lastly, if the minor is under 13, a buyer convicted under the statute may receive imprisonment up to 20 years, a fine not to exceed \$40,000, or both. Minn. Stat. Ann. § 609.324(1)(a).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor, but these statutes do not specifically make the commercial sexual exploitation of a child illegal or refer to the human trafficking statute to bring these criminal offenses within the reach of human trafficking under Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking).<sup>13</sup>

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

Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) differentiates between the act of buying sex with a minor and the act of buying sex with an adult.<sup>14</sup> While Minn. Stat. Ann. § 609.324(1) applies to a person who engages in, or agrees or offers to engage in prostitution with a person under the age of 18, Minn. Stat. Ann. § 609.324(3)(a) applies when a buyer “(1) engages in prostitution with an individual 18 years of age or above; or (2) hires or offers or agrees to hire an individual 18 years of age or above to engage in sexual penetration or sexual contact. . . .”<sup>15</sup> The penalty for a conviction under subsection (1) is staggered according to the minor’s age, ranging from imprisonment between 5 and 20 years, a fine ranging from \$10,000 to \$20,000, or both. Minn. Stat. Ann. § 609.324(1)(a), (b), (c). In contrast, a conviction under Minn. Stat. Ann. § 609.324(3)(a) is punishable as a misdemeanor by a fine of at least \$500, unless the buyer has been convicted of Minn. Stat. Ann. § 609.324(3)(a) or § 609.322 within the previous 2 years, in which case the buyer will be guilty of a gross misdemeanor punishable by a fine of at least \$1,500 and a minimum of community work service for 20 hours, which may be waived by the court if it “makes specific, written findings that the community work service is not feasible or appropriate under the circumstances of the case.” Minn. Stat. Ann. § 609.324(3)(a), (b). If a person “hires or offers or agrees to hire an individual 18 years of age or older to engage in sexual penetration or sexual contact” in a public place, a conviction is punishable by a fine of at least \$1,500.<sup>16</sup> Minn. Stat. Ann. § 609.324(2).

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

Buyers of commercial sex with minors may be prosecuted for crimes carrying penalties ranging from imprisonment between 1 and 30 years, fines of \$5,000–\$40,000, or both imprisonment and a fine.

<sup>13</sup> See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

<sup>14</sup> See *supra* Section 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.324 (Patrons, prostitutes; housing individuals engaged in prostitution; penalties).

<sup>15</sup> The text of Minn. Stat. Ann. § 609.324(2) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Sess. 2011 Minn. Laws 1, available at [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective August 1, 2011).

<sup>16</sup> Minn. Stat. Ann. § 609.324(4), entitled “Community service in lieu of minimum fine,” states,

The court may order a person convicted of violating subdivision 2 or 3 to perform community work service in lieu of all or a portion of the minimum fine required under those subdivisions if the court makes specific, written findings that the convicted person is indigent or that payment of the fine would create undue hardship for the convicted person or that person’s immediate family. Community work service ordered under this subdivision is in addition to any mandatory community work service ordered under subdivision 3.



Buyers convicted of Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) may receive imprisonment between 5 and 20 years, based on the minor's age, a fine ranging from \$10,000–\$40,000, based on the minor's age, or both imprisonment and a fine. Minn. Stat. Ann. § 609.324(1).

Buyers found convicted of violating Minn. Stat. Ann. § 609.352(2) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children) may receive imprisonment up to 3 years, fines of up to \$5,000, or both. Minn. Stat. Ann. § 609.352(4).

Lastly, several other sexual offense laws could be used to prosecute some buyers of commercial sex acts with minors, which could result, depending on the offense, in imprisonment up to 30 years, a fine up to \$40,000, or both imprisonment and a fine.<sup>17</sup>

In contrast, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>18</sup> against a minor. To the extent buyers can be prosecuted under other federal CSEC laws,<sup>19</sup> 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.<sup>20</sup>

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.*

Under Minn. Stat. Ann. § 609.352(2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children),

A person 18 years of age or older who uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:

(1) soliciting<sup>21</sup> a child or someone the person reasonably believes is a child to engage in sexual conduct;

<sup>17</sup> See *supra* Section 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.342, § 609.343, § 609.344, and § 609.345 that may apply to some buyers.

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

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

<sup>19</sup> 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).

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

<sup>21</sup> See *supra* note 11.

- (2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or
- (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

For purposes of Minn. Stat. Ann. § 609.352(2a), a “child” only includes minors “15 years of age or younger.” Minn. Stat. Ann. § 609.352(1)(a). A conviction under Minn. Stat. Ann. § 609.352(2a) is punishable as a felony by imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Minn. Stat. Ann. § 609.352(4).

- 2.5.1 Recommendation: Amend Minn. Stat. Ann. § 609.352(4) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children) to specifically make illegal and to impose an enhanced penalty on using the Internet to solicit or purchase commercial sex acts with any minor under the age of 18.

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

The mistake of age defense is not available to a buyer prosecuted under Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) or Minn. Stat. Ann. § 609.352(2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children). Minn. Stat. Ann. §§ 609.325(2), 609.352(3)(a). Similarly, sexual offenses, Minn. Stat. Ann. § 609.342(1)(a) (Criminal sexual conduct in the first degree) and § 609.343(1)(a) (Criminal sexual conduct in the second degree), do not permit a mistake of age defense.

However, for buyers prosecuted under both Minn. Stat. Ann. § 609.344(1)(b) (Criminal sexual conduct in the third degree) (covering situations in which the child is 13–15 and the buyer is more than 2 years older than the child) and § 609.345(1)(b) (Criminal sexual conduct in the fourth degree), if the perpetrator is not more than 10 years older than the victim “it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older.” Otherwise, mistake of age is not a defense. Minn. Stat. Ann. §§ 609.344(1)(b), 609.345(1)(b).

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.*

Minn. Stat. Ann. § 609.324 (Patrons, prostitutes; housing individuals engaged in prostitution; penalties), staggers penalties based on the age of the minor involved in the crime. Specifically, where the minor is 16–17, a convicted buyer may receive imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Minn. Stat. Ann. § 609.324(1)(c). If the minor is 13–15, a convicted buyer may receive imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 609.324(1)(b). Lastly, if the minor is under 13 years old, a convicted buyer may receive imprisonment up to 20 years, a fine not to exceed \$40,000, or both. Minn. Stat. Ann. § 609.324(1)(a).

- 2.7.1 Recommendation: Amend Minn. Stat. Ann. § 609.324 (Patrons, prostitutes; housing individuals engaged in prostitution; penalties) to impose sufficiently high penalties on buyers convicted of buying commercial sex from any minor under 18.

2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*

Buyers of commercial sex with minors may be required to pay fines ranging from \$5,000–\$40,000. Specifically, buyers convicted of Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) may be required to pay fines ranging from \$10,000–\$40,000, depending on the

minor's age. In addition, when a buyer is convicted under Minn. Stat. Ann. § 609.324, “[T]he court shall impose an assessment<sup>22</sup> of not less than \$500 and not more than \$750 for a violation of section 609.324, subdivision 2, or a misdemeanor violation of section 609.324, subdivision 3; otherwise the court shall impose an assessment of not less than \$750 and not more than \$1,000. The assessment . . . is in addition to the surcharge required by section 357.021, subdivision 6.” Minn. Stat. Ann. § 609.3241(a).<sup>23</sup> Minn. Stat. Ann. § 357.021(6)(a) requires the court administrator to “collect a \$75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense.” Buyers convicted of sexual offenses may be required to pay fines up to \$40,000. Minn. Stat. Ann. §§ 609.342(2)(a), 609.343(2)(a), 609.344(2), 609.345(2), 609.352(4).

Additionally, minors victimized through prostitution may be able to pursue a civil claim against a buyer. Specifically, Minn. Stat. Ann. § 611A.81(1)(b) (Cause of action for coercion for use in prostitution) provides, “[a]n individual has a cause of action against a person who did the following while the individual was a minor: . . . (4) hired, offered to hire, or agreed to hire the individual to engage in prostitution.” Minn. Stat. Ann. § 611A.81 enables minor victims to recover a range of monetary damages from a buyer.

Under Minn. Stat. Ann. § 611A.81(2)(b),

A person against whom a cause of action may be maintained under subdivision 1 is liable for the following damages that resulted from the plaintiff's being used in prostitution or to which the plaintiff's use in prostitution proximately contributed:

- (1) economic loss, including damage, destruction, or loss of use of personal property; loss of past or future income or earning capacity; and income, profits, or money owed to the plaintiff from contracts with the person; and
- (2) damages for death as may be allowed under section 573.02 [Action for death by wrongful act; survival of actions], personal injury, disease, and mental and emotional harm, including medical, rehabilitation, and burial expenses; and pain and suffering, including physical impairment.

Defendants, including, presumably, buyers, may also be ordered to make restitution. Pursuant to Minn. Stat. Ann. § 611A.04(1)(a) (Order of restitution),

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<sup>22</sup> Minn. Stat. Ann. § 609.3241(c) provides,

The assessment collected under paragraph (a) must be distributed as follows:

- (1) 40 percent of the assessment shall be forwarded to the political subdivision that employs the arresting officer for use in enforcement, training, and education activities related to combating sexual exploitation of youth, or if the arresting officer is an employee of the state, this portion shall be forwarded to the commissioner of public safety for those purposes identified in clause (3)
- (2) 20 percent of the assessment shall be forwarded to the prosecuting agency that handled the case for use in training and education activities relating to combating sexual exploitation activities of youth; and
- (3) 40 percent of the assessment must be forwarded to the commissioner of public safety to be deposited in the safe harbor for youth account in the special revenue fund and are appropriated to the commissioner for distribution to crime victims services organizations that provide services to sexually exploited youth, as defined in section 260C.007, subdivision 31.
- (d) A safe harbor for youth account is established as a special account in the state treasury.

<sup>23</sup> The text of Minn. Stat. Ann. § 609.3241 included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, *available at* [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective August 1, 2011).

A victim<sup>24</sup> of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. . . . A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. . . .

Additionally, buyers may be required to forfeit certain property used in committing a crime. Pursuant to Minn. Stat. Ann. § 609.5312(1)(a) (Forfeiture of property associated with designated offenses),

All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property, are subject to forfeiture, except as provided in this section.

As defined in Minn. Stat. Ann. § 609.531(1)(f) (Forfeitures), "designated offenses" include felony violations of, or felony-level attempts and conspiracies to violate Minn. Stat. Ann. § 609.352 (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), § 617.247 (Possession of pornographic work involving minors), or any violation of § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

Furthermore, Minn. Stat. Ann. § 609.5312(3)(a), states,

A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. . . .

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

Minn. Stat. Ann. § 617.247(4)(a) (Possession of pornographic work involving minors) states,

A person who possesses a pornographic work<sup>25</sup> or a computer disk or computer or other electronic, magnetic, or optical storage system or a storage system of any other type, containing a pornographic work, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than five years and a fine of not more than \$5,000 for a first offense and for not more than ten years and a fine of not more than \$10,000 for a second or subsequent offense.

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<sup>24</sup> "Victim" is defined in part in Minn. Stat. Ann. § 611A.01(b) as "a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime . . ." "Crime" is defined as "conduct that is prohibited by local ordinance and results in bodily harm to an individual; or conduct that is included within the definition of 'crime' in section 609.02, subdivision 1, or would be included within that definition but for the fact that (1) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state, or (2) the act was alleged or found to have been committed by a juvenile." Minn. Stat. Ann. § 611A.01(a). Pursuant to Minn. Stat. Ann. § 609.02(1), "'Crime' means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine."

<sup>25</sup> See *supra* note 7 for the definition of "pornographic work."

In contrast, a federal conviction for possession of child pornography<sup>26</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>27</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>28</sup>

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

Pursuant to Minn. Stat. Ann. § 243.166(1b)<sup>29</sup> (Registration of predatory offenders),

(a) A person shall register under this section if:

...

(2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit . . . soliciting a minor to engage in prostitution in violation of section . . . 609.324 [Patrons, prostitutes; housing individuals engaged in prostitution; penalties]; soliciting a minor to engage in sexual conduct in violation of section 609.352 [Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children]; . . . or possessing pornographic work involving a minor in violation of section 617.247 [Possession of pornographic work involving minors], and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;

...

(4) the person was convicted of or adjudicated delinquent for, including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3).

<sup>26</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>27</sup> 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).

<sup>28</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>29</sup> Here and elsewhere in this report that Minn. Stat. Ann. § 243.166 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File 447 during the Minnesota 87th Legislative Session. 2011 Minn. Laws 28 (effective August 1, 2011).

**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.

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**Legal Analysis:**

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

Traffickers convicted under Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement and promotion of prostitution; sex trafficking in the first degree)<sup>30</sup> may be punished by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. However, a trafficker may receive imprisonment up to 25 years, a fine not to exceed \$60,000, or both under Minn. Stat. Ann. § 609.322(1)(b) if at least one of the following aggravating factors is present:

- (1) the offender has committed a prior qualified human trafficking-related offense;
- (2) the offense involved a sex trafficking victim who suffered bodily harm during the commission of the offense;
- (3) the time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or
- (4) the offense involved more than one sex trafficking victim.

Additionally, traffickers face prosecution under Minn. Stat. Ann. § 609.324(1a) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) and Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking).<sup>31</sup> A trafficker convicted under Minn. Stat. Ann. § 609.324(1a) may receive imprisonment up to 1 year, a fine not to exceed \$3,000, or both. If the victim of Minn. Stat. § 609.283(1) is under the age of 18, a conviction under Minn. Stat. Ann. § 609.283(1) may be punished by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 609.283(2).

Minnesota's racketeering laws also may apply to traffickers. Pursuant to Minn. Stat. Ann. § 609.903(1) (Racketeering),

A person is guilty of racketeering if the person:

- (1) is employed by or associated with an enterprise and intentionally conducts or participates in the affairs of the enterprise by participating in a pattern of criminal activity;
- (2) acquires or maintains an interest in or control of an enterprise, or an interest in real property, by participating in a pattern of criminal activity; or

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<sup>30</sup> See *supra* Section 1.1 for the substantive provisions of Minn. Stat. Ann. § 609.324(1a) and Minn. Stat. Ann. § 609.322(1)(a).

<sup>31</sup> See *supra* Section 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.324(1a) and Minn. Stat. Ann. § 609.283(1).

(3) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise<sup>32</sup> or in real property.

A trafficker “participates in a pattern of criminal activity” if the trafficker “is a principal with respect to conduct constituting at least three of the criminal acts included in the pattern and two of the acts constitute felonies other than conspiracy.” Minn. Stat. Ann. § 609.902(5). Minn. Stat. Ann. § 609.902(6) (Definitions), similarly defines a “pattern of a criminal activity” as the following:

[C]onduct constituting three or more criminal acts that:

- (1) were committed within ten years of the commencement of the criminal proceeding;
- (2) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a single criminal offense; and
- (3) were either: (i) related to one another through a common scheme or plan or a shared criminal purpose or (ii) committed, solicited, requested, importuned, or intentionally aided by persons acting with the mental culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

“Criminal act” is defined in Minn. Stat. Ann. § 609.902(4), as “conduct constituting, or a conspiracy or attempt to commit, a felony violation of chapter 152, or a felony violation of” certain listed statutes, including Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), Minn. Stat. Ann. § 609.342 (Criminal sexual conduct in the first degree), Minn. Stat. Ann. § 609.343 (Criminal sexual conduct in the second degree), Minn. Stat. Ann. § 609.344 (Criminal sexual conduct in the third degree), and Minn. Stat. Ann. § 609.345 (Criminal sexual conduct in the fourth degree). If convicted under Minn. Stat. Ann. § 609.903(1), a trafficker may receive imprisonment up to 20 years, a fine of up to \$1,000,000, or both. Minn. Stat. Ann. § 609.904(1). Instead of the fine, “[A] person convicted of violating section 609.903, who received economic gain from the act or caused economic loss or personal injury during the act, may be sentenced to pay a fine calculated under this subdivision. The maximum fine is 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, less the value of any property forfeited under section 609.905.” Minn. Stat. Ann. § 609.904(2).<sup>33</sup>

Furthermore, Minn. Stat. Ann. § 609.3453 (Criminal sexual predatory conduct) enhances a sentence “if the person commits a predatory crime<sup>34</sup> that was motivated by the offender’s sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal.” Minn. Stat. Ann. § 609.3453(1). A person convicted who falls under Minn. Stat. Ann. § 609.3453(1) may have the sentence enhanced by up to “25 percent longer than for the underlying predatory crime” and a possible fine of up to \$20,000. If the offender has prior sex offense convictions, the sentence may be enhanced by up to “50 percent longer than for the underlying predatory crime” and a possible fine of up to \$20,000. Minn. Stat. Ann. § 609.3453(2).

<sup>32</sup> Pursuant to Minn. Stat. Ann. § 609.902(3), an “enterprise” is defined as, “a sole proprietorship, partnership, corporation, trust, or other legal entity, or a union, governmental entity, association, or group of persons, associated in fact although not a legal entity, and includes illicit as well as legitimate enterprises.”

<sup>33</sup> Minn. Stat. Ann. § 609.904(2) further states, “In imposing a fine, the court shall consider the seriousness of the conduct, whether the amount of the fine is disproportionate to the conduct in which the person engaged, its impact on victims and any legitimate enterprise involved in that conduct, as well as the economic circumstances of the convicted person, including the effect of the imposition of the fine on the person’s immediate family. For purposes of this subdivision, loss does not include pain and suffering.”

<sup>34</sup> “Predatory crime” is defined as “a felony violation of . . . 609.25 (kidnapping), 609.255 (false imprisonment), 609.498 (tampering with a witness), 609.561 (first-degree arson), or 609.582, subdivision 1 (first-degree burglary).” Minn. Stat. Ann. § 609.341(22).

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>35</sup> 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 offense<sup>36</sup> against a minor.

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

Minn. Stat. Ann. § 617.246(2) (Use of minors in sexual performance prohibited) prohibits creating child pornography.<sup>37</sup> Additionally, Minn. Stat. Ann. § 617.246(4) makes it illegal to sell child pornography, by making it unlawful if a person, “knowing or with reason to know its content and character, disseminates for profit . . . a pornographic work,”<sup>38</sup> while Minn. Stat. Ann. § 617.246(3) makes it illegal if a person to “owns or operates a business in which pornographic work . . . is disseminated . . . or is reproduced” when the person “knows the content and character of the pornographic work disseminated or reproduced.” Convictions under Minn. Stat. Ann. § 617.246(2), (3), and (4) are all felonies punishable by imprisonment up to 10 years, a fine not to exceed \$20,000 for a first offense, or both. The fine rises to \$40,000 for any subsequent offense. Minn. Stat. Ann. § 617.246(2), (3), (4).

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 offense<sup>39</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>40</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>41</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>42</sup>

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<sup>35</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>36</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>37</sup> See *supra* Section 1.2 for the substantive provisions of Minn. Stat. Ann. § 617.246(2).

<sup>38</sup> See *supra* note 7 for the definition of “pornographic work.”

<sup>39</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>40</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>41</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up



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.*

Minn. Stat. Ann. § 609.352(2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children) makes it illegal to use the Internet to solicit a child for the purpose of engaging in sexual conduct.<sup>43</sup> A conviction under Minn. Stat. Ann. § 609.352(2a) is punishable as a felony by imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Minn. Stat. Ann. § 609.352(4).

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

Traffickers convicted under Minnesota's trafficking related criminal laws may be required to pay fines ranging from \$3,000 to \$1,000,000. Specifically, traffickers convicted of Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking) may be ordered to pay a fine not to exceed \$50,000. Minn. Stat. Ann. § 609.322(1)(a). However, a trafficker may be required to pay a fine not to exceed \$60,000 under Minn. Stat. Ann. § 609.322(1)(b) if at least one aggravating factor is present.

Traffickers prosecuted under Minn. Stat. Ann. § 609.324(1a) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) may be required to pay a fine not to exceed \$3,000, while those convicted under Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking), if the victim is under the age of 18, may be ordered to pay a fine not to exceed \$20,000. Minn. Stat. Ann. §§ 609.324(1a), 609.283(2). In addition, when a trafficker is convicted under Minn. Stat. Ann. §§ 609.322 or 609.324, "the court shall impose an assessment<sup>44</sup> of not less than \$500 and not more than \$750 for a violation of section 609.324, subdivision 2, or a misdemeanor violation of section 609.324, subdivision 3; otherwise the court shall impose an assessment of not less than \$750 and not more than \$1,000. The assessment . . . is in addition to the surcharge required by section 357.021, subdivision 6." Minn. Stat. Ann. § 609.324(1a).<sup>45</sup> Minn. Stat. Ann. § 357.021(6) requires the court administrator to "collect a \$75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense."

A trafficker convicted under Minn. Stat. Ann. § 609.352(2) or (2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), both felonies, may have to pay fines not to exceed \$5,000. Traffickers convicted under Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited) may be required to pay a fine not to exceed \$20,000 for a first offense, and \$40,000 for any subsequent offense. Minn. Stat. Ann. § 617.246(2), (3), (4). Lastly, traffickers convicted under Minn. Stat. Ann. § 609.903(1) (Racketeering) may be ordered to pay a fine not to exceed \$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, less the value of any property forfeited under section 609.905 [Criminal forfeiture]." Minn. Stat. Ann. § 609.904(1), (2).

Additionally, traffickers may be liable for civil damages to minors victimized through prostitution, pornography and sexual performance. Specifically, Minn. Stat. Ann. § 611A.81(1)(b) (Cause of action for coercion for use in prostitution) states,

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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).

<sup>42</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>43</sup> *See supra* Section 2.5 for the substantive provisions of Minn. Stat. Ann. § 609.352(2a).

<sup>44</sup> *See supra* note 22.

<sup>45</sup> *See supra* note 23.

An individual has a cause of action against a person who did the following while the individual was a minor:

- (1) solicited or induced the individual to practice prostitution;
- (2) promoted the prostitution of the individual;
- (3) collected or received the individual's earnings derived from prostitution; or
- (4) hired, offered to hire, or agreed to hire the individual to engage in prostitution.

....

Traffickers who are defendants in a civil claim under Minn. Stat. Ann. § 611A.81(1)(b) may be liable under Minn. Stat. Ann. § 611A.81(2)

for the following damages that resulted from the plaintiff's being used in prostitution or to which the plaintiff's use in prostitution proximately contributed:

- (1) economic loss, including damage, destruction, or loss of use of personal property; loss of past or future income or earning capacity; and income, profits, or money owed to the plaintiff from contracts with the person; and
- (2) damages for death as may be allowed under section 573.02, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, and burial expenses; and pain and suffering, including physical impairment.

Traffickers may also be liable for civil damages under Minn. Stat. Ann. § 617.245(2) (Civil action; use of minor in sexual performance), which states in part,

A cause of action exists for injury caused by the use of a minor in a sexual performance.<sup>46</sup> The cause of action exists against a person who promotes, employs, uses, or permits a minor to engage or assist others to engage in posing or modeling alone or with others in a sexual performance, if the person knows or has reason to know that the conduct intended is a sexual performance.

Minn. Stat. Ann. § 541.073(3) (Actions for damages due to sexual abuse; special provisions) "applies to an action for damages commenced against a person who caused the plaintiff's personal injury either by (1) committing sexual abuse against the plaintiff, or (2) negligently permitting sexual abuse against the plaintiff to occur." Minn. Stat. Ann. § 541.073(1) defines "sexual abuse" to mean "conduct described in sections 609.342 [Criminal sexual conduct in the first degree] to 609.345 [Criminal sexual conduct in the fourth degree]."

For traffickers who violate Minn. Stat. Ann. § 609.903 (Racketeering), pursuant to Minn. Stat. Ann. §609.911(3),

The prosecuting authority may institute proceedings against an enterprise or an individual to recover a civil penalty. The penalty may be imposed in the discretion of the district court for conduct constituting a violation of section 609.903. The civil penalty may not exceed \$1,000,000 less a fine imposed under section 609.903. Penalties collected under this section must be applied to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution, and the balance, if any, to the state general fund.

Traffickers may also be ordered to make restitution. Minn. Stat. Ann. § 609.904(5) directs the prosecuting authority to "vigorously advocate full and complete restitution to an aggrieved person" when a trafficker is convicted of Minn. Stat. Ann. § 609.903. Traffickers convicted of racketeering may also be subject to forfeiture. Pursuant to Minn. Stat. Ann. § 609.905(1), (2),

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<sup>46</sup> Pursuant to Minn. Stat. Ann. § 617.245(1)(d) (Civil action; use of minor in sexual performance), "sexual performance" is defined as "any play, dance, or other exhibition presented before an audience or for purposes of visual or mechanical reproduction which depicts sexual conduct as defined by paragraph (e)."

[1] When a person is convicted of violating section 609.903, the court may order the person to forfeit to the prosecuting authority any real or personal property subject to forfeiture under this section. Property subject to forfeiture is real and personal property that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 609.903. A court may not order the forfeiture of property that has been used to pay reasonable attorney fees in connection with a criminal proceeding under section 609.903. . . .

[2] The district court may order criminal forfeiture of any other property of the defendant up to the value of the property that is unreachable if any property subject to criminal forfeiture under subdivision 1:

- (1) cannot be located;
- (2) has been sold to a bona fide purchaser for value;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value by the conduct of the defendant;
- (5) has been commingled with other property that cannot be divided without difficulty or undue injury to innocent persons; or
- (6) is otherwise unreachable without undue injury to an innocent person.

Under Minn. Stat. Ann. § 611A.04(1)(a),

A victim<sup>47</sup> of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. . . . A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child’s parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim’s right to obtain court-ordered restitution under this section. . . .

Additionally, traffickers may be required to forfeit certain property used in committing a crime. Pursuant to Minn. Stat. Ann. § 609.5312(1)(a) (Forfeiture of property associated with designated offenses),

All personal property<sup>48</sup> is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property are subject to forfeiture, except as provided in this section.

As defined in Minn. Stat. Ann. § 609.531(1)(f) (Forfeitures), “designated offenses” include Minn. Stat. Ann. § 609.352 (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited), Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), or any violation of section 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

Furthermore, Minn. Stat. Ann. § 609.5312(3)(a), states,

<sup>47</sup> See *supra* note 24.

<sup>48</sup> Minn. Stat. Ann. § 609.531 (Forfeitures) defines “property” for the purposes of Minn. Stat. Ann. § 609.5312(1), according to “section 609.52, subdivision 1, clause (1),” which states that property

means all forms of tangible property, whether real or personal, without limitation including documents of value, electricity, gas, water, corpses, domestic animals, dogs, pets, fowl, and heat supplied by pipe or conduit by municipalities or public utility companies and articles, as defined in clause (4), representing trade secrets, which articles shall be deemed for the purposes of Extra Session Laws 1967, chapter 15 to include any trade secret represented by the article.”

A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. . . .

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

Pursuant to Minn. Stat. Ann. § 243.166(1b),

(a) A person shall register under this section if:

. . . .

(2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring<sup>49</sup> to commit . . . soliciting a minor to engage in prostitution in violation of section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties]; soliciting a minor to engage in sexual conduct in violation of section 609.352 [Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children]; using a minor in a sexual performance in violation of section 617.246 [Use of minors in sexual performance prohibited] . . . and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;

. . . .

(4) the person was convicted of or adjudicated delinquent for, including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3).

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.*

According to Minn. Stat. Ann. § 260C.301(1),

The juvenile court may upon petition, terminate all rights of a parent to a child:

- (a) with the written consent of a parent who for good cause desires to terminate parental rights; or
- (b) if it finds that one or more of the following conditions exist:

. . . .

(6) that a child has experienced egregious harm in the parent's care which is of a nature, duration, or chronicity that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care;

. . . .

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (g), clauses (1) to (3).

. . . .

Pursuant to Minn. Stat. Ann. § 260C.007(14), "egregious harm" is defined as the following:

[T]he infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care. . . . Egregious harm includes, but is not limited to:

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<sup>49</sup> Here and elsewhere in this report that Minn. Stat. Ann. § 243.166(1b) is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 447 during the Minnesota 87th Legislative Session. 2011 Minn. Laws 28 (effective August 1, 2011).

- ...
- (7) conduct towards a child that constitutes solicitation, inducement, or promotion of, or receiving profit derived from prostitution under section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking];
- ...
- (10) conduct toward a child that constitutes criminal sexual conduct under sections 609.342 [Criminal sexual conduct in the first degree] to 609.345 [Criminal sexual conduct in the fourth degree].

However, the list of crimes in Minn. Stat. Ann. § 260.012(g)(1)–(3) does not include Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324(1a) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties), § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking), § 609.352(2) or (2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), or § 617.246 (Use of minors in sexual performance prohibited).

- 3.6.1 Recommendation: Amend Minn. Stat. Ann. § 260.012(g)(1)–(3) (Duty to ensure placement prevention and family reunification; reasonable efforts) to include convictions for Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324(1a) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties), § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking), § 609.352(2) or (2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), or § 617.246 (Use of minors in sexual performance prohibited) when the victim is any child, as crimes that constitute 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.*

Minn. Stat. Ann. § 609.322(1)(a)(3) (Solicitation, inducement and promotion of prostitution; sex trafficking) could be used to prosecute a facilitator who “receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual under the age of 18 years.”<sup>50</sup> A facilitator who is convicted under Minn. Stat. Ann. § 609.322(1)(a) may be punished by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. However, according to Minn. Stat. Ann. § 609.322(1)(b), a facilitator may receive imprisonment up to 25 years, a fine not to exceed \$60,000, or both imprisonment and a fine, if at least one of the following aggravating factors is present:

<sup>50</sup> See *supra* Section 1.1 for the substantive provisions of Minn. Stat. Ann. § 609.322(1)(a).

- (1) the offender has committed a prior qualified human trafficking-related offense;
- (2) the offense involved a sex trafficking victim who suffered bodily harm during the commission of the offense;
- (3) the time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or
- (4) the offense involved more than one sex trafficking victim.

Additionally, facilitators may face prosecution under Minn. Stat. Ann. § 609.324(1a) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties),<sup>51</sup> which states,

Any person, other than one related by blood, adoption, or marriage to the minor, who permits a minor to reside, temporarily or permanently, in the person’s dwelling without the consent of the minor’s parents or guardian, knowing or having reason to know that the minor is engaging in prostitution may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; except that, this subdivision does not apply to residential placements made, sanctioned, or supervised by a public or private social service agency.

Minnesota’s racketeering law, Minn. Stat. Ann. § 609.903(1) (Racketeering), may also apply to facilitators.<sup>52</sup> If convicted under Minn. Stat. Ann. § 609.903(1), a trafficker may receive imprisonment up to 20 years, a fine not to exceed \$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, less the value of any property forfeited under section 609.905 [Criminal forfeiture],”<sup>53</sup> or both imprisonment and a fine. Minn. Stat. Ann. § 609.904(1), (2).

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 convicted under Minnesota’s criminal laws may be required to pay fines ranging from \$3,000 to \$1,000,000. Specifically, facilitators convicted of violating Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement and promotion of prostitution; sex trafficking) may be ordered to pay a fine not to exceed \$50,000 or \$60,000 if aggravating factors are present. Minn. Stat. Ann. § 609.322(1)(a), (b).

Facilitators convicted under Minn. Stat. Ann. § 609.324(1a) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) may be required to pay a fine not to exceed \$3,000. Minn. Stat. Ann. § 609.324(1a). Facilitators convicted of Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited) may be required to pay a fine not to exceed \$20,000 for a first offense, and \$40,000 for any subsequent offense, while facilitators convicted of Minn. Stat. Ann. § 617.247(3)(a) (Possession of pornographic work involving minors) may have to pay fine not to exceed \$10,000 for a first offense and a fine not to exceed \$20,000 for any subsequent offenses. Minn. Stat. Ann. §§ 617.246(2), (3), (4), 617.247(3)(b). Lastly, facilitators convicted under Minn. Stat. Ann. § 609.903(1) (Racketeering) may be ordered to pay a fine not to exceed \$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, less the value of any property forfeited under section 609.905 [Criminal forfeiture].”<sup>54</sup> Minn. Stat. Ann. § 609.904(1), (2).

Additionally, facilitators may be liable for civil damages to minors victimized through prostitution, pornography, and sexual performance. Minn. Stat. Ann. § 611A.81(1)(b) (Cause of action for coercion for use in prostitution) states, “An individual has a cause of action against a person who did the following while the

<sup>51</sup> See *supra* Section 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.324(1a).

<sup>52</sup> See *supra* Section 3.1 for the substantive provisions of Minnesota’s racketeering laws.

<sup>53</sup> See *supra* note 33.

<sup>54</sup> See *supra* note 33.

individual was a minor: . . . (2) promoted the prostitution of the individual; [or] (3) collected or received the individual's earnings derived from prostitution . . . .”

Facilitators who are defendants in a civil claim under Minn. Stat. Ann. § 611A.81(1)(b) may be liable under Minn. Stat. Ann. § 611A.81(2)

for the following damages that resulted from the plaintiff's being used in prostitution or to which the plaintiff's use in prostitution proximately contributed:

- (1) economic loss, including damage, destruction, or loss of use of personal property; loss of past or future income or earning capacity; and income, profits, or money owed to the plaintiff from contracts with the person; and
- (2) damages for death as may be allowed under section 573.02, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, and burial expenses; and pain and suffering, including physical impairment.

Facilitators may also be liable for civil damages under Minn. Stat. Ann. § 617.245(2) (Civil action; use of minor in sexual performance), which states in part,

A cause of action exists for injury caused by the use of a minor in a sexual performance.<sup>55</sup> The cause of action exists against a person who promotes, employs, uses, or permits a minor to engage or assist others to engage in posing or modeling alone or with others in a sexual performance, if the person knows or has reason to know that the conduct intended is a sexual performance.

For facilitators who violate Minn. Stat. Ann. § 609.903 (Racketeering), pursuant to Minn. Stat. Ann. §609-911(3),

The prosecuting authority may institute proceedings against an enterprise or an individual to recover a civil penalty. The penalty may be imposed in the discretion of the district court for conduct constituting a violation of section 609.903. The civil penalty may not exceed \$1,000,000 less a fine imposed under section 609.903. Penalties collected under this section must be applied to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution, and the balance, if any, to the state general fund.

Facilitators may also be ordered to make restitution. Minn. Stat. Ann. § 609.904(5) directs the prosecuting authority to “vigorously advocate full and complete restitution to an aggrieved person” when a trafficker is convicted of Minn. Stat. Ann. § 609.903.

Additionally, a crime<sup>56</sup> victim, including a commercially sexually exploited child who, pursuant to Minn. Stat. Ann. § 611A.01(b), “incurs loss or harm as a result of a crime” and has “the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent.” Minn. Stat. Ann. § 611A.04(1). Pursuant to Minn. Stat. Ann. § 611A.04(1)(a) (Order of restitution),

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<sup>55</sup> See *supra* note 6.

<sup>56</sup> Pursuant to Minn. Stat. Ann. § 611A.01(a) “crime” means

conduct that is prohibited by local ordinance and results in bodily harm to an individual; or conduct that is included within the definition of “crime” in section 609.02, subdivision 1, or would be included within that definition but for the fact that (1) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state, or (2) the act was alleged or found to have been committed by a juvenile.

Minn. Stat. Ann. § 609.02(1) defines “crime” as “conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.”

A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section. . . .

Additionally, facilitators may be required to forfeit certain property used in committing a crime. Pursuant to Minn. Stat. Ann. § 609.5312(1)(a) (Forfeiture of property associated with designated offenses),

All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property are subject to forfeiture [subject to the exceptions listed in Minn. Stat. Ann. § 609.5312(2)].

As defined in Minn. Stat. Ann. § 609.531(1)(f) (Forfeitures), "designated offenses" include felony violations, or felony-level attempts and conspiracies to violate Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited), Minn. Stat. Ann. § 617.247 (Possession of pornographic work involving minors), Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), or Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

Additionally, Minn. Stat. Ann. § 609.5312(3) states,

A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense.

Lastly, pursuant to Minn. Stat. Ann. § 609.905(1), (2) (Criminal forfeiture),

When a person is convicted of violating section 609.903, the court may order the person to forfeit to the prosecuting authority any real or personal property subject to forfeiture under this section. Property subject to forfeiture is real and personal property that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 609.903. A court may not order the forfeiture of property that has been used to pay reasonable attorney fees in connection with a criminal proceeding under section 609.903. . . .

Under subdivision (2), "The district court may order criminal forfeiture of any other property of the defendant up to the value of the property that is unreachable if any property subject to criminal forfeiture under subdivision 1: (1) cannot be located . . . ."

Minn. Stat. Ann. § 609.284 (Labor or sex trafficking crimes; defenses; civil liability; corporate liability) creates civil liability for "a person who violates section 609.282 [Labor trafficking] or 609.283 [Unlawful conduct with respect to documents in furtherance of labor or sex trafficking]" and sets out specific penalties for corporations convicted under Minn. Stat. Ann. § 609.283 or § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking).

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

There is no specific provision in Minnesota law making it illegal to promote or to sell child sex tourism in Minnesota.



- 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, if the offer, travel, or sale is occurring in Minnesota.

4.4 *Promoting and selling child pornography is illegal.*

Minn. Stat. Ann. § 617.246(3) makes it a crime to own a business that sells child pornography, stating in part, “A person who owns or operates a business in which a pornographic work, as defined in this section, is disseminated to an adult or a minor or is reproduced, and who knows the content and character of the pornographic work disseminated or reproduced, is guilty of a felony.” Minn. Stat. Ann. § 617.246(4) separately makes it illegal to disseminate child pornography, stating, “A person who, knowing or with reason to know its content and character, disseminates for profit to an adult or a minor a pornographic work, as defined in this section, is guilty of a felony.” Convictions for violating Minn. Stat. Ann. § 617.246, (3), and (4) are all punishable as felonies by imprisonment not to exceed 10 years, a fine not to exceed \$20,000, or both imprisonment and a fine, for a first offense, but the fine is increased up to \$40,000 for any subsequent offense. Minn. Stat. Ann. § 617.246(2), (3), (4).

### *Legal Components:*

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

### *Legal Analysis:*

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

Under Minn. Stat. Ann. § 609.321(7b) (Sex trafficking victim), a "sex trafficking victim" is defined as "a person subjected to the practices in subdivision 7a," which defines "sex trafficking" as "(1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or (2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1)."

For purposes of the recently amended child protection provisions of Minnesota's Juvenile Court Act, effective August 1, 2011, a "sexually exploited youth" is defined to include a sex trafficking victim, as defined in Minn. Stat. Ann. § 609.321(7b) (Prostitution and sex trafficking; definition). Pursuant to Minn. Stat. Ann. § 260C.007(31),<sup>57</sup> a "sexually exploited youth" means one who

(1) is alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct;

<sup>57</sup> The text of Minn. Stat. Ann. § 260C.007(31) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, available at [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2011).

- (2) is a victim of a crime described in section 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.345 [Criminal sexual conduct in the fourth degree], 609.3451 [Criminal sexual conduct in the fifth degree], 609.3453 [Criminal sexual predatory conduct], 609.352 [Solicitation of children to engage in sexual conduct; communications of sexually explicit material to children], 617.246 [Use of minors in sexual performance prohibited], or 617.247 [Possession of pornographic work involving minors];
- (3) is a victim of a crime described in United States Code, title 18, section 2260; 2421; 2422; 2423; 2425; 2425A; or 2256; or
- (4) is a sex trafficking victim as defined in section 609.321 [Prostitution and sex trafficking; definitions], subdivision 7b.

In addition, Minn. Stat. Ann. § 260C.007(6)(11), (17)<sup>58</sup> defines a “child in need of protection or services” in part as a child who “has engaged in prostitution as defined in section 609.321” or “is a sexually exploited youth.”

In contrast, a “victim” for purposes of Minnesota’s victim rights provisions, including eligibility to receive restitution pursuant to Minn. Stat. Ann. § 611A.04 (Order of Restitution), is defined more generally under Minn. Stat. Ann. § 611A.01(b) (Definitions) as,

[A] natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime<sup>59</sup> . . . . The term “victim” includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person. . . . The term “victim” does not include the person charged with or alleged to have committed the crime.

This definition is likely broad enough to include commercially sexually exploited children.

For purposes of the Minnesota Crime Victims Reparation Act, a “victim” is defined, in part, as including a “person who suffers personal injury or death as a direct result of: (1) a crime . . . .” Minn. Stat. Ann. § 611A.52(10). Pursuant to Minn. Stat. Ann. § 611A.52(9) (Definitions), “injury” means “actual bodily harm including pregnancy and emotional trauma.” Under Minn. Stat. Ann. § 611A.52(6), a “crime” includes conduct that occurs within the state of Minnesota, “poses a substantial threat of personal injury or death,” and is defined as a “crime” in section 609.02 (Criminal Code; general principles), subdivision 1, “or would be included within that definition but for the fact that (i) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; or (ii) the act was alleged or found to have been committed by a juvenile.”<sup>60</sup> Therefore, a commercially sexually exploited minor who is the victim of any crime under Minnesota law and suffers personal injury or death may be considered a victim for purposes of Minnesota’s Crime Victims Reparation Act.

Minnesota’s laws also specifically allow victims of sex trafficking to obtain services as victims. Under Minn. Stat. Ann. § 299A.795 (Trafficking victim assistance), the commissioner of the Department of Public Safety may recommend a plan to coordinate services to trafficking victims, including, “(1) medical and mental health services; (2) housing; (3) education and job training; (4) English as a second language; (5) interpreting services; (6) legal and immigration services; and (7) victim compensation.” Under Minn. Stat. Ann. § 299C.065(1)(4) (Undercover buy fund; witness and victim protection), the commissioner can give grants to local officials for “violations of section 609.322 or any other state or federal law prohibiting the recruitment, transportation, or use of juveniles for purposes of prostitution.” Additionally, Minnesota has also set up a toll-free hotline, under Minn. Stat. Ann. § 299A.7957, with interpreters of languages commonly spoken in Minnesota, for trafficking

<sup>58</sup> The text of Minn. Stat. Ann. § 260C.007(6) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, *available at* [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2011).

<sup>59</sup> See *supra* note 56.

<sup>60</sup> See *supra* note 56 for further definitions of “crime.”

victims to call and be referred to attorneys and victims' service organizations. For purposes of this section, "trafficking victims" are defined in Minn. Stat. Ann. § 299A.78(1)(i), which refers to the definition of "sex trafficking victim" in Minn. Stat. Ann. § 609.321(7b).

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.*

The consent of a minor to a commercial sex act is not available as a defense to a prosecution under Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) or Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) as Minn. Stat. Ann. § 609.325(2) (Defenses) expressly states that "[c]onsent . . . shall be no defense to prosecutions under 609.322 or 609.324." Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) also provides that "the consent or age of the victim is not a defense."

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

While Minnesota's prostitution laws, Minn. Stat. Ann. § 609.324(2), (3) (Patrons; Prostitutes; Housing Individuals engaged in prostitution; Penalties) and Minn. Stat. Ann. § 609.3243 (Loitering with intent to participate in prostitution), do not facially make minors immune from committing these offenses, Minnesota recently amended its definition of "delinquent child" in Minn. Stat. Ann. § 260B.007,<sup>61</sup> to include a new subsection (6)(c), which states

The term delinquent child does not include a child under the age of 16 years of age alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct.

The recently passed bill also amended the definition of "juvenile petty offender" in Minn. Stat. Ann. § 260B.007(16)<sup>62</sup> by amending subsection (16)(d) to read,

A child who commits a juvenile petty offense is a "juvenile petty offender." The term juvenile petty offender does not include a child under the age of 16 years alleged to have violated any law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct which, if committed by an adult, would be a misdemeanor.

Under these provisions, minors under 16 years who violate Minn. Stat. Ann. § 609.324(2), (3) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) or Minn. Stat. Ann. § 609.3243 (Loitering with intent to participate in prostitution) will not be treated as delinquent or as petty offenders. Additionally, the recently passed bill adds Minn. Stat. Ann. § 609.093(1)<sup>63</sup> (Juvenile prostitutes; diversion or child protection proceedings), which states,

<sup>61</sup>The text of Minn. Stat. Ann. § 260B.007(6) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, available at [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2014).

<sup>62</sup>The text of Minn. Stat. Ann. § 260B.007(16) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, available at [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2014).

<sup>63</sup>The text of Minn. Stat. Ann. § 609.093 included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, available at [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2011).

(a) This section applies to a 16 or 17 year old child alleged to have engaged in prostitution as defined in section 609.321, subdivision 9, who:

(1) has not been previously adjudicated delinquent for engaging in prostitution as defined in section 609.321, subdivision 9;

(2) has not previously participated in or completed a diversion program for engaging in prostitution as defined in section 609.321, subdivision 9;

(3) has not previously been placed on probation without an adjudication or received a continuance under section 260B.198, subdivision 7, for engaging in prostitution as defined in section 609.321, subdivision 9;

(4) has not previously been found to be a child in need of protection or services for engaging in prostitution as defined in section 609.321, subdivision 9, or because the child is a sexually exploited youth as defined in section 260C.007, subdivision 31, clause (1); and

(5) agrees to successfully complete a diversion program under section 388.24 [Pretrial diversion programs for juveniles] or fully comply with a disposition order under section 260C.201

(b) The prosecutor shall refer a child described in paragraph (a) to a diversion program under section 388.24 or file a petition under section 260C.141 alleging the child to be in need of protection or services.

Pursuant to Minn. Stat. Ann. § 609.093(3),

The court shall dismiss the charge against the child if any of the following apply:

(1) the prosecutor referred the child to diversion program and the prosecutor notifies the court that the child successfully completed the program;

(2) the prosecutor filed a petition under section 260C.141 and the court does not find that the child is in need of protection or services; or

(3) the prosecutor filed a petition under section 260C.141, the court entered an order under section 260C.201, and the child fully complied with the order.

However, a child who “fails to successfully complete diversion or fails to fully comply with a disposition order under section 260C.201” may be referred back to the court for further juvenile delinquency proceedings. Minn. Stat. Ann. § 609.093(2).<sup>64</sup>

<sup>64</sup> Until these amendments become effective on August 1, 2014, a minor-victim still may be adjudicated a delinquent child by violating Minn. Stat. Ann. § 609.324(6) or (7), which state,

[6] Prostitution in public place; penalty for prostitutes. Whoever, while acting as a prostitute, intentionally does any of the following while in a public place is guilty of a gross misdemeanor:

(1) engages in prostitution with an individual 18 years of age or older; or

(2) is hired, offers to be hired, or agrees to be hired by an individual 18 years of age or older to engage in sexual penetration or sexual contact.

[7] General prostitution crimes; penalties for prostitutes.

(a) Whoever, while acting as a prostitute, intentionally does any of the following is guilty of a misdemeanor:

(1) engages in prostitution with an individual 18 years of age or older; or

(2) is hired, offers to be hired, or agrees to be hired by an individual 18 years of age or older to engage in sexual penetration or sexual contact.

(b) Whoever violates the provisions of this subdivision within two years of a previous prostitution conviction for violating this section or section 609.322 is guilty of a gross misdemeanor.

The text of Minn. Stat. Ann. § 609.324(6), (7) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, *available at* [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2011). Under the new bill, “prostitution” means “hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact, or being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.” The text of Minn. Stat. Ann. § 609.321(8) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, *available at* [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary,

Additionally, sex trafficking victims may assert an affirmative defense to a charge under Minn. Stat. Ann. § 609.324 under some circumstances. Minn. Stat. Ann. § 609.325(4) (Defenses) states,

It is an affirmative defense to a charge under section 609.324 if the defendant proves by a preponderance of the evidence that the defendant is a labor trafficking victim, as defined in section 609.281, or a sex trafficking victim, as defined in section 609.321, and that the defendant committed the act only under compulsion by another who by explicit or implicit threats created a reasonable apprehension in the mind of the defendant that if the defendant did not commit the act, the person would inflict bodily harm upon the defendant.

5.3.1 Recommendation: Amend Minn. Stat. Ann. § 609.324(1) (Patrons; Prostitutes; Housing Individuals engaged in prostitution; Penalties) and Minn. Stat. Ann. § 609.3243 (Loitering with intent to participate in prostitution) to refer cases of minors arrested for prostitution related offenses to Minn. Stat. Ann. § 609.093(1) (Juvenile prostitutes; diversion or child protection proceedings) when the child is 16 or 17 and to Minn. Stat. Ann. § 299A.795 (Trafficking victim assistance) for services as a trafficking victim. Also amend Minn. Stat. Ann. § 609.324(2), (3) (Patrons; Prostitutes; Housing Individuals engaged in prostitution; Penalties) and Minn. Stat. Ann. § 609.3243 (Loitering with intent to participate in prostitution) to refer cases of minors arrested for prostitution related offenses to refer to Minn. Stat. Ann. § 260C.175(1) (Taking child into custody) to ensure minors under 16 are identified as children in need of services and routed into protective services.

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.*

Senate File 1,<sup>65</sup> which was passed during the 2011 Special Session, states in article, 4, section 9,

(a) If sufficient funding from outside sources is donated, the commissioner of public safety shall develop a statewide model as provided in this section. By June 30, 2012, the commissioner of public safety, in consultation with the commissioners of health and human services, shall develop a victim services model to address the needs of sexually exploited youth and youth at risk of sexual exploitation. The commissioner shall take into consideration the findings and recommendations as reported to the legislature on the results of the safe harbor for sexually exploited youth pilot project authorized by Laws 2006, chapter 282, article 13, section 4, paragraph (b). . . .

(b) By January 15, 2013, the commissioner of public safety shall report to the chairs and ranking minority members of the senate and house of representatives divisions having jurisdiction over health and human services and criminal justice funding and policy on the development of the statewide model, including recommendations for additional legislation or funding for services for sexually exploited youth or youth at risk of sexual exploitation.

(c) As used in this section, “sexually exploited youth” has the meaning given in section 260C.007, subdivision 31.<sup>66</sup>

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relevant section effective Aug. 1, 2011). Lastly, a minor still may also be adjudicated a delinquent child for having violated Minn. Stat. Ann. § 609.3243 (Loitering with intent to participate in prostitution), which provides that “[a] person who loiters in a public place with intent to participate in prostitution is guilty of a misdemeanor.”

<sup>65</sup> Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, *available at* [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2011).

<sup>66</sup> See *supra* Section 5.1 for definition of “sexually exploited youth.”



Even if Minnesota does not receive adequate funding to implement this victim services model, several protective provisions exist for sexually exploited youth under the child protection provisions of Minnesota's Juvenile Court Act.

Minnesota recently amended its definition of "delinquent child" in Minn. Stat. Ann. § 260B.007,<sup>67</sup> to include a new subsection (6)(c), which states

The term delinquent child does not include a child under the age of 16 years of age alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct.

The recently passed bill also amended the definition of "juvenile petty offender" in Minn. Stat. Ann. § 260B.007(16) by amending subsection (16)(d) to read,

A child who commits a juvenile petty offense is a "juvenile petty offender." The term juvenile petty offender does not include a child under the age of 16 years alleged to have violated any law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct which, if committed by an adult, would be a misdemeanor.

Under these provisions, minors under 16 years of age engaging in commercial sex acts will not be treated as delinquent children.<sup>68</sup> The newly enacted bill also adds the term "sexually exploited youth" to the definition of "child in need of protection or services" in Minn. Stat. Ann. § 260C.007(6)<sup>69</sup> and adds to that same statute a definition of "sexually exploited youth," which includes "a sex trafficking victim as defined in section 609.321, subdivision 7b."

Under Minn. Stat. Ann. § 260C.175(1) (Taking child into custody), a child in need of protection or services may be taken into immediate custody by some of the following methods:

- (1) with an order issued by the court in accordance with the provisions of section 260C.151, subdivision 6 [Summons; notice] . . .
- (2) by a peace officer:
  - (i) when a child has run away from a parent, guardian, or custodian, or when the peace officer reasonably believes the child has run away from a parent, guardian, or custodian, but only for the purpose of transporting the child home, to the home of a relative, or to another safe place, which may include a shelter care facility; or
  - (ii) when a child is found in surroundings or conditions which endanger the child's health or welfare or which such peace officer reasonably believes will endanger the child's health or welfare.
- . . .
- (4) by a peace officer or probation officer under section 260C.143, subdivision 1 or 4 [Procedure; Habitual Truants, Runaways, Offenders].

<sup>67</sup> The text of Minn. Stat. Ann. § 260B.007(16)(d) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, available at [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2014).

<sup>68</sup> See *supra* Section 5.3 for the substantive provisions of Minn. Stat. Ann. § 609.093, which protects minors under 16 from being labeled as delinquent for engaging in commercial sex acts.

<sup>69</sup> The text of Minn. Stat. Ann. § 260C.007(6) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, available at [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2011).

Pursuant to Minn. Stat. Ann. § 260C.151(6),

If the court makes individualized, explicit findings, based on the notarized petition or sworn affidavit, that there are reasonable grounds to believe the child is in surroundings or conditions which endanger the child's health, safety, or welfare that require that responsibility for the child's care and custody be immediately assumed by the responsible social services agency and that continuation of the child in the custody of the parent or guardian is contrary to the child's welfare, the court may order that the officer serving the summons take the child into immediate custody for placement of the child in foster care. In ordering that responsibility for the care, custody, and control of the child be assumed by the responsible social services agency, the court is ordering emergency protective care as that term is defined in the juvenile court rules.

Runaways and habitually truant minors may be taken into custody by law enforcement under Minn. Stat. Ann. § 260C.143(1), which provides,

When a peace officer, or attendance officer in the case of a habitual truant, has probable cause to believe that a child is in need of protection or services under section 260C.007, subdivision 6, clause (13) [runaway] or (14) [habitual truant], the officer may issue a notice to the child to appear in juvenile court in the county in which the child is found or in the county of the child's residence. . . . If a child fails to appear in response to the notice, the court may issue a summons notifying the child of the nature of the offense alleged and the time and place set for the hearing. If the peace officer finds it necessary to take the child into custody, sections 260C.175 and 260C.176 shall apply.

After being taken into custody, the child's parent, guardian, or custodian "shall be notified as soon as possible," and "[u]nless there is reason to believe that the child would endanger self or others or not return for a court hearing, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, or other suitable relative." Minn. Stat. Ann. § 260C.176(1). Pursuant to Minn. Stat. Ann. § 260C.176(2)(b),

No child taken into custody and placed in a shelter care facility or relative's home by a peace officer pursuant to section 260C.175, subdivision 1, clause (1) or (2), item (ii), may be held in custody longer than 72 hours, excluding Saturdays, Sundays, and holidays, unless a petition has been filed and the judge or referee determines pursuant to section 260C.178 [Emergency removal hearing] that the child shall remain in custody or unless the court has made a finding of domestic abuse perpetrated by a minor after a hearing . . . in which case the court may extend the period of detention for an additional seven days, within which time the social services agency shall conduct an assessment and shall provide recommendations to the court regarding voluntary services or file a child in need of protection or services petition.

When a child in need of protection or services is not released under Minn. Stat. Ann. § 260C.176(1) (Release or detention), "[T]he person taking the child into custody shall notify the court as soon as possible of the detention of the child and the reasons for detention." Minn. Stat. Ann. § 260C.176(2). Pursuant to Minn. Stat. Ann. § 260C.181(1), a child taken into custody under Minn. Stat. Ann. § 260C.175 may be detained for no more than 24 hours in "a shelter care facility, secure detention facility, or, if there is no secure detention facility available for use by the county having jurisdiction over the child, in a jail or other facility for the confinement of adults who have been charged with or convicted of a crime in quarters separate from any adult confined in the facility which has been approved for the detention of juveniles by the commissioner of corrections."

However, a child in need of protection or services taken into custody under Minn. Stat. Ann. § 260C.175(1)(1), or (2)(ii) and who is not allegedly delinquent, "shall be detained in the least restrictive setting consistent with the child's health and welfare and in closest proximity to the child's family as possible." Minn. Stat. Ann. §



260C.181(2). Additionally, a habitual truant or runaway who is taken into temporary custody may only be placed in a shelter care facility. Minn. Stat. Ann. § 260C.181(3). Minn. Stat. § 260C.181(3) states, “If the child had been taken into custody and detained as one who is alleged to be in need of protection or services under section 260C.007, subdivision 6, clause (13) or (14) . . . the child may be placed only in a shelter care facility.”

In making a dispositional placement for a child who is found to be in need of protection or services, the court has several options including placing the child “under the protective supervision of the responsible social services agency or child-placing agency in the home of a parent of the child under conditions prescribed by the court,”<sup>70</sup> transferring legal custody to a social services or child-placing agency, returning the child to the parent or guardian from whom the child was removed for up to six months for a trial home visit,<sup>71</sup> or allowing the child to live independently if he is at least 16 years old and the court believes the “child has sufficient maturity and judgment.” Minn. Stat. Ann. § 260C.201(1)(a).

In making a dispositional placement for a child who is found to be a child in need of services or protection because he or she is a habitual truant or runaway, the court has a number of options, including leaving the child in the child’s home under supervision, transferring legal custody to probation officer for placement of the child in a group foster home, and transferring legal custody of the child to a “reputable person of good moral character.” Minn. Stat. Ann. § 260C.201(1)(b).<sup>72</sup>

Despite these protections and services, under the law in effect until August 1, 2014, and for children aged 16 and 17 who fail to successfully complete a diversion program after August 1, 2014, it is still possible for children to be taken into custody and detained for committing prostitution offenses. In these cases, the child victim may be labeled a “delinquent child,” for having violated a state law. Minn. Stat. Ann. § 260C.007(11).<sup>73</sup> Under Minn. Stat. Ann. § 260B.007(6), a “delinquent child” is defined to include a child “who has violated any state or local law, except as provided in section 260B.225, subdivision 1, and except for juvenile offenders as described in subdivisions 16 to 18.”<sup>74</sup> Any reputable person who has knowledge regarding a child in Minnesota who appears to be delinquent may file a delinquency petition with the court, and the juvenile court will have “original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent.” Minn. Stat. Ann. §§ 260B.101, 260B.141(1).

Under Minn. Stat. Ann. § 260B.175(1) (Taking child into custody),

No child may be taken into immediate custody except:

- (a) with an order issued by the court in accordance with the provisions of section 260C.151 [Summons; notice] . . . or by a warrant issued in accordance with the provisions of section 260B.154 [Failure to obey summons or subpoena; contempt; arrest];
- (b) in accordance with the laws relating to arrests; or

<sup>70</sup> According to Minn. Stat. Ann. § 260C.201(1)(a)(1), if the child is placed with a child-placing agency, he will reside “in the home of a parent of the child under conditions prescribed by the court directed to the correction of the child’s need for protection or services . . . .”

<sup>71</sup> During a trial home visit, a social services agency shall continue to have legal custody of the child, the ability to access information pursuant to Minn. Stat. Ann. § 260C.208 (Information for child placement), provide appropriate services to the child and parent, may terminate the trial home visit without a court order, and prepare a report for the court when the trial home visit is terminated. Minn. Stat. Ann. § 260C.201(1)(a)(3).

<sup>73</sup> The text of Minn. Stat. Ann. § 260C.007(11) included here and elsewhere in this report includes amendments made by the passage of Senate File No. 1 during the Minnesota 2011 1st Special Session. 2011 Minn. Laws 1, *available at* [https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session\\_year=2011&session\\_number=1](https://www.revisor.mn.gov/bin/bldbill.php?bill=S0001.0.html&session_year=2011&session_number=1) (effective dates vary, relevant section effective Aug. 1, 2011).

<sup>74</sup> Minn. Stat. Ann. § 260B.225(1) defines “major traffic offense” and “adult court traffic offense.” Minn. Stat. Ann. § 260B.007(16)(c)(1) specifically excludes misdemeanor violations of section 609.324 from being defined as a “juvenile petty offense.” Minn. Stat. Ann. § 260B.007(17) covers juvenile alcohol offenses and Minn. Stat. Ann. § 260.007(18) covers juvenile controlled substance offenses.

(c) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision.

Once taken into custody, the child alleged to be a delinquent child “shall be released to the custody of a parent, guardian, custodian, or other suitable person” except when there is “reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child’s parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child’s health or welfare would be immediately endangered.” Minn. Stat. Ann. § 260B.176(1). If not released, a child may not be detained in a “juvenile secure detention facility or shelter care facility longer than 36 hours, excluding Saturdays, Sundays, and holidays, after being taken into custody for a delinquent act . . . unless a petition has been filed and the judge or referee determines pursuant to section 260B.178 [Detention hearing] that the child shall remain in detention.” Minn. Stat. Ann. § 260B.176(2)(b). Similarly, pursuant to Minn. Stat. Ann. § 260B.176(2)(c),

(c) No child may be detained in an adult jail or municipal lockup longer than 24 hours, excluding Saturdays, Sundays, and holidays, or longer than six hours in an adult jail or municipal lockup in a standard metropolitan statistical area, after being taken into custody for a delinquent act as defined in section 260B.007, subdivision 6, unless:

- (1) a petition has been filed under section 260B.141; and
- (2) a judge or referee has determined under section 260B.178 that the child shall remain in detention.

After August 1, 1991, no child described in this paragraph may be detained in an adult jail or municipal lockup longer than 24 hours, excluding Saturdays, Sundays, and holidays, or longer than six hours in an adult jail or municipal lockup in a standard metropolitan statistical area, unless the requirements of this paragraph have been met and, in addition, a motion to refer the child for adult prosecution has been made under section 260B.125. Notwithstanding this paragraph, continued detention of a child in an adult detention facility outside of a standard metropolitan statistical area county is permissible if:

- (i) the facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours. A delay not to exceed 48 hours may be made under this clause; or
- (ii) the facility is located where conditions of safety exist. Time for an appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. “Conditions of safety” include adverse life-threatening weather conditions that do not allow for reasonably safe travel.

The continued detention of a child under clause (i) or (ii) must be reported to the commissioner of corrections.

If a “child is being held at a juvenile secure detention facility or shelter care facility,” a detention hearing must be held “within 36 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays,” but if the child is detained at “an adult jail or municipal lockup,” the detention hearing must be held “within 24 hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays.” Minn. Stat. Ann. § 260B.178(1)(a)(1), (1)(a)(2). At the detention hearing, Minn. Stat. Ann. § 260B.178(1)(b) (Detention hearing) provides that

[u]nless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child’s parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child’s health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release . . . . In determining

whether the child's health or welfare would be immediately endangered, the court shall consider whether the child would reside with a perpetrator of domestic child abuse.

If the court determines that the child is a delinquent child, it may place the child in a variety of settings, including returning the child to the child's home under supervision and court-ordered conditions or, "if the court determines that the child is a danger to self or others," it may transfer legal custody of the child to a "child-placing agency," "local social services agency," "a reputable individual of good moral character," a county home school, "a county probation officer for placement in a group foster home," or to the "commissioner of corrections." Minn. Stat. Ann. § 260B.198(1)(3). Additionally, if the court finds the child to be "in need of special treatment and care for reasons of physical or mental health," the court may "order the child's parent, guardian, or custodian to provide it. If the parent, guardian, or custodian fails to provide this treatment or care, the court may order it provided." Minn. Stat. Ann. § 260B.198(1)(7).

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

Conduct that amounts to a violation of Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) or a violation of Minnesota's CSEC laws or sexual offense laws is expressly included within the definition of child abuse used in the child protection provisions of Minnesota's Juvenile Court Act. Specifically, under Minn. Stat. Ann. § 260C.007(5) (Definitions), "child abuse" means the following:

[A]n act that involves a minor victim that constitutes a violation of section . . . 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking ], 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties], 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree], 609.345 [Criminal sexual conduct in the fourth degree] . . . 617.246 [Use of minors in sexual performance prohibited], or that is physical or sexual abuse as defined in section 626.556, subdivision 2 [Reporting of maltreatment of minors], or an act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state.

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.*

The applicable definition of "custodian" under the child protection provisions may not cover every situation in which a trafficker is in custody of a domestic minor sex trafficking victim. Pursuant to Minn. Stat. Ann. § 260C.007(10) (Definitions), a "custodian" means

any person who is under a legal obligation to provide care and support for a minor or who is in fact providing care and support for a minor. This subdivision does not impose upon persons who are not otherwise legally responsible for providing a child with necessary food, clothing, shelter, education, or medical care a duty to provide that care. . . .

By only including individuals who have some "legal obligation to provide care and support" for the child or who are "in fact providing care and support" for a child, the definition of custodian may fail to include all situations where a trafficker is in control of or resides with a child.

5.6.1 Recommendation: Amend Minn. Stat. Ann. § 260C.007(10) (Definitions) to include as a "custodian" those persons who are in control of a child in order to bring a trafficked child within the protection of the child protection statutes.

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

Minnesota's Crime Victims Reparation Act does not make reparation awards available to children who are victims of commercial sexual exploitation without regard to ineligibility requirements. Generally, a "victim"<sup>75</sup> who has incurred economic loss," will be "entitled to reparations upon a showing by a preponderance of the evidence that the requirements for reparations have been met." Minn. Stat. Ann. § 611A.53(1). As provided in Minn. Stat. Ann. § 611A.52(8) within the Crime Victims Reparation Act,

- (a) "Economic loss" means actual economic detriment incurred as a direct result of injury or death.
- (b) In the case of injury the term is limited to:
  - (1) reasonable expenses incurred for necessary medical, chiropractic, hospital, rehabilitative, and dental products, services, or accommodations, including ambulance services, drugs, appliances, and prosthetic devices;
  - . . .
  - (3) reasonable expenses incurred for psychological or psychiatric products, services, or accommodations, not to exceed an amount to be set by the board, where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim;
  - (4) loss of income that the victim would have earned had the victim not been injured;
  - (5) reasonable expenses incurred for substitute child care or household services to replace those the victim or claimant would have performed had the victim or the claimant's child not been injured; . . .
  - (6) reasonable expenses actually incurred to return a child who was a victim of a crime under section 609.25 or 609.26 to the child's parents or lawful custodian. These expenses are limited to transportation costs, meals, and lodging from the time the child was located until the child was returned home; and
  - (7) the claimant's moving expenses, storage fees, and phone and utility installation fees, up to a maximum of \$1,000 per claim, if the move is necessary due to a reasonable fear of danger related to the crime for which the claim was filed.

Although a commercially sexually exploited child who suffers economic loss will generally be eligible to receive reparations under Minnesota's Crime Victims Reparation Act, several additional requirements for reparations could present difficulties for victims of domestic minor sex trafficking. Specifically, reparations will not be awarded unless the crime was "reported to the police within 30 days of its occurrence or, if it could not reasonably have been reported within that period, within 30 days of the time when a report could reasonably have been made." Minn. Stat. Ann. § 611A.53(2)(1). Notably, however, "A victim of criminal sexual conduct in the first, second, third, or fourth degree who does not report the crime within 30 days of its occurrence is deemed to have been unable to have reported it within that period." Minn. Stat. Ann. § 611A.53(2)(1). To be eligible to receive reparations, a victim must also "cooperate fully with the police and other law enforcement officials," must not have been an accomplice of the offender, and must not have been "in the act of committing a crime at the time the injury occurred." Minn. Stat. Ann. § 611A.53(2)(2), (3), (4). Additionally, pursuant to Minn. Stat. Ann. § 611A.53(2)(5), (6), the claim must be for more than \$50, and the victim must file a claim for reparation within 3 years of the date of the harm suffered,

except that (i) if the claimant was unable to file a claim within that period, then the claim can be made within three years of the time when a claim could have been filed; and (ii) if the victim's injury or death was not reasonably discoverable within three years of the injury or death, then the claim can be made within three years of the time when the injury or death is reasonably discoverable. The following circumstances do not render a claimant unable to file a claim for the purposes of this clause: (A) lack of

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<sup>75</sup> See *supra* Section 5.1.

knowledge of the existence of the Minnesota Crime Victims Reparations Act, (B) the failure of a law enforcement agency to provide information or assistance to a potential claimant under section 611A.66, (C) the incompetency of the claimant if the claimant's affairs were being managed during that period by a guardian, guardian ad litem, conservator, authorized agent, or parent, or (D) the fact that the claimant is not of the age of majority.

If the victim's claim is based on child abuse,<sup>76</sup> the claim does not have to be for more than \$50, does not have to be reported to the police within 30 days, and the 3-year period to file a claim will toll until the time the crime actually is reported to the police. Minn. Stat. Ann. § 611A.53(2).

The amount of reparations a victim receives also may be reduced to the extent: (i) "that economic loss is recouped from a collateral source or collateral sources;" and (ii) "the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims." Minn. Stat. § 611A.54(1), (2). Additionally, in no case will the victim receive more than \$50,000. Minn. Stat. Ann. § 611A.54(3).

Despite the reporting and filing extension granted to victims of child abuse and certain sexual offenses, nothing expressly exempts victims of Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking), Minn. Stat. Ann. § 609.324(1) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties), Minn. Stat. Ann. § 617.246(2) (Use of minors in sexual performance prohibited), or Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) from the same requirements as other victims.

5.7.1 Recommendation: Amend Minn. Stat. Ann. § 611A.53(2) to specifically exempt victims of Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324(1) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties), § 617.246(2) (Use of minors in sexual performance prohibited), and § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) from the listed limitations on reparations awards.

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

Minnesota does not afford criminal friendly justice procedures and protections specifically to victims of domestic minor sex trafficking. However, regardless of the victim's age, Minnesota law provides special protections for victims of sexual offenses pursuant to Minn. Stat. Ann. § 609.347 (Evidence in criminal sexual conduct cases). Minn. Stat. Ann. § 609.347(1) provides, "In a prosecution under sections 609.342 [Criminal sexual conduct in the first degree] to 609.3451 [Criminal sexual conduct in the fifth degree]; 609.3453 [Criminal sexual predatory conduct] . . . the testimony of a victim need not be corroborated." Similarly, there is no need to demonstrate that the "victim resisted the accused." Minn. Stat. Ann. § 609.347(2). Additionally, pursuant to Minn. Stat. Ann. § 609.347(3), in prosecutions for those offenses,

[E]vidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4. The evidence can be admitted only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the circumstances set out in paragraphs (a) and (b). For the evidence to be admissible under paragraph (a), subsection (i), the judge must find by a preponderance of the evidence that the facts set out in the accused's offer of proof are true. For the evidence to be admissible under paragraph (a), subsection (ii) or paragraph (b), the judge must find that the evidence is sufficient to support a finding that the facts set out in the accused's offer of proof are true, as provided under Rule 901 of the Rules of Evidence.

<sup>76</sup> See *supra* Section 5.6 for the definition of "child abuse." The term "child abuse" is not defined in Minn. Stat. Ann. § 611A.52.

- (a) When consent of the victim is a defense in the case, the following evidence is admissible:
  - (i) evidence of the victim’s previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue. In order to find a common scheme or plan, the judge must find that the victim made prior allegations of sexual assault which were fabricated; and
  - (ii) evidence of the victim’s previous sexual conduct with the accused.
- (b) When the prosecution’s case includes evidence of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim’s previous sexual conduct is admissible solely to show the source of the semen, pregnancy, or disease.

Special protections are afforded to minor victims of sexual abuse throughout the process of investigating and prosecuting a criminal offense related to the sexual abuse of the child. For example, Minn. Stat. Ann. § 609.3471 (Records pertaining to victim identity confidential) provides that “no data contained in records or reports relating to petitions, complaints, or indictments issued pursuant to section 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree], 609.345 [Criminal sexual conduct in the fourth degree], or 609.3453, which specifically identifies a victim who is a minor shall be accessible to the public, except by order of the court.” Pursuant to Minn. Stat. Ann. § 626.561 (Interviews with child abuse victims), a record must be made of every interview of an alleged child abuse victim<sup>77</sup> and that every county attorney’s office must develop written guidelines for tape recording such interviews. Minn. Stat. Ann. § 626.561(3), (4).

Additional protections apply during a trial. Specifically, certain minors are allowed to give out-of-court statements in lieu of testifying in court. Minn. Stat. Ann. § 595.02(3) (Testimony of witnesses) states,

An out-of-court statement made by a child under the age of ten years . . . alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

- (a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and
- (b) the child . . . either:
  - (i) testifies at the proceedings; or
  - (ii) is unavailable as a witness and there is corroborative evidence of the act; and
- (c) the proponent of the statement notifies the adverse party of the proponent’s intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

<sup>77</sup> Minn. Stat. Ann. § 626.561(2)(1) defines “child abuse” as “physical or sexual abuse as defined in section 626.556, subdivision 2.” Minn. Stat. Ann. § 626.556(2)(d) defines “sexual abuse” as

the subjection of a child by a person responsible for the child’s care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes threatened sexual abuse.

Minn. Stat. Ann. § 595.02(4) further provides that when a child under 12 years of age is “alleging, denying, or describing . . . an act of sexual contact or penetration performed with or on the child or any other person by another,” the child may provide testimony via closed-circuit television or a videotaped recording. Pursuant to Minn. Stat. Ann. § 595.02(4)(b), (c), when a child under 12 years old provides testimony via closed-circuit television or videotaped recording,

[O]nly the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 [Juveniles] or a dissolution or custody proceeding under chapter 518 [Marriage Dissolution], the attorneys for those parties with a right to participate may be present with the child during the child’s testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

- (1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or
- (2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

When a prosecuting attorney discloses a videotaped interview of a child victim of physical or sexual abuse to a defendant or the defendant’s attorney, only two copies of any portion of the tape may be made by the defendant, the defendant’s attorney, or by any agent or representative of the defendant, the tapes may only be used to prepare for defense, may only be publicly shown in judicial proceedings against the defendant, may only be viewed by the defendant and those working on the defense, and must be returned to the prosecuting attorney after a final disposition of the case. Minn. Stat. Ann. § 634.35(a). Furthermore, “[N]o person may be granted access to the tapes, any transcription of the tapes, or the substance of any portion of the tapes unless the person has first signed a written agreement that the person is aware of this statute and acknowledges that the person is subject to the court’s contempt powers for any violation of it.” Minn. Stat. Ann. § 634.35(a)(6).

In addition to limits on public access to recorded child testimony, restrictions are also placed on the discovery of “a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse.” In releasing discoverable material “the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b),” which states that “[t]he court order may govern the purposes for which the videotape may be used, reproduction, release to other persons, retention and return of copies, and other requirements reasonably necessary for protection of the privacy and best interests of the child.” Minn. Stat. Ann. §§ 13.03(6), 611A.90(2)(b).

Additionally, the judge may exclude spectators from the courtroom at “the trial of a complaint or indictment for a violation of sections 609.341 [Definitions] to 609.3451 [Criminal sexual conduct in the fifth degree]; 609.3453 [Criminal sexual predatory conduct]; [or] 617.246, subdivision 2 [Use of minor in sexual performance prohibited] . . . when a minor under 18 years of age is the person upon, with, or against whom the crime is alleged to have been committed,” and may also authorize the presence of any supportive person in the courtroom for prosecuting witnesses who are minors in cases involving child abuse as defined in Minn. Stat. Ann. § 630.36 (Issues, how disposed of), which expressly includes conduct amounting to violations of, among other laws, Minn. Stat. Ann. § 609.321 (Prostitution and sex trafficking; definitions), Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), and Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties). Minn. Stat. Ann. §§ 631.045, 631.046(1).

5.8.1 Recommendation: Amend Minn. Stat. Ann. § 609.347 (Evidence in criminal sexual conduct cases) to apply to victims of human trafficking and CSEC offenses.

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.*

Under Minnesota law, unless a minor is classified as an extended jurisdiction juvenile or prosecuted as an adult for the commission of a felony, a minor is not considered to be a “criminal” and, thus, cannot be “arrested.” Minn. Stat. Ann. § 260B.245(1)(a). Instead, a minor is taken custody and comes within the jurisdiction of the juvenile court as a juvenile offender, a juvenile delinquent, or as a child in need of protection or services. Minnesota law requires the court to “keep and maintain records pertaining to delinquent adjudications until the person reaches the age of 28.” Minn. Stat. Ann. § 260B.171(1)(a).<sup>78</sup> However, pursuant to Minn. Stat. Ann. § 260B.198(6) (Dispositions; delinquent child), the “court may expunge the adjudication of delinquency at any time that it deems advisable,” except when legal custody of the juvenile is transferred “by commitment to the commissioner of corrections.” Minn. Stat. Ann. § 260B.198(1)(4), (6).

5.9.1 Recommendation: Amend Minn. Stat. Ann. § 260B.198(6) (Dispositions; delinquent child) to provide that any criminal records resulting from arrests for offenses perpetrated as a result of, or in the course of, the commercial sexual exploitation of a minor may be expunged upon application by the minor at age 18.

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

Minors victimized through prostitution, pornography, and sexual performance may pursue several civil claims under Minnesota law. Specifically, Minn. Stat. Ann. § 611A.81(1)(b) (Cause of action for coercion for use in prostitution) provides,

(b) An individual has a cause of action against a person who did the following while the individual was a minor:

- (1) solicited or induced the individual to practice prostitution;
- (2) promoted the prostitution of the individual;
- (3) collected or received the individual’s earnings derived from prostitution; or
- (4) hired, offered to hire, or agreed to hire the individual to engage in prostitution.

Pursuant to Minn. Stat. Ann. § 611A.81(2),

A person against whom a cause of action may be maintained under subdivision 1 is liable for the following damages that resulted from the plaintiff’s being used in prostitution or to which the plaintiff’s use in prostitution proximately contributed:

- (1) economic loss, including damage, destruction, or loss of use of personal property; loss of past or future income or earning capacity; and income, profits, or money owed to the plaintiff from contracts with the person; and
- (2) damages for death as may be allowed under section 573.02, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, and burial expenses; and pain and suffering, including physical impairment.

<sup>78</sup> Minn. Stat. Ann. § 260B.171(1)(b) further states, “The court shall retain records of the court finding that a juvenile committed an act that would be a felony- [sic] or gross misdemeanor level offense until the offender reaches the age of 28. If the offender commits a felony as an adult, or the court convicts a child as an extended jurisdiction juvenile, the court shall retain the juvenile records for as long as the records would have been retained if the offender had been an adult at the time of the juvenile offense. This paragraph does not apply unless the juvenile was provided counsel as required by section 260B.163, subdivision 2.”



Civil remedies are also available under Minn. Stat. Ann. § 617.245(2) (Civil action; use of minor in sexual performance). Under Minn. Stat. Ann. § 617.245(2), “A cause of action exists for injury caused by the use of a minor [under the age of 16] in a sexual performance. The cause of action exists against a person who promotes, employs, uses, or permits a minor to engage or assist others to engage in posing or modeling alone or with others in a sexual performance, if the person knows or has reason to know that the conduct intended is a sexual performance.” Subsection (2) also states, “A person found liable for injuries under this section is liable to the minor for damages.”

Lastly, Minn. Stat. Ann. § 541.073 (Actions for damages due to sexual abuse; special provisions) addresses the statute of limitations for a civil suit “based on personal injury caused by sexual abuse,” which is defined as “conduct described in sections 609.342 to 609.345.”

Under Minn. Stat. Ann. § 611A.04(1)

A victim<sup>79</sup> of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent. . . . A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child’s parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim’s right to obtain court-ordered restitution under this section. . . .

*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.*

Limitations periods for criminal offenses vary. Pursuant to Minn. Stat. Ann. § 628.26(e), “Indictments or complaints for violation of sections 609.342 [Criminal sexual conduct in the first degree] to 609.345 [Criminal sexual conduct in the fourth degree] if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.” For offenses that do not have a specific limitation listed in Minn. Stat. Ann. § 628.26, “[I]ndictments or complaints shall be found or made and filed in the proper court within three years after the commission of the offense.” Minn. Stat. Ann. § 628.26(k).

Civil claims under Minn. Stat. Ann. § 611A.81(1) (Cause of action for coercion for use in prostitution) must be commenced within 6 years from the date that the cause of action arises, “except that the running of the limitation period is suspended during the time that coercion as defined in section 611A.80 continues, or as otherwise provided by section 541.13 [Absence from state] or 541.15 [Periods of disability not counted].” Minn. Stat. Ann. § 611A.84. Civil claims under Minn. Stat. Ann. § 617.245(2) (Civil action; use of minor in sexual performance) must be commenced within 6 years of “the time the plaintiff knew or had reason to know injury was caused by plaintiff’s use as a minor in a sexual performance.” Minn. Stat. Ann. § 617.245(3).<sup>80</sup> Similarly, Minn. Stat. Ann. § 541.073(2)(a) (Actions for damages due to sexual abuse; special provisions) provides that “[a]n action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse.”<sup>81</sup> Minn. Stat. Ann. § 541.073(2)(b) further clarifies that “[t]he plaintiff need not establish which act in a

<sup>79</sup> See *supra* note 24.

<sup>80</sup> For purposes of determining when a cause of action under Minn. Stat. Ann. § 617.245 arises, “The knowledge of a parent, guardian, or custodian may not be imputed to the minor.” Minn. Stat. Ann. § 617.245(3).

<sup>81</sup> In determining when a claim for injury caused by sexual abuse accrued, “The knowledge of a parent or guardian may not be imputed to a minor.” Minn. Stat. Ann. § 541.073(2)(c).

continuous series of sexual abuse acts by the defendant caused the injury.” Moreover, in any case in which the plaintiff is under 18 when the cause of action arises, the applicable statute of limitations will be tolled pursuant to Minn. Stat. Ann. § 541.15(a) (Periods of disability not counted), and the plaintiff may bring the cause of action any time before turning 19.

- 5.11.1 Recommendation: Amend Minn. Stat. Ann. § 628.26 to eliminate or sufficiently lengthen all statute of limitations for violations of 609.322(1) (Solicitation, inducement, and promotion of prostitution; sex trafficking).

## FRAMEWORK ISSUE 6: CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

### *Legal Components:*

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Domestic minor sex trafficking investigations may use wiretapping to investigate the crime.*
- 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
- 6.5 *Using the Internet to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

### *Legal Analysis:*

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

Pursuant to Minn. Stat. Ann. § 299A.71(1) (Combating juvenile prostitution; prevention grants), “A grant program is established for enhanced law enforcement efforts and peace officer education and training to combat juvenile prostitution.” The grant program’s stated goal is to “provide peace officers with the knowledge and skills to recognize individuals who sexually exploit youth, charge and prosecute these individuals for promotion and solicitation of prostitution, and effectively communicate with the victims of juvenile prostitution.” Under subsection (2), the commission of public safety must make such grants available to local law enforcement agencies “to provide enhanced efforts targeted to juvenile prostitution and training and staff development relating to the prevention of juvenile prostitution,” and any law enforcement agency receiving a grant must use “all of the grant funding received for efforts to combat juvenile prostitution.” Minn. Stat. Ann. § 299A.71(2).

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

Single party consent to audio recording and interception of oral communications is permitted in Minnesota. Minn. Stat. Ann. § 626A.02(2)(c) (Interception and disclosure of wire, electronic, or oral communications prohibited) states, “It is not unlawful under this chapter for a person acting under color of law to intercept a wire, electronic, or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.”

Further, under Minn. Stat. Ann. § 626A.02(d),

(d) It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, electronic, 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 any state.

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

Law enforcement officers investigating a violation of, among other offenses, Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) may use wiretapping and the resulting evidence. Although Minn. Stat. Ann. § 626A.02(1) (Interception and disclosure of wire, electronic, or oral communications prohibited) generally makes it unlawful if a person “intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, electronic, or oral communication,” pursuant to Minn. Stat. Ann. § 626A.05(2) (Authorization for interception of wire, electronic, or oral communications),

A warrant authorizing interception of wire, electronic, or oral communications by investigative or law enforcement officers may only be issued when the interception may provide evidence of the commission of, or of an attempt or conspiracy to commit, any of the following offenses:

- (1) a felony offense involving . . . kidnapping, criminal sexual conduct in the first, second, and third degrees, prostitution . . . as punishable under sections . . . 609.25 [Kidnapping], 609.321 [Prostitution and sex trafficking; definitions] to 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties], 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree] . . .

. . . .

Therefore, a law enforcement officer investigating a violation of Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324 (Patrons; prostitutes, housing individuals engaged in prostitution; penalties), and § 609.25 (Kidnapping), may be able to obtain a warrant pursuant to Minn. Stat. Ann. § 626A.06 (Procedure for interception of wire, electronic, or oral communication) authorizing the use of wiretapping.

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.*

The use of a decoy by law enforcement in investigating violations of Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) is not specifically authorized in the statute. However, decoys may be used under Minn. Stat. Ann. § 609.352(3) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), which expressly provides, “The fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense under this section does not constitute a defense to prosecution under this section.” Minn. Stat. Ann. § 609.352(3). Additionally, under Minn. Stat. Ann. § 609.352, an adult who “solicits<sup>82</sup> a child or someone the person reasonably believes is a child to engage in sexual conduct with the intent to engage in sexual conduct” may be “guilty of a felony and may be sentenced to imprisonment for not more than three years, or to payment of a fine of not more than \$5,000, or both.” Minn. Stat. Ann. § 609.352(2), (4). The standard of “someone the person reasonably believes is a child” appears to open the possibility of the use of a decoy by law enforcement in the investigation of the crime. Minn. Stat. Ann. § 609.352(1)(a) defines “child” as “a person 15 years of age or younger.”

- 6.4.1 Recommendation: Amend Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) and § 609.324(1) (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) to expressly permit law enforcement decoys to investigate the crimes.

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<sup>82</sup> See *supra* note 11.

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

Using the Internet to investigate buyers and traffickers appears to be a permissible investigative technique under Minnesota law. “A person 18 years of age or older” violates Minn. Stat. Ann. § 609.352(2a) (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children) if he,

uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person . . .

- (1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;
- (2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or
- (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

The standard of “someone the person reasonably believes is a child” appears to open the possibility of law enforcement using the Internet to pose as a child in an investigation for this offense. Minn. Stat. Ann. § 609.352(1)(a) defines “child” as “a person 15 years of age or younger.” Moreover, Minn. Stat. Ann. § 609.352(3) expressly provides, “The fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense under this section does not constitute a defense to prosecution under this section.”

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

Minn. Stat. Ann. § 299C.52(2) (Minnesota missing children and endangered persons program) requires Minnesota to establish and to maintain a missing children and persons program “to enable documented information about missing Minnesota children and endangered persons to be entered into the NCIC [National Crime Information Center] computer.” Law enforcement agencies must “accept without delay any report of a missing person” and upon receipt of a report, must “conduct a preliminary investigation to determine whether the person is missing,<sup>83</sup> and if missing, whether the person is endangered.”<sup>84</sup> Minn. Stat. Ann. § 299C.53(1)(a), (b). Minn. Stat. Ann. § 299C.53(1)(b) further provides,

<sup>83</sup> Minn. Stat. Ann. §299C.52(1)(d) defines “missing” as “the status of a person after a law enforcement agency that has received a report of a missing person has conducted a preliminary investigation and determined that the person cannot be located.”

<sup>84</sup> Under Minn. Stat. Ann. §299C.52(1)(c), a person is “endangered” if

a law enforcement official has received sufficient evidence that the missing person is at risk of physical injury or death. The following circumstances indicate that a missing person is at risk of physical injury or death:

- (1) the person is missing as a result of a confirmed abduction or under circumstances that indicate that the person’s disappearance was not voluntary;
- (2) the person is missing under known dangerous circumstances;
- (3) the person is missing more than 30 days;
- (4) the person is under the age of 21 and at least one other factor in this paragraph is applicable;
- (5) there is evidence the person is in need of medical attention or prescription medication such that it will have a serious adverse effect on the person’s health if the person does not receive the needed care or medication;
- (6) the person does not have a pattern of running away or disappearing;
- ...
- (8) there is evidence that the person may have been abducted by a noncustodial parent;
- (9) the person has been the subject of past threats or acts of violence;
- ...
- (11) any other factor that the law enforcement agency deems to indicate that the person may be at risk of physical injury or death, including a determination by another law enforcement agency that the person is missing and endangered.

If the person is initially determined to be missing and endangered, the agency shall immediately consult the Bureau of Criminal Apprehension during the preliminary investigation, in recognition of the fact that the first two hours are critical. If the person is determined to be missing and endangered, the agency shall immediately enter identifying and descriptive information about the person into the NCIC computer. Law enforcement agencies having direct access to the NCIC computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the systems.

Additionally, “The law enforcement agency shall promptly notify all appropriate law enforcement agencies in the state and, if deemed appropriate, law enforcement agencies in adjacent states or jurisdictions of any information that may aid in the prompt location and safe return of a missing and endangered person.” Minn. Stat. Ann. § 299C.53(3). Once a law enforcement agency locates or returns a missing person, “[a]s soon as is practically possible after a missing person is located, the law enforcement agency which located or returned the missing person shall notify the law enforcement agency having jurisdiction over the investigation, and that agency shall cancel the entry from the NCIC computer.” Minn. Stat. Ann. § 299C.53(2).

Additionally, Minn. Stat. Ann. § 299C.54(1) (Missing children bulletin) directs the Commissioner to circulate a missing persons bulletin to local law enforcement agencies, county attorneys, and, in the case of missing children, to public and nonpublic schools. The commissioner shall also make this information accessible to other parties involved in efforts to locate missing children and endangered persons and to other persons as the commissioner considers appropriate.

*NOTE: ENACTED LEGISLATION AS OF 8/1/11*