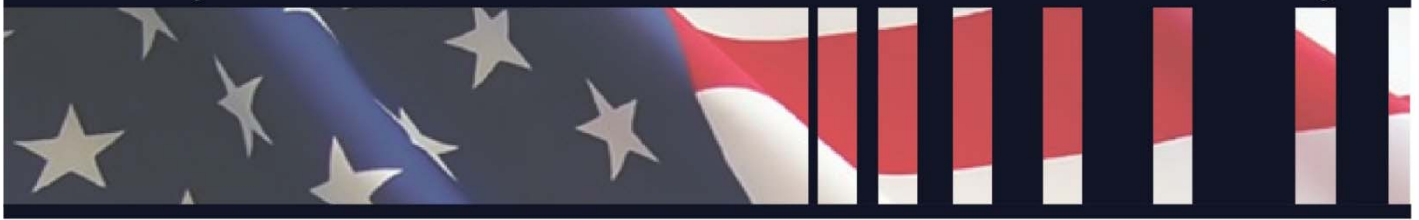


PROTECTED INNOCENCE INITIATIVE

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



ANALYSIS AND RECOMMENDATIONS NEW JERSEY

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.J. Stat. Ann. § 2C:13-8 (Human trafficking) requires some form of force, threat of force, or coercion and gives no specific provisions related to minors, stating,

- a. A person commits the crime of human trafficking if he:
 - (1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another to engage in sexual activity² as defined in paragraph (2) of subsection a. of N.J.S. 2C:34-1 [Prostitution and related offenses] or to provide labor services:

¹ Unless otherwise specified, all references to New Jersey statutes were taken from the New Jersey Annotated Statutes (LEXIS through 2011 2d Ann. Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-54, approved 11/12/2011).

² Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(2), “‘Sexual activity’ includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.”

- (a) by threats of serious bodily harm or physical restraint against the person or any other person;
 - (b) by means of any scheme, plan or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint;
 - (c) by committing a violation of N.J.S.2C:13-5 [Criminal coercion] against the person; or
 - (d) by destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document as defined in section 1 of P.L. 1997, c. 1 (C. 2C:21-31[Unauthorized practice of immigration law; penalties]), or other document issued by a governmental agency to any person which could be used as a means of verifying the person’s identity or age or any other personal identifying information; or
 - (e) by means of the abuse or threatened abuse of the law or legal process
- (2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection.

A conviction under this section is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine up to \$200,000.³ N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1), 2C:43-3(a)(1). If, however, the trafficker is convicted under N.J. Stat. Ann. § 2C:13-8(a)(2), the trafficker shall be sentenced to imprisonment for 20 years to life, and shall not be eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d).

1.1.1 Recommendation: Eliminate the requirement to prove a form of force, fraud or coercion in sex trafficking of a child cases or enact a separate sex trafficking of a child statute that eliminates the requirement to prove force, fraud or coercion and ensures identification of a child victim as a trafficking victim.⁴

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

The following laws criminalize CSEC in New Jersey:

1. N.J. Stat. Ann. § 2C:34-1(b)(3), (4) (Prostitution and related offenses) states,

A person commits an offense if:

...

³ Under N.J. Stat. Ann. § 2C:43-3(e),

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

...

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term “gain” means the amount of money or the value of property derived by the offender and “loss” means the amount of value separated from the victim or the amount of any payment owed to the victim and avoided or evaded and includes any reasonable and necessary expense incurred by the owner in recovering or replacing lost, stolen or damaged property, or recovering any payment avoided or evaded, and, with respect to property of a research facility, includes the cost of repeating an interrupted or invalidated experiment or loss of profits. The term “victim” shall mean a person who suffers a personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the victim. . . .

⁴ Subsequent recommendations in this report are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

(3) The actor knowingly promotes prostitution⁵ of a child under 18 whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable;

(4) The actor knowingly promotes prostitution of the actor's child, ward, or any other person for whose care the actor is responsible;

A conviction under either of these subsections is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000.⁶ N.J. Stat. Ann. §§ 2C:34-1(c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2).

2. Also, under N. J. Stat. Ann. § 2C:34-1(b),

A person commits an offense if:

...

(7) The actor knowingly engages in prostitution⁷ with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity⁸ with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.

A conviction under this section is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

3. N.J. Stat. Ann. § 2C:24-4(b)(3), (4) (Endangering welfare of children) states,

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act⁹ or in the simulation of such an act if the person knows, has reason to know or

⁵ Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(4), “promoting prostitution” is defined as,

- (a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;
- (b) Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;
- (c) Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;
- (d) Soliciting a person to patronize a prostitute;
- (e) Procuring a prostitute for a patron;
- (f) Transporting a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
- (g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

⁶ Under N.J. Stat. Ann. § 2C:43-3, “A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both”

⁷ Under N.J. Stat. Ann. § 2C:34-1(a)(1), “prostitution” is defined as “sexual activity with another person in exchange for something of economic value, or the offer or acceptance of an offer to engage in sexual activity in exchange for something of economic value.”

⁸ Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(2), “‘Sexual activity’ includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.”

⁹ Pursuant to N.J. Stat. Ann. § 2C:24-4(b)(1), “prohibited sexual act” is defined as

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or

intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

Generally, a conviction under N.J. Stat. Ann. § 2C:24-4(b)(3), (4) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(b)(3), (4), 2C:43-6(a)(2), 2C:43-3(a)(2). However, when the person permitting the child to engage in the prohibited act for film or reproduction is the parent or legal guardian, a conviction is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:24-4(b)(3), 2C:43-6(a)(1), 2C:43-3(a)(1).

Sexual offense laws that may apply in cases of commercial sexual exploitation of a child include the following:

1. Pursuant to N.J. Stat. Ann. § 2C:14-2(a)(1) (Sexual assault),

An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration¹⁰ with another person under any one of the following circumstances:

(1) The victim is less than 13 years old;

A conviction for aggravated sexual assault is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:14-2(a), 2C:43-6(a)(1), 2C:43-3(a)(1).

Additionally, pursuant to N.J. Stat. Ann. § 2C:14-2(b), (c),

b. An actor is guilty of sexual assault if he commits an act of sexual contact¹¹ with a victim who is less than 13 years old and the actor is at least four years older than the victim.

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

...

(4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

A conviction for sexual assault is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:14-2(b), (c), 2C:43-6(a)(2), 2C:43-3(a)(2).¹²

(f) Masochism; or

(g) Fellatio; or

(h) Cunnilingus;

(i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or

(j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1.

¹⁰ Pursuant to N.J. Stat. Ann. § 2C:14-1(c) (Definitions), “sexual penetration” is defined as “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor’s instruction. The depth of insertion shall not be relevant as to the question of commission of the crime.”

¹¹ Pursuant to N.J. Stat. Ann. § 2C:14-1(d), “sexual contact” is defined as

an intentional touching by the victim or actor, either directly or through clothing, of the victim’s or actor’s intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.

Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present.

¹² Pursuant to N.J. Stat. Ann. § 2C:14-6 (Sentencing),

2. Pursuant to N.J. Stat. Ann. § 2C:14-3(b) (Aggravated criminal sexual contact; criminal sexual contact), “An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c.(1) through (4).”

A conviction of criminal sexual conduct is punishable as a fourth degree crime by imprisonment not to exceed 18 months and a possible fine not to exceed \$10,000. N.J. Stat. Ann. §§ 2C:14-3(b), 2C:43-6(a)(4), 2C:43-3(b)(2).¹³

4. N.J. Stat. Ann. § 2C:24-4(a) (Endangering welfare of children) states,

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child¹⁴ who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S. 9:6-1 [Abuse, abandonment, cruelty and neglect of child], R.S. 9:6-3 [Cruelty and neglect of children] and P.L. 1974, c. 119, § 1 (C. 9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

When the defendant has legal or assumed care over the child, a conviction is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(a), 2C:43-6(a)(2), 2C:43-3(a)(2). A conviction for any other person is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:24-4(a), 2C:43-6(a)(3), 2C: 43-3(b)(1).

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

N.J. Stat. Ann. § 2C:34-1(e) (Prostitution and related offenses) refers to New Jersey’s human trafficking law by creating an affirmative defense to prosecutions under the section for human trafficking victims. N.J. Stat. Ann. § 2C:34:1(e) states, “It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) [Human trafficking].”

However, the law does not specify that a child under 18 involved in prostitution is a victim of human trafficking, since New Jersey still requires force, fraud, or coercion for children to be considered human trafficking victims.

- 1.3.1 Recommendation: Specifically refer to N.J. Stat. Ann. § 2C:13-8 (Human trafficking) in the CSEC statutes to ensure that CSEC victims are properly identified as human trafficking victims.

If a person is convicted of a second or subsequent offense under sections 2C:14-2 [Sexual assault] or 2C:14-3 a. [Aggravated criminal sexual contact; criminal sexual contact], the sentence imposed under those sections for the second or subsequent offense shall, unless the person is sentenced pursuant to the provisions of 2C:43-7 [Sentence of imprisonment for crime; extended terms], include a fixed minimum sentence of not less than 5 years during which the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purpose of this section an offense is considered a second or subsequent offense, if the actor has at any time been convicted under sections 2C:14-2 or 2C:14-3 a. or under any similar statute of the United States, this state, or any other state for an offense that is substantially equivalent to sections 2C:14-2 or 2C:14-3a.

¹³ See *supra* note 12 for enhanced sentencing provisions for convictions under N.J. Stat. Ann. § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact).

¹⁴ For the purposes of N.J. Stat. Ann. § 2C:24-4, “child” is defined as “any person under 16 years of age.” N.J. Stat. Ann. § 2C:24-4(b)(1).

Legal Components:

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

Legal Analysis:

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

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) is unlikely to apply to buyers. N.J. Stat. Ann. § 2C:13-8 requires the person to use specified forms of force, fraud, or coercion in committing the crime. This requirement makes it unlikely that N.J. Stat. Ann. § 2C:13-8 would be apply to buyers.

- 2.1.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-8(1) (Human trafficking) to make the statute clearly apply to buyers of commercial sex acts induced through trafficking.

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

N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) specifically makes it a crime to buy sex with a child. Pursuant to N.J. Stat. Ann. § 2C:34-1(b)(7),

A person commits an offense if:

...

(7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. . . .

A conviction under this section is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

Several sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a child.¹⁵ These statutes, however, do not specifically criminalize the commercial sexual exploitation of a child and do not refer to N.J. Stat. Ann. § 2C:13-8 (Human trafficking).

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

New Jersey's solicitation laws differentiate between buying sex with adults and children. Under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), a first conviction for engaging in prostitution pursuant to subsection (b)(1) is punishable as a disorderly persons offense by imprisonment up to 6 months, a temporary loss of driver's license and a possible fine not to exceed \$1,000, with heightened penalties for second and subsequent convictions. N.J. Stat. Ann. §§ 2C:34-1(c)(4), 2C:43-8, 2C:43-3(c). In contrast, under N.J. Stat. Ann. § 2C:34-1(b)(7), a conviction for buying sex with an individual under 18 or soliciting an individual under 18 is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

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

A conviction for buying sex with a child under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a child but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of N.J. Stat. Ann. § 2C:13-8(a)(1) (Human trafficking).¹⁶

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)¹⁷ for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense¹⁸ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,¹⁹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁰

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

¹⁶ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

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 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).

¹⁹ 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).

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

2.4.1 Recommendation: Amend N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) to set the penalty for soliciting a child under 18 as a crime of the first degree, consistent with N.J. Stat. Ann. § 2C:13-8(a)(1) (Human trafficking).

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.*

Pursuant to N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions),

A person commits a crime of the second degree if he attempts, via electronic²¹ or any other means, to lure or entice a child²² or one who he reasonably believes to be a child into a motor vehicle, structure²³ or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

A conviction under N.J. Stat. Ann. § 2C:13-6(a) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-6(a), 2C:43-6(a)(2), 2C:43-3(a)(2).²⁴ Additionally, under N.J. Stat. Ann. § 2C:13-6(f), “The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.”

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

New Jersey does not allow a buyer of commercial sex to assert a mistake of age defense for the crime of prostitution. N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) states, in part, “It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.”

²¹ N.J. Stat. Ann. § 2C: 13-6(b) states that “[e]lectronic means’ includes, but is not limited to, the Internet.”

²² Pursuant to N.J. Stat. Ann. § 2C:13-6(b), a “child” is “a person less than 18 years old.”

²³ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

²⁴ Additional penalties may be imposed for second or subsequent convictions. Under N.J. Stat. Ann. § 2C:13-6,

d. A person convicted of a second or subsequent offense under this section shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6 [Sentence of imprisonment for crime; ordinary terms; mandatory terms], the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7 [Sentence of imprisonment for crime; extended terms], a mandatory minimum term of one-third to one-half of the sentence imposed, or three years, whichever is greater, during which time the defendant shall not be eligible for parole. If the person is sentenced pursuant to N.J.S.2C:43-7, the court shall impose a minimum term of one-third to one-half of the sentence imposed, or five years, whichever is greater. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section.

....

e. A person convicted of an offense under this section who has previously been convicted of a violation of N.J.S.2C:14-2 [Sexual assault], subsection a. of N.J.S.2C:14-3 [Aggravated criminal sexual contact; criminal sexual contact] or N.J.S.2C:24-4 [Endangering welfare of children] shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory minimum term of five years, during which time the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.

....

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.*

The penalty for buying sex with a child does not change based on the age of the victim. A conviction for buying sex with a child under 18 years of age under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

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

Buyers of commercial sex with children are subject to fines, restitution, and asset forfeiture. Under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses), a third degree crime, a buyer may face a fine up to \$15,000, a sentence to pay restitution, or both. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-3(b)(1). For a violation of N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions) a buyer may face a fine up to \$150,000 and a sentence to pay restitution to the victim, or both. N.J. Stat. Ann. §§ 2C:13-6(a), 2C:43-3(a)(2).

Additionally, buyers may face asset forfeiture pursuant to N.J. Stat. Ann. § 2C:64-1(a)(2) (Property subject to forfeiture), including “[a]ll property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purposes of committing offenses against the State.”

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

Possessing pornography of a child under 16 is a crime, pursuant to N.J. Stat. Ann. § 2C:24-4(b)(5)(b) (Endangering welfare of children), which states,

Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child²⁵ engaging in a prohibited sexual act²⁶ or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.

Possessing child pornography is punishable as a fourth degree crime by imprisonment not to exceed 18 months and a possible fine up to \$10,000. N.J. Stat. Ann. §§ 2C:24-4(5)(b), 2C:43-6(a)(4), 2C:43-3(b)(2).

²⁵ For the purposes of N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of children), a “child” is “any person under 16 years of age.” N.J. Stat. Ann. § 2C:24-4(b)(1).

²⁶ Pursuant to N.J. Stat. Ann. § 2C:24-4(b)(1), a “prohibited sexual act” is defined to include

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus;
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1 [Definitions].

In comparison, a federal conviction for possession of child pornography²⁷ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁸ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²⁹

2.9.1 Recommendation: Raise the age of “child” in N.J. Stat. Ann. § 2C:24-4(b)(1) to any individual under the age of 18 in order to provide protections for all children and be consistent with New Jersey’s other CSEC laws related to soliciting a child for sex.

2.9.2 Recommendation: Raise the penalties for violating N.J. Stat. Ann. § 2C:24-4(b)(5)(b) to be consistent with federal penalties.

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

Those convicted of buying sex with a child under N.J. Stat. Ann. § 2C:34-1(a)(7) (Prostitution and related offenses) are not required to register as convicted sex offenders under the sex offender registration laws. N.J. Stat. Ann. § 2C:7-2. However, other crimes applicable to buyers require registration. Pursuant to N.J. Stat. Ann. § 2C:7-2(a), (b) (Registration of sex offenders; definition; requirements; penalties),

a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

. . . .

b. For the purposes of this act a sex offense shall include the following:

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact . . . or an attempt to commit any of these crimes if the court found that the offender’s conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; . . . ; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3 b. if the victim is a minor; . . . or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date [Oct. 31, 1994] of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date [Oct. 31, 1994] of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria

²⁷ 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).

²⁸ 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).

²⁹ 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).

set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

- 2.10.1 Recommendation: Amend N.J. Stat. Ann. § 2C:7-2(b) (Registration of sex offenders; definition; requirements; penalties) to include N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) and § 2C:13-8 (Human trafficking) as sex offenses for which a person convicted or pleading guilty to the crime would be required to register if the victim is a child.

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.*

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1), 2C:43-3(a)(1). If, however, the trafficker is convicted under N.J. Stat. Ann. § 2C:13-8(a)(2), the trafficker shall be sentenced to imprisonment for 20 years to life, and shall not be eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d).

Under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), promoting the prostitution of a child under 18 is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:34-1(b)(3)–(4), (c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2).

A trafficker may also be subject to racketeering laws. Pursuant to N.J. Stat. Ann. § 2C:41-1(a) (Definitions), “racketeering activity” includes promoting prostitution, obscenity, and human trafficking. N.J. Stat. Ann. § 2C:41-1(d), (e), (z). Under N.J. Stat. Ann. § 2C:41-1(d),

“Pattern of racketeering activity” requires:

- (1) Engaging in at least two incidents of racketeering conduct one of which shall have occurred after the effective date of this act and the last of which shall have occurred within 10 years (excluding any period of imprisonment) after a prior incident of racketeering activity; and
- (2) A showing that the incidents of racketeering activity embrace criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

Under N.J. Stat. Ann. § 2C:41-2,

- a. It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which he has participated as a principal within the meaning of N.J.S. 2C:2-6 to use or invest, directly or indirectly, any part of the income, or the proceeds of the income, in acquisition of any interest in, or the establishment or operation of any enterprise which is engaged in or the activities of which affect trade or commerce. . . .
- b. It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in or activities of which affect trade or commerce.
- c. It shall be unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
- d. It shall be unlawful for any person to conspire as defined by N.J.S. 2C:5-2, to violate any of the provisions of this section.

Pursuant to N.J. Stat. Ann. § 2C:41-3(a), “Any person who violates any provision of N.J.S.2C:41-2 in connection with a pattern of racketeering activity which involves a crime of violence, a crime of the first degree [, which includes human trafficking,] or the use of firearms shall be guilty of a crime of the first degree. All other violations of N.J.S.2C:41-2 shall be crimes of the second degree.”

A first degree crime is punishable by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:43-6(a)(1), 2C:43-3(a)(1). A second degree crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2).

A trafficker may also be charged with crime gang activity for committing, attempting to commit, or conspiring to commit certain crimes including N.J. Stat. Ann. § 2C:13-8 (Human trafficking) or § 2C:34-1 (Prostitution and related offenses) as part of a criminal street gang, defined as “three or more persons associated in fact.”³⁰ N.J. Stat. Ann. § 2C:33-29(a). Pursuant to N.J. Stat. Ann. 2C:33-29(b) (Crime of gang criminality; “criminal street gang” defined; grading of offense),

Grading. Gang criminality is a crime of one degree higher than the most serious underlying crime referred to in subsection a. of this section, except that where the underlying crime is a crime of the first degree, gang criminality is a first degree crime and the defendant, upon conviction, and notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, shall be sentenced to an ordinary term of imprisonment between 15 and 30 years. A sentence imposed upon conviction of the crime of gang criminality shall be ordered to be served consecutively to the sentence imposed upon conviction of any underlying offense referred to in subsection a. of this section.

This means that a trafficker who violates N.J. Stat. Ann. § 2C:13-8 (Human trafficking), a first degree crime, as part of a criminal street gang may be punished by “an ordinary term of imprisonment between 15 and 30 years.” N.J. Stat. Ann. § 2C:33-29(b). If a trafficker knowingly promotes child prostitution in violation of N.J. Stat. Ann. § 2C:34-1(b)(3), (4), a second degree crime, as part of a criminal gang, a violation may be punished as a first

³⁰ Pursuant to N.J. Stat. Ann. § 2C:33-29(a),

Individuals are associated in fact if: (1) two of the following seven criteria that indicate criminal street gang membership apply: (a) self-proclamation; (b) witness testimony or official statement; (c) written or electronic correspondence; (d) paraphernalia or photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia of street gang activity; and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed or conspired or attempted to commit, within the preceding five years from the date of the present offense, excluding any period of imprisonment, one or more offenses on separate occasions of robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, tampering with witnesses and informants or a violation of chapter 11, section 3, 4, 5, 6, or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes.

degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:33-29(b), 2C:34-1(b)(3), (4), 2C:43-6(a)(1), 2C:43-3(a)(1).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³¹ 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 offense³² against a minor.

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

N.J. Stat. Ann. § 2C:24-4(3), (4) (Endangering welfare of children) states, in part,

(3) A person commits a crime of the second degree if he causes or permits a child³³ to engage in a prohibited sexual act³⁴ or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

A second degree crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2). A first degree crime is punishable by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:43-6(a)(1), 2C:43-3(a)(1).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense³⁵ against a minor. Additionally, a federal conviction for distribution of child pornography³⁶ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁷ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁸

³¹ See *supra* note 17.

³² See *supra* note 18 for the definition of “federal sex offense.”

³³ See *supra* note 14.

³⁴ See *supra* note 9.

³⁵ See *supra* note 18 for the definition of “federal sex offense.”

³⁶ 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).

³⁷ 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).

³⁸ 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–

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.*

Pursuant to N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions),

A person commits a crime of the second degree if he attempts, via electronic³⁹ or any other means, to lure or entice a child⁴⁰ or one who he reasonably believes to be a child into a motor vehicle, structure⁴¹ or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

A conviction under N.J. Stat. Ann. § 2C:13-6(a) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2).⁴² Additionally, under N.J. Stat. Ann. § 2C:13-6(f), “The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.”

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

Traffickers are subject to various fines, restitution, and asset forfeiture. Traffickers convicted of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), a first degree crime, may receive a possible fine not to exceed \$200,000 and shall be sentenced to pay restitution to the victim. N.J. Stat. Ann. §§ 2C:13-8(b), (e), 2C:43-3(a)(1). Pursuant to N.J. Stat. Ann. § 2C:13-8(e),

In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be sentenced to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim’s labor or services; or
- (2) the value of the victim's labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L. 1963, c. 150 (C. 34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L. 1966, c. 113 (C. 34:11-56a et seq.), the Seasonal Farm Labor Act, P.L. 1945, c. 71 (C. 34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. § 201 et seq. or any other applicable federal law.

Traffickers convicted of promoting prostitution of a child under 18 under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses) or of racketeering under N.J. Stat. Ann. § 2C:41-2 (Prohibited activities) involving promoting the prostitution of a child, both second degree crimes, may receive a possible fine not to exceed \$150,000 and a possible sentence to pay restitution. N.J. Stat. Ann. §§ 2C:34-1(c)(1), 2C:41-3(a), 2C:43-3(a)(2). If convicted of racketeering involving human trafficking and a violation of N.J. Stat. Ann. § 2C:13-8, a conviction is punishable as a first degree crime, and a trafficker may receive a possible fine not to exceed \$200,000 and a possible sentence to pay restitution to the victim. N.J. Stat. Ann. §§ 2C:13-8(b), 2C:41-3(a), 2C:43-3(a)(1). Additionally, if charged with racketeering, a trafficker shall forfeit “[a]ny interest including money or anything of

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).

³⁹ N.J. Stat. Ann. § 2C:13-6(b) states that “[e]lectronic means’ includes, but is not limited to, the Internet.”

⁴⁰ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “child” is “a person less than 18 years old.”

⁴¹ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

⁴² *See supra* note 24 for additional penalties that may be imposed for second or subsequent convictions pursuant to N.J. Stat. Ann. § 2C:13-6.

value he has acquired or maintained” through racketeering activity and may face civil penalties including restitution and civil monetary penalties. N.J. Stat. Ann. §§ 2C:41-3(b), 2C:41-4.

Traffickers may also face asset forfeiture. Pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture),

Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

....

(2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.

(3) Property which has become or is intended to become an integral part of illegal activity

(4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a.(1), proceeds of . . . prostitution

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

Pursuant to N.J. Stat. Ann. § 2C:7-2(a), (b) (Registration of sex offenders; definition; requirements; penalties),

a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

....

b. For the purposes of this act a sex offense shall include the following:

....

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for . . . endangering the welfare of a child pursuant to paragraph (3) or (4) or subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3 b. if the victim is a minor; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of N.J.S.2C:34-1, or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date [Oct. 31, 1994] of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date [Oct. 31, 1994] of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

3.5.1 Recommendation: Amend N.J. Stat. Ann. § 2C:7-2(b) (Registration of sex offenders; definition; requirements; penalties) to include N.J. Stat. Ann. § 2C:13-8 (Human trafficking) as a sex offense for which a person convicted or pleading guilty to the crime would be required to register if the victim is a child.

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.*

New Jersey’s laws for terminating parental rights do not include convictions of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1(b) (Prostitution and related offenses) (when a child is prostituted), or § 2C:24-4 (Endangering welfare of children). N.J. Stat. Ann. § 30:4C-15(f).

N.J. Stat. Ann. § 30:4C-15(f) (Petition to terminate parental rights, conditions) allows for termination when the parent is criminally convicted of

murder, aggravated manslaughter or manslaughter of another child of the parent; to have aided or abetted, attempted, conspired, or solicited to commit such murder, aggravated manslaughter or manslaughter of the child or another child of the parent; or to have committed, or attempted to commit, an assault that resulted, or could have resulted, in the significant bodily injury to the child or another child of the parent; or the parent has committed a similarly serious act which resulted, or could have resulted, in the death or significant bodily injury to the child or another child of the parent.

Parental rights may also be terminated wherever, pursuant to N.J. Stat. Ann. § 30:4C-15(a), “it appears that a court wherein a complaint has been proffered as provided in chapter 6 of Title 9 of the Revised Statutes, has entered a conviction against the parent or parents, guardian, or person having custody and control of any child because of abuse, abandonment, neglect of or cruelty to such child.” Pursuant to N.J. Stat. Ann. § 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes),

Abuse of a child shall consist in any of the following acts: . . . (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; . . . (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child

- 3.6.1 Recommendation: Amend N.J. Stat. Ann. § 30:4C-15 (Petition to terminate parental rights, conditions) to include N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1(b) (Prostitution and related offenses) (when the victim is a child), and § 2C:24-4 (Endangering welfare of children) as offenses for which a parent can lose 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.J. Stat. Ann. § 2C:13-8(a)(2) (Human trafficking) includes a facilitator who “receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection.” Pursuant to N.J. Stat. Ann. § 2C:13-8(d), for a conviction under this section,

the term of imprisonment imposed for a crime of the first degree under paragraph (2) of subsection a. shall be either a term of 20 years during which the actor shall not be eligible for parole, or a specific term between 20 years and life imprisonment, of which the actor shall serve 20 years before being eligible for parole.

As a first degree crime, a conviction is also punishable by a possible fine not to exceed \$200,000. N.J. Stat. Ann. § 2C:43-3(a)(1).

Additionally, a facilitator could be in violation of N.J. Stat. Ann. § 2C:34-1(b)(3) (Prostitution and related offenses) for promoting prostitution of a child. Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(4), “promoting prostitution” is defined as

(a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;

. . .

(f) Transporting a person into or within this State with purpose to promote that person’s engaging in prostitution, or procuring or paying for transportation with that purpose; or

(g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

A conviction under this section is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:34-1(b)(3), (c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2).

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

Facilitators are subject to fines, asset forfeiture, and restitution. As a first degree crime, a conviction under N.J. Stat. Ann. § 2C:13-8(a)(2) (Human trafficking) carries a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:13-8(a)(2), 2C:43-3(a)(1). Additionally, for a conviction of promoting prostitution of a child under N.J. Stat. Ann. § 2C:34-1(b)(3) (Prostitution and related offenses), a facilitator could receive a possible fine not to exceed \$150,000 and a possible sentence to pay restitution. N.J. Stat. Ann. §§ 2C:34-1(b)(3), (c)(1), 2C:43-3(a)(2).

Persons convicted of trafficking shall also pay restitution pursuant to N.J. Stat. Ann. § 2C:13-8(e), which states,

In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be sentenced to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim’s labor or services; or
- (2) the value of the victim’s labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L. 1963, c. 150 (C. 34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L. 1966, c. 113 (C. 34:11-56a et seq.), the Seasonal Farm Labor Act, P.L. 1945, c. 71 (C. 34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. § 201 et seq. or any other applicable federal law.

A facilitator may also be subject to racketeering laws. A conviction of racketeering constitutes a first degree crime if it is violated “in connection with . . . a crime of the first degree,” such as human trafficking; otherwise it is punishable as a second degree crime. N.J. Stat. Ann. § 2C:41-3(a). A conviction is punishable by a possible fine, a possible sentence to pay restitution, and forfeiture of “[a]ny interest including money or anything of value

he has acquired or maintained” through racketeering activity. N.J. Stat. Ann. §§ 2C:41-3(a), (b), 2C: 43-3(a)(2). The maximum fine is \$200,000 if charged as a first degree crime and \$150,000 if charged as a second degree crime. N.J. Stat. Ann. § 2C:43-3(a)(1), (2). Additionally, if charged with racketeering, a facilitator may face civil penalties including restitution and civil monetary penalties. N.J. Stat. Ann. § 2C:41-4.

Facilitators may be subject to asset forfeiture. Pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture),

Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

....

(2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.

(3) Property which has become or is intended to become an integral part of illegal act

(4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a.(1), proceeds of . . . prostitution,

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

There is no specific provision in the New Jersey code prohibiting child sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

N.J. Stat. Ann. § 2C:24-4(b)(5)(a) (Endangering welfare of children) includes the crime of selling pornography of children under 16. N.J. Stat. Ann. § 2C:24-4(b)(5)(a) specifically states,

Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

The crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(b)(5)(a), 2C:43-6(a)(2), 2C:43-3(a)(2).

Legal Components:

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

Legal Analysis:

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

New Jersey has a broad definition of "victim" within its statutes, which could include domestic minor sex trafficking victims. For the purpose of the Criminal Injuries Compensation Act of 1971,⁴³ N.J. Stat. Ann. § 52:4B-2 (Definitions) defines "victim" as "a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in [N.J. Stat. Ann. § 52:4B-11]."

The offenses listed in N.J. Stat. Ann. § 52:4B-11 include human trafficking; lewd, indecent, or obscene acts; indecent acts with children; sexual assault and aggravated sexual assault; and criminal sexual contact and aggravated criminal sexual contact. N.J. Stat. Ann. § 52:4B-11(b).

For the purpose of other victim services, "victim" is also defined in § 52:4B-39(a) (Definitions) as "a person who suffers personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person."

- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*

The statutory language of New Jersey's CSEC laws do not expressly prohibit a defense based upon consent.

⁴³ N.J. Stat. Ann. §§ 52:4B-1 to 4B-25.1.

However, N.J. Stat. Ann. § 2C:2-10 (Consent) states,

a. In general. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

....

c. Ineffective consent. Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if:

(1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(2) It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or

(3) It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

5.2.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1 (Prostitution and related offenses) (when the victim is a child), and § 2C:24-4 (Endangering welfare of children) to expressly prohibit a defense based upon the consent of the victim.

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

Prostitution laws apply to both adults and children, specifying no difference in crime based on age. Neither N.J. Stat. Ann. § 2C:34-1(b)(1) (Prostitution and related offenses) nor § 2C:34-1.1 (Loitering for the purpose of engaging in prostitution) make children immune from prosecution for prostitution-related offenses. However, N.J. Stat. Ann. § 2C:34-1(e) provides an affirmative defense to prostitution charges for human trafficking victims and states, “It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to [N.J. Stat. Ann. § 2C:13-8].” However, N.J. Stat. Ann. § 2C:13-8 requires force, fraud, or coercion for a child to be considered a human trafficking victim, leaving the defense unavailable to many commercially sexually exploited children.

5.3.1 Recommendation: Amend N.J. Stat. Ann. § 2C:34-1(b)(1) (Prostitution and related offenses) and § 2C:34-1.1 (Loitering for the purpose of engaging in prostitution) to specify that the offenses of engaging in prostitution and loitering for the purpose of prostitution are inapplicable to children under 18.

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.*

New Jersey currently has no law expressly providing victims with a child protective response or with specialized services.

Moreover, statutes defining reasons for bringing a child into child protective custody do not expressly list cases of commercial sexual exploitation. However, under N.J. Stat. Ann. § 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes), the definition of abuse does include “employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State,” or “employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child,” which could include commercial sexual exploitation victims.

A child engaging in domestic sex trafficking could constitute a juvenile-family crisis, or the child could be classified as a delinquent for convictions of prostitution-related offenses. Pursuant to N.J. Stat. Ann. § 2A:4A-23 (Definition of delinquency),

As used in this act, “delinquency” means the commission of an act by a juvenile which if committed by an adult would constitute:

- a. A crime;
- b. A disorderly persons offense or petty disorderly persons offense; or
- c. A violation of any other penal statute, ordinance or regulation.

....

Under N.J. Stat. Ann. § 2A:4A-31 (Taking into custody),

- a. A juvenile may be taken into custody:
 - (1) Pursuant to an order or warrant of any court having jurisdiction; or
 - (2) For delinquency, when there has been no process issued by a court, by a law enforcement officer, pursuant to the laws of arrest and the Rules of Court.
 - b. Except where delinquent conduct is alleged, a juvenile may be taken into short-term custody by a law enforcement officer without order of the court when:
 - (1) The officer has reasonable grounds to believe that the health and safety of the juvenile is seriously in danger and taking into immediate custody is necessary for his protection;
 - (2) The officer has reasonable grounds to believe the juvenile has left the home and care of his parents or guardian without the consent of such persons; or
-
- c. The taking of a juvenile into custody shall not be construed as an arrest, but shall be deemed a measure to protect the health, morals and well being of the juvenile.

After taking the child into short-term custody, the child may not be detained in a juvenile facility or jail. N.J. Stat. Ann. § 2A:4A-32(a). Pursuant to N.J. Stat. Ann. § 2A:4A-32(b), (c) (Short-term custody),

- b. An officer taking a juvenile into short-term custody shall inform the juvenile of the reason for custody and shall where possible transport, or arrange to have the juvenile transported to his home. The officer releasing a juvenile from such custody shall inform the juvenile’s parents or guardian and the juvenile-family crisis intervention unit⁴⁴ of the reason for taking the juvenile into custody and may, if he believes further services are needed, inform the juvenile and his parents of the nature and location of appropriate services.
- c. A law enforcement officer taking a juvenile into short-term custody may transport the juvenile to the home of a relative of the juvenile or to the home of another responsible adult or make arrangement for such transportation where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in custody of the adult until such time as the juvenile-family crisis intervention unit can bring about the child’s return home or an alternative living arrangement or out of home placement. A law enforcement officer placing a juvenile with a relative or responsible adult shall immediately notify the juvenile-family crisis intervention unit of this fact and the reason for taking the juvenile into custody.

The law enforcement officer may refer the child to the juvenile-family crisis intervention unit in certain circumstances. Pursuant to N.J. Stat. Ann. § 2A:4A-80 (Law enforcement referral),

⁴⁴ Pursuant to N.J. Stat. Ann. § 2A:4A-76 (Juvenile-family crisis intervention units established),

There shall be established in each county one or more juvenile-family crisis intervention units. Each unit shall operate either as a part of the court intake service, or where provided for by the county, through any other appropriate office or private service pursuant to an agreement with the Administrative Office of the Courts, provided that all such units shall be subject to the Rules of Court. In any county where a crisis intervention service system, designed to attend and stabilize juvenile and family problems on a county-wide basis, is in operation as of the effective date of this act, such service shall satisfy all the provisions of this act, and may continue in its present form and under its present procedures, provided that it is operating in substantial compliance with the specific requirements and goals set forth in this act.

A law enforcement officer taking a juvenile into short-term custody pursuant to section 12 of P.L. 1982, c. 77 [C. 2A:4A-31] shall immediately notify the juvenile-family crisis intervention unit and shall promptly bring the juvenile to the unit or place designated by the unit when:

a. The officer has reason to believe that it is not in the best interests of the juvenile or the family for the officer to return the juvenile to his home;

...

d. The juvenile has run away from a placement and the juvenile refuses to return home or the juvenile, through his past behavior, has demonstrated an inability to remain at home;

e. The law enforcement officer is unable, by all reasonable efforts to identify or locate a parent, relative or other such appropriate person;

f. The juvenile requires immediate emergency services, such as medical or psychiatric care; or

g. No identification can be obtained from the juvenile.

In addition to law enforcement referrals, a juvenile may be referred to the juvenile-family crisis unit under N.J. Stat. Ann. § 2A:4A-81(a) (Other referrals), which states,

The juvenile-family crisis intervention unit shall also receive referrals on a continuous basis in situations where a juvenile-family crisis exists and there has been either:

(1) A request by a parent or juvenile for intervention; or

(2) A referral by a public or private agency, educational institution, or any other organization serving children, which has contact with the juvenile or family, and has reasonable cause to believe that a family crisis exists.

The court will hold a hearing on the juvenile-family crisis if the crisis is not stabilized. N.J. Stat. Ann. §§ 2A:4A-82, 2A:4A-86.

Pursuant to N.J. Stat. Ann. § 2A:4A-83 (Juvenile-family crisis referral to the court; continuing crisis),

When, in the judgment of the crisis intervention unit, a juvenile-family crisis continues to exist despite the provision of crisis intervention services and the exhaustion of appropriate community services, court intake services shall, by filing a petition, refer the case to the court. In counties where the crisis intervention units are not part of intake and a juvenile-family crisis continues to exist, the court shall immediately refer the case to intake for the filing of a petition pursuant to this section. Upon the filing of the petition, the jurisdiction of the court shall extend to the juvenile, parent or guardian, or other family member contributing to the crisis.

Under N.J. Stat. Ann. § 2A:4A-87 (Juvenile-family crisis referral to courts; out of home placement),

When, despite provision of crisis intervention services and the exhaustion of all alternative services, there is a refusal on the part of the juvenile to stay in or return to the home or a refusal on the part of the parents to allow the juvenile to stay in or return home, or the physical safety of the juvenile is threatened, or the juvenile is in need of immediate care such that it is necessary to make an out of home placement of the juvenile, court intake services shall:

a. Arrange, when agreed to by the parent or guardian and juvenile, alternate living arrangement for the juvenile with a relative, neighbor, or other suitable family setting. It shall not be necessary for a court hearing to approve the living arrangement and the arrangement may continue as long as there is agreement; or

b. Arrange, when no alternate living arrangement can be agreed to and when all possible resources for alternate living arrangements as set forth in subsection a. of this section have been exhausted, temporary out of home placement prior to the placement hearing. Court intake services shall immediately file a petition for out of home placement which shall

include documentation of the attempts made to provide alternate living arrangements including, but not limited to, the names of persons contacted, their responses and the lack of agreement by the juvenile or the juvenile's parents if the persons contacted are willing to take the juvenile with the court. The crisis intervention unit shall inform the juvenile and parent or guardian that an out of home placement determination may be made by the court where an alternate living arrangement cannot be agreed to.

And, under N.J. Stat. Ann. § 2A:4A-46(b) (Disposition of juvenile-family crisis),

No juvenile involved in a juvenile-family crisis shall be committed to or placed in any institution or facility established for the care of delinquent children or in any facility, other than an institution for persons with intellectual disabilities, a mental hospital or facility for the care of persons addicted to controlled dangerous substances, which physically restricts such juvenile committed to or placed in it.

A juvenile charged with delinquency shall be released to any person or agency enumerated in the section, such as the juvenile's parent or guardian, provided there is assurance that the person or agency accepts responsibility to ensure the juvenile is brought before the court and there is not a need for detention.⁴⁵ N.J. Stat. Ann. § 2A:4A-34(a), (d). A juvenile cannot be "placed in detention without the permission of a judge or the court intake service." N.J. Stat. Ann. § 2A:4A-34(b). The court will hold a hearing to determine if detention is necessary. N.J. Stat. Ann. § 2A:4A-38(a). Pursuant to N.J. Stat. Ann. § 2A:4A-34(c), a juvenile may be detained prior to disposition, except as otherwise provided, only if:

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service or the juvenile is subject to a current warrant for failure to appear at court proceedings which is active at the time of arrest; or

...

(3) With respect to a juvenile charged with an offense which, if committed by an adult, would constitute a crime of the fourth degree other than those enumerated in paragraph (2) of this subsection, or a disorderly persons or petty disorderly persons offense, and with respect to a juvenile charged with an offense enumerated in subsection c. when the criteria for detention are not met, the juvenile may be temporarily placed in a shelter or other non-secure placement if a parent or guardian cannot be located or will not accept custody of the juvenile. Police and court intake personnel shall make all reasonable efforts to locate a parent or guardian to accept custody of the juvenile prior to requesting or approving the juvenile's placement in a shelter or other non-secure placement. If, after the initial detention hearing, continued placement is necessary, the juvenile shall be returned to a shelter or other non-secure placement.

⁴⁵ N.J. Stat. Ann. § 2A:4A-34(d) states that the judge or intake officer must consider the following placement alternatives before deciding whether detention is necessary:

- (1) Release to parents;
- (2) Release on juvenile's promise to appear at next hearing;
- (3) Release to parents, guardian or custodian upon written assurance to secure the juvenile's presence at the next hearing;
- (4) Release into care of a custodian or public or private agency reasonably capable of assisting the juvenile to appear at the next hearing;
- (5) Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile at the next hearing;
- (6) Release with required participation in a home detention program;
- (7) Placement in a shelter care facility; or
- (8) Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.

A juvenile 11 years old or younger may not be placed in detention “unless he is charged with an offense which, if committed by an adult, would be a crime of the first or second degree or arson.” N.J. Stat. Ann. § 2A:4A-34(f).

If a child is adjudicated a delinquent, a dispositional hearing must occur under N.J. Stat. Ann. § 2A:4A-41 (Dispositional hearing). Prior to this hearing a predispositional evaluation may be conducted under N.J. Stat. Ann. § 2A:4A-42 (Predispositional evaluation). Pursuant to N.J. Stat. Ann. § 2A:4A-43(b) (Disposition of delinquency cases), if a juvenile is adjudicated delinquent he may be incarcerated or sentenced to one of many dispositions, including release to the supervision of a parent or guardian or relative, placement with a state agency, placement on probation, or placement with a nonresidential work program.

CSEC victims may also be temporarily removed from their place of residence under N.J. Stat. Ann. § 9:6-8.27(a) (Temporary removal with consent), which states, in part,

A police officer or an agency or institution or individual may temporarily remove a child from the place where he is residing with the consent of his parent or other person legally responsible for his care,⁴⁶ if, there is reasonable cause to suspect that the child’s life or health is in imminent danger. . . .

Alternatively, a court may hold a hearing to determine whether to remove the child for reasons of abuse or neglect.⁴⁷ N.J. Stat. Ann. § 9:6-8.28(a). The court may also place an abused or neglected child “in the custody of a relative or other suitable person or the division for the placement of a child after a finding that the division has made reasonable efforts to prevent placement” or that such reasonable efforts were not required. N.J. Stat. Ann. § 9:6-8.54(a).

- 5.4.1 Recommendation: Establish a mandatory response law that directs any child involved in prostitution or who is a victim of trafficking for sexual servitude away from the criminal justice system and into a protective system.

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

New Jersey does not expressly identify commercial sexual exploitation as a type of abuse or neglect. Pursuant to N.J. Stat. Ann. § 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes),

Abuse of a child shall consist in any of the following acts: . . . (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child’s behavior is harmful to himself, others or property

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child’s physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in

⁴⁶ See *infra* Section 5.6.

⁴⁷ See *infra* Section 5.5.

section 1 of P.L.1974, c. 119 (C. 9:6-8.21[Definitions]), with the knowledge that the placement has resulted and may continue to result in harm to the child’s mental or physical well-being.

Additionally, pursuant to N.J. Stat. Ann. § 9:6-8.9(c) (“Abused child” defined), an “abused child” is “a child under the age of 18 years whose parent, guardian, or other person having his custody and control . . . [c]ommits or allows to be committed an act of sexual abuse against the child.”

Under N.J. Stat. Ann. § 9:6-8.84 (Definitions relative to child abuse, neglect),

“Sexual abuse” means contacts or actions between a child and a parent or caretaker for the purpose of sexual stimulation of either that person or another person. Sexual abuse includes:

- a. the employment, use, persuasion, inducement, enticement or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct;
- b. sexual conduct including molestation, prostitution, other forms of sexual exploitation of children or incest; or
- c. sexual penetration⁴⁸ and sexual contact⁴⁹ as defined in N.J.S.2C:14-1 [Definitions] and a prohibited sexual act⁵⁰ as defined in N.J.S.2C:24-4 [Endangering welfare of children].

5.5.1 Recommendation: Expand the definitions of abuse to expressly include when a child is victimized through N.J. Stat. Ann. § 2C:13-8 (Human trafficking).

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

For the purpose of protective child welfare laws, N.J. Stat. Ann. § 9:6-2 (“Parent” and “custodian” defined) defines “the person having care, custody and control of any child” as including,

any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed, and shall include . . . a person who legally or voluntarily assumes the care, custody, maintenance or support of the child.

This definition is potentially broad enough to encompass a trafficker for the purpose of child welfare intervention.

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

Crime victims’ compensation is only allowed for certain crimes, but most crimes related to domestic minor sex trafficking are included. Under the Criminal Injuries Compensation Act of 1971, the Victims of Crime Compensation Agency may order payment for victims⁵¹ who suffer personal injury or death resulting from the commission or attempt to commit specified offenses, including violations of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:14-2 (Sexual assault), § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact), or any other lewd, indecent, or obscene acts with children. N.J. Stat. Ann. § 52:4B-11. The Agency may make an order for compensation even if the buyer has not been prosecuted or convicted. N.J. Stat. Ann. § 52:4B-10. Applications shall be made within two years of the date of injury or death (unless good cause is found for delay) and reported to authorities “within three months after its occurrence or reasonable discovery.” N.J. Stat. Ann. § 52:4B-18. Furthermore, pursuant to N.J. Stat. Ann. § 52:4B-18,

⁴⁸ See *supra* note 10.

⁴⁹ See *supra* note 11.

⁵⁰ See *supra* note 9.

⁵¹ Pursuant to N.J. Stat. Ann. § 52:4B-2 (Definitions), a “victim” is defined as “a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in [N.J. Stat. Ann. § 52:4B-11].”

No compensation shall be awarded if:

a. . . . the victim did not cooperate with the reasonable requests of law enforcement authorities unless the victim demonstrates a compelling health or safety reason for not cooperating; or

. . . .

c. The victim was guilty of a violation of . . . subtitle 2 of Title 2C [Specific Offenses] of the New Jersey Statutes, which caused or contributed to his injuries; or

. . . .

f. The victim has been convicted of a crime and is still incarcerated; or

. . . .

. . . .

Additionally, New Jersey has a “Sex Crime Victim Treatment Fund,” which is only applicable to crimes that fall within the sexual assault chapter, such as sexual assault and lewdness, but not human trafficking. N.J. Stat. Ann. § 52:4B-43.2.

5.7.1 Recommendation: Provide exceptions to the listed ineligibility criteria for child sex trafficking victims to ensure that domestic minor sex trafficking victims may receive compensation.

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

The only CSEC victims eligible for the protections of New Jersey’s “rape shield” law are victims of N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of a child). However, many CSEC victims are ineligible, including victims of N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses) and § 2C:13-8 (Human trafficking). N.J. Stat. Ann. § 2C:14-7(a). Pursuant to N.J. Stat. Ann. § 2C:14-7 (Victim’s previous sexual conduct; manner of dress),

a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of a child in violation of N.J.S. 2C:24-4 or the fourth degree crime of lewdness in violation of subsection b. of N.J.S. 2C:14-4, evidence of the victim’s previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. . . .

b. In the absence of clear and convincing proof to the contrary, evidence of the victim’s sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.

d. Evidence of the victim’s previous sexual conduct with the defendant shall be considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.

e. Evidence of the manner in which the victim was dressed at the time an offense was committed shall not be admitted unless such evidence is determined by the court to be relevant and admissible in the interest of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury or at such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination. A statement by the court of its findings shall also be included in the record.

f. For the purposes of this section, “sexual conduct” shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and life style.

Similarly, the law prevents the disclosure of the identity of some child victims, but only for victims of certain sexual offense crimes including N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of children), but not N.J. Stat. Ann. § 2C:13-8 (Human trafficking) or § 2C:34-1 (Prostitution and related offenses). N.J. Stat. Ann. § 2A:82-46(a).

Similarly, New Jersey’s law allowing a minor to testify via closed circuit television does not include CSEC offenses as qualifying offenses. N.J. Stat. Ann. § 2A:84A-32.4(a). Only prosecutions for “aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, or child abuse, or any action alleging abused or neglected children” can occur via closed circuit television under this statute. N.J. Stat. Ann. § 2A:84A-32.4(a). An order for such testimony of a witness 16 years of age or younger may be made when “there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify in open court.” N.J. Stat. Ann. § 2A:84A-32.4(b).

5.8.1 Recommendation: Amend N.J. Stat. Ann. § 2A:84A-32.4 (Prosecutions or actions for sexual assault, criminal sexual conduct, or child abuse or neglect; closed circuit testimony by minor) and § 2C:14-7 (Victim’s previous sexual conduct; manner of dress) to cover child victims of N.J. Stat. Ann. § 2C:13-8 (Human trafficking) and § 2C:34-1 (Prostitution and related offenses) to provide them greater protections when prosecuting trafficking cases.

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.*

Juvenile records may be sealed under N.J. Stat. Ann. § 2A:4A-62 (Sealing of records), which states in part,

a. On motion of a person who has been the subject of a complaint filed under this act or on its own motion, the court may vacate its order and findings and order the nondisclosure of social, medical, psychological, legal and other records of the court and probation services, and records of law enforcement agencies if it finds:

(1) Two years have elapsed since the final discharge of the person from legal custody or supervision, or two years have elapsed after the entry of any other court order not involving custody or supervision; and

(2) He has not been convicted of a crime, or a disorderly persons offense or adjudged delinquent, during the two years prior to the filing of the motion, and no proceeding or complaint is pending seeking such conviction or adjudication.

....

e. Any adjudication of delinquency or conviction of a crime subsequent to sealing shall have the effect of nullifying the sealing order.

f. Expungement of juvenile records shall be governed by the applicable provisions of chapter 52 of Title 2C of the New Jersey Statutes [Expungement].

A juvenile charged with prostitution or loitering for the purpose of prostitution can have their records expunged because these offenses are both disorderly persons offenses. N.J. Stat. Ann. §§ 2C:52-4.1(a)(2), 2C:52-3, 2C:34-1(c)(4), 2C:34-1.1(b). However, if the juvenile is convicted twice of engaging in prostitution, the minor can be guilty of a fourth degree crime, resulting in possible barriers to expungement. N.J. Stat. Ann. § 2C:34-1(c)(4). In such situations, the juvenile record is only eligible for expungement on the same grounds as adult offenders. N.J. Stat. Ann. § 2C:52-4.1(a)(1). These requirements mandate 10 years without conviction of a subsequent crime before the juvenile is eligible for expungement. N.J. Stat. Ann. § 2C:52-2(a).

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

Offenders convicted under N.J. Stat. Ann. § 2C:13-8 (Human trafficking) must pay restitution to the victim. Specifically, under N.J. Stat. Ann. § 2C:13-8(e),

The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim's labor or services; or
- (2) the value of the victim's labor or services as determined by the "New Jersey Prevailing Wage Act," the "New Jersey State Wage and Hour Law," "the Seasonal Farm Labor Act," the laws concerning the regulation of child labor...or any other applicable State law, and the "Fair Labor Standards Act of 1938"

Similarly, other offenders may be ordered to pay restitution because the court is allowed to order the perpetrator to pay the victim restitution for any degree of crime. N.J. Stat. Ann. § 2C:43-3. However, except in state tax cases, "[t]he restitution ordered paid to the victim shall not exceed the victim's loss." N.J. Stat. Ann. § 2C:43-3.

Although no civil remedies are specifically outlined for human trafficking victims, minors could bring a civil case under an action for sexual abuse. N.J. Stat. Ann. § 2A:61B-1. For purposes of this action, "sexual abuse" is defined in N.J. Stat. Ann. § 2A:61B-1(a)(1) as

an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis within the household who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

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

Most prosecutions in New Jersey are subject to a 5-year statute of limitations pursuant to N.J. Stat. Ann. § 2C:1-6(b)(1) (Time limitations). Prosecutions for sexual assault and aggravated sexual assault under N.J. Stat. Ann. § 2C:14-2 (Sexual assault) have no limitation and may be brought at any time. N.J. Stat. Ann. § 2C:1-6(a)(1). An extension is also available to victims of N.J. Stat. Ann. § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact) and § 2C:24-4 (Endangering welfare of children) pursuant to N.J. Stat. Ann. § 2C:1-6(b)(4), which states,

A prosecution for an offense set forth in N.J.S.2C:14-3 or N.J.S.2C:24-4, when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim's attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later.

A civil action brought under N.J. Stat. Ann. § 2A:61B-1 (Definitions; accrual of actions; proceedings) for sexual abuse must "be brought within two years after reasonable discovery." N.J. Stat. Ann. § 2A:61B-1(b).

- 5.11.1 Recommendation: Amend N.J. Stat. Ann. § 2C:1-6(a)(1) (Time limitations) to include § 2C:13-8 (Human trafficking) and § 2C:34-1 (Prostitution and related offenses) when a child is involved, in order to allow prosecutions for these offenses to be brought at any time.

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.*

While New Jersey law mandates training in many specific topics, it does not require training specifically focused on human trafficking. However, New Jersey does require training on “substances which could be used to facilitate sexual assault,” training on tracing missing persons, and training on technology used in the commission of sex offenses, all of which could include topics related to domestic minor sex trafficking. N.J. Stat. Ann. §§52:17B-4.5(a), 52:17B-9.8, 52:17B-77.11.

6.1.1 Recommendation: Mandate training on domestic minor sex trafficking for law enforcement.

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

New Jersey allows for single party consent to audiotaping. The following actions are lawful pursuant to N.J. Stat. Ann. § 2A:156A-4(b)–(d),

- b. Any investigative or law enforcement officer to intercept a wire, electronic or oral communication, where such officer is a party to the communication or where another officer who is a party to the communication requests or requires him to make such interception;
- c. Any person acting at the direction of an investigative or law enforcement officer to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; provided, however, that no such interception shall be made without the prior approval of the Attorney General or his designee or a county prosecutor or his designee;
- d. A person not acting under color of law to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception unless such communication is intercepted or used for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act. . . .

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

New Jersey only allows wiretapping for domestic minor sex trafficking cases that fall within N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of children) or racketeering offenses under N.J. Stat. Ann. § 2C:41-2 (Prohibited activities). N.J. Stat. Ann. § 2A:156A-8.

Pursuant to N.J. Stat. Ann. § 2A:156A-8 (Authorization for application for order to intercept communications),

The Attorney General, county prosecutor or a person designated to act for such an official and to perform his duties in and during his actual absence or disability, may authorize, in writing, an ex parte application to a judge designated to receive the same for an order authorizing the interception of a wire, or electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation when such interception may provide evidence of the commission of the offense of . . . endangering the welfare of a child pursuant to N.J.S. 2C:24-4, . . . racketeering or a violation of subsection g. of N.J.S. 2C:5-2, . . . or any conspiracy to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the foregoing offenses.

- 6.3.1 Recommendation: Amend N.J. Stat. Ann. § 2A:156A-8 (Authorization for application for order to intercept communications) to add the crimes of N.J. Stat. Ann. § 2C:13-8 (Human trafficking) and § 2C:34-1 (Prostitution and related offenses) (when the victim is a child) as crimes for which wiretapping may be authorized.

- 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.*

While no law expressly allows for the use of a decoy in investigations of prostitution or sex trafficking, N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions) appears to permit the use of a decoy, by making it a crime to attempt to lure a person the offender “reasonably believes to be a child.” N.J. Stat. Ann. § 2C:13-6(a) states,

A person commits a crime of the second degree if he attempts, via electronic⁵² or any other means, to lure or entice a child⁵³ or one who he reasonably believes to be a child into a motor vehicle, structure⁵⁴ or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

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

While no law expressly allows for investigation using the Internet, law enforcement can likely use electronic means for investigation under N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions).⁵⁵

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

Law enforcement must report missing and recovered minors in New Jersey. Under N.J. Stat. Ann. § 52:17B-9.8 (Powers, duties of unit), the Department of Law and Public Safety shall,

- a. Coordinate, file and investigate all missing persons cases in this State, and cooperate with local law enforcement officials and federal law enforcement officials in the creation of a centralized office on missing persons in this State;
. . . .
- c. Collect and maintain data on missing persons and unidentified bodies in this State and throughout the United States;

⁵² N.J. Stat. Ann. § 2C:13-6(b) states that “[e]lectronic means” includes, but is not limited to, the Internet.”

⁵³ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), a “child” is “a person less than 18 years old.”

⁵⁴ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

⁵⁵ See *supra* Section 6.4 for the relevant provisions of N.J. Stat. Ann. § 2C:13-6(a).

d. Coordinate efforts with other states and with the federal government in the investigation of cases involving missing persons or unidentified bodies;

....

Additionally, pursuant to N.J. Stat. Ann. § 52:17B-217 (Actions relative to high risk missing person or child), if the missing person is a child,

b. The lead law enforcement agency shall promptly notify all law enforcement agencies within the State and, if deemed appropriate, law enforcement agencies in adjacent states or jurisdictions of the information that may aid in the prompt location and safe return of the high risk missing person.

c. Local law enforcement agencies that receive notification from the lead law enforcement agency pursuant to subsection b. of this section shall forward that information immediately to their officers and members.

d. The lead law enforcement agency shall, as expeditiously as possible, prepare and disseminate a photographic information bulletin utilizing the Missing Child Alert System, or any successor law enforcement notification system the State may employ.

e. The lead law enforcement agency shall, as appropriate, enter all collected information relating to the missing person case to applicable federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases, as follows:

(1) a missing person report, and relevant information, in a high risk missing person case shall be entered in the National Crime Information Center database immediately, but in no case no more than two hours after the determination that the missing person is a high risk missing person;

(2) a missing person report, and relevant information, in a case not involving a high risk missing person shall be entered within 24 hours of the initial filing of the missing person report;

....

(6) the State Police shall, when deemed appropriate and likely to facilitate a resolution to a particular missing person report, activate the Amber Alert program for the State.

f. If, after the dissemination of a photographic information bulletin utilizing the Missing Child Alert System information, the missing person is found, the lead law enforcement agency shall promptly disseminate an additional bulletin on the Missing Child Alert System indicating that the person was found.

Original Version: January 31, 2012

© Original version dated January 31, 2012 copyrighted by Shared Hope International and the American Center for Law and Justice. Subsequent versions have not been reviewed by the American Center for Law and Justice. All rights reserved

