

ANALYSIS AND RECOMMENDATIONS NEW HAMPSHIRE*

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*
- 1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*
- 1.3 *CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

Legal Analysis¹:

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*

N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) addresses sex trafficking by including commercial sex acts or sexually explicit performances within the definition of “involuntary servitude,” but it does not clearly define human trafficking victims as any minor under the age of 18 used in a commercial sex act without regard to the use of force, fraud, or coercion. N.H. Rev. Stat. Ann. § 633:7(I), (II) (Trafficking in Persons) states,

I. (a) It is a class A felony to knowingly subject a person to involuntary servitude,² where the compulsion is accomplished by any of the following means:

- (1) Causing or threatening to cause serious harm to any person.

** This document has not been fully reviewed and approved by ACLJ.*

¹ Unless otherwise specified, all references to New Hampshire statutes were taken from New Hampshire Revised Statutes Annotated (LEXIS current through Chapter 269 of the 2011 Session) and all federal statutes were taken from United States Code (LEXIS current through PL 112-54, approved 11/12/11).

² N.H. Rev. Stat. Ann. § 633:6(V) defines “involuntary servitude” as,

[A] condition of compulsory service or labor, including commercial sex acts or sexually explicit performance, performed by one person, against his or her will, for the benefit of another. If a person willingly begins to perform the labor or service but later attempts to withdraw and is forced to remain and perform against his or her will, the service becomes involuntary. The payment of a wage or salary is not determinative of the question as to whether that person has been held in involuntary servitude.

- (2) Confining the person unlawfully as defined in RSA 633:2, II [Criminal restraint], or threatening to so confine the person.
- (3) Abusing legal process or threatening to bring legal action against the person relating to the person's legal status or potential criminal liability.
- (4) Destroying, concealing, removing, confiscating, or otherwise making unavailable to that person any actual or purported passport or other immigration document, or any other actual or purported government identification document.
- (5) Threatening to commit a crime against the person.
- (6) False promise relating to the terms and conditions of employment, education, marriage, or financial support.
- (7) Threatening to reveal any information sought to be kept concealed by the person which relates to the person's legal status or which would expose the person to criminal liability.
- (8) Facilitating or controlling the person's access to an addictive controlled substance.
- (9) Engaging in any scheme, plan, or pattern, whether overt or subtle, intended to cause the person to believe that, if he or she did not perform such labor, services, commercial sex acts,³ or sexually explicit performances,⁴ that such person or any person would suffer serious harm or physical restraint.
- (10) Withholding or threatening to withhold food or medication that the actor has an obligation or has promised to provide to the person.
- (11) Coercing a person to engage in any of the foregoing acts by requiring such in satisfaction of a debt owed to the actor.

....
 II. It is a class A felony to recruit, harbor, transport, provide, obtain, or otherwise make available a person, knowing or believing it likely that the person will be subjected to trafficking as defined in paragraph I. . . .

³ N.H. Rev. Stat. Ann. § 633:6(I) defines "commercial sex act" as "any sex act because of which anything of value is given, promised to, or received, directly or indirectly, by any person." N.H. Rev. Stat. Ann. § 633:6(II) defines "sex act" as "any act of sexual contact as defined in RSA 632-A:1, IV [Definitions], any act of sexual penetration as defined in RSA 632-A:1, V [Definitions], or any other sexually explicit conduct as defined in RSA 649-A:2 [Definitions]." N.H. Rev. Stat. Ann. 632-A:1(IV) (Definitions) defines "sexual contact" as "the intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification." N.H. Rev. Stat. Ann. § 632-A:1(V) states,

- (a) "Sexual penetration" means:
 - (1) Sexual intercourse; or
 - (2) Cunnilingus; or
 - (3) Fellatio; or
 - (4) Anal intercourse; or
 - (5) Any intrusion, however slight, of any part of the actor's body, including emissions, or any object manipulated by the actor into genital or anal openings of the victim's body; or
 - (6) Any intrusion, however slight, of any part of the victim's body, including emissions, or any object manipulated by the victim into the oral, genital, or anal openings of the actor's body; or
 - (7) Any act which forces, coerces, or intimidates the victim to perform any sexual penetration as defined in subparagraphs (1)–(6) on the actor, on another person, or on himself.
- (b) Emissions include semen, urine, and feces. Emission is not required as an element of any form of sexual penetration.
- (c) "Objects" include animals as defined in RSA 644:8, II.

N.H. Rev. Stat. Ann. § 649-A:2(III) defines "sexually explicit conduct" as

[H]uman masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.

⁴ N.H. Rev. Stat. Ann. § 633:6(III) defines "sexually-explicit performance" as "an act or show involving one or more sex acts, intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, or videotaped."

A conviction under N.H. Rev. Stat. Ann. § 633:7(I) is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, but if the offense involves “a commercial sex act or sexually explicit performance by a victim under the age of 18,” a conviction is punishable as a Class A felony by imprisonment for 10–30 years,⁵ a fine not to exceed \$4,000,⁶ or both. N.H. Rev. Stat. Ann. §§ 633:7(I)(a), (c), 651:2(I),

⁵ Extended terms of imprisonment may apply under certain circumstances. N.H. Rev. Stat. Ann. § 651:6(I)–(IV) (Extended Term of Imprisonment) provides,

I. A convicted person may be sentenced according to paragraph III if the jury also finds beyond a reasonable doubt that such person:

(a) Based on the circumstances for which he or she is to be sentenced, has knowingly devoted himself or herself to criminal activity as a major source of livelihood;

...

(c) Has manifested exceptional cruelty or depravity in inflicting death or serious bodily injury on the victim of the crime;

(d) Has committed an offense involving the use of force against a person with the intention of taking advantage of the victim’s age or physical disability;

(e) Has committed or attempted to commit any of the crimes defined in RSA 631 [Assault and related sentences] or 632-A [Sexual assault and related offenses] against a person under 13 years of age;

...

(m) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, I(l) or RSA 632-A:2, II [Aggravated felonious sexual assault] where the defendant was 18 years of age or older at the time of the offense;

(n) Has committed or attempted to commit aggravated felonious sexual assault in violation of RSA 632-A:2, III, and one or more of the acts comprising the pattern of sexual assault was an offense under RSA 632-A:2, I(l) or RSA 632-A:2, II, or both, and the defendant was 18 years of age or older when the pattern of sexual assault began;

...

(q) Has knowingly committed any of the following offenses as a criminal street gang member, or for the benefit of, at the direction of, or in association with any criminal street gang, with the purpose to promote, further, or assist in any such criminal conduct by criminal street gang members:

(1) Violent crime as defined in RSA 651:5, XIII [Annulment of Criminal Records] [includes any felonious child pornography offense under N.H. Rev. Stat. Ann. § 649-A].

.....

(6) Criminal street gang solicitation as defined in RSA 644:20 [Criminal street gang; Solicitation]; or

.....

II. A convicted person may be sentenced according to the terms of paragraph III if the court finds, and includes such findings in the record, that such person:

(a) Has twice previously been convicted in this state, or in another jurisdiction, on sentences in excess of one year;

.....

III. If authorized by paragraph I or II, . . . a defendant may be sentenced to an extended term of imprisonment. An extended term is, for a person convicted of:

(a) Any felony, other than murder or manslaughter, a minimum to be fixed by the court of not more than 10 years and a maximum to be fixed by the court of not more than 30 years;

(b) A misdemeanor, a minimum to be fixed by the court of not more than 2 years and a maximum to be fixed by the court of not more than 5 years;

.....

(e) Two or more offenses under RSA 632-A:2 [Aggravated felonious sexual assault], life imprisonment without parole;

(f) A third offense under RSA 632-A:3 [Felonious sexual assault], life imprisonment; or

.....

IV. If authorized by subparagraphs I(m), (n), or (o) and if notice of the possible application of this section is given to the defendant prior to the commencement of trial:

(a) There is a presumption that a person shall be sentenced to a minimum to be fixed by the court of not less than 25 years and a maximum of life imprisonment unless the court makes a determination that the goals of deterrence, rehabilitation, and punishment would not be served, based on the specific circumstances of the case, by such a sentence and the court makes specific written findings in support of the lesser sentence. . . .

(b) The sentence shall also include, in addition to any other penalties provided by law, a special sentence of lifetime supervision by the department of corrections. . . [which] shall begin upon the offender’s release from incarceration, parole, or probation. . . .

.....

⁶ Under N.H. Rev. Stat. Ann. § 633 651:2(IV), the fines imposed for a felony violation vary depending on whether the offender is an individual or organization or whether the offender gained property through the illegal violation. N.H. Rev. Stat. Ann. § 633 651:2(IV) states,

(II)(a), (IV)(a). Similarly, a conviction under N.H. Rev. Stat. Ann. § 633:7(II) is punishable as a Class A felony punishable by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, but if the victim is under the age of 18 and “the offender knew or believed it likely that the victim would be coerced into engaging in a commercial sex act or sexually explicit performance,” a conviction is punishable by imprisonment for 10 years to a maximum “fixed by the court,” a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 633:7(II), 651:2(I), (II)(a), (IV)(a).

- 1.1.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) to eliminate the compulsion requirement if the victim is a minor under the age of 18 and used in a commercial sex act.⁷

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 statutes specifically prohibit CSEC in New Hampshire:

1. N.H. Rev. Stat. Ann. § 645:2(I) (Prostitution and Related Offenses) makes it a crime if a person
- (a) Solicits, agrees to perform, or engages in sexual contact⁸ as defined in RSA 632-A:1, IV [Definitions] or sexual penetration⁹ as defined in RSA 632-A:1, V, [Definitions] in return for consideration; or
 - (b) Induces or otherwise purposely causes another to violate subparagraph (a); or
 - (c) Transports another into or within this state with the purpose of promoting or facilitating such other in engaging in conduct in violation of subparagraph (a); or
 - (d) Not being a legal dependent incapable of self support, knowingly is supported in whole or in part by the proceeds of violation of subparagraph (a); or
 - (e) Knowingly permits a place under such person’s control to be used for violation of subparagraph (a); or
 - (f) Pays, agrees to pay, or offers to pay another person to engage in sexual contact as defined in RSA 632-A:1, IV or sexual penetration as defined in RSA 632-A:1, V, with the payor or with another person.

A conviction under this statute is punishable as a Class B misdemeanor by a fine not to exceed \$1,200. N.H. Rev. Stat. Ann. §§ 645:2(I), 625:9(IV)(b), (c), 651:2(IV)(a). If the offense involves a minor under the age of 18, however, a conviction under N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 645:2(II)(a), 651:2(I), (II)(b), (IV)(a).

IV. A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. The limitations on amounts of fines authorized in subparagraphs (a) and (b) shall not include the amount of any civil penalty, the imposition of which is authorized by statute or by a properly adopted local ordinance, code, or regulation. The amount of any fine imposed on:

- (a) Any individual may not exceed \$4,000 for a felony, \$2,000 for a class A misdemeanor, \$1,200 for a class B misdemeanor, and \$1,000 for a violation.
- (b) A corporation or unincorporated association may not exceed \$100,000 for a felony, \$20,000 for a misdemeanor and \$1,000 for a violation. A writ of execution may be issued by the court against the corporation or unincorporated association to compel payment of the fine, together with costs and interest.
- (c) If a defendant has gained property through the commission of any felony, then in lieu of the amounts authorized in paragraphs (a) and (b), the fine may be an amount not to exceed double the amount of that gain.

⁷ Subsequent recommendations in this report referring to N.H. Rev. Stat. Ann. § 633:7 (Trafficking in persons) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

⁸ See *supra* note 3 for the definition of “sexual contact.”

⁹ See *supra* note 3 for the definition of “sexual penetration.”

2. N.H. Rev. Stat. Ann. § 649-B:3(I)(d) (Computer Pornography) states,

I. No person shall knowingly:

- (a) Compile, enter into, or transmit by means of computer;
- (b) Make, print, publish, or reproduce by other computerized means;
- (c) Cause or allow to be entered into or transmitted by means of computer; or
- (d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child,¹⁰ or the visual depiction of such conduct.

A conviction under N.H. Rev. Stat. Ann. § 649-B:3(I)(d) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

Several other New Hampshire laws, while not expressly commercial in nature, may also be applicable in cases involving the commercial sexual exploitation of a child. Some of those statutes are as follows:

1. N.H. Rev. Stat. Ann. § 632-A:4(I) (Sexual Assault) states,

I. A person is guilty of a class A misdemeanor under any of the following circumstances:

- (a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2 [Aggravated Felonious Sexual Assault].
- (b) When the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.
- (c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.

A conviction under N.H. Rev. Stat. Ann. § 632-A:4(I) is punishable as a Class A misdemeanor by imprisonment up to 1 year, a fine not to exceed \$2,000, or both. N.H. Rev. Stat. Ann. §§ 632-A:4(I), 651:2(I), (II)(c), (IV)(a).

2. N.H. Rev. Stat. Ann. § 632-A:3(II), (III) (Felonious Sexual Assault) states,

A person is guilty of a class B felony if such person:

....

- II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or
- III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

A first or second conviction under this statute is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. § 632-A:3, 651:2(I), (II)(b), (IV)(a). Under certain circumstances, a third conviction is punishable by an extended term of life imprisonment. N.H. Rev. Stat. Ann. § 651:6(I), (III)(f).¹¹

¹⁰ "In this chapter, 'child' means any person under the age of 16 years." N.H. Rev. Stat. Ann. § 649-B:2.

¹¹ See *supra* note 5 for the provisions of N.H. Rev. Stat. Ann. § 651:6(I), (III)(f).

3. N.H. Rev. Stat. Ann. § 632-A:2 (Aggravated Felonious Sexual Assault) states,

I. A person is guilty of the felony of Aggravated Felonious Sexual Assault if such person engages in sexual penetration with another person under any of the following circumstances:

....

(l) When the victim is less than 13 years of age.

....

II. A person is guilty of Aggravated Felonious Sexual Assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of Aggravated Felonious Sexual Assault when such person engages in a pattern of sexual assault¹² against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

First convictions under this statute are punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both; second convictions¹³ are punishable by imprisonment for 20–40 years, a fine not to exceed \$4,000, or both, while third and subsequent convictions are punishable by life imprisonment without the possibility of parole. N.H. Rev. Stat. Ann. §§ 632-A:10-a(I)–(III), 651:2(I), (IV)(a). Under certain circumstances, convictions under N.H. Rev. Stat. Ann. § 632-A:2(I)(l) (Aggravated Felonious Sexual Assault when the victim is under the age of 13) are subject to enhanced punishments including 25 years to life imprisonment for a first conviction, life imprisonment for subsequent convictions, and life-time supervision by the department of corrections. N.H. Rev. Stat. Ann. § 651:6(I)(m), (III)(e), (IV)(a), (b).¹⁴

¹² Pursuant to N.H. Rev. Stat. Ann. §632-A:1(I-c), “‘Pattern of sexual assault’ means committing more than one act under RSA 632-A:2 [Aggravated Felonious Sexual Assault] or RSA 632-A:3 [Felonious Sexual Assault], or both, upon the same victim over a period of 2 months or more and within a period of 5 years.”

¹³ For purposes of this statute, prior convictions include previous convictions under N.H. Rev. Stat. Ann. § 632-A:2 “or any other statute prohibiting the same conduct in another state, territory or possession of the United States.” N.H. Rev. Stat. Ann. § 632-A:10-a(II).

¹⁴ See *supra* note 5 for the substantive provisions of N.H. Rev. Stat. Ann. § 651:6(I)(m), (III)(e), (IV)(a), (b). Additionally, N.H. Rev. Stat. Ann. § 651:6(VI) provides,

VI. A person shall be sentenced [to imprisonment for life without the possibility of parole] if the court finds, and includes such findings in the record, that such person:

(a) (1) Committed a violation of RSA 632-A:2, I(l), RSA 632-A:2, II, or RSA 632-A:2, III, in which one or more of the acts comprising the pattern of sexual assault was an offense under RSA 632-A:2, I(l) or RSA 632-A:2, II, or both, after having previously been convicted of an offense in violation of one of the aforementioned offenses or any other statute prohibiting the same conduct in another state, territory or possession of the United States, and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release; or

(b) (1) Committed a violation of RSA 631:1 after having previously been convicted of an offense in violation of RSA 631:1, or any other statute prohibiting the same conduct in another state, territory or possession of the United States, if the earlier offense also involved a victim under 13 years of age where the serious bodily injury resulted in brain damage or physical disability to the child that is likely to be permanent; and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release; or

(c) (1) Committed a violation of RSA 630:1-b after having previously been convicted of an offense in violation of RSA 630:1-b, or any other statute prohibiting the same conduct in another state, territory, or possession of the United States; and

(2) The person committed the subsequent offense while released on bail on the earlier offense or the sentence for the earlier conviction involved a term of incarceration, probation, parole, or other supervised release.

VII. If the court has made the findings authorized by RSA 651:6, VI, and if notice of the possible application of this section is given to the defendant prior to the commencement of trial, a person shall be sentenced to an extended term of imprisonment of life without parole.

4. N.H. Rev. Stat. Ann. § 639:3 (Endangering the Welfare of a Child) states,

I. A person is guilty of endangering the welfare of a child or incompetent if he knowingly endangers the welfare of a child under 18 years of age . . . by purposely violating a duty of care, protection or support he owes to such child. . . , or by inducing such child . . . to engage in conduct that endangers his health or safety.

....

III. In the prosecution of any person under this section, the solicitation by any person of a child under the age of 16 to engage in sexual activity as defined by RSA 649-A:2, III [Definitions] for the purpose of creating a visual representation as defined in RSA 649-A:2, IV [Definitions],¹⁵ or to engage in sexual penetration as defined by RSA 632-A:1, V [Definitions],¹⁶ constitutes endangering the welfare of such child.

A conviction under N.H. Rev. Stat. Ann. § 639:3(I) is punishable as a Class B misdemeanor by a fine not to exceed \$1,200. N.H. Rev. Stat. Ann. §§ 639:3(V), 625:9(IV)(b), (c), 651:2(IV)(a). A conviction under N.H. Rev. Stat. Ann. § 639:3(III), however, is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. § 639:3(V), 651:2(I), (II)(b), (IV)(a).

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

None of New Hampshire's CSEC statutes refer to N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons).

1.3.1 Recommendation: Amend New Hampshire's CSEC statutes to refer to N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) to ensure that minors under the age of 18 are treated as sex trafficking victims in commercial sex cases.

¹⁵ See *supra* note 3 for the definition of "sexually explicit conduct."

¹⁶ See *supra* note 3 for the definition of "sexual penetration."

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.*

N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons) makes it illegal for a person to “obtain . . . a person, knowing or believing it likely that the person will be subjected to trafficking.” Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),¹⁷ have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”¹⁸ a person under 18 to engage in commercial sex.¹⁹ It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in New Hampshire’s trafficking statute may be similarly applied, and could, therefore, implicate buyers under N.H. Rev. Stat. Ann. § 633:7(II). If the victim is under the age of 18 and “the offender knew or believed it likely that the victim would be coerced into engaging in a commercial sex act or sexually explicit performance,” a conviction under N.H. Rev. Stat. Ann. § 633:7(II) is punishable as a Class A felony by imprisonment for 10 years to a maximum “fixed by the court,” a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 633:7(II), 651:2(I), (IV)(a).

- 2.1.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) to include the term “purchase” and clarify that the statute applies to buyers of commercial sex with minors.

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

New Hampshire’s CSEC laws do not specifically include the crime of buying sex with a minor, as N.H. Rev.

¹⁷ 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.).

¹⁸ 18 U.S.C. § 1591(a).

¹⁹ See, e.g., Indictment at 1, United States v. Oflyng, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

Stat. Ann. § 645:2(I)(a), (f) (Prostitution and Related Offenses) does not distinguish between the buying of sex with an adult and with a minor. Regardless of the age of the victim, a conviction under N.H. Rev. Stat. Ann. § 645:2(I)(a), (f) is punishable as a Class B misdemeanor by a fine up to \$1,200. N.H. Rev. Stat. Ann. §§ 645:2(I), 625:9(IV)(b), (c), 651:2(IV)(a).

N.H. Rev. Stat. Ann. § 649-B:3(I)(d) (Computer Pornography) does make it illegal, however, for a person to knowingly

[b]uy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

This law could apply to buyers who attempt to obtain information about where to purchase commercial sex with a minor or arrange to meet a minor for these purposes. The law, however, does not explicitly refer to commercial sex acts. A conviction under this statute is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

Several of New Hampshire's sexual offenses may also be used to prosecute a buyer of commercial sex acts with a minor.²⁰

2.2.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 645:2 (Prostitution and Related Offenses) to impose enhanced penalties where a person solicits or pays for sex with a minor under the age of 18.

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

N.H. Rev. Stat. Ann. § 645:2(I)(a) (Prostitution and Related Offenses) does not distinguish between the solicitation of an adult and of a minor. Regardless of the age of the victim, a conviction under N.H. Rev. Stat. Ann. § 645:2(I)(a), (f) is punishable as a Class B misdemeanor by a fine not to exceed \$1,200. N.H. Rev. Stat. Ann. §§ 645:2(I), 625:9(IV)(b), (c), 651:2(IV)(a).

2.3.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 645:2 (Prostitution and Related Offenses) to impose enhanced penalties when a person solicits sex with a minor under the age of 18.

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

If N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons) applies to buyers,²¹ and if the victim is under the age of 18 and “the offender knew or believed it likely that the victim would be coerced into engaging in a commercial sex act or sexually explicit performance,” a conviction under N.H. Rev. Stat. Ann. § 633:7(II) is punishable as a Class A felony by imprisonment for 10 years to a maximum “fixed by the court,” a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 633:7(II), 651:2(I), (IV)(a). A conviction under N.H. Rev. Stat. Ann. § 649-B:3(I)(d) (Computer Pornography) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both, while a conviction under N.H. Rev. Stat. Ann. § 645:2(I)(a), (f) (Prostitution and Related Offenses) is punishable as a Class B misdemeanor by a fine not to exceed \$1,200. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a), 645:2(I), 625:9(IV)(b), (c), 651:2(IV)(a).

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

²⁰ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

²¹ See *supra* Section 2.1 for discussion on whether N.H. Rev. Stat. Ann. § 633:7(II) is applicable to buyers.

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 offense²² against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²³ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁴

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.*

N.H. Rev. Stat. Ann. § 649-B:3(I) (Computer Pornography) provides,

I. No person shall knowingly:

...

(d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child,²⁵ or the visual depiction of such conduct.

This law could apply to buyers who use a computer to attempt to obtain information about where to purchase commercial sex with a minor or arrange for meeting a minor for these purposes. The law, however, does not explicitly refer to commercial sex acts. A conviction under this statute is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

Additionally, N.H. Rev. Stat. Ann. § 649-B:4(I) (Certain Uses of Computer Services Prohibited) states,

No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child²⁶ or another person believed by the person to be a child, to commit any of the following:

- (a) Any offense under RSA 632-A, relative to sexual assault and related offenses.
- (b) Indecent exposure and lewdness under RSA 645:1.
- (c) Endangering a child as defined in RSA 639:3, III.

If the victim is under the age of 16 and the offender believes the victim to be 13 years of age or older, a first conviction under this statute is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both, while a second conviction is punishable as a Class A felony by imprisonment up to 15

²² 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).

²³ 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).

²⁴ 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).

²⁵ *See supra* note 10.

²⁶ *See supra* note 10.

years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:4(II)(a), (b), 651:2(I), (II)(a), (b), (IV)(a), 649-B:2. If the victim is under the age of 16 and the offender believes the victim to be under the age of 13, a first conviction is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, while a second conviction is punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:4(II)(a), (b), 651:2(I), (II)(a), (IV)(a), 649-B:2. Third and any subsequent convictions, regardless of whether the defendant believed the victim to be under 13, are punishable by imprisonment up to 30 years. N.H. Rev. Stat. Ann. § 649-B:4(II)(c).

2.5.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 649-B:4 (Certain Uses of Computer Services Prohibited) to specifically include N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) in its list of referenced offenses for which the use of a computer or online service prohibits in order to provide added protections and remedies for victims of domestic minor sex trafficking who are trafficked in this manner.

2.5.2 Recommendation: Amend N.H. Rev. Stat. Ann. § 649-B:2 to raise the age of a “child” to under 18 to protect all minors.

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

N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons), § 649-B:3(I) (Computer Pornography), or § 649-B:4 (Certain Uses of Computer Services Prohibited) do not expressly prohibit a mistake of age defense, and a mistake of age defense is irrelevant in prosecutions of N.H. Rev. Stat. Ann. § 645:2(I) (Prostitution and Related Offenses), as its penalties for soliciting and buying sex are not dependent on the age of the victim.

2.6.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons), § 649-B:3(I) (Computer Pornography), 649-B:4 (Certain Uses of Computer Services Prohibited), and § 645:2 (Prostitution and Related Offenses) to expressly prohibit a defendant asserting a mistake of age defense.

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

N.H. Rev. Stat. Ann. § 633:7(I)(c), (II) (Trafficking in Persons) provides an enhanced penalty for violations of N.H. Rev. Stat. Ann. § 633:7(I)(a), (II) that involve a minor under the age of 18 and does not stagger those enhanced penalties based on the age of the minor victim. A conviction under N.H. Rev. Stat. Ann. § 633:7(I) is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, but if the offense involves “a commercial sex act or sexually explicit performance by a victim under the age of 18,” a conviction is punishable as a Class A felony by imprisonment for 10–30 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 633:7(I)(a), (c), 651:2(I), (II)(a), (IV)(a). Similarly, a conviction under N.H. Rev. Stat. Ann. § 633:7(II) is punishable as a Class A felony punishable by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, but if the victim is under the age of 18 and “the offender knew or believed it likely that the victim would be coerced into engaging in a commercial sex act or sexually explicit performance,” a conviction is punishable by imprisonment for 10 years to a maximum “fixed by the court,” a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 633:7(II), 651:2(I), (II)(a), (IV)(a).

Similarly, N.H. Rev. Stat. Ann. § 645:2(II) (Prostitution and Related Offenses) provides enhanced penalties for violations of N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e) that involve a minor under the age of 18 and does not stagger those enhanced penalties based on the age of the minor victim. A conviction under N.H. Rev. Stat. Ann. § 645:2(I)²⁷ is punishable as a Class B misdemeanor by a fine not to exceed \$1,200. N.H. Rev. Stat. Ann. §§ 645:2(I), 625:9(IV)(b), (c), 651:2(IV)(a). If the offense involves a minor under the age of 18, however, a

²⁷ See *supra* Section 1.2 for the substantive provisions of N.H. Rev. Stat. Ann. § 645:2(I).

conviction under N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 645:2(II)(a), 651:2(I), (II)(b), (IV)(a).

Although N.H. Rev. Stat. Ann. § 649-B:3(I)(d) (Computer Pornography) does not have staggered penalties based on the age of the minor, the statute only applies to victims under the age of 16.²⁸ A conviction under N.H. Rev. Stat. Ann. § 649-B:3(I)(d) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a). N.H. Rev. Stat. Ann. § 649-B:4(I) (Certain Uses of Computer Services Prohibited) also only applies to victims under the age of 16,²⁹ and although it does have staggered penalties, the staggering is based on whether the offender believed the victim to be under the age of 13, and not whether the victim was actually 13. N.H. Rev. Stat. Ann. § 649-B:4(II), (III). If the victim is believed to be 13 years of age or older, a first conviction under this statute is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both, while a second conviction is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:4(II)(a), (b), 651:2(I), (II)(a), (b), (IV)(a). If the victim is believed to be under the age of 13, a first conviction is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, while a second conviction is punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:4(II)(a), (b), 651:2(I), (II)(a), (IV)(a). Third and any subsequent convictions, regardless of whether the defendant believed the victim to be under 13, are punishable by imprisonment up to 30 years. N.H. Rev. Stat. Ann. § 649-B:4(II)(c).

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

Buyers are subject to potential fines ranging from \$1,200–\$4,000.³⁰ Pursuant to N.H. Rev. Stat. Ann. § 651:2(IV)(a) (Sentences and Limitations), a buyer convicted of any felony, which includes N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons), § 649-B:3(I)(d) (Computer Pornography), § 645:2(I)(b) (Prostitution and Related Offenses), and § 649-B:4(II)(a) (Certain Uses of Computer Services Prohibited), is subject to a possible fine not to exceed \$4,000. N.H. Rev. Stat. Ann. §§ 633:7(I)(c), 649-B:3(II), 645:2(II), 649-B:4(II). A violation of N.H. Rev. Stat. Ann. § 645:2(I)(a), (f) (Prostitution and Related Offenses), however, is a Class B misdemeanor, and, pursuant to N.H. Rev. Stat. Ann. § 651:2(IV)(a), is punishable by a fine not to exceed \$1,200. N.H. Rev. Stat. Ann. §§ 645:2(I), 625:9(IV)(c), 651:2(IV)(a).

In addition to fines, convicted buyers may also be subject to restitution payments. N.H. Rev. Stat. Ann. § 633:10 (Restitution and Compensation), specifically requires buyers convicted under N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) to make restitution to their victims. N.H. Rev. Stat. Ann. § 633:10(I), (II) states,

- I. A person convicted under this section shall be ordered by the court to pay restitution to the victim. Such restitution may include but not be limited to:
- (a) Any economic loss³¹ compensable under RSA 651:62 [Definitions], in accordance with the provisions of RSA 651:61-a through RSA 651:67; and

²⁸ See *supra* note 10.

²⁹ See *supra* note 10.

³⁰ See *supra* note 6.

³¹ N.H. Rev. Stat. Ann. § 651:62(III) (Definitions) defines “economic loss” as,

- [O]ut-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including:
- (a) Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services for the victim or, in the case of the death of the victim, for the victim’s spouse and immediate family;
 - (b) Loss of income by the victim or the victim’s dependents;
 - (c) The value of damaged, destroyed, or lost property;

- (b) The value of the victim’s labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act or the state minimum wage law, whichever is greater.
- II. To the extent not included in economic loss that is compensable under paragraph I, the court may also order a person convicted under this section to pay compensation as follows:
 - (a) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court’s discretion;
 - (b) Costs of necessary transportation, temporary housing, and child care, at the court’s discretion;
 - (c) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
 - (d) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items; and
 - (e) Any and all other losses suffered by the victim as a result of an offense under this section.

Buyers convicted of other offenses are also subject to pay restitution under New Hampshire’s general restitution statute, N.H. Rev. Stat. Ann. § 651:63(I) (Restitution Authorized), which allows the court to sentence any offender “to make restitution in an amount determined by the court. . . . regardless of the offender’s ability to pay.”

Additionally, a buyer convicted under N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) may be subject to asset forfeiture. N.H. Rev. Stat. Ann. § 633:8 (Forfeiture of Items Used in Connection with Trafficking in Persons) states,

- I. All offenses under this section shall qualify as offenses for forfeiture and thereby upon petition of the attorney general, shall be subject to forfeiture to the state and said property interest shall be vested in the state:
 - (a) All materials, products, and equipment of any kind used in violation of this section.
 - (b) Any property interest in any conveyance used in furtherance of an act which violates this section.
 - (c) Any moneys, coin, currency, negotiable instruments, securities, or other investments knowingly used or intended for use in violation of this section.
 - (d) Any books, records, ledgers, and research material, including formulae, microfilm, tapes, and any other data which are used or intended for use in felonious violation of this section.
 - (e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in felonious violation of this section. of the property.

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

N.H. Rev. Stat. Ann. § 649-A:3(I)(a) (Possession of Child Sexual Abuse Images) makes it illegal for a person to knowingly “[b]uy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct.”³² A first conviction under this statute is punishable as a Class A felony by imprisonment up to 15

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- (d) Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim’s dependents;
 - (e) Reasonable expenses related to funeral and burial or crematory services for the decedent victim.

³² See *supra* note 3 for the definition of “sexually explicit conduct.”

³³ N.H. Rev. Stat. Ann. § 649-A:3(III) provides,

It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:



years, a fine not to exceed \$4,000, or both, while subsequent convictions are punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-A:3(II), 651:2(I), (II)(a), (IV)(a).

Additionally, N.H. Rev. Stat. Ann. § 649-B:3(I) (Computer Pornography) provides,

No person shall knowingly:

...

(d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

A conviction under N.H. Rev. Stat. Ann. § 649-B:3(I)(d) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

In contrast, a federal conviction for possession of child pornography³⁴ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁵ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁶

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

Buyers convicted under N.H. Rev. Stat. Ann. § 645:2(I)(a), (b), (f) (Prostitution and Related offenses), § 649-B:3(I)(d) (Computer Pornography), § 649-A:3(I)(a) (Possession of Child Sexual Abuse Images), or § 649-B:4(I) (Certain Uses of Computer Services Prohibited) are required to register as a sexual offender. Buyers convicted under N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons), however, are not required to register.

N.H. Rev. Stat. Ann. § 651-B:2(I) (Registration) states that “[e]very sexual offender or offender against children shall be registered with the department of safety, division of state police” N.H. Rev. Stat. Ann. § 651-B:1(IV) (Definitions) defines “sexual offender” as “a person who is required to register for any sexual offense,” while N.H. Rev. Stat. Ann. § 651-B:1(V) defines a “sex offense” to include convictions under N.H. Rev. Stat. Ann. § 632-A:2 (Aggravated Felonious Sexual Assault), § 632-A:3 (Felonious Sexual Assault), or “[a]ny other

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- (a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and
 - (b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:
 - (1) Took reasonable steps to destroy each such visual depiction; or
 - (2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

³⁴ 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).

³⁵ 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).

³⁶ 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).

criminal offense . . . if the court finds by clear and convincing evidence at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.” N.H. Rev. Stat. Ann. § 651-B:1(VI) defines an “offender against children” as “a person who is required to register for an offense against a child” and N.H. Rev. Stat. Ann. § 651-B:1(VII) explains that “offense against a child” includes,

- (a) Any of the following offenses, where the victim was under the age of 18 at the time of the offense: . . . Aggravated Felonious Sexual Assault, RSA 632-A:2 [Aggravated Felonious Sexual Assault]; Felonious Sexual Assault, RSA 632-A:3 [Felonious Sexual Assault]; . . . or prostitution, RSA 645:2 [Prostitution and Related offenses].
- (b) Intentional contribution to the delinquency of a minor, RSA 169-B:41 [Intentional Contribution to Delinquency], II; sexual assault, RSA 632-A:4, I(b) [Sexual Assault] if the actor was 18 years of age or older at the time of the offense; endangering the welfare of a child, RSA 639:3, III [Endangering the Welfare of a Child]; Possession of Child Sexual Abuse Images, RSA 649-A:3 [Possession of Child Sexual Abuse Images]; Distribution of Child Sexual Abuse Images, RSA 649-A:3-a [Distribution of Child Sexual Abuse Images]; Manufacture of Child Sexual Abuse Images, RSA 649-A:3-b [Manufacture of Child Sexual Abuse Images]; Computer Pornography, RSA 649-B:3 [Computer Pornography]; Certain Uses of Computer Services Prohibited, RSA 649-B:4 [Certain Uses of Computer Services Prohibited]; or obscene matters, RSA 650:2, II [Offenses].
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- (e) Any other criminal offense which is not specifically listed in subparagraph (a) if the court finds by clear and convincing evidence at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification and protection of the public would be furthered by requiring the person to register. . . .

2.10.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 651-B:1 (Definitions) to include N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) as an offense requiring sex offender registration.

FRAMEWORK ISSUE 3: CRIMINAL PROVISIONS FOR TRAFFICKERS

Legal Components:

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing child pornography carries penalties as high as similar federal offenses.*
- 3.3 *Using the Internet to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*
- 3.4 *Financial penalties for traffickers, including asset forfeiture, are sufficiently high.*
- 3.5 *Convicted traffickers are required to register as sex offenders.*
- 3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.*

Legal Analysis:

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

Traffickers convicted under N.H. Rev. Stat. Ann. § 633:7(I) (Trafficking in Persons)³⁷ are guilty of a Class A felony punishable by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, but if the offense involves “a commercial sex act or sexually explicit performance by a victim under the age of 18,” a conviction

³⁷ See *supra* Section 1.1 for the substantive provisions of N.H. Rev. Stat. Ann. § 633:7.

is punishable as a Class A felony by imprisonment for 10–30 years, a fine not to exceed \$4,000,³⁸ or both. N.H. Rev. Stat. Ann. §§ 633:7(I)(a), (c), 651:2(I), (II)(a), (IV)(a). Similarly, a conviction under N.H. Rev. Stat. Ann. § 633:7(II) is punishable as a Class A felony punishable by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, but if the victim is under the age of 18 and “the offender knew or believed it likely that the victim would be coerced into engaging in a commercial sex act or sexually explicit performance,” a conviction is punishable by imprisonment for 10 years to a maximum “fixed by the court,” a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 633:7(II), 651:2(I), (II)(a), (IV)(a).

Traffickers may also be prosecuted under N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e) (Prostitution and Related Offenses).³⁹ A conviction under N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e) is punishable as a Class B misdemeanor by a fine not to exceed \$1,200. N.H. Rev. Stat. Ann. §§ 645:2(I), 625:9(IV)(b), (c), 651:2(IV)(a). If the offense involves a minor under the age of 18, however, a conviction under N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 645:2(II)(a), 651:2(I), (II)(b), (IV)(a).

A trafficker who uses the computer to effect the sexual exploitation of a child may be convicted under N.H. Rev. Stat. Ann. § 649-B:3(I)(d) (Computer Pornography),⁴⁰ which is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁴¹ for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense⁴² against a minor.

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

New Hampshire expressly prohibits both the manufacturing and distribution of child pornography. Pursuant to N.H. Rev. Stat. Ann. § 649-A:3-b(I) (Manufacture of Child Sexual Abuse Images), “No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct,⁴³ or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.” A first conviction under this statute is punishable by imprisonment for 15–30 years, a fine not to exceed \$4,000, or both, while subsequent convictions are punishable by “life imprisonment or for such term as the court may order.” N.H. Rev. Stat. Ann. §§ 649-A:3-b(II), 651:2(I), (IV)(a), (c). Additionally, certain penalty enhancements may be available under N.H. Rev. Stat. Ann. § 651:6(I)(q)(1) (Extended Term of Imprisonment).⁴⁴

Pursuant to N.H. Rev. Stat. Ann. § 649-A:3-a(I) (Distribution of Child Sexual Abuse Images),

I. No person shall:

- (a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell, exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually

³⁸ See *supra* note 6.

³⁹ See *supra* Section 1.2 for the provisions of N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e).

⁴⁰ See *supra* Section 1.2 for the provisions of N.H. Rev. Stat. Ann. § 649-B:3(I)(d).

⁴¹ See *supra* note 17.

⁴² See *supra* note 22.

⁴³ See *supra* note 3 for the definition of “sexually explicit conduct.”

⁴⁴ See *supra* note 5 for the substantive provisions of N.H. Rev. Stat. Ann. § 651:6(I)(q)(1) as well as other possible penalty enhancements.

explicit conduct;

(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.

A first conviction under this statute is punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both, but a first conviction under N.H. Rev. Stat. Ann. § 649-A:3-a(I)(b) by an offender with “less than 3 images or visual representations,” is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-A:3-a(II), 651:2(I), (II)(b), (IV)(a). All subsequent convictions are punishable by imprisonment for 15–30 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-A:3-a(II)(a), 651:2(I), (II)(b), (IV)(a). Additionally, certain penalty enhancements may be available under N.H. Rev. Stat. Ann. § 651:6(I)(q)(1) (Extended Term of Imprisonment).⁴⁵

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 offense⁴⁶ against a minor. Additionally, a federal conviction for distribution of child pornography⁴⁷ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴⁸ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁹

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.*

According to N.H. Rev. Stat. Ann. § 649-B:3(I) (Computer Pornography),

I. No person shall knowingly:

- (a) Compile, enter into, or transmit by means of computer;
- (b) Make, print, publish, or reproduce by other computerized means;
- (c) Cause or allow to be entered into or transmitted by means of computer; or
- (d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

A conviction under this statute is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

⁴⁵ See *supra* note 5 for the substantive provisions of N.H. Rev. Stat. Ann. § 651:6(I)(q)(1) as well as other possible penalty enhancements. 44

⁴⁶ See *supra* note 22.

⁴⁷ 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).

⁴⁸ 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

⁴⁹ 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).

Additionally, although not directly commercial, N.H. Rev. Stat. Ann. § 649-B:4(I) (Certain Uses of Computer Services Prohibited) states,

I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:

- (a) Any offense under RSA 632-A [Sexual Assault and Related Offenses], relative to sexual assault and related offenses.
- (b) Indecent exposure and lewdness under RSA 645:1 [Indecent Exposure and Lewdness].
- (c) Endangering a child as defined in RSA 639:3 [Endangering a Child], III.

If the victim is under the age of 16 and the offender believes the victim to be 13 years of age or older, a first conviction under this statute is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both, while a second conviction is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:4(II)(a), (b), 651:2(I), (II)(a), (b), (IV)(a), 649-B:2. If the victim is under the age of 16 and the offender believes the victim to be under the age of 13, however, a first conviction is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, while a second conviction is punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:4(II)(a), (b), 651:2(I), (II)(a), (IV)(a), 649-B:2. Third and any subsequent convictions, regardless of whether the defendant believed the victim to be under 13, are punishable by imprisonment up to 30 years. N.H. Rev. Stat. Ann. § 649-B:4(II)(c).

3.3.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 649-B:4 (Certain Uses of Computer Services Prohibited) to specifically include N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) in its list of referenced offenses for which the use of a computer or online service prohibits in order to provide added protections and remedies for victims of domestic minor sex trafficking who are trafficked in this manner.

3.3.2 Recommendation: Amend N.H. Rev. Stat. Ann. § 649-B:2 to raise the age of a “child” to under 18 to protect all minors.

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

Traffickers are subject to a possible fine not to exceed \$4,000 for any felony conviction. N.H. Rev. Stat. Ann. § 651:2(I), (IV)(a). Therefore, traffickers convicted of N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons), § 645:2(I)(b)–(e) (Prostitution and Related Offenses), § 649-B:3(I)(d) (Computer Pornography), § 649-B:4(I) (Certain Uses of Computer Services Prohibited), § 649-A:3-b(I) (Manufacture of Child Sexual Abuse Images), or § 649-A:3-a(I) (Distribution of Child Sexual Abuse Images) are subject to a possible fine not to exceed \$4,000. N.H. Rev. Stat. Ann. §§ 633:7(I)(c), 645:2(II), 649-B:3(II), 649-B:4(II)(a), 649-A:3-b(II), 649-A:3-a(II), 651:2(I), (IV)(a).

In addition to fines, convicted traffickers may also be subject to restitution payments. N.H. Rev. Stat. Ann. § 633:10(I), (II) (Restitution and Compensation),⁵⁰ specifically requires buyers convicted under N.H. Rev. Stat. Ann. § 633:7 to make restitution to their victims for any compensable economic loss⁵¹ and other costs, including medical treatment. Traffickers convicted of other offenses are also subject to restitution payments under New Hampshire’s general restitution statute, N.H. Rev. Stat. Ann. § 651:63(I) (Restitution Authorized), which allows the court to sentence any offender “to make restitution in an amount determined by the court. . . . regardless of the offender’s ability to pay.”

⁵⁰ See *supra* Section 2.8 for the substantive provisions of N.H. Rev. Stat. Ann. § 633:10(I), (II).

⁵¹ See *supra* note 31.

Additionally, pursuant to N.H. Rev. Stat. Ann. § 633:8(I) (Forfeiture of Items Used in Connection with Trafficking in Persons),⁵² a trafficker convicted under N.H. Rev. Stat. Ann. § 633:7 may be subject to asset forfeiture, including any equipment, property, or money used for the commission of the crime.

N.H. Rev. Stat. Ann. § 633:9(I) (Administrative Forfeiture of Items Used in Connection with Trafficking in Persons) further provides,

Interests in property subject to forfeiture under the provisions of RSA 633:8, I(a), I(b), I(c) [Forfeiture of Items Used in Connection with Trafficking in Persons] excepting proceeds, and I(d), but not real property, shall be subject to administrative forfeiture by the department of justice provided that the total amount or value of such property does not exceed \$75,000. The provisions of RSA 633:8 shall apply in any case of administrative forfeiture except as otherwise provided in this section.

3.4.1 Recommendation: Raise the fines to make the penalty more severe for sex trafficking and CSEC crimes.

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

Buyers convicted under N.H. Rev. Stat. Ann. § 645:2(I)(a), (b), (f) (Prostitution and Related Offenses), § 649-B:3(I) (Computer Pornography), § 649-A:3(I)(a) (Possession of Child Sexual Abuse Images), or § 649-B:4(I) (Certain Uses of Computer Services Prohibited) are required to register as a sexual offender. Buyers convicted under N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons), however, are not required to register.

N.H. Rev. Stat. Ann. § 651-B:2(I) (Registration) states that “[e]very sexual offender or offender against children shall be registered with the department of safety, division of state police” N.H. Rev. Stat. Ann. § 651-B:1(IV) (Definitions) defines “sexual offender” as “a person who is required to register for any sexual offense,” while N.H. Rev. Stat. Ann. § 651-B:1(V) defines a “sex offense” to include convictions under N.H. Rev. Stat. Ann. § 632-A:2 (Aggravated Felonious Sexual Assault), § 632-A:3 (Felonious Sexual Assault), or “[a]ny other criminal offense . . . if the court finds by clear and convincing evidence at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.” N.H. Rev. Stat. Ann. § 651-B:1(VI) defines an “offender against children” as “a person who is required to register for an offense against a child.”⁵³

3.5.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 651-B:1 (Definitions) to include N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons).

3.6 *Laws relating to termination of parental rights for certain offenses include sex trafficking or CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.*

Convictions under N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) or other New Hampshire’s CSEC laws are not expressly included as grounds for termination of parental rights. N.H. Rev. Stat. Ann. § 170-C:5 (Grounds for Termination of the Parent-Child Relationship) authorizes the termination of parental rights under any of the following circumstances:

. . . .
III. The parents, subsequent to a finding of child neglect or abuse under RSA 169-C [Child Protection Act], have failed to correct the conditions leading to such a finding within 12 months of the finding despite reasonable efforts under the direction of the district court to rectify the conditions.
. . . .

⁵² See *supra* Section 2.8 for the substantive provisions of N.H. Rev. Stat. Ann. § 633:8(I).

⁵³ See *supra* Section 2.8 for the substantive provisions of N.H. Rev. Stat. Ann. § 651-B:1(VI), (VII).

V. The parent knowingly or willfully caused or permitted another to cause severe sexual, physical, emotional, or mental abuse of the child. Subsequent to a finding of such abuse pursuant to RSA 169-C [Child Protection Act], the parent-child relationship may be terminated if return of the child to the parent would result in a substantial possibility of harm to the child. . . .

VI. If the parent or guardian is, as a result of incarceration for a felony offense, unable to discharge his responsibilities to and for the child and, in addition, has been found pursuant to RSA 169-C [Child Protection Act] to have abused or neglected his child or children, the court may review the conviction of the parent or guardian to determine whether the felony offense is of such a nature, and the period of incarceration imposed of such duration, that the child would be deprived of proper parental care and protection and left in an unstable or impermanent environment for a longer period of time than would be prudent. . . .

VII. The parent has been convicted of one or more of the following offenses:

(a) Murder, pursuant to RSA 630:1-a [First Degree Murder] or 630:1-b [Second Degree Murder], of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(b) Manslaughter, pursuant to RSA 630:2 [Manslaughter], of another child of the parent, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

(c) Attempt, pursuant to RSA 629:1 [Attempt], solicitation, pursuant to RSA 629:2 [Criminal Solicitation], or conspiracy, pursuant to RSA 629:3 [Conspiracy], to commit any of the offenses specified in subparagraphs VII(a) and VII(b).

(d) A felony assault under RSA 631:1 [First Degree Assault], 631:2 [Second Degree Assault], 632-A:2 [Aggravated Felonious Sexual Assault], or 632-A:3 [Felonious Sexual Assault] which resulted in injury to the child, a sibling or step-sibling of the child, the child's other parent, or other persons related by consanguinity or affinity, including a minor child who resided with the defendant.

- 3.6.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 170-C:5 (Grounds for Termination of the Parent-Child Relationship) to include N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) and New Hampshire's CSEC offenses as grounds for termination of parental rights.

FRAMEWORK ISSUE 4: CRIMINAL PROVISIONS FOR FACILITATORS

Legal Components:

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

Legal Analysis:

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

N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) does not specifically prohibit assisting, enabling, or financially benefitting from domestic minor sex trafficking, but N.H. Rev. Stat. Ann. § 633:7(II) may apply to facilitators who “harbor” or “transport” a minor, “knowing or believing it likely that the [minor] will be subjected to trafficking.” If the victim is under the age of 18 and “the offender knew or believed it likely that the

victim would be coerced into engaging in a commercial sex act or sexually explicit performance,” a conviction under N.H. Rev. Stat. Ann. § 633:7(II) is punishable as a Class A felony by imprisonment for 10 years to a maximum “fixed by the court,” a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 633:7(II), 651:2(I), (II)(a), (IV)(a).

A facilitator who transports a minor “with the purpose of promoting or facilitating” the minor to engage in prostitution, or who “[k]nowingly permits a place under such person’s control to be used” for purposes of prostitution of a child, may also be prosecuted under N.H. Rev. Stat. Ann. § 645:2(I)(c), (e) (Prostitution and Related Offenses).⁵⁴ If the offense involves a minor under the age of 18, a conviction under N.H. Rev. Stat. Ann. § 645:2(I)(c), (e) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, both. N.H. Rev. Stat. Ann. §§ 645:2(II)(a), 651:2(I), (II)(b), (IV)(a).

A facilitator who “disseminate[s] by means of computer, any notice, statement, or advertisement, or any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating . . . sexual conduct of or with any child” may be convicted under N.H. Rev. Stat. Ann. § 649-B:3(I)(d) (Computer Pornography),⁵⁵ which is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

- 4.1.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) to add language specifically capturing the facilitators of sex trafficking who aid, assist and financially benefit from the trafficking.

4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*

Facilitators are subject to a possible fine not to exceed \$4,000 for any felony conviction. N.H. Rev. Stat. Ann. § 651:2(I), (IV)(a). Therefore, facilitators convicted under N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons), § 645:2(I)(c), (e) (Prostitution and Related Offenses), § 649-B:3(I)(d) (Computer Pornography), § 649-B:4(I) (Certain Uses of Computer Services Prohibited), § 649-A:3-b(I) (Manufacture of Child Sexual Abuse Images), or § 649-A:3-a(I) (Distribution of Child Sexual Abuse Images) are subject to a possible fine not to exceed \$4,000. N.H. Rev. Stat. Ann. §§ 633:7(I)(c), 645:2(II), 649-B:3(II), 649-B:4(II)(a), 649-A:3-b(II), 649-A:3-a(II), 651:2(I), (IV)(a).

In addition to fines, convicted facilitators may also be subject to restitution payments. N.H. Rev. Stat. Ann. § 633:10(I), (II) (Restitution and Compensation),⁵⁶ specifically requires buyers convicted under N.H. Rev. Stat. Ann. § 633:7 to make restitution to their victims for any compensable economic loss⁵⁷ and other costs, including medical treatment. Traffickers convicted of other offenses are also subject to restitution payments under New Hampshire’s general restitution statute, N.H. Rev. Stat. Ann. § 651:63(I) (Restitution Authorized), which allows the court to sentence any offender “to make restitution in an amount determined by the court. . . . regardless of the offender’s ability to pay.”

Additionally, pursuant to N.H. Rev. Stat. Ann. § 633:8(I) (Forfeiture of Items Used in Connection with Trafficking in Persons),⁵⁸ a trafficker convicted under N.H. Rev. Stat. Ann. § 633:7 may be subject to asset forfeiture, including any equipment, property, or money used for the commission of the crime.

⁵⁴ See *supra* Section 1.2 for the provisions of N.H. Rev. Stat. Ann. § 645:2(I)(b)–(e).

⁵⁵ See *supra* Section 1.2 for the provisions of N.H. Rev. Stat. Ann. § 649-B:3(I)(d).

⁵⁶ See *supra* Section 2.8 for the substantive provisions of N.H. Rev. Stat. Ann. § 633:10(I), (II).

⁵⁷ See *supra* note 31.

⁵⁸ See *supra* Section 2.8 for the substantive provisions of N.H. Rev. Stat. Ann. § 633:8(I).

N.H. Rev. Stat. Ann. § 633:9(I) (Administrative Forfeiture of Items Used in Connection with Trafficking in Persons) further provides,

Interests in property subject to forfeiture under the provisions of RSA 633:8, I(a), I(b), I(c) [Forfeiture of Items Used in Connection with Trafficking in Persons] excepting proceeds, and I(d), but not real property, shall be subject to administrative forfeiture by the department of justice provided that the total amount or value of such property does not exceed \$75,000. The provisions of RSA 633:8 shall apply in any case of administrative forfeiture except as otherwise provided in this section.

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

New Hampshire does not specifically prohibit sex tourism.

- 4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services in New Hampshire that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor either in or outside of New Hampshire.

4.4 *Promoting and selling child pornography is illegal.*

Although promoting child pornography is not a distinct crime under New Hampshire law, selling child pornography is illegal under N.H. Rev. Stat. Ann. § 649-A:3-a(I) (Distribution of Child Sexual Abuse Sexual Images).⁵⁹ A first conviction under this statute is punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both, but a first conviction under N.H. Rev. Stat. Ann. § 649-A:3-a(I)(b) by an offender with “less than 3 images or visual representations,” is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-A:3-a(II), 651:2(I), (II)(b), (IV)(a). All subsequent convictions are punishable by imprisonment for 15–30 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-A:3-a(II)(a), 651:2(I), (II)(b), (IV)(a). Additionally, certain penalty enhancements may be available under N.H. Rev. Stat. Ann. § 651:6(I)(q)(1) (Extended Term of Imprisonment).⁶⁰

Additionally, N.H. Rev. Stat. Ann. § 649-A:3(I)(a) (Possession of Child Sexual Abuse Images) makes it illegal for a person to knowingly “[b]uy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct.”^{61,62} A first conviction under this statute is punishable as a Class A felony by imprisonment up to 15 years, a fine not to exceed \$4,000, or both, while subsequent convictions are punishable by imprisonment for 10–20 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-A:3(II), 651:2(I), (II)(a), (IV)(a).

Under N.H. Rev. Stat. Ann. § 649-B:3(I) (Computer Pornography),

No person shall knowingly:

- (a) Compile, enter into, or transmit by means of computer;
- (b) Make, print, publish, or reproduce by other computerized means;
- (c) Cause or allow to be entered into or transmitted by means of computer; or
- (d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.

⁵⁹ See *supra* Section 3.2 for the provisions of N.H. Rev. Stat. Ann. § 649-A:3(I).

⁶⁰ See *supra* note 5 for the substantive provisions of N.H. Rev. Stat. Ann. § 651:6(I)(q)(1) as well as other possible penalty enhancements. 44

⁶¹ See *supra* note 3 for the definition of “sexually explicit conduct.”

⁶² See *supra* note 33 for affirmative defenses to this offense.

A conviction under N.H. Rev. Stat. Ann. § 649-B:3(I)(d) is punishable as a Class B felony by imprisonment up to 7 years, a fine not to exceed \$4,000, or both. N.H. Rev. Stat. Ann. §§ 649-B:3(II), 651:2(I), (II)(b), (IV)(a).

FRAMEWORK ISSUE 5: PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Legal Components:

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

A commercially sexually exploited child is not specifically defined as a victim. For purposes of receiving restitution, N.H. Rev. Stat. Ann. § 651:62(VI) (Definitions) defines "victim" as a "person or claimant who suffers economic loss⁶³ as a result of an offender's criminal conduct or the good faith effort of any person attempting to prevent or preventing the criminal conduct." As used in New Hampshire's laws relating to victims' assistance, both N.H. Rev. Stat. Ann. § 21-M:8-b(I)(a) (Office of Victim/Witness Assistance) and N.H. Rev. Stat. Ann. § 21-M:8-k(I)(a) (Rights of Crime Victims) state,

"Victim" means a person who suffers direct or threatened physical, emotional, psychological or financial harm as a result of the commission or the attempted commission of a crime. "Victim" also includes the immediate family of any victim who is a minor or who is incompetent, or the immediate family of a homicide victim, or the surviving partner in a civil union.

⁶³ See *supra* note 31.

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.*

None of N.H. Rev. Stat. Ann. § 633:7(II) (Trafficking in Persons) or New Hampshire’s CSEC laws expressly prohibit the use of a defense based on the consent of a minor to a commercial sex act.

5.2.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 633:6–7 (Trafficking in Persons and Definitions) and New Hampshire’s CSEC laws to expressly prohibit the use of a defense based on a minor’s consent to a commercial sex act.

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

N.H. Rev. Stat. Ann. § 645:2(I)(a) (Prostitution and Related Offenses) is age-neutral and makes it a crime if any person “[s]olicits, agrees to perform, or engages in sexual contact . . . or sexual penetration . . . in return for consideration.” Pursuant to N.H. Rev. Stat. Ann. § 654:2(IV), however, “It shall be an affirmative defense to a charge under subparagraph I(a) that the defendant engaged in the conduct because he or she was the victim of Trafficking in Persons, as defined in RSA 633:7 [Trafficking in Persons].” However, because a conviction under N.H. Rev. Stat. Ann. § 633:7 requires compulsion, some commercially sexually exploited children may not qualify as “a victim of Trafficking in Persons,” and, therefore, will not be able to assert this affirmative defense.⁶⁴

5.3.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 645:2 (Prostitution and Related Offenses) to make the law inapplicable to minors under the age of 18 and amend the affirmative defense available under N.H. Rev. Stat. Ann. § 645:2(IV) to make it applicable only to persons 18 years of age or older.

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.*

N.H. Rev. Stat. Ann. § 169-C:29 (Persons Required to Report) states that medical professionals, school personnel, law enforcement, members of the clergy, or “any other person having reason to suspect that a child⁶⁵ has been abused⁶⁶ or neglected” to report their suspicions to the Department of Health and Human Services (“Department”) in accordance with N.H. Rev. Stat. Ann. § 169-C:30 (Nature and Content of Report), which states,

An oral report shall be made immediately by telephone or otherwise, and followed within 48 hours by a report in writing, if so requested, to the department. Such report shall, if known, contain the name and address of the child suspected of being neglected or abused and the person responsible for the child’s welfare, the specific information indicating neglect or the nature and extent of the child’s injuries (including any evidence of previous injuries), the identity of the person or persons suspected of being responsible for such neglect or abuse, and any other information that might be helpful in establishing neglect or abuse or that may be required by the department.

N.H. Rev. Stat. Ann. § 169-C:38 (Report to Law Enforcement Authority) further provides,

I. The department shall immediately by telephone or in person refer all cases in which there is reason to believe that any person under the age of 18 years has been: (a) sexually molested; (b) sexually

⁶⁴ See *supra* Section 1.1 for discussion of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons).

⁶⁵ Pursuant to N.H. Rev. Stat. Ann. § 169-C:3(V), “‘Child’ means any person who has not reached his eighteenth birthday.”

⁶⁶ Pursuant to N.H. Rev. Stat. Ann. § 169-C:3(II)(a)–(c), “abused child” is defined as including any child who has been “[s]exually abused,” “[i]ntentionally physically injured,” or “[p]sychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect.”

exploited; (c) intentionally physically injured so as to cause serious bodily injury; . . . or (e) a victim of a crime, to the local law enforcement agency in the community in which the acts of abuse are believed to have occurred. . . .

IV. Law enforcement personnel or department employees who are trained caseworkers shall have the right to enter any public place, including but not limited to schools and child care agencies, for the purpose of conducting an interview with a child, with or without the consent or notification of the parent or parents of such child, if there is reason to believe that the child has been:

- (a) Sexually molested.
- (b) Sexually exploited.
- (c) Intentionally physically injured so as to cause serious bodily injury.
- (d) Physically injured by other than accidental means so as to cause serious bodily injury.
- (e) A victim of a crime.
- (f) Abandoned.
- (g) Neglected.

Pursuant to N.H. Rev. Stat. Ann. § 169-C:6(I) (Protective Custody), law enforcement may assume “protective custody [of a child] . . . if the child is in such circumstances or surroundings as would present an imminent danger to the child’s health or life unless immediate action is taken and there is not enough time to petition for a court order.”

Additionally, N.H. Rev. Stat. Ann. § 169-C:6(II), (IV) states,

II. If a police or juvenile probation and parole officer removes a child under paragraph I above, the officer:

- (a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;
- (b) May take the child to a child protection services worker of the department; or
- (c) May place the child in a foster home; if a child is placed directly in a foster home, the department shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and
- (d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform both parents or other persons legally responsible for the child’s care where the child has been taken.

IV. The court shall hold a hearing on the matter within 24 hours of taking the child into protective custody, Sundays and holidays excluded. Notice shall be given to both parents and all parties designated by the petitioner or the court.

In determining whether a child should be removed from the home, even temporarily, the court must “determine whether continuation in the home is contrary to the child’s welfare.” N.H. Rev. Stat. Ann. § 169-C:60-b(I). Additionally, N.H. Rev. Stat. Ann. § 169-C:6(VII) prohibits a child taken into custody under N.H. Rev. Stat. Ann. § 169-C:6 from being securely detained.

After a petition has been filed pursuant to N.H. Rev. Stat. Ann. § 169-C:7 (Petition), alleging a child to be abused or neglected, the court will hold a preliminary hearing to determine “if there is reasonable cause to believe that the child is abused or neglected.” N.H. Rev. Stat. Ann. § 169-C:15(I). If the court finds reasonable cause for abuse or neglect at the preliminary hearing, it may, among other things, allow the child to remain with the child’s parents, transfer legal or protective supervision to a child placing agency, or impose a number of protective orders. N.H. Rev. Stat. Ann. § 169-C:16(I). N.H. Rev. Stat. Ann. § 169-C:16(II) prohibits a

neglected or abused child from being “placed in an institution established for the care and rehabilitation of delinquent children, the youth development center or any institution where an adult is confined.”

If the court adjudicates the child to be an abused or neglect child, pursuant to N.H. Rev. Stat. Ann. § 169-C:19 (Dispositional Hearing), the court may, among other things, order the child to remain with a parent or guardian subject to a list of conditions, issue an order of protection that sets out condition of behavior for a parent or guardian, or transfer legal custody to a relative or child placing agency.

Despite these provisions, it is possible that commercially sexually exploited children may not be routed through child protective services. N.H. Rev. Stat. Ann. § 169-D:8(II) (Temporary Custody) authorizes law enforcement to take a child into custody if “there are reasonable grounds to believe that a child has run away from his parents, guardian, or other custodian; or the circumstances are such as to endanger the child’s health or welfare unless immediate action is taken.” Pursuant to N.H. Rev. Stat. Ann. § 169-D:9 (Diversion), diversion programs are available to children taken into custody under N.H. Rev. Stat. Ann. § 169-D:8. N.H. Rev. Stat. Ann. § 169-D:9 states,

At any time before or during a proceeding brought pursuant to this chapter, a child and the child’s family may be referred to a court approved diversion program, as defined in RSA 169-B:2, IV-b,⁶⁷ or other intervention program or community resource. Referral may be made by a law enforcement agency or juvenile probation and parole officer prior to or after filing a petition with the court, upon the court’s own motion, or at the request of any party with the approval of the court. When the arresting or prosecuting agency, or juvenile probation and parole officer suspects that a child has a disability, an administrator at the responsible school district shall be notified. If appropriate, the school district shall refer the child for evaluation to determine if the child is in need of special education and related services. The administrative judge of the judicial branch family division shall have authority to approve diversion procedures for use by the courts in all juvenile matters throughout the state.

However, pursuant to N.H. Rev. Stat. Ann. § 169-D:9-a (Alternative to Secure Detention), rather than being placed in secure detention, a child may be released to an alternative program. N.H. Rev. Stat. Ann. § 169-B:2(II) (Definitions) defines “alternative to secure detention” as

any local program, approved by the court, police, probation, or the department of health and human services, which offers a less restrictive alternative to secure detention for minors. Such programs include, but are not limited to, youth attender, crisis home placement, group homes which have entered into agreements with the department of health and human services to provide such care, truant and runaway programs, and alcohol and drug detoxification programs.

Pursuant to N.H. Rev. Stat. Ann. § 169-D:9-b (Prohibited Manner of Detention), children taken into custody under N.H. Rev. Stat. Ann. § 169-D:8 (Temporary Custody) may not be held “in a public or private facility, which includes construction fixtures designed to physically restrict the movements and activities of persons in custody, including but not limited to locked rooms and buildings, fences, or other physical structures.” Additionally, N.H. Rev. Stat. Ann. § 169-D:9-c (Detention in Certain Facilities; CHINS and Juvenile Delinquents) provides,

⁶⁷ Pursuant to N.H. Rev. Stat. Ann. § 169-D:2(VI),

“Diversion” means a decision made by a person with authority which results in providing an individually designed program for delivery of services for the child by a specific provider, or a plan to assist the child in finding a remedy for his or her inappropriate behavior. The goal of diversion is to prevent further involvement of the child in the formal legal system. Diversion of a child may take place either at pre-filing as an alternative to the filing of a petition or at any time after the filing of the petition.

I. Facilities which are not physically restricted may receive for placement minors who have been adjudicated as children in need of services⁶⁸ or minors who have been adjudicated as juvenile delinquents.

II. Physically restricted facilities shall receive for commitment and detention only those minors who have been adjudicated juvenile delinquents pursuant to RSA 169-B⁶⁹ or who are awaiting the court's disposition regarding allegations of juvenile delinquency. Physically restricted facilities which are primarily used for psychiatric treatment or evaluation shall not be limited only to such minors.

For a child adjudicated a child in need of services, N.H. Rev. Stat. Ann. § 169-D:17(I) (Dispositional Hearing) states that the court "shall order the least restrictive and most appropriate disposition considering the facts in the case, the investigation report, and the dispositional recommendations of the parties and counsel." Included among the dispositions authorized under N.H. Rev. Stat. Ann. § 169-D:17(I) are the following:

(a) Permitting the child to remain with a parent, guardian, relative or custodian, subject to such limitations and conditions as the court may prescribe

(b)(1) . . .

(2) Releasing the child to the custody of the department of health and human services for placement in a foster home, . . . a group home, a crisis home, or a shelter care facility

. . . .

(d) Ordering the minor to perform up to 50 hours of uncompensated public service subject to the approval of the elected or appointed official authorized to give approval of the city or town in which the offense occurred. . . .

(e) Requiring any child to attend structured after-school or evening programs which address some of the child's compliance issues, as well as supervise the child during the time of the day in which the child most values his or her freedom and the time which is most often used to perform unruly acts. . . .

Commercially sexually exploited children may also be treated as delinquent children. Pursuant to N.H. Rev. Stat. Ann. § 169-B:9(I) (Arrest or Taking Minor Into Custody), a juvenile probation and parole officer may immediately arrest or take into custody "any minor who is found violating any law, . . . or whose circumstances are such as to endanger such minor's person or welfare, unless immediate action is taken." After a child is taken into custody under N.H. Rev. Stat. Ann. § 169-B:9(I), N.H. Rev. Stat. Ann. § 169-B:9-a (Use of Alternative to Secure Detention) and N.H. Rev. Stat. Ann. § 169-B:10(I) (Juvenile Diversion) state that the child may be released to an alternative secure detention program⁷⁰ pending the arrival of a parent or custodian, released to the custody of his or her parent, guardian, or custodian, and, in some cases, may receive diversion.⁷¹

Pursuant to N.H. Rev. Stat. Ann. § 169-B:14 (Release or Detention Pending Adjudicatory Hearing), if the child does not receive diversion, the child may be placed in any of the following while awaiting an adjudicatory hearing:

(a) Retained in the custody of a parent, guardian, or custodian; or

(b) Released in the supervision and care of a relative or friend; or

⁶⁸ N.H. Rev. Stat. Ann. § 169-D:2(II) defines a "child in need of services" as,

[A] child under the age of 18 with a diagnosis of severe emotional, cognitive, or other mental health issues who engages in aggressive, fire setting, or sexualized behaviors that pose a danger to the child or others and who is otherwise unable or ineligible to receive services under RSA 169-B or RSA 169-C.

⁶⁹ N.H. Rev. Stat. Ann. § 169-B:2(IV) defines a "delinquent" as,

[A] person who has committed an offense before reaching the age of 17 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, and is expressly found to be in need of counselling, supervision, treatment, or rehabilitation as a consequence thereof.

⁷⁰ See *supra* Section 5.4 for the definition of "alternative to secure detention."

⁷¹ See *supra* note 67.

(c) Released to the custody of the department of health and human services for placement in a foster home, . . . a group home, a crisis home, or a shelter care facility . . .

....

(e) Detained at a facility certified by the commissioner of the department of health and human services for detention of minors pursuant to the following:

(1) No minor charged with delinquency shall be securely detained following arraignment unless the prosecution establishes probable cause to believe that the minor committed the alleged delinquent acts and unless the prosecution demonstrates by clear and convincing evidence the need for secure detention, based upon the criteria for secure detention specified in subparagraph (e)(2);

(2) A minor shall not be securely detained unless secure detention is necessary:

(A) To insure the presence of the juvenile at a subsequent hearing; or

(B) To provide care and supervision for a minor who is in danger of self-inflicted harm when no parent, guardian, custodian, or other suitable person or program is available to supervise and provide such care; or

(C) To protect the personal safety or property of others from the probability of serious bodily harm or other harm.

N.H. Rev. Stat. Ann. § 169-B:15 (No Detention at Jail) also provides, “Following arraignment no minor shall be detained in any facility where adults charged, convicted or committed for criminal offenses are simultaneously detained.”

If a child is adjudicated delinquent, N.H. Rev. Stat. Ann. § 169-B:19(I), (III) (Dispositional Hearing) states,

I. . . . If the court finds that a minor is delinquent, the court may order the least restrictive of the following dispositions, which the court finds is the most appropriate:

(a) Return the minor to a parent, custodian or guardian.

....

(d) Place the minor on conditional release for a term no longer than 5 years.

(e) Release the minor in the care and supervision of a relative or friend; or to home detention for a period not to exceed 6 months. . . .

(f) Release the minor to the custody of the department of health and human services for placement in a foster home, a group home, a crisis home, or a shelter care facility. . . .

....

(j) Commit the minor to the custody of the department of health and human services for the remainder of minority. Commitment may include, but is not limited to, placement by the department of health and human services at a facility certified for the commitment of minors pursuant to RSA 169-B:19 [Dispositional Hearing], VI, administrative release to parole pursuant to RSA 621:19 [Release and Discharges], or administrative release consistent with the cap on youth development center population under RSA 621:10 [Limits to Population at the Youth Development Center], provided that the appropriate juvenile probation and parole officer is notified.

....

III. A minor found to be a delinquent on a petition filed after the minor’s sixteenth birthday, in addition to or in place of the dispositions provided for in paragraph I, may be committed to a county correctional facility for no greater term than an adult could be committed for a like offense; provided, however, that during minority the minor shall not be confined in a county correctional facility and provided further that the term shall not extend beyond the minor’s eighteenth birthday.

5.4.1 Recommendation: Enact a comprehensive protection system for domestic minor sex trafficking victims ensuring that such victims receive a protective response rather than a criminal justice response.

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

Commercial sexual exploitation is identified as a type of abuse and neglect within New Hampshire’s Child Protection Act.⁷² Specifically, N.H. Rev. Stat. Ann. § 169-C:3(II)(a) defines “abused child” as, “any child who has been . . . [s]exually abused.” Pursuant to N.H. Rev. Stat. Ann. § 169-C:3(XXVII-a),

“Sexual abuse” means the following activities under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm: the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of such conduct for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term “child” or “children” means any individual who is under the age of 18 years.

5.6.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 169-C:3(XXVII-a) (Child Protection Act: Definitions) to specifically include subjecting a child to trafficking, as defined in N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons), as a form of sexual abuse.

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

New Hampshire does not specifically use the term “caregiver” in its child welfare statutes and the definitions for the relevant terms used in N.H. Rev. Stat. Ann. § 169-C:6 (Protective Custody), regarding when a child may be taken into protective custody, are likely not broad enough to include a trafficker in custody or control of a child. N.H. Rev. Stat. Ann. § 169-C:6 authorizes law enforcement to take a child into custody, in specified circumstances, without the consent of the child’s “parents or other person legally responsible for the child’s care.”

N.H. Rev. Stat. Ann. § 169-C:3(XVIII) (Definitions) defines “legal supervision” as “a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order,” while N.H. Rev. Stat. Ann. § 169-C:3(XXI) defines “parent” as the child’s “mother, father, adoptive parent, . . . [provided] such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.”

The Child Protection Act⁷³ also includes definitions for the terms “custodian,” “guardian,” and “person responsible for the welfare of a child.” A guardian is a person appointed by the court “with the duty and authority to make important decisions” regarding the life, development, and general welfare of the child. N.H. Rev. Stat. Ann. § 169-C:3(XIV). A custodian is “an agency or person, other than a parent or guardian, licensed pursuant to RSA 170-E to whom legal custody of the child has been given by court order.” N.H. Rev. Stat. Ann. § 169-C:3(X). N.H. Rev. Stat. Ann. § 169-C:3(XXII) defines “a person responsible for a child’s welfare” as

includ[ing] the child’s parent, guardian or custodian, as well as the person providing out-of-home care of the child, if that person is not the parent, guardian or custodian. For purposes of this definition, “out-of-home care” includes child day care, and any other settings in which children are given care outside of their homes.

⁷² See *supra* note 73.

⁷³ N.H. Rev. Stat. Ann. §§ 169-C:1–C:28.

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

Commercially sexually exploited children may be eligible to receive crime victim compensation. N.H. Rev. Stat. Ann. § 21-M:8-h(I)(a) (Claimant eligibility; Compensation) states,

I. (a) Victims eligible for compensation are:

- (1) Any person who sustains personal injury as a result of a felony or misdemeanor;
- (2) Any person who sustains personal injury caused by a person driving under the influence of alcohol or controlled substances;
- (3) Any person who is a victim of sexual abuse and is under the age of 18 at the time the claim is filed.

Although victims of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) and New Hampshire's CSEC laws likely qualify as eligible victims, certain other requirements for receiving compensation could present difficulties. N.H. Rev. Stat. Ann. § 21-M:8-h(II) requires a claim for compensation to be filed "within 2 years of the crime, unless good cause is shown," but does not explain what constitutes good cause. Additionally, under N.H. Rev. Stat. Ann. § 21-M:8-h(IV), if the Victims' Assistance Commission determines that a victim was contributorily at fault, the commission may deny or reduce a victim's award. N.H. Rev. Stat. Ann. § 21-M:8-h(V) also imposes a "\$25,000 maximum recovery per claimant per incident."

5.7.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 21-M:8-h (Claimant Eligibility; Compensation) to create exceptions for commercially sexually exploited children.

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

Limited victim-friendly criminal justice procedures are afforded specifically to victims of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons). N.H. Rev. Stat. Ann. § 633:7(III) (Trafficking in Persons) provides a "rape shield" protection specifically for victims of N.H. Rev. Stat. Ann. § 633:7, stating that "[e]vidence of a trafficking victim's personal sexual history or history of commercial sexual activity shall not be admissible at trial."

Other protections afforded to victims of sexual assault may be provided to victims of N.H. Rev. Stat. Ann. § 633:7 and New Hampshire's CSEC laws. For example, N.H. Rev. Stat. Ann. § 632-A:8 (In Camera Testimony) states, "In [sexual assault and other related] cases where the victim is under 16 years of age, the victim's testimony shall be heard in camera unless good cause is shown by the defendant. . . ."

Additionally, N.H. Rev. Stat. Ann. § 632-A:6(I) prohibiting evidence of "prior consensual sexual activity between the victim and any person other than the actor" from being admissible in sexual offense cases. Pursuant to N.H. Rev. Stat. Ann. § 632-A:6(IV),

In any sexual assault case under RSA 632-A [Sexual Assault and Related Offenses] where the victim is 16 years of age or younger, and the defense has listed as a witness or subpoenaed a parent or parents to testify in the case and requested that the parent or parents be sequestered, the court shall appoint a guardian ad litem to determine the best interests of the minor victim. The guardian ad litem shall make a recommendation to the court, based on the preferences and best interests of the victim, as to whether the parent or parents should be permitted to sit with the victim in the court room during the duration of the trial.

N.H. Rev. Stat. Ann. § 517:13-a(I) (Videotape Trial Testimony Authorized) allows a victim of any crime, who is under 16 years of age at the time of the crime, to give videotaped testimony, provided the court finds that "[t]he child will suffer emotional or mental strain if required to testify in open court," or "[f]urther delay will

impair the child’s ability to recall and relate the facts of the alleged offense.” The videotaped testimony “shall be conducted before the judge at a place as ordered by the court in the presence of the prosecutors, the defendant and his attorneys, and such other persons as the court allows.” N.H. Rev. Stat. Ann. § 517:13-a(II). N.H. Rev. Stat. Ann. § 517:13-a(IV) allows any witness 16 years of age or younger to have his or her parent or other appropriate adult present during the taping of the testimony, and N.H. Rev. Stat. Ann. § 517:13-a(III) provides that a witness whose testimony is videotaped under this section “shall not be required to appear or testify at trial” unless the court orders it for good cause.

Lastly, N.H. Rev. Stat. Ann. § 21-M:8-k(II) (Rights of Crime Victims) affords crime victims the following rights:

- (a) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
- (b) The right to be informed about the criminal justice process and how it progresses.
- (c) The right to be free from intimidation and to be reasonably protected from the accused throughout the criminal justice process.
-
- (g) The right to have inconveniences associated with participation in the criminal justice process minimized.
-
- (i) The right to be informed about available resources, financial assistance, and social services.
- (j) The right to restitution
- (k) The right to be provided a secure, but not necessarily separate, waiting area during court proceedings.
-
- (m) The right of confidentiality of the victim’s address, place of employment, and other personal information.
-

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.*

N.H. Rev. Stat. Ann. § 169-B:35(I), (II) (Juvenile Case and Court Records) states that “[a]ll case records, as defined in RSA 170-G:8-a [Record Content; Confidentiality; Rulemaking], relative to delinquency, shall be confidential and access shall be provided pursuant to RSA 170-G:8-a,” must be kept separate from other court records, and must “be withheld from public inspection but shall be open to inspection by officers of the institution where the minor is committed, juvenile probation and parole officers, a parent, a guardian, a custodian, the minor’s attorney, the relevant county, and others entrusted with the corrective treatment of the minor.” N.H. Rev. Stat. Ann. § 169-B:35(II) further provides that once the person turns 21, “all court records and individual institutional records, including police records, shall be closed and placed in an inactive file.”

5.9.1 Recommendation: Enact a provision requiring the automatic expungement of criminal records of minor victims of commercial sexual exploitation and domestic minor sex trafficking who are under the age of 18.

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

Victims of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) may receive restitution from their offenders. N.H. Rev. Stat. Ann. § 633:10(I), (II) (Restitution and Compensation) states that an offender convicted under N.H. Rev. Stat. Ann. § 633:7 shall make restitution to their victim, stating,

- I. A person convicted under this section shall be ordered by the court to pay restitution to the victim. Such restitution may include but not be limited to:
- (a) Any economic loss⁷⁴ compensable under RSA 651:62 [Definitions], in accordance with the provisions of RSA 651:61-a through RSA 651:67; and
 - (b) The value of the victim's labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act or the state minimum wage law, whichever is greater.
- II. To the extent not included in economic loss that is compensable under paragraph I, the court may also order a person convicted under this section to pay compensation as follows:
- (a) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;
 - (b) Costs of necessary transportation, temporary housing, and child care, at the court's discretion;
 - (c) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
 - (d) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items; and
 - (e) Any and all other losses suffered by the victim as a result of an offense under this section.

Victims of other offenses may also be able to receive restitution under New Hampshire's general restitution statute, N.H. Rev. Stat. Ann. § 651:63(I) (Restitution Authorized), which allows the court to sentence any offender, regardless of his ability to pay, "to make restitution in an amount determined by the court."

No civil remedies are specifically provided to victims of N.H. Rev. Stat. Ann. § 633:7 or New Hampshire's CSEC offenses.

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.

Pursuant to N.H. Rev. Stat. Ann. § 625:8(I)(a), (b) (Limitations), prosecutions for felonies, including N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) and New Hampshire's felony CSEC offenses, must commence within 6 years of the crime. Prosecutions for N.H. Rev. Stat. Ann. § 645:2(I)(a), (f) (Prostitution and Related Offenses), a Class B misdemeanor, must be brought within 1 year of the crime. N.H. Rev. Stat. Ann. § 625:8(I)(c). Although these statutes of limitations toll "[d]uring any time when the accused is continuously absent from the state or has no reasonably ascertained place of abode or work within this state . . . [or] when a prosecution is pending against the accused in this state based on the same conduct," no tolling is provided if the victim of the offense is a minor under the age of 18. N.H. Rev. Stat. Ann. § 625:8(VI)(a), (b).

- 5.11.1 Recommendation: Eliminate the statute of limitations for N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) and New Hampshire's CSEC offenses.

⁷⁴ See *supra* note **Error! Bookmark not defined.** for the definition of "economic loss."

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.

New Hampshire does not require law enforcement to receive training on human trafficking or domestic minor sex trafficking. N.H. Rev. Stat. Ann. § 188-F:24(I) (Police Standards and Training Council) creates the Police Standards and Training Council which, according to N.H. Rev. Stat. Ann. § 188-F:26(III) (Powers), is responsible for establishing “minimum educational and training standards for employment as a police officer, state corrections officer, or state probation-parole officer either in permanent positions or in temporary or probationary status.” Additionally, N.H. Rev. Stat. Ann. § 188-F:27 (Education and Training Required) mandates that law enforcement complete a training program, but does not specify the types of training that must be provided.

- 6.1.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 188-F:27 (Education and Training Required) to specifically require training and education for law enforcement in the area of domestic minor sex trafficking and the commercial sexual exploitation of children to ensure law enforcement can adequately arrest the traffickers and recognize and care for the victims.

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

Single party consent to audiotaping generally is not permitted in New Hampshire. N.H. Rev. Stat. Ann. § 570-A:2 (Interception and disclosure of telecommunication or oral communications prohibited) requires the consent of all parties to the communication. N.H. Rev. Stat. Ann. § 570-A:2(I-a) states,

A person is guilty of a misdemeanor if, except as otherwise specifically provided in this chapter or without consent of all parties to the communication, the person knowingly intercepts a telecommunication or oral communication when the person is a party to the communication or with the prior consent of one of the parties to the communication, but without the approval required by RSA 570-A:2, II(d) [Interception and Disclosure of Telecommunication or Oral Communications Prohibited].

Pursuant to N.H. Rev. Stat. Ann. § 570-A:2(I-a)(II)(d),

An investigative or law enforcement officer in the ordinary course of the officer’s duties pertaining to the conducting of investigations of organized crime,⁷⁵ offenses enumerated in this chapter, solid waste

⁷⁵ N.H. Rev. Stat. Ann. § 570-A:1(XI) defines “organized crime” as “the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services, including but not limited to . . . prostitution . . . and other unlawful activities of members of such organizations.”

violations under RSA 149-M:9, I and II [Permit Required], or harassing or obscene telephone calls to intercept a telecommunication or oral communication, when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; provided, however, that no such interception shall be made unless the attorney general, the deputy attorney general, or an assistant attorney general designated by the attorney general determines that there exists a reasonable suspicion that evidence of criminal conduct will be derived from such interception. Oral authorization for the interception may be given and a written memorandum of said determination and its basis shall be made within 72 hours thereafter. The memorandum shall be kept on file in the office of the attorney general.

- 6.2.1 Recommendation: Amend N.H. Rev. Stat. Ann. § 570-A:2 (Interception and Disclosure of Telecommunication or Oral Communication prohibited) to allow for single-party consent to audio taping in the investigation of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) and New Hampshire's CSEC laws without receiving authorization from the attorney general.

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

N.H. Rev. Stat. Ann. § 570-A:7 (Authorization for Interception of Telecommunications or Oral Communications) states,

The attorney general, deputy attorney general, or a county attorney, upon the written approval of the attorney general or deputy attorney general, may apply to a judge of competent jurisdiction for an order authorizing or approving the interception of telecommunications or oral communications, and such judge may grant . . . an order authorizing or approving the interception of telecommunications or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offenses as to which the application is made, when such interception may provide, or has provided, evidence of the commission of organized crime⁷⁶ . . . or evidence of the commission of the offenses of . . . kidnapping, . . . child pornography . . . , Computer Pornography and child exploitation . . . , Aggravated Felonious Sexual Assault . . . , Felonious Sexual Assault . . . , or any conspiracy to commit any of the foregoing offenses.

Pursuant to N.H. Rev. Stat. Ann. § 570-A:9(III) (Procedure for Interception of Telecommunications and Oral Communications) a judge may enter an order approving an application

if the judge determines on the basis of the facts submitted by the applicant that:

- (a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in RSA 570-A:7 [Authorization for interception of telecommunications or oral communications];
- (b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
- (c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (d) There is probable cause for belief that the facilities from which, or the place where, the telecommunications or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

⁷⁶ See *supra* note 75.

6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*

No law in New Hampshire authorizes the use of a decoy by law enforcement in the investigation of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) or New Hampshire's CSEC laws. New Hampshire does, however, recognize an entrapment defense pursuant to N.H. Rev. Stat. Ann. § 626:5 (Entrapment), which states,

It is an affirmative defense that the actor committed the offense because he was induced or encouraged to do so by a law enforcement official or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence against him and when the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it. However, conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

6.4.1 Recommendation: Enact a law authorizing for the use of a decoy in the investigation of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) and New Hampshire's CSEC laws.

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

New Hampshire does not have a specific law that specifically allows law enforcement to use the Internet to investigate buyers and traffickers. N.H. Rev. Stat. Ann. § 649-b:4 (Certain Uses of Computer Services Prohibited), may, however, provide law enforcement the ability to use the Internet to investigate buyers and traffickers. N.H. Rev. Stat. Ann. § 649-b:4(I) states that “[n]o person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit” sexual assault or other specified non-commercial sexual offenses. The use of the language “another person believed by the person to be a child,” suggests that it may be permissible for law enforcement to be involved in the investigation of this offense. Additionally, N.H. Rev. Stat. Ann. § 649-B:4(III) states, “It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.”

6.5.1 Recommendation: Enact a law authorizing the use of the Internet by law enforcement in investigating N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) and New Hampshire's CSEC laws.

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

The reporting of missing children and rescued child victims of N.H. Rev. Stat. Ann. § 633:7 (Trafficking in Persons) is required under New Hampshire law. N.H. Rev. Stat. Ann. § 169-E:2 (Report) requires law enforcement to accept a missing child report from the child's parents, guardian, legal custodian, or another person responsible for the child and to “take reasonable and appropriate action to locate the missing child.” Additionally, N.H. Rev. Stat. Ann. § 169-E:2-a (Hotline for Missing Children; Rulemaking) establishes a “toll-free statewide hotline for the purpose of reporting information on missing children.” N.H. Rev. Stat. Ann. § 169-E:1 (Definition) defines a “missing child” as “any person under the age of 16 years missing from his normal and ordinary place of residence and whose whereabouts cannot be determined by a person responsible for the child's care.”

Upon receipt of a missing child report, N.H. Rev. Stat. Ann. § 169-E:3(I) (Procedure) mandates that law enforcement gather information about the missing child and “integrate it into the national crime information center computer within 12 hours following the making of the report, unless extraordinary circumstances cause a delay.”

Pursuant to N.H. Rev. Stat. Ann. § 169-E:6 (Recovery of a Child),

A missing child's parents, custodial parent, guardian, or legal custodian, or any other person responsible for a missing child, shall immediately notify the law enforcement agency with which they filed the missing child report whenever the child has returned to their home or to their care, custody, and control, has been released if he was the victim of an offense under RSA 633 [Interference with freedom], or has otherwise been located. Upon such notification or upon otherwise learning that a missing child has returned to the home of, or to the care, custody, and control of his parents, custodial parent, guardian, or legal custodian, or other person responsible for him, or has been released if he was the victim of an offense under RSA 633, or otherwise has been located, the law enforcement agency involved shall promptly integrate the fact that the minor is no longer a missing child into the national crime information center computer.

NOTE: ENACTED LEGISLATION AS OF 8/1/11