

PROTECTED INNOCENCE INITIATIVE

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



ANALYSIS AND RECOMMENDATIONS OHIO

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.*

Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) does not distinguish between the sex trafficking of adults and children and further requires the trafficker to use a form of “force, fear, duress, or intimidation” to cause a minor to engage in commercial sex acts. Ohio Rev. Code Ann. § 2905.32(A) states,

No person shall knowingly recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, or knowingly attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity

¹ Unless otherwise specified, all references to Ohio statutes were taken from Ohio Revised Code Annotated (LEXIS through 2010 Reg. Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-54, approved 11/12/2011).

oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.²

Ohio Rev. Code Ann. § 2905.31(A) (Involuntary servitude) defines “involuntary servitude” as “being compelled to perform labor or services for another against one’s will.” Ohio Rev. Code Ann. § 2905.32(B) explains that “the element ‘compelled’ does not require that the compulsion be openly displayed or physically exerted. The element ‘compelled’ has been established if the state proves that the victim’s will was overcome by force, fear, duress, or intimidation.” However, under Ohio Rev. Code Ann. § 2905.32(C), “In a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section.” A conviction under Ohio Rev. Code Ann. § 2905.32(A) is punishable as a second degree felony³ by imprisonment for 2–8 years⁴ and a possible fine up to \$15,000.⁵ Ohio Rev. Code Ann. §§ 2905.32(E), 2929.14(A)(2), 2929.18(A)(3)(b).

1.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) to impose enhanced penalties if the sex trafficking victim is a minor.

² Ohio Rev. Code Ann. § 2905.31(B) (Involuntary servitude) states, “‘Material that is obscene, sexually oriented, or nudity oriented’ and ‘performance that is obscene, sexually oriented, or nudity oriented’ have the same meanings as in section 2929.01 [Definitions] of the Revised Code” Ohio Rev. Code Ann. § 2929.01(CCC) defines “material that is obscene, sexually oriented, or nudity oriented” as “any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.” Ohio Rev. Code Ann. § 2929.01(DDD) defines “performance that is obscene, sexually oriented, or nudity oriented” as “any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.”

³ Pursuant to Ohio Rev. Code Ann. § 2929.13(A) (Guidance by degree of felony; monitoring of sexually oriented offenders by global positioning device), unless the criminal provision specifies that a prison term is presumptive or mandatory, the judge has discretion to sentence a felony offender according to the terms of Ohio Rev. Code Ann. § 2929.14 (Basic prison terms), § 2929.15 (Community control sanctions), § 2929.16 (Residential Sanctions), § 2929.17 (Nonresidential sanctions), or § 2929.18 (Financial sanctions; restitution; reimbursements) with the minimum sentence necessary to accomplish the purposes of rehabilitating the criminal and protecting the community from future crime. Ohio Rev. Code Ann. §§ 2929.11, 2929.13(A), (D), 2929.14(A). If the criminal provision specifies that imprisonment is mandatory, then the court must “impose any financial sanction pursuant to section 2929.18 of the Revised Code that is required for the offense and may impose any other financial sanction pursuant to that section” Ohio Rev. Code Ann. § 2929.13(A). If the statute specifies that there is a presumption of imprisonment then “it is presumed that a prison term is necessary in order to comply with the purposes and principles of” Ohio Rev. Code Ann. § 2929.11 (Purposes of felony sentencing; discrimination prohibited), but the court may depart from the presumption and community control sanctions if it evaluates the factors outlined in § 2929.12 (Seriousness and recidivism factors) and finds that community control sanctions would adequately punish the offender, protect the public, and maintain the seriousness of the offense. Ohio Rev. Code Ann. § 2929.13(D). In the absence of a mandatory term of imprisonment and when the court departs from the presumption of imprisonment, the judge may order community control sanctions like community service, house arrest, mediation between offender and victim, probation, curfew, time in a halfway house, or up to six months in a community-based correctional facility. Ohio Rev. Code Ann. §§ 2929.15(A), 2929.16(A)(1), (4), 2929.17(B), (C), (E), (I), (L). Ohio Rev. Code Ann. § 2929.12 provides the judge several factors to consider in determining whether it is appropriate to issue a community control sanction or a term of imprisonment. This report will explicitly note when imprisonment is presumptive or mandatory.

⁴ Ohio Rev. Stat. Ann. § 2929.14(A)(2) states, “the prison term shall be two, three, four, five, six, seven, or eight years.”

⁵ When an offender is an organization rather than a person, different fines apply to felonies and misdemeanors of various degrees under Ohio Rev. Code Ann. § 2929.31 (Organizational penalties). Additionally, Ohio Rev. Code Ann. § 2929.32(A)(1) (Additional fine for certain offenders; collection of fines; crime victims recovery fund) authorizes the court to order an offender to pay a fine up to \$1,000,000 if

any of the following applies to the offense and the offender:

- (a) There are three or more victims, as defined in section 2969.11 of the Revised Code, of the offense for which the offender is being sentenced.
- (b) The offender previously has been convicted of or pleaded guilty to one or more offenses, and, for the offense for which the offender is being sentenced and all of the other offenses, there is a total of three or more victims, as defined in section 2969.11 of the Revised Code.
- (c) The offense for which the offender is being sentenced is aggravated murder, murder, or a felony of the first degree that, if it had been committed prior to July 1, 1996, would have been an aggravated felony of the first degree.

- 1.1.2 Recommendation: Amend Ohio Rev. Code § 2905.32 (Compulsion to involuntary servitude) to eliminate the requirement that a minor sex trafficking victim be compelled to engage in sexual activity.⁶

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 Ohio:

1. Ohio Rev. Code Ann. § 2907.21(A) (Compelling prostitution) states,

No person shall knowingly do any of the following:

- (1) Compel⁷ another to engage in sexual activity for hire;
- (2) Induce, procure, encourage, solicit, request, or otherwise facilitate either of the following:
 - (a) A minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor;
 - (b) A person the offender believes to be a minor to engage in sexual activity for hire, whether or not the person is a minor.
- (3) (a) Pay or agree to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor;
(b) Pay or agree to pay a person the offender believes to be a minor, either directly or through the person's agent, so that the person will engage in sexual activity, whether or not the person is a minor.
- (4) (a) Pay a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity pursuant to a prior agreement, whether or not the offender knows the age of the minor;
(b) Pay a person the offender believes to be a minor, either directly or through the person's agent, for the person having engaged in sexual activity pursuant to a prior agreement, whether or not the person is a minor.
- (5) (a) Allow a minor to engage in sexual activity for hire if the person allowing the child to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the minor;
(b) Allow a person the offender believes to be a minor to engage in sexual activity for hire if the person allowing the person to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person in loco parentis of the person the offender believes to be a minor, whether or not the person is a minor.

A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by imprisonment for 9–36 months⁸ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the victim is 16–17, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a second degree felony by imprisonment for 2–8

⁶ Subsequent recommendations in this report referring to Ohio's human trafficking law are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

⁷ Ohio Rev. Code Ann. § 2907.21(B) states,

For a prosecution under division (A)(1) of this section, the element "compel" does not require that the compulsion be openly displayed or physically exerted. The element "compel" has been established if the state proves that the victim's will was overcome by force, fear, duress, or intimidation.

⁸ Ohio Rev. Code Ann. § 2929.14(A)(3)(b) states, "the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months."

years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2), 2929.18(A)(3)(b). If the victim is under 16, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a first degree felony by imprisonment for 3–11 years⁹ and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(1), 2929.18(A)(3)(a).

If an offender convicted under Ohio Rev. Code Ann. § 2907.21 committed the offense “in furtherance of human trafficking,”¹⁰ however, enhanced penalties apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification)¹¹ and § 2929.14(B)(7) (Basic prison terms).¹² Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c). If

⁹ Ohio Rev. Code Ann. § 2929.14(A)(1) states, “the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.”

¹⁰ As used in Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) and § 2929.14(B)(7) (Basic prison terms) and as defined in Ohio Rev. Code Ann. § 2929.01(AAA) (Definitions), “human trafficking”

means a scheme or plan to which all of the following apply:

(1) Its object is to subject a victim or victims to involuntary servitude, as defined in section 2905.31 [Involuntary servitude] of the Revised Code, to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2905.32 [Compulsion to involuntary servitude], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

¹¹ Ohio Rev. Code Ann. § 2941.1422 provides,

(A) Imposition of a mandatory prison term under division (B)(7) of section 2929.14 [Basic prison terms] of the Revised Code is precluded unless the offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of human trafficking. . . .

¹² Ohio Rev. Code Ann. § 2929.14(B)(7)(a) states,

(a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 [Human trafficking specification] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

(i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than ten years;

(ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A) of section 2929.14 [Basic prison terms] of the Revised Code;

(iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code.

the victim is 16–17 years old, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a second degree felony by mandatory imprisonment for 3–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(2), (B)(7)(a)(ii), 2929.18(A)(3)(b). If the victim is under 16 years old, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(1) is punishable as a first degree felony by mandatory imprisonment for 5–10 years and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(B)(7)(a)(i), 2929.18(A)(3)(a).

2. Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution) states,

No person shall knowingly:

- (1) Establish, maintain, operate, manage, supervise, control, or have an interest in a brothel;
- (2) Supervise, manage, or control the activities of a prostitute in engaging in sexual activity for hire;
- (3) Transport another, or cause another to be transported across the boundary of this state or of any county in this state, in order to facilitate the other person's engaging in sexual activity for hire;
- (4) For the purpose of violating or facilitating a violation of this section, induce or procure another to engage in sexual activity for hire.

Ohio Rev. Code Ann. § 2907.22(B)¹³ imposes enhanced penalties when the victim of the offense is a commercially sexually exploited child. In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). Where an offender convicted under Ohio Rev. Code Ann. § 2907.22 committed the offense “in furtherance of human trafficking,” enhanced penalties apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22 is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

3. Ohio Rev. Code Ann. § 2907.321(A)(1), (3) (Pandering obscenity involving a minor) states,

No person, with knowledge of the character of the material¹⁴ or performance¹⁵ involved, shall do any of the following:

- (1) Create, reproduce, or publish any obscene material that has a minor¹⁶ as one of its participants or portrayed observers;
- ...
- (3) Create, direct, or produce an obscene performance that has a minor as one of its participants;

¹³ Ohio Rev. Code Ann. § 2907.22(B) states, in part,

Whoever violates this section is guilty of promoting prostitution. Except as otherwise provided in this division, promoting prostitution is a felony of the fourth degree. If any prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, then promoting prostitution is a felony of the third degree. . . .

¹⁴ Ohio Rev. Code Ann. § 2907.01(J) (Definitions) defines “material” as

any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

¹⁵ Ohio Rev. Code Ann. § 2907.01(K) defines “performance” as “any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.”

¹⁶ Ohio Rev. Code Ann. § 2907.01(M) defines a “minor” as “a person under the age of eighteen.”

A conviction under Ohio Rev. Code Ann. § 2907.321(A)(1), (3) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2), 2929.18(A)(3)(b).

4. Ohio Rev. Code Ann. § 2907.322(A)(1), (3) (Pandering sexually oriented matter involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity,¹⁷ masturbation, or bestiality;

...

(3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

A conviction under Ohio Rev. Code Ann. § 2907.322(A)(1), (3) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2), 2929.18(A)(3)(b).

5. Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) states,

No person shall do any of the following to a child under eighteen years of age . . .

...

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) is punishable as a second degree felony punishable by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b).

The following laws may be applicable to sexual exploitation of children although they do not specify commercial exchanges:

1. Ohio Rev. Code Ann. § 2907.07(A)–(D) (Importuning) states,

(A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity¹⁸ with the offender, whether or not the offender knows the age of such person.

(B) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct¹⁹ with the offender, when the offender is eighteen years of age or older and four or more years older than the

¹⁷ Ohio Rev. Code Ann. § 2907.01(C) defines “sexual activity” as “sexual conduct or sexual contact, or both.” See *infra* note 19 for the definition of sexual conduct and note 24 for the definition of sexual contact.

¹⁸ See *supra* note 17 for the definition of “sexual activity.” See *infra* note 19 for the definition of sexual conduct and note 24 for the definition of sexual contact.

¹⁹ Ohio Rev. Code Ann. § 2907.01(A) defines “sexual conduct” as

vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.

(C) No person shall solicit another by means of a telecommunications device,²⁰ as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.

(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.

(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.

(2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.

A first conviction under Ohio Rev. Code Ann. § 2907.07(A), (C) carries “a presumption that a prison term shall be imposed” and is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(A), (C) is punishable as a second degree felony by mandatory imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.14(A)(2), 2929.18(A)(3)(b).

A first conviction under Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fifth degree felony by imprisonment for 6–12 months²¹ with “a presumption that a prison term shall be imposed” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(B), (D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months²² and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

2. Ohio Rev. Code Ann. § 2907.02(A)(1)(b) (Rape) states,

No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

....

²⁰ Ohio Rev. Code Ann. § 2913.01(Y) (Definitions) defines a “telecommunications device” as “any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.”

²¹ Ohio Rev. Code Ann. § 2929.14(A)(5) states, “the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.”

²² Ohio Rev. Code Ann. § 2929.14(A)(4) states, “the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.”

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

A first conviction under Ohio Rev. Code Ann. § 2907.02(A)(1)(b) is a first degree felony punishable by mandatory imprisonment for 10 years to life and a possible fine up to \$20,000, unless the victim was under 10, in which the minimum increases to 15 years. Ohio Rev. Code Ann. §§ 2907.02(B), 2929.18(A)(3)(a), 2971.03(B)(1)(a)–(b). If the offender uses force, has a previous conviction, or causes harm to the victim the minimum increases to 25 years. Ohio Rev. Code Ann. § 2971.03(B)(1)(c). However, under Ohio Rev. Code Ann. § 2907.02(B),

If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division.

Additionally, if the offender has a prior conviction under Ohio Rev. Code Ann. § 2907.02(A)(1)(b) or a similar offense in another jurisdiction, the victim is under 10, or the offender causes serious harm, a violation of Ohio Rev. Code Ann. § 2907.02(A)(1)(b) may be punishable as a first degree felony by life imprisonment without parole and a possible fine up to \$20,000. Ohio Rev. Code Ann. §§ 2907.02(B), 2929.18(A)(3)(a). Other penalties are applicable to sexually violent predators pursuant to Ohio Rev. Code Ann. §2971.03(A).

3. Ohio Rev. Code Ann. § 2907.04(A) (Unlawful sexual conduct with a minor) states,

No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

A first conviction under Ohio Rev. Code Ann. § 2907.04(A) generally is punishable as a fourth degree felony by imprisonment for 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. § 2907.04(B)(1), 2929.14(A)(4), 2929.18(A)(3)(d). If the offender is at least 10 years older than the victim, a first conviction under Ohio Rev. Code Ann. § 2907.04(A) is punishable as a third degree felony by imprisonment for 12–60 months²³ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.04(B)(3), 2929.14(A)(3)(a), 2929.18(A)(3)(c). However, if the offender is less than 4 years older than the victim, a first conviction under Ohio Rev. Code Ann. § 2907.04(A) is punishable as a first degree misdemeanor by imprisonment for up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2907.04(B)(2), 2929.24(A)(1), 2929.28(A)(2)(a)(i). If the offender has a prior conviction under Ohio Rev. Code Ann. § 2907.02, § 2907.04, or § 2907.03 (Sexual battery), a violation of Ohio Rev. Code Ann. § 2907.04 is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.04(B)(4), 2929.14(A)(2), 2929.18(A)(3)(b).

²³ Ohio Rev. Code Ann. § 2929.14(A)(3)(a) states, “the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.”

4. Ohio Rev. Code Ann. § 2907.05(A)(4), (B) (Gross sexual imposition) states,

(A) No person shall have sexual contact²⁴ with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

.....

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

.....

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

A conviction under Ohio Rev. Code Ann. § 2907.05(A)(4) or (B) is punishable as a third degree felony with “a presumption that a prison term shall be imposed for the offense” by imprisonment for 12–60 months and a possible fine up to \$10,000.²⁵ Ohio Rev. Code Ann. §§ 2907.05(C)(2), 2929.14(A)(3)(a), 2929.18(A)(3)(c).

5. Ohio Rev. Code Ann. § 2907.06(A)(4) (Sexual imposition) states,

No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

.....

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

A first conviction under Ohio Rev. Code Ann. § 2907.06(A)(4) is punishable as a third degree misdemeanor by imprisonment up to 60 days and a possible fine up to \$500. Ohio Rev. Code Ann. § 2907.06(C), 2929.24(A)(3), 2929.28(A)(2)(a)(iii). However, if an offender has certain prior convictions,²⁶ a conviction under Ohio Rev. Code Ann. § 2907.06(A)(4) is punishable as a first degree misdemeanor by imprisonment up to 180 days and a possible fine up to \$1,000. Ohio Rev. Code Ann. §§ 2907.06(C), 2929.24(A)(1) 2929.28(A)(2)(a)(i).

²⁴ Ohio Rev. Code Ann. § 2907.01(B) defines “sexual contact” as, “any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is female, a breast, for the purpose of sexually arousing or gratifying either person.”

²⁵ Ohio Rev. Code Ann. § 2907.05(C)(2) further states,

The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:

- (a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;
- (b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

²⁶ These include convictions under Ohio Rev. Code Ann. § 2907.06, § 2907.02 (Rape), § 2907.03 (Sexual battery), § 2907.04 (Unlawful sexual conduct with minor), or § 2907.05 (Gross sexual imposition).

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

None of Ohio’s CSEC statutes refer to Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) to clarify the status of a victim as a victim of minor sex trafficking. Ohio Rev. Code Ann. § 2941.1422(A) (Human trafficking specification), however, does refer to human trafficking for sentencing purposes of certain CSEC statutes by stating,

(A) Imposition of a mandatory prison term under division (B)(7) of section 2929.14 of the Revised Code is precluded unless the offender is convicted of or pleads guilty to a felony violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in pattern of corrupt activity], division (A)(1) or (2) of section 2907.323 [Illegal use of minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code and unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of human trafficking. . . .

1.3.1 Recommendation: Amend Ohio’s CSEC laws to reference victims of domestic minor sex trafficking and Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude).

FRAMEWORK ISSUE 2: CRIMINAL PROVISIONS FOR DEMAND

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.*

Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) does not apply to buyers of commercial sex with minors. Additionally, Ohio Rev. Code Ann. § 2905.32(C) states, “In a prosecution under this section, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of this section.”

2.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) to clarify that the statute applies to buyers of commercial sex with minors.

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

Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution) includes the crime of buying sex with a minor by making it illegal for a person to “pay or agree to pay a minor, either directly or through the minor’s agent, so that the minor will engage in sexual activity” or to pay for having engaged in sexual activity with a minor “pursuant to a prior agreement.” A conviction under Ohio Rev. Code Ann. § 2907.21(A)(3) or (4) is punishable as a third degree felony by imprisonment for 9–36 months²⁷ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

Buyers could also be prosecuted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), which states,

No person shall do any of the following to a child under eighteen years of age . . .

. . .
(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) is punishable as a second degree felony punishable by imprisonment for 2–8 years²⁸ and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b). Several of Ohio’s sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.²⁹

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

Under Ohio Rev. Code Ann. § 2907.21(A)(2)–(4) (Compelling prostitution), Ohio makes it a separate crime to solicit or pay a minor to engage in sexual activity for hire.³⁰

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

A conviction under Ohio Rev. Code Ann. § 2907.21(A)(3), (4) (Compelling prostitution) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) is punishable as a second degree felony punishable by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b).

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

²⁷ See *supra* note 8.

²⁸ See *supra* note 4.

²⁹ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

³⁰ See *supra* Section 2.2 for the penalties applicable to a conviction under Ohio Rev. Code Ann. § 2907.21.

³¹ 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.).

the buyer has a prior conviction for a federal sex offense³² against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,³³ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.³⁴

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.*

While not expressly commercial, Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning) makes it a crime to use the Internet to solicit a child under 16 to engage in sexual activity.³⁵ Where the child is under 13, a first conviction under Ohio Rev. Code Ann. § 2907.07(C) “carries a presumption that a prison term shall be imposed” and is punishable as a third degree by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the buyer was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(C) is punishable as a second degree felony by mandatory imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.14(A)(2), 2929.18(A)(3)(b). Where the child is 13–15, a first conviction under Ohio Rev. Code Ann. § 2907.07(D) is punishable as a fifth degree felony by imprisonment for 6–12 months³⁶ with “a presumption that a prison term will be imposed” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the buyer was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months³⁷ and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

2.5.1 Recommendation: Enact a law that creates a separate crime for use of the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor or amend Ohio Rev. Code Ann. § 2907.07 (Importuning) to include commercial sexual activity and impose heightened penalties.

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

Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) prohibits the use of an age mistake defense by stating that the conduct prohibited under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) is illegal “whether or not the offender knows the age” of such person. However, an age mistake defense may be available under Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning), as it requires the offender to know of the minor’s age or to be “reckless in that regard.” Ohio Rev. Code Ann. § 2907.07(C), (D).

³² 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).

³³ 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).

³⁴ 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).

³⁵ *See supra* Section 1.2 for the relevant text of Ohio Rev. Code Ann. § 2907.07(C), (D).

³⁶ *See supra* note 21.

³⁷ *See supra* note 22.

2.6.1 Recommendation: Enact a law expressly prohibiting the defense of mistake of age in any prosecution for Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning).

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.*

Neither Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) nor § 2919.22(B)(5) (Endangering children) stagger penalties based on the minor’s age. Regardless of the age of the minor-victim, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c).

However, Ohio Rev. Code Ann. § 2907.07 (Importuning) only applies to minors under 16 and further imposes enhanced penalties where the victim is under the age of 13. Where the child is under 13, a first conviction under Ohio Rev. Code Ann. § 2907.07(C) carries “a presumption that a prison term shall be imposed” and is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.13(D), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(C) is punishable as a second degree felony by mandatory imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.07(F)(2), 2929.14(A)(2), 2929.18(A)(3)(b). Where the child is 13–15, a first conviction under Ohio Rev. Code Ann. § 2907.07(D) is punishable as a fifth degree felony by imprisonment for 6–12 months with “a presumption that a prison term shall be imposed” and a possible fine up to \$2,500. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.13(D), 2929.14(A)(5), 2929.18(A)(3)(e). If the offender was previously convicted of a “sexually oriented” or “child-victim oriented” offense a violation of Ohio Rev. Code Ann. § 2907.07(D) is punishable as a fourth degree felony by mandatory imprisonment for 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.07(F)(3), 2929.14(A)(4), 2929.18(A)(3)(d).

2.7.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.07 (Importuning) to impose the same penalties where the victim is any minor under 18.

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

Buyers may be required to pay fines. Buyers convicted under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution) may be ordered to pay a fine up to \$10,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.21(C), 2929.18(A)(3)(b), (c). Buyers convicted under Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning) for the first time may be ordered to pay possible fines up to \$10,000, where the victim is under 13, or up to \$2,500, where the victim is 13–15. Ohio Rev. Code Ann. §§ 2907.07(F)(2), (3), 2929.18(A)(3)(c), (e). Buyers with prior convictions convicted under Ohio Rev. Code Ann. § 2907.07(C), (D) or may be required to pay a possible fine up to \$15,000, where the victim is under 13, or up to \$5,000, where the victim is 13–15. Ohio Rev. Code Ann. §§ 2907.07(F)(2), (3), 2929.18(A)(3)(b), (d). Buyers convicted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children) may be ordered to pay possible fines up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.18(A)(3)(b).

Buyers convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) for a “victim’s economic loss.”

Buyers convicted of an offense³⁸ such as Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2)–(4), or § 2907.07 may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A) (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that property is subject to forfeiture if it is contraband of any offense or any instrumentality³⁹ used, or intended to be used, in the commission of a felony.

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

Ohio criminalizes both buying and possessing child pornography. Ohio Rev. Code Ann. § 2907.321(A)(5) (Pandering obscenity involving a minor) makes it illegal to “[b]uy, procure, possess, or control any obscene material, that has a minor as one of its participants,” while Ohio Rev. Code Ann. § 2907.322(A)(5) (Pandering sexually oriented matter involving a minor) makes it illegal for a person to “[k]nowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.” A first conviction under Ohio Rev. Code Ann. § 2907.321(A)(5) or § 2907.322(A)(5) is punishable as a fourth degree felony by imprisonment for 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2907.322(C), 2929.14(A)(4), 2929.18(A)(3)(d). A subsequent conviction under either statute is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2907.322(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). Ohio Rev. Code Ann. § 2907.323(A)(3) (Illegal use of minor in nudity-oriented material or performance) also bans possessing or viewing “any material or performance that shows a minor who is not the person’s child or ward in a state of nudity” without proper purpose. A first conviction under Ohio Rev. Code Ann. § 2907.323(A)(3) is punishable as a fifth degree felony by imprisonment for 6–12 months and a possible fine up to \$2,500, while a conviction under Ohio Rev. Code Ann. § 2907.323(A)(3) after a prior conviction pursuant to Ohio Rev. Code Ann. § 2907.321, § 2907.322 or § 2907.323 is punishable as a fourth degree felony by imprisonment for 6–18 months and a possible fine up to \$5,000. Ohio Rev. Code Ann. §§ 2907.323(B), 2929.14(A)(4), (5), 2929.18(A)(3)(d), (e).

In comparison, a federal conviction for possession of child pornography⁴⁰ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴¹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴²

³⁸ Ohio Rev. Code Ann. § 2981.01(B)(10) (Purposes of forfeitures; definitions) defines an “offense” as

any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal criminal prosecution or delinquent child proceeding began at the time the forfeiture is initiated. Except as otherwise specified, an offense for which property may be forfeited includes any felony and any misdemeanor. The commission of an “offense” includes the commission of a delinquent act.

³⁹ Ohio Rev. Code Ann. § 2981.01(B)(6) defines an “instrumentality” as including the following:

[P]roperty otherwise lawful to possess that is used in [or intended to be used in an offense. . . .] a firearm, a mobile instrumentality, a computer, a computer network, a computer system, computer software, a telecommunications device, money, and any other means of exchange.

⁴⁰ 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).

⁴¹ 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).

⁴² 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

- 2.9.1 Recommendation: Increase the penalties for violations of Ohio Rev. Code Ann. § 2907.323(A)(3) (Illegal use of minor in nudity-oriented material or performance) and Ohio Rev. Code Ann. § 2907.322(A)(5) (Pandering sexually oriented matter involving a minor).

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

Buyers are required to register as sex offenders if convicted under Ohio Rev. Code Ann. § 2907.21(A)(3)–(4) (Compelling prostitution).

Ohio Rev. Code Ann. § 2950.04(A)(1)(a) (Duty to register and comply with registration requirements) requires a person convicted of a “sexually oriented offense” to register as a sex offender. Ohio Rev. Code Ann. § 2950.01(A) (Definitions) defines a “sexually oriented offense” as

any of the following violations or offenses committed by a person, regardless of the person’s age:

- (1) A violation of section 2907.02 [Rape], 2907.03 [Sexual battery], 2907.05 [Gross sexual imposition], 2907.06 [Sexual imposition], 2907.07 [Importuning], 2907.08 [Voyeurism], 2907.21 [Compelling prostitution], 2907.32 [Pandering obscenity], 2907.321 [Pandering obscenity involving a minor], 2907.322 [Pandering sexually oriented matter involving a minor], or 2907.323 [Illegal use of minor in nudity-oriented material or performance] of the Revised Code;
- (2) A violation of section 2907.04 [Unlawful sexual conduct with minor] of the Revised Code when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 [Repealed] of the Revised Code;
- (3) A violation of section 2907.04 of the Revised Code when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code;
- ...
- (11) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of this section;
- (12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in division (A)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of this section.

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).

Legal Components:

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

Legal Analysis:

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

A conviction under Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude)⁴³ is punishable as a second degree felony by imprisonment for 2–8 years⁴⁴ and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2929.14(A)(2), 2929.18(A)(3)(b). Traffickers who knowingly “[i]nduce, procure, encourage, solicit, request, or otherwise facilitate . . . [a] minor to engage in sexual activity for hire” may be convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution). A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by imprisonment for 9–36 months⁴⁵ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). However, if a trafficker convicted under Ohio Rev. Code Ann. § 2907.21 committed the offense “in furtherance of human trafficking,” enhanced penalties apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) and § 2929.14(B)(7) (Basic prison terms). Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Traffickers also may be convicted under Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution).⁴⁶ Where the victim is a minor, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If a trafficker convicted under Ohio Rev. Code Ann. § 2907.22 committed the offense “in furtherance of human trafficking,” enhanced penalties apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). Ohio Rev. Code Ann. § 2907.22(B). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22 is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Additionally, traffickers may be prosecuted under Ohio Rev. Code Ann. § 2923.32 (Engaging in pattern of corrupt activity; forfeiture). Ohio Rev. Code Ann. § 2923.32(A) states,

⁴³ See *supra* section 1.1 for the provisions of Ohio Rev. Code Ann. § 2905.32.

⁴⁴ See *supra* note 4.

⁴⁵ See *supra* note 8.

⁴⁶ See *supra* section 1.2 for the provisions of Ohio Rev. Code Ann. § 2907.22(A).

- (1) No person employed by, or associated with, any enterprise⁴⁷ shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity⁴⁸ or the collection of an unlawful debt.
 - (2) No person, through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.
 - (3) No person, who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt, shall use or invest, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- ...

Ohio Rev. Code Ann. § 2923.31(I) (Definitions) defines “corrupt activity” as

engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as “racketeering activity” under the “Organized Crime Control Act of 1970,” 84 Stat. 941, 18 U.S.C. 1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended;

(2) Conduct constituting any of the following:

(a) A violation of section 1315.55 [Additional money laundering prohibitions], . . . 2907.321 [Pandering obscenity involving a minor], 2907.322 [Pandering sexually oriented matter involving a minor], 2907.323 [Illegal use of minor in nudity-oriented material or performance]

...

(c) Any violation of section 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution]

...

(e) Any violation or combination of violations of section 2907.32 [Pandering obscenity] of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 [Definitions] of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or

⁴⁷ Ohio Rev. Code Ann. § 2923.31(C) (Definitions) defines an “enterprise” as including “any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. ‘Enterprise’ includes illicit as well as licit enterprises.”

⁴⁸ Ohio Rev. Code Ann. § 2923.31(E) defines a “pattern of corrupt activity” as

two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

At least one of the incidents forming the pattern shall occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.

For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this state in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, shall constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of this state if committed in this state.

other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds one thousand dollars;

(f) Any combination of violations described in division (I)(2)(c) of this section and violations of section 2907.32 of the Revised Code involving any material or performance containing a display of bestiality or of sexual conduct, as defined in section 2907.01 of the Revised Code, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds one thousand dollars;

(g) Any violation of section 2905.32 [Compulsion to involuntary servitude] of the Revised Code to the extent the violation is not based solely on the same conduct that constitutes corrupt activity pursuant to division (I)(2)(c) of this section due to the conduct being in violation of section 2907.21 of the Revised Code.

(3) Conduct constituting a violation of any law of any state other than this state that is substantially similar to the conduct described in division (I)(2) of this section, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

....

A conviction under Ohio Rev. Code Ann. § 2923.32(A) generally is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(2), 2929.18(A)(3)(b). However, where at least “one of the incidents of corrupt activity is a felony of the first, second, or third degree,” a conviction under Ohio Rev. Code Ann. § 2923.32(A) is punishable as a first degree felony by imprisonment for 3–11 years⁴⁹ and a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(1), 2929.18(A)(3)(a).

Traffickers also may face prosecution under Ohio’s laws relating to money laundering. Ohio Rev. Code Ann. § 1315.55(A) states,

(1) No person shall conduct or attempt to conduct a transaction⁵⁰ knowing that the property⁵¹ involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity.⁵²

(2) No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity⁵³ with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction reporting requirement under section 1315.53 [Duty to report transactions, keep records; money laundering prohibitions] of the Revised Code or federal law.

⁴⁹ Ohio Rev. Code Ann. § 2929.14(A)(1) states, “the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.”

⁵⁰ Ohio Rev. Code Ann. § 1315.51(L) (Definitions) defines a “transaction” to include “a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of a payment instrument, use of a safe deposit box, or any other acquisition or disposition of property.”

⁵¹ Ohio Rev. Code Ann. § 1315.51(I) defines “property” as “anything of value and includes an interest in property, including a benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible.”

⁵² Ohio Rev. Code Ann. § 1315.51(B) provides that “[c]orrupt activity” has the same meaning as in section 2923 of the Revised Code.” *See supra* section 3.1 for the definition of “corrupt activity” provided in Ohio Rev. Code Ann. § 2923.31(I).

⁵³ Ohio Rev. Code Ann. § 1315.51(O) defines “unlawful activity” as “an act that is a criminal offense in the state in which the act is committed and, if the act is committed in a state other than this state, would be a criminal offense if committed in this state.”

(3) No person shall conduct or attempt to conduct a transaction with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity.

(4) No person shall conduct or structure or attempt to conduct or structure a transaction that involves the proceeds of corrupt activity that is of a value greater than ten thousand dollars if the person knows or has reasonable cause to know that the transaction involves the proceeds of corrupt activity.

(5) No person shall conduct or attempt to conduct a transaction that involves what has been represented to the person by a law enforcement officer or another person at the direction of or with the approval of a law enforcement officer to be the proceeds of corrupt activity or property used to conduct or facilitate corrupt activity with the intent to promote, manage, establish, carry on, or facilitate promotion, management, establishment, or carrying on of corrupt activity, to conceal or disguise the nature, location, source, ownership, or control of the property believed to be the proceeds of corrupt activity, or to avoid a transaction reporting requirement under section 1315.53 of the Revised Code or federal law.

A conviction under Ohio Rev. Code Ann. § 1315.55(A) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine of the greater of \$7,500 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 1315.99(C), 1315.55(B), 2929.14(A)(3)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁵⁴ 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 offense⁵⁵ against a minor.

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

Both the creation and distribution of child pornography is criminalized under Ohio law. Ohio Rev. Code Ann. § 2907.321(A)(1)–(4), (6) (Pandering obscenity involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

- (1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;
- (2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;
- (3) Create, direct, or produce an obscene performance that has a minor as one of its participants;
- (4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;
- ...
- (6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

A conviction under Ohio Rev. Code Ann. § 2907.321(A)(1)–(4), (6) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2), 2929.18(A)(3)(b).

⁵⁴ See *supra* note 31.

⁵⁵ See *supra* note 32.

Similarly, Ohio Rev. Code Ann. § 2907.322(A)(1)–(4), (6) (Pandering sexually oriented matter involving a minor) states,

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

- (1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- (2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- (3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- (4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- ...
- (6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

A conviction under Ohio Rev. Code Ann. § 2907.322(A)(1)–(4), (6) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2), 2929.18(A)(3)(b).

Additionally, Ohio Rev. Code Ann. § 2907.323(A)(1) (Illegal use of minor in nudity-oriented material or performance) states,

No person shall do any of the following:

- (1) Photograph any minor who is not the person’s child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:
 - (a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;
 - (b) The minor’s parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

A conviction under Ohio Rev. Code Ann. § 2907.323(A)(1), (2) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.323(B), 2929.14(A)(2), 2929.18(A)(3)(b).⁵⁶

⁵⁶ Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) may be applicable to impose enhanced penalties upon conviction. See *supra* note 10 for the text of the provision and Section 1.2 for an explanation of its applicability.

Traffickers may also be convicted under Ohio Rev. Code Ann. § 2919.22(B)(5) (Endangering children), which states,

No person shall do any of the following to a child under eighteen years of age . . .

. . .

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

A conviction under Ohio Rev. Code Ann. § 2919.22(B)(5) is punishable as a second degree felony punishable by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2919.22(E)(4), 2929.14(A)(2), 2929.18(A)(3)(b).

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 offense⁵⁷ against a minor. Additionally, a federal conviction for distribution of child pornography⁵⁸ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵⁹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁶⁰

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.*

Although Ohio Rev. Code Ann. § 2907.07(C), (D) (Importuning)⁶¹ makes it illegal to use the Internet to solicit a child under 16 to engage in sexual activity, Ohio Rev. Code Ann. § 2907.07(C), (D) is most likely inapplicable to traffickers because Ohio Rev. Code Ann. § 2907.07(C), (D) requires the offender, and not a third party, to engage in the sexual activity with the minor. Ohio Rev. Code Ann. § 2907.07(C), (D).

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

Traffickers may be required to pay fines. Traffickers convicted under Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) or § 2919.22(B)(5) (Endangering children) may be ordered to pay a possible fine up to \$15,000, while those convicted under Ohio Rev. Code Ann. § 2709.21(A)(2) (Compelling

⁵⁷ See *supra* note 32.

⁵⁸ 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).

⁵⁹ 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).

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

⁶¹ See *supra* section 2.5 for the provisions of Ohio Rev. Code Ann. § 2907.07(C), (D).

prostitution) and § 2907.22(A) (Promoting prostitution) may be ordered to pay fines up to \$10,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.21(C), 2907.22(B), 2929.18(A)(3)(b), (c). Those convicted under Ohio Rev. Code Ann. § 2923.32 (Engaging in a pattern of corrupt activity; forfeiture) face a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused,” and may be ordered to pay court and investigation costs, while those convicted under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions) may be ordered to pay a possible fine of the greater of \$7,5000 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 2923.32(B)(2), 2929.18(A)(3)(a), (b), 1315.99(C), 1315.55(B).

Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements)⁶² requires traffickers convicted of an offense committed in furtherance of human trafficking to make restitution, while traffickers convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) for a “victim’s economic loss.”

Traffickers convicted of an offense such as of Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2)–(4), and § 2907.22(A) also may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A) (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that property is subject to forfeiture if it is contraband and proceeds⁶³ of any offense⁶⁴ or any instrumentality⁶⁵ used, or intended to be used, in the commission of a felony. Additionally, Ohio Rev. Code Ann. § 2923.32(B)(3) states,

In addition to any other penalty or disposition authorized or required by law, the court shall order any person who is convicted of or pleads guilty to a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit to the state under Chapter 2981. of the Revised Code any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of a violation of this section, or that was derived from or realized through conduct in violation of this section, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation . . .

. . . .

Traffickers convicted under Ohio Rev. Code Ann. § 2923.32 also may be liable for civil damages under Ohio Rev. Code Ann. § 2923.34(A), (E) (Civil proceedings for relief from violation; civil penalty), which states,

(A) Any person who is injured or threatened with injury by a violation of section 2923.32 of the Revised Code may institute a civil proceeding in an appropriate court seeking relief from any person whose conduct violated or allegedly violated section 2923.32 of the Revised Code or who conspired or allegedly conspired to violate that section, except that the pattern of corrupt activity alleged by an injured person or person threatened with injury shall include at least one incident other than a violation

⁶² See *supra* section 2.8 for the provisions of Ohio Rev. Code Ann. § 2929.18(B)(8)(a).

⁶³ Ohio Rev. Code Ann. § 2981.01(B)(11) states,

(11) “Proceeds” means both of the following:

(a) In cases involving unlawful goods, services, or activities, “proceeds” means any property derived directly or indirectly from an offense. “Proceeds” may include, but is not limited to, money or any other means of exchange. “Proceeds” is not limited to the net gain or profit realized from the offense.

(b) In cases involving lawful goods or services that are sold or provided in an unlawful manner, “proceeds” means the amount of money or other means of exchange acquired through the illegal transactions resulting in the forfeiture, less the direct costs lawfully incurred in providing the goods or services. The lawful costs deduction does not include any part of the overhead expenses of, or income taxes paid by, the entity providing the goods or services. The alleged offender or delinquent child has the burden to prove that any costs are lawfully incurred.

⁶⁴ See *supra* note 38 for the definition of “offense.”

⁶⁵ See *supra* note 39 for the definition of “instrumentality.”

of division (A)(1) or (2) of section 1707.042 [Prohibited acts relating to control bids] or division (B), (C)(4), (D), (E), or (F) of section 1707.44 [Prohibited acts] of the Revised Code, of 18 U.S.C. 1341, 18 U.S.C. 1343, 18 U.S.C. 2314, or any other offense involving fraud in the sale of securities.

.....
(E) In a civil proceeding under division (A) of this section, any person directly or indirectly injured by conduct in violation of section 2923.32 of the Revised Code or a conspiracy to violate that section . . . shall have a cause of action for triple the actual damages the person sustained. . . . Damages under this division may include, but are not limited to, competitive injury and injury distinct from the injury inflicted by corrupt activity.

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

Traffickers will be required to register as sex offenders if convicted under Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2907.321 (Pandering obscenity involving minor), or § 2907.322 (Pandering sexually oriented matter involving a minor), but not if convicted under Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) or § 2907.22 (Promoting prostitution). Ohio Rev. Code Ann. §§ 2950.01(A), 2950.04(A)(1)(a).

Ohio Rev. Code Ann. § 2950.04(A)(1)(a) (Duty to register and comply with registration requirements) requires a person convicted of a “sexually oriented offense” to register as a sex offender. Ohio Rev. Code Ann. § 2950.01(A) (Definitions)⁶⁶ defines a sexually oriented offenses to include convictions under Ohio Rev. Code Ann. § 2907.21, § 2907.321, and § 2907.322.

3.5.1 Recommendation: Amend Ohio Rev. Code Ann. § 2950.01(A) (Definitions) to include Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and § 2907.22 (Promoting prostitution) when the commercially sexually exploited victim is a minor.

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.*

While convictions for certain enumerated crimes constitute grounds for the termination of parental rights, Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) is not included among those crimes. Ohio Admin. Code § 5101:2-42-95(A)(1)(a) (Obtaining permanent custody: termination of parental rights) states,

Unless the public children services agency (PCSA) or private child placing agency (PCPA) has compelling reasons for not pursuing a request for permanent custody of a child, the agency, pursuant to section 2151.413 [Motion requesting permanent custody] of the Revised Code, shall petition the court that issued the current order of disposition to request permanent custody of a child when any of the following conditions are present:

(1) A court of competent jurisdiction has determined that the parent from whom the child was removed has:

(a) Been convicted of or pleaded guilty to one of the following:

.....
(iv) An offense under section 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (sexual corruption of a minor), 2907.05 (gross sexual imposition), or 2907.06 (sexual imposition) of the Revised Code or under existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent’s household at the time of the offense.

⁶⁶ See *supra* section 2.10 for the text of Ohio Rev. Code Ann. § 2950.01(A).

(v) A conspiracy or attempt to commit, or complicity to committing, an offense described in paragraph (A)(1)(a)(i) or (A)(1)(a)(iv) of this rule.

- 3.6.1 Recommendation: Amend Ohio Admin. Code § 5101:2-42-95(A)(1)(a) (Obtaining permanent custody: termination of parental rights) to include convictions under Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) when the sex trafficking victim is a minor and Ohio's CSEC crimes as grounds for termination of parental rights.

FRAMEWORK ISSUE 4: CRIMINAL PROVISIONS FOR FACILITATORS

Legal Components:

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

Legal Analysis:

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

Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) does not criminalize assisting, enabling, or financially benefitting from domestic minor sex trafficking, but may apply to facilitators who knowingly “harbor” or “transport . . . another person knowing that the person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire” A conviction under Ohio Rev. Code Ann. § 2905.32⁶⁷ is punishable as a second degree felony by imprisonment for 2–8 years⁶⁸ and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2929.14(A)(2), 2929.18(A)(3)(b).

Facilitators who knowingly “[i]nduce, procure, . . . or otherwise facilitate . . . a minor to engage in sexual activity for hire” may be convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) (Compelling prostitution).⁶⁹ A conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by imprisonment for 9–36 months⁷⁰ and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), 2929.18(A)(3)(c). However, if the facilitator convicted under Ohio Rev. Code Ann. § 2907.21(A)(2) committed the offense “in furtherance of human trafficking,” enhanced penalties apply under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification)⁷¹ and § 2929.14(B)(7) (Basic prison terms). Ohio Rev. Code Ann. § 2907.21(C). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.21(A)(2) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.21(C), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Facilitators also may be convicted under Ohio Rev. Code Ann. § 2907.22(A) (Promoting prostitution).⁷² Where the victim is a minor,⁷³ a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree

⁶⁷ See *supra* Section 1.1 for the provisions of Ohio Rev. Code Ann. § 2905.32.

⁶⁸ See *supra* note 4.

⁶⁹ See *supra* Section 1.2 for a detailed explanation and the text of Ohio Rev. Code Ann. § 2907.21.

⁷⁰ See *supra* note 8.

⁷¹ See *supra* Section 1.2 for a detailed explanation and the text of Ohio Rev. Code Ann. § 2941.1422.

⁷² See *supra* Section 1.2 for the provisions of Ohio Rev. Code Ann. § 2907.22(A).

felony by imprisonment for 9–36 months and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), 2929.18(A)(3)(c). If a facilitator convicted under Ohio Rev. Code Ann. § 2907.22(A) committed the offense “in furtherance of human trafficking,” enhanced penalties apply pursuant to Ohio Rev. Code Ann. § 2941.1422 and § 2929.14(B)(7). In such a case, a conviction under Ohio Rev. Code Ann. § 2907.22(A) is punishable as a third degree felony by mandatory imprisonment for 3 years and a possible fine up to \$10,000. Ohio Rev. Code Ann. §§ 2907.22(B), 2929.14(A)(3)(b), (B)(7)(a)(ii), 2929.18(A)(3)(c).

Additionally, facilitators may be prosecuted under Ohio Rev. Code Ann. § 2923.32 (Engaging in a pattern of corrupt activity; forfeiture).⁷⁴ A conviction under Ohio Rev. Code Ann. § 2923.32(A) generally is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(2), 2929.18(A)(3)(b). However, where at least “one of the incidents of corrupt activity is a felony of the first, second, or third degree,” a conviction under Ohio Rev. Code Ann. § 2923.32(A) is punishable as a first degree felony by imprisonment for 3–11 years⁷⁵ and a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused.” Ohio Rev. Code Ann. §§ 2923.32(B)(1), (2)(a), 2929.14(A)(1), 2929.18(A)(3)(a).

Facilitators also may face prosecution under Ohio’s laws relating to money laundering. Ohio Rev. Code Ann. § 1315.55(A).⁷⁶ A conviction under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions) is punishable as a third degree felony by imprisonment for 9–36 months and a possible fine of the greater of \$7,500 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 1315.99(C), 1315.55(B), 2929.14(A)(3)(b).

4.1.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) to include assisting, enabling, or financially benefitting from domestic minor sex trafficking.

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

Facilitators may be required to pay fines. Facilitators convicted under Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) may be ordered to pay a possible fine up to \$15,000, while facilitators convicted under Ohio Rev. Code Ann. § 2709.21(A)(2) (Compelling prostitution) and § 2907.22(A) (Promoting prostitution) may be ordered to pay fines up to \$10,000. Ohio Rev. Code Ann. §§ 2905.32(E), 2907.21(C), 2907.22(B), 2929.18(A)(3)(b), (c). Persons convicted under Ohio Rev. Code Ann. § 2923.32 (Engaging in a pattern of corrupt activity; forfeiture) face a possible fine up to \$20,000 or 3 times the greater of “the gross value gained” or “the gross loss caused,” and may be ordered to pay court and investigation costs, while those convicted under Ohio Rev. Code Ann. § 1315.55(A) (Additional money laundering prohibitions) may be ordered to pay a possible fine of the greater of \$7,500 or up to “twice the value of the property involved,” and a possible additional fine of up to 3 times the “value of the property involved in the transaction,” which will “be paid to the state treasury to the credit of the general revenue fund.” Ohio Rev. Code Ann. §§ 2923.32(B)(2), 2929.18(A)(3)(a), (b), 1315.99(C), 1315.55(B).

Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements)⁷⁷ requires facilitators convicted of an offense committed in furtherance of human trafficking to make restitution, while traffickers

⁷³ See *supra* note 13 for the text of Ohio Rev. Code Ann. § 2907.22(B).

⁷⁴ See *supra* Section 3.1 for a detailed discussion of Ohio Rev. Code Ann. § 2923.32 and the relevant definitions.

⁷⁵ See *supra* note 9.

⁷⁶ See *supra* Section 3.1 for the provisions of Ohio Rev. Code Ann. § 1315.55.

⁷⁷ See *supra* Section 3.4 for the provisions of Ohio Rev. Code Ann. § 2929.18(B)(8)(a).

convicted of other crimes also may be ordered to make restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) for a “victim’s economic loss.”

Facilitators convicted of an offense⁷⁸ such as Ohio Rev. Code Ann. § 2905.32, § 2907.21(A)(2), or § 2907.22(A) also may be subject to asset forfeiture under Ohio Rev. Code Ann. § 2981.04 (Criminal forfeiture proceedings). Ohio Rev. Code Ann. § 2981.02(A) (Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion) states that property is subject to forfeiture if it is contraband and proceeds⁷⁹ of any offense⁸⁰ and any instrumentality⁸¹ used, or intended to be used, in the commission of a felony. Additionally, Ohio Rev. Code Ann. § 2923.32(B)(3)⁸² expressly requires facilitators convicted of engaging in a pattern of corrupt activity to forfeit property “used in the course of,” or “derived from,” a violation of Ohio Rev. Code Ann. § 2923.32. Lastly, facilitators convicted under Ohio Rev. Code Ann. § 2923.32 also may be liable for civil damages under Ohio Rev. Code Ann. § 2923.34(A), (E) (Civil proceeding for relief from violation; civil penalty).⁸³

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

Ohio does not specifically prohibit sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

Ohio criminalizes both promoting and selling child pornography. Ohio Rev. Code Ann. § 2907.321(A)(2), (4) (Pandering obscenity involving a minor) states,

No person, with knowledge of the character of the material⁸⁴ or performance⁸⁵ involved, shall do any of the following:

...

(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;

...

(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants.

A conviction under Ohio Rev. Code Ann. § 2907.321(A)(2), (4), is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.321(C), 2929.14(A)(2), 2929.18(A)(3)(b).

Similarly, Ohio Rev. Code Ann. § 2907.322(A)(2), (4) (Pandering sexually oriented matter involving a minor) states,

⁷⁸ See *supra* note 38.

⁷⁹ See *supra* note 63 for the definition of “proceeds.”

⁸⁰ See *supra* note 38 for the definition of “offense.”

⁸¹ See *supra* note 39 for the definition of “instrumentality.”

⁸² See *supra* Section 3.4 for the provisions of Ohio Rev. Code Ann. § 2923.32(B)(3).

⁸³ See *supra* Section 3.4 for the provisions of Ohio Rev. Code Ann. § 2923.34(A), (E).

⁸⁴ See *supra* note 14.

⁸⁵ See *supra* note 15.

No person, with knowledge of the character of the material or performance involved, shall do any of the following:

...

(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor⁸⁶ participating or engaging in sexual activity, masturbation, or bestiality;

...

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

A conviction under Ohio Rev. Code Ann. § 2907.322(A)(1)–(4),(6) is punishable as a second degree felony by imprisonment for 2–8 years and a possible fine up to \$15,000. Ohio Rev. Code Ann. §§ 2907.322(C), 2929.14(A)(2), 2929.18(A)(3)(b).

FRAMEWORK ISSUE 5: PROTECTIVE PROVISIONS FOR THE CHILD VICTIMS

Legal Components:

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

In the context of Ohio statute's chapter of victim's rights, Ohio Rev. Code Ann. § 2930.01(H)(1) (Definitions) defines a "victim" as the following:

⁸⁶ See *supra* note 16.

A person who is identified as the victim of a crime⁸⁷ or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which this chapter makes reference.

For purposes of crime victims' compensation, Ohio Rev. Code Ann. § 2743.51(L)(1) (Definitions) defines a victim as including "a person who suffers personal injury or death as a result of . . . [c]riminally injurious conduct."⁸⁸

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.*

Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio's CSEC laws do not expressly prohibit a defendant from raising a defense that the subject minor consented to the commercial sex act.

5.2.1 Recommendation: Enact a provision expressly prohibiting a consent defense to any commercial sexual offense when the victim is a minor.

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

Ohio Rev. Code Ann. § 2907.25(A) (Prostitution; after positive HIV test) does not make minors immune from prosecution or limit its applicability to adults. Ohio Rev. Code Ann. § 2907.25(A) states, "No person shall engage in sexual activity for hire." A conviction under Ohio Rev. Code Ann. § 2907.25 is punishable as a third degree misdemeanor by imprisonment for up to 60 days and a possible fine up to \$500. Ohio Rev. Code Ann. §§ 2907.25(C)(1), 2929.24(A)(3), 2929.28(A)(2)(a)(iii).

5.3.1 Recommendation: Amend Ohio Rev. Code Ann. § 2907.25 (Prostitution; after positive HIV test) to apply only to adults, making minors immune from prosecution. Refer any case of a minor involved in prostitution to Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude).

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.*

Ohio Rev. Code Ann. § 2151.421(A)(1)(a) (Duty to report child abuse or neglect; investigation and followup procedures) requires attorneys and specified healthcare and education professionals, among others, who have "reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under eighteen years of age . . . has suffered or faces a threat of

⁸⁷ Ohio Rev. Code Ann. § 2930.01(A)(1) defines "crime" in part as "[a] felony."

⁸⁸ Ohio Rev. Code Ann. § 2743.51(C) defines "criminally injurious conduct" as

one of the following:

(1) For the purposes of any person described in division (A)(1) [Definition of claimant] of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. . . .

. . . .

(2) For the purposes of any person described in division (A)(2) of this section, any conduct that occurs or is attempted in another state, district, territory, or foreign country; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted. . . .

suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child” to report the suspected abuse.

Ohio Rev. Code Ann. § 2151.31(A) (Apprehension, custody, and detention) provides that a child may be taken into custody,

- (1) Pursuant to an order of the court under this chapter or pursuant to an order of the court upon a motion filed pursuant to division (B) of section 2930.05 [Notice of arrest of defendant or alleged juvenile offender; affidavit concerning violence or intimidation] of the Revised Code;
- (2) Pursuant to the laws of arrest;
- (3) By a law enforcement officer or duly authorized officer of the court when any of the following conditions are present:
 - (a) There are reasonable grounds to believe that the child is suffering from illness or injury and is not receiving proper care, as described in section 2151.03 [Neglected child defined; failure to provide medical care for religious reasons; duty to report child abuse] of the Revised Code, and the child’s removal is necessary to prevent immediate or threatened physical or emotional harm;
 - (b) There are reasonable grounds to believe that the child is in immediate danger from the child’s surroundings and that the child’s removal is necessary to prevent immediate or threatened physical or emotional harm;
 - (c) There are reasonable grounds to believe that a parent, guardian, custodian, or other household member of the child’s household has abused or neglected another child in the household and to believe that the child is in danger of immediate or threatened physical or emotional harm from that person.
-
- (5) By a law enforcement officer or duly authorized officer of the court when there are reasonable grounds to believe that the child has run away from the child’s parents, guardian, or other custodian;
- (6) By a law enforcement officer or duly authorized officer of the court when any of the following apply:
 - (a) There are reasonable grounds to believe that the conduct, conditions, or surroundings of the child are endangering the health, welfare, or safety of the child.
 - (b) A complaint has been filed with respect to the child under section 2151.27 [Complaint] or 2152.021 [Complaint alleging that child is delinquent child or juvenile traffic offender; initiation of serious youthful offender proceedings] of the Revised Code or the child has been indicted under division (A) of section 2152.13 [Serious youthful offender dispositional sentence] of the Revised Code or charged by information as described in that section and there are reasonable grounds to believe that the child may abscond or be removed from the jurisdiction of the court.
 - (c) The child is required to appear in court and there are reasonable grounds to believe that the child will not be brought before the court when required.
 - (d) There are reasonable grounds to believe that the child committed a delinquent act and that taking the child into custody is necessary to protect the public interest and safety.

Ohio Rev. Code Ann. § 2151.31(B) explains that taking a child into custody under Ohio Rev. Code Ann. § 2151.31(A) is not considered an arrest. Ohio Rev. Code Ann. § 2151.31(C) states the following:

- (1) Except as provided in division (C)(2) of this section, a child taken into custody shall not be confined in a place of juvenile detention or placed in shelter care prior to the implementation of the court’s final order of disposition, unless detention or shelter care is required to protect the child from immediate or threatened physical or emotional harm, because the child is a danger or threat to one or more other persons and is charged with violating a section of the Revised Code that may be violated by an adult, because the child may abscond or be removed from the jurisdiction of the court, because the child has no parents, guardian, or custodian or other person able to provide supervision and care for the child and

return the child to the court when required, or because an order for placement of the child in detention or shelter care has been made by the court pursuant to this chapter.

(2) A child alleged to be a delinquent child who is taken into custody may be confined in a place of juvenile detention prior to the implementation of the court's final order of disposition if the confinement is authorized under section 2152.04 [Confinement of delinquent child for purposes of preparing social history] of the Revised Code or if the child is alleged to be a serious youthful offender under section 2152.13 of the Revised Code and is not released on bond.

Ohio Rev. Code Ann. § 2151.311(A) (Procedure upon apprehension) explains that, once taken into custody, a child must be released to the "child's parents, guardian, or other custodian, unless the child's detention or shelter care appears to be warranted or required as provided in section 2151.31 of the Revised Code" or "[b]ring the child to the court or . . . a place of detention or shelter care"

Pursuant to Ohio Rev. Code Ann. § 2151.312(B)(1), (2) (Places where neglected, abused, dependent, or unruly child may or may not be held),

(B) (1) Except as provided under division (C)(1) of section 2151.311 of the Revised Code, a child alleged to be or adjudicated a neglected child,⁸⁹ an abused child,⁹⁰ a dependent child,⁹¹ or an unruly child⁹² may not be held in any of the following facilities:

- (a) A state correctional institution, county, multicounty, or municipal jail or workhouse, or other place in which an adult convicted of a crime, under arrest, or charged with a crime is held;
- (b) A secure correctional facility.

(2) Except as provided under sections 2151.27 to 2151.59 of the Revised Code and division (B)(3) of this section and except when a case is transferred under section 2152.12 of the Revised Code, a child

⁸⁹ See *infra* Section 5.6 for the definition of "neglected child."

⁹⁰ See *infra* Section 5.6 for the definition of "abused child."

⁹¹ Ohio Rev. Code Ann. § 2151.04 (Dependent child defined) states,

As used in this chapter, "dependent child" means any child:

- (A) Who is homeless or destitute or without adequate parental care, through no fault of the child's parents, guardian, or custodian;
- (B) Who lacks adequate parental care by reason of the mental or physical condition of the child's parents, guardian, or custodian;
- (C) Whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship;
- (D) To whom both of the following apply:
 - (1) The child is residing in a household in which a parent, guardian, custodian, or other member of the household committed an act that was the basis for an adjudication that a sibling of the child or any other child who resides in the household is an abused, neglected, or dependent child.
 - (2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling or other child and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent, guardian, custodian, or member of the household.

⁹² Ohio Rev. Code Ann. § 2151.022 (Unruly child defined) states,

As used in this chapter, "unruly child" includes any of the following:

- (A) Any child who does not submit to the reasonable control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;
- (B) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;
- (C) Any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others;
- (D) Any child who violates a law, other than division (C) of section 2907.39 [Permitting juvenile on premises of adult entertainment establishment; use by juvenile of false information to enter adult entertainment establishment], division (A) of section 2923.211 [Underage purchase of firearm or handgun], division (C)(1) or (D) of section 2925.55 [Definitions; prohibitions concerning purchasing pseudoephedrine products], or section 2151.87 [Child prohibited from possessing, using, purchasing or receiving cigarettes or other tobacco products] of the Revised Code, that is applicable only to a child.

alleged to be or adjudicated an unruly child may not be held for more than twenty-four hours in a detention facility. A child alleged to be or adjudicated a neglected child, an abused child, or a dependent child shall not be held in a detention facility.

Ohio. Rev. Code Ann. § 2151.331 (Placement options for alleged or adjudicated abused, neglected, dependent or unruly child) states,

A child alleged to be or adjudicated an abused, neglected, dependent, or unruly child or a juvenile traffic offender may be detained after a complaint is filed in a certified foster home for a period not exceeding sixty days or until the final disposition of the case, whichever comes first. The court also may arrange with a public children services agency or private child placing agency to receive, or with a private noncustodial agency for temporary care of, the child within the jurisdiction of the court. A child alleged to be or adjudicated an unruly child also may be assigned to an alternative diversion program established by the court for a period not exceeding sixty days after a complaint is filed or until final disposition of the case, whichever comes first.

....

If the court adjudicates the child to be an abused, neglected, or dependent child, pursuant to Ohio. Rev. Code Ann. § 2151.353 (Disposition of abused, neglected or dependent child), the court may enter an order for any of the following dispositions:

- (1) Place the child in protective supervision;
- (2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;
- (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. . . .

....

- (4) Commit the child to the permanent custody of a public children services agency or private child placing agency, if the court determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child. . . .
- (5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:
 - (a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.
 - (b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.
 - (c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.

(6) Order the removal from the child’s home until further order of the court of the person who committed abuse as described in section 2151.031 of the Revised Code against the child, who caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, or who is the parent, guardian, or custodian of a child who is adjudicated a dependent child and order any person not to have contact with the child or the child’s siblings.

For a child adjudicated to be an unruly child, the court may enter a disposition order for any of the dispositions provided in Ohio Rev. Code Ann. § 2151.353, or pursuant to Ohio Rev. Code Ann. § 2151.354(A) (Disposition of unruly child) the court may

(2) Place the child on community control under any sanctions, services, and conditions that the court prescribes, as described in division (A)(4) of section 2152.19 of the Revised Code, provided that, if the court imposes a period of community service upon the child, the period of community service shall not exceed one hundred seventy-five hours;

....

(4) Commit the child to the temporary or permanent custody of the court;

(5) Make any further disposition the court finds proper that is consistent with sections 2151.312 and 2151.56 [Interstate compact for juveniles] to 2151.59 [Department of youth services to administer compact] of the Revised Code;

....

Despite these protections, commercially sexually exploited children who are taken into custody as an allegedly delinquent child⁹³ may be detained in adult correctional facilities under certain circumstances. Ohio Rev. Code Ann. § 2151.311(C)(1) permits an allegedly delinquent child to be held “in a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime . . . is held” for processing purposes⁹⁴ up to 6 hours, if “the child is alleged to be a delinquent child for” an offense “that would be a felony if committed by an adult,” or up to 3 hours “[i]f the child is alleged to be a delinquent child” for having committed an act “that would be a misdemeanor if committed by an adult, . . . [or] for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or is alleged to be an unruly child . . .” Ohio Rev. Code Ann. § 2151.311(C)(1)(a), (b). If a child is so detained, the child must be supervised by personnel, no handcuffs may be put on the child, and the child must be out of reach of adult detainees. Ohio Rev. Code Ann. § 2151.311(C)(1).

⁹³ Ohio Rev. Code Ann. § 2151.011(B)(13) (Definitions) defines a “delinquent child” by referring to Ohio Rev. Code Ann. § 2152.02(F) (Definitions), which states,

“Delinquent child” includes any of the following:

- (1) Any child, except a juvenile traffic offender, who violates any law of this state or the United States, or any ordinance of a political subdivision of the state, that would be an offense if committed by an adult;
- (2) Any child who violates any lawful order of the court made under this chapter or under Chapter 2151 [Juvenile court] of the Revised Code other than an order issued under section 2151.87 [Prohibiting child from possessing, using, purchasing or receiving cigarettes or other tobacco products] of the Revised Code;
- (3) Any child who violates division (C) of section 2907.39, division (A) of section 2923.211 [Underage purchase of firearm or handgun], or division (C)(1) or (D) of section 2925.55 [Unlawful purchase of pseudoephedrine product] of the Revised Code;
- (4) Any child who is a habitual truant and who previously has been adjudicated an unruly child for being a habitual truant;
- (5) Any child who is a chronic truant.

⁹⁴ Ohio Rev. Code Ann. § 2151.311 (Procedure upon taking child into custody) explains that “processing purposes” include the following:

- (1) Fingerprinting, photographing, or fingerprinting and photographing the child in a secure area of the facility;
- (2) Interrogating the child, contacting the child’s parent or guardian, arranging for placement of the child, or arranging for transfer or transferring the child, while holding the child in a nonsecure area of the facility.

Additionally, Ohio Rev. Code Ann. § 2152.04 states,

A child who is alleged to be, or who is adjudicated, a delinquent child may be confined in a place of juvenile detention provided under section 2152.41 [County or district detention facility; temporary boarding in private homes] of the Revised Code for a period not to exceed ninety days, during which time a social history may be prepared to include court record, family history, personal history, school and attendance records, and any other pertinent studies and material that will be of assistance to the juvenile court in its disposition of the charges against that alleged or adjudicated delinquent child.

Ohio Rev. Code Ann. § 2152.41(A) reiterates that detention facilities “may be used to detain alleged delinquent children until final disposition for evaluation pursuant to section 2152.04” or “to confine children who are adjudicated delinquent children and placed in the facility pursuant to division (A)(3) of section 2152.19 of the Revised Code.”

When adjudicated a delinquent child, Ohio Rev. Code Ann. § 2152.19(A) (Additional orders of disposition; motor vehicle license suspension; victim restitution, impact statement; truancy warnings; searches) states,

[T]he court may make any of the following orders of disposition, in addition to any other disposition authorized or required by this chapter:

- (1) Any order that is authorized by section 2151.353 of the Revised Code for the care and protection of an abused, neglected, or dependent child;
- (2) Commit the child to the temporary custody of any school, camp, institution, or other facility operated for the care of delinquent children by the county, by a district organized under section 2152.41 or 2151.65 of the Revised Code, or by a private agency or organization, within or without the state, that is authorized and qualified to provide the care, treatment, or placement required, including, but not limited to, a school, camp, or facility operated under section 2151.65 of the Revised Code;
- (3) Place the child in a detention facility or district detention facility operated under section 2152.41 of the Revised Code, for up to ninety days;
- (4) Place the child on community control under any sanctions, services, and conditions that the court prescribes. . . .
. . . .
- (5) Commit the child to the custody of the court;
- (6) Require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or twelve or more school days in a school year;
- (7)(a) If a child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being a habitual truant, do either or both of the following:
 - (i) Require the child to participate in a truancy prevention mediation program;
 - (ii) Make any order of disposition as authorized by this section, except that the court shall not commit the child to a facility described in division (A)(2) or (3) of this section unless the court determines that the child violated a lawful court order made pursuant to division (C)(1)(e) of section 2151.354 of the Revised Code or division (A)(6) of this section.
. . . .
- (8) Make any further disposition that the court finds proper, except that the child shall not be placed in any of the following:
 - (a) A state correctional institution, a county, multicounty, or municipal jail or workhouse, or another place in which an adult convicted of a crime, under arrest, or charged with a crime is held;
 - (b) A community corrections facility, if the child would be covered by the definition of public safety beds for purposes of sections 5139.41 to 5139.43 of the Revised Code if the court

exercised its authority to commit the child to the legal custody of the department of youth services for institutionalization or institutionalization in a secure facility pursuant to this chapter.

- 5.4.1 Recommendation: Enact a law to route commercially sexually exploited children directly into a protective response system.

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

The definition of an “abused child” includes victims of commercial sexual exploitation. Ohio Rev. Code Ann. § 2151.031 (Abused child defined) states,

As used in this chapter, an “abused child” includes any child who:

- (A) Is the victim of “sexual activity”⁹⁵ as defined under Chapter 2907 [Sex offenses] of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;
- (B) Is endangered as defined in section 2919.22 [Endangering children] of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

....

Ohio’s CSEC laws are located throughout chapter 2907 entitled “Sex Offenses.” Thus, commercially sexually exploited children are considered abused children under Ohio Rev. Code Ann. § 2151.031(A). However, Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) is not considered a sex offense, and thus these victims are not expressly defined as abused children.

Ohio Rev. Code Ann. § 2151.03(A) (Neglected child defined; failure to provide medical or surgical care for religious reasons; duty to report child abuse) defines a “neglected child” as one,

- (2) Who lacks adequate parental care because of the faults or habits of the child’s parents, guardian, or custodian;
- (3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child’s health, morals, or well being;
-
- (6) Who, because of the omission of the child’s parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare;
- (7) Who is subjected to out-of-home care child neglect.

- 5.5.1 Recommendation: Amend Ohio Rev. Code Ann. § 2151.031 (Abused child defined) to include minors victimized under Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude).

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.*

Ohio Rev. Code Ann. § 2151.011(12) (Definitions) defines a “custodian” as “a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent, temporary, or legal custody of a child.”

⁹⁵ See *supra* note 18 for the definition of “sexual activity.”

5.6.1 Recommendation: Amend Ohio Rev. Code Ann. § 2151.011(12) (Definitions) to amend the definition of custodian to include persons in control or custody of a minor.

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

Ohio Rev. Code Ann. § 2743.52(A), (B) (Attorney general to determine reparations awards; OVI findings not lawful evidence) provides for victim compensation, stating,

(A) The attorney general shall make awards of reparations for economic loss arising from criminally injurious conduct,⁹⁶ if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

(B) A court of claims panel of commissioners or a judge of the court of claims has appellate jurisdiction to order awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

(C) A decision of the attorney general, an order of a court of claims panel of commissioners, or the judgment of a judge of the court of claims concerning an OVI violation shall not be used as the basis for any civil or criminal action and shall not be admissible as evidence in any civil or criminal proceeding.

A victim of Ohio Rev. Code Ann. § 2905.32 and Ohio's CSEC laws should fall within the definition of a victim⁹⁷ and a "claimant"⁹⁸ used within Ohio's laws regarding crime victims compensation.

However, Ohio's laws contain certain ineligibility criteria that could bar victims of Ohio Rev. Code Ann. § 2905.32 and Ohio's other CSEC laws from receiving compensation. Ohio Rev. Code Ann. § 2743.60(B)(1)(a) (Grounds for denial of claim or reduction of award; limit on aggregate awarded) prohibits a victim from receiving compensation where the victim was "an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice," while Ohio Rev. Code Ann. § 2743.60(A) prohibits an award where the victim fails to report the crime to law enforcement. Additionally, Ohio Rev. Code Ann. § 2743.60(C) authorizes the denial or reduction of a claim for compensation where the victim did not fully cooperate with law enforcement.

A claim also may be denied or reduced based on a finding of the victim's contributory misconduct. Ohio Rev. Code Ann. § 2743.60(F). Ohio Rev. Code Ann. § 2743.51(M) (Definitions) defines "contributory misconduct" as "any conduct of the claimant . . . that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim."

Additionally, Ohio Rev. Code Ann. § 2743.56(B) (Applications for award of reparations) establishes the time limits for filing an application for an award, stating,

(B) All applications for an award of reparations shall be filed as follows:

⁹⁶ See *supra* note 88 for the definition of "criminally injurious conduct."

⁹⁷ See *supra* Section 5.1 for the definition of "victim" provided in Ohio Rev. Code Ann. § 2743.51(L) (Reparation award to victim of crime definitions).

⁹⁸ Ohio Rev. Code Ann. § 2743.51(A)(1)(a) (Reparation award to victim of crime definitions) defines a "claimant" as

(1) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who was one of the following at the time of the criminally injurious conduct:

(i) A resident of the United States;

(ii) A resident of a foreign country the laws of which permit residents of this state to recover compensation as victims of offenses committed in that country.

(1) If the victim of the criminally injurious conduct was a minor, within two years of the victim's eighteenth birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is later. This division does not require that a complaint, indictment, or information be filed against an alleged offender in order for an application for an award of reparations to be filed pertaining to a victim who was a minor if the application is filed within two years of the victim's eighteenth birthday, and does not affect the provisions of section 2743.64 of the Revised Code.

(2) If the victim of the criminally injurious conduct was an adult, at any time after the occurrence of the criminally injurious conduct.

5.7.1 Recommendation: Amend Ohio Rev. Code Ann. § 2743.60 (Grounds for denial of claim or reduction of award; limit on aggregate awarded) to create exceptions to the listed ineligibility provisions for commercially sexually exploited children.

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

Some victim-friendly criminal justice procedures or protections may be afforded to victims of Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio's CSEC laws.

Ohio Rev. Code Ann. § 2945.481(A), (B) (Deposition of child victim; videotaping; testimony taken outside courtroom and televised into it or replayed in courtroom) permits a victim of certain offenses, including Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution), § 2907.321 (Pandering obscenity involving a minor), or § 2907.322 (Pandering sexually oriented material involving a minor), who is under 13 to provide testimony via a deposition, which may be videotaped. Similarly, under Ohio Rev. Code Ann. § 2945.481(C)–(E), under specified circumstances, the judge may permit victims of the same crimes who are under 13 years old to give testimony via closed-circuit television or videotaped testimony..

While Ohio has “rape shield” provisions for victims of Ohio Rev. Code Ann. § 2907.02(D) (Rape) or § 2907.05(E) (Gross sexual imposition), which prohibit the admission of evidence of the victim's sexual history unless such evidence is needed to show “the origin of semen, pregnancy, or disease, or the victims past sexual history with the offender,”⁹⁹ these protections are not available to victims of Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio's CSEC laws unless their offenders are prosecuted under Ohio Rev. Code Ann. § 2907.02 or § 2907.05. As an added protection, victims of Ohio Rev. Code Ann. § 2907.05 or § 2907.02 may receive court-appointed counsel. Ohio Rev. Code Ann. §§ 2907.05(G), 2907.02(F). Moreover,

Ohio Rev. Code Ann. § 2907.26(A)–(C) (Rules of evidence in prostitution cases) states,

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such place and as to the reputation of the persons who inhabit or frequent it, is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of sections 2907.21 to 2907.25 of the Revised Code, proof of a prior conviction of the accused of any such offense or substantially equivalent offense is admissible in support of the charge.

Victims of Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio's CSEC laws will be afforded those rights generally afforded to crime victims. Under Ohio Rev. Code Ann. § 2930.04

⁹⁹ Additionally, this evidence is admissible “only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.” Ohio Rev. Code Ann. §§ 2907.02(D), 2907.05(E).

(Information to be given to victim by investigating law enforcement agency), a victim is entitled to information regarding counseling, housing, victim compensation, information about protection orders, and contact information for law enforcement. Pursuant to Ohio Rev. Code Ann. § 2930.07 (Concealment of victim's or representative's address, telephone number and similar identifying facts), in certain circumstances the court may keep the victim's personal information confidential. Under Ohio Rev. Code Ann. § 2930.10 (Minimization of unwanted contact between prosecution and defense sides), the court shall minimize contact between the victim and the offender, and provide a separate waiting area for the victim in order to protect the victim.

5.8.1 Recommendation: Amend Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio's CSEC laws to include protections prohibiting the admission of the victim's sexual history with limited exceptions, similar to the protections afforded victims under of Ohio Rev. Code Ann. § 2907.02(D) (Rape) or § 2907.05(E) (Gross sexual imposition).

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.*

Ohio Rev. Code Ann. § 2151.356(B)(1)(e) (Procedure for sealing records of alleged and adjudicated delinquent and unruly children and adjudicated juvenile traffic offenders) orders the juvenile court to seal the records of a child adjudicated an unruly child who has turned 18 and is "not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child," while Ohio Rev. Code Ann. § 2151.356(C)(1) authorizes the court, in its discretion, to seal the records of a child adjudicated a delinquent child, if "the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child." The court may consider whether to seal the records within 2 years from the later of "[t]he termination of any order made by the court" related to the adjudication or "[t]he unconditional discharge of the person from the department of youth services" or another facility to which the child was committed. Ohio Rev. Code Ann. § 2151.356(C)(1)(a), (b). Ohio Rev. Code Ann. § 2151.358(A) (Expungement of records) further authorizes the court to expunge records sealed under Ohio Rev. Code Ann. § 2151.356 "five years after the court issues a sealing order or upon the twenty-third birthday of the person who is the subject of the sealing order, whichever date is earlier."

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

Under Ohio Rev. Code Ann. § 2929.18(B)(8)(a) (Financial sanctions; restitution; reimbursements), victims whose offenders are convicted of committing an offense in furtherance of human trafficking under Ohio Rev. Code Ann. § 2941.1422 (Human trafficking specification) may receive restitution. Ohio Rev. Code Ann. § 2929.18(B)(8)(a) states,

If an offender who is convicted of or pleads guilty to a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], or 2923.32 [Engaging in a pattern of corrupt activity; forfeiture], division (A)(1) or (2) of section 2907.323 [Illegal use of a minor in nudity-oriented material or performance], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 [Endangering children] of the Revised Code also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 [Human trafficking specification] of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

(i) The gross income or value to the offender of the victim's labor or services;

(ii) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the “Federal Fair Labor Standards Act of 1938,” 52 Stat. 1060, 20 U.S.C. 207, and state labor laws.

Victims whose offenders are convicted of other crimes also may receive restitution under Ohio Rev. Code Ann. § 2929.18(A)(1) for their “economic loss.”

No civil remedies are specifically provided to CSEC victims in Ohio; however, victims whose offenders are convicted of engaging in a pattern of corrupt activity under Ohio Rev. Code Ann. § 2923.32 may be able to pursue civil remedies under Ohio Rev. Code Ann. § 2923.34(A), (E) (Civil proceedings for relief from violation; civil penalty).

5.10.1 Recommendation: Enact civil remedies for victims of domestic minor sex trafficking.

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.*

Ohio Rev. Code Ann. § 2901.13(A)(1)(a) (Limitations of criminal prosecutions) imposes a 6-year statute of limitations for prosecution of most felonies including Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and most of Ohio’s CSEC laws. However, Ohio Rev. Code Ann. § 2901.13(A)(3)(a) provides a 20 year statute of limitations that is applicable to prosecutions of Ohio Rev. Code Ann. § 2907.21 (Compelling prostitution). Additionally, if the victim of a crime included in Ohio Rev. Code Ann. tit. 29 (Crimes—procedure) was a minor at the time of the offense, Ohio Rev. Code Ann. § 2901.13(I) states,

The period of limitation for a violation of any provision of Title XXIX of the Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age . . . shall not begin to run until either of the following occurs:

- (1) The victim of the offense reaches the age of majority.
- (2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

Ohio Rev. Code Ann. § 2305.111 (Actions for assault or battery; victims of childhood sexual abuse) provides a civil statute of limitations for actions brought by victims of childhood sexual abuse, by stating,

(C) An action for assault or battery brought by a victim of childhood sexual abuse¹⁰⁰ based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse, shall be brought within twelve years after the cause of action accrues. For purposes of this section, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. If the defendant in an action brought by a victim of childhood sexual abuse asserting a claim resulting from childhood sexual abuse that occurs on or after the effective date of this act has fraudulently concealed from the plaintiff facts that form the basis of the claim, the

¹⁰⁰ Subsection (A)(1) states, “‘Childhood sexual abuse’ means any conduct that constitutes any of the violations identified in division (A)(1)(a) or (b) of this section and would constitute a criminal offense under the specified section or division of the Revised Code, if the victim of the violation is at the time of the violation a child under eighteen years of age” The violations listed in (A)(1)(a) and (b) include Ohio Rev. Code Ann. § 2907.02 (Rape), certain subsections of § 2907.03 (Sexual battery), and § 2907.05 (Gross sexual imposition) through § 2907.06 (Sexual imposition), if certain conditions apply.

running of the limitations period with regard to that claim is tolled until the time when the plaintiff discovers or in the exercise of due diligence should have discovered those facts.

- 5.11.1 Recommendation: Eliminate the statute of limitations in criminal actions for child sex trafficking offenses and amend Ohio Rev. Code Ann. § 2305.111 (Actions for assault or battery; victims of childhood sexual abuse) to include CSEC crimes to extend the statute of limitations for civil actions.

FRAMEWORK ISSUE 6: CRIMINAL JUSTICE TOOLS FOR INVESTIGATION AND PROSECUTIONS

Legal Components:

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

Legal Analysis:

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

Ohio does not statutorily mandate that law enforcement receive training on human trafficking. Ohio Rev. Code Ann. § 109.79 (Training academy) grants the Ohio peace officer training commission the power to “establish and conduct a training school for law enforcement officers of any political subdivision of the state or of the state public defender’s office.” Ohio Rev. Code Ann. § 109.741 (Training in missing children, missing persons, child abuse and neglect cases) further requires the attorney general to adopt rules regarding “the training of peace officers in the handling of missing children, missing persons, and child abuse and neglect cases.”

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

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

Ohio permits single-party consent to audiotaping. Ohio Rev. Code Ann. § 2933.52(A)(1) (Interception of wire, oral or electronic communications) makes it a crime for a person to purposely “[i]ntercept, attempt to intercept, or procure another person to intercept or attempt to intercept a wire, oral, or electronic communication.” According to Ohio Rev. Code Ann. § 2933.52(B)(3), (4), the prohibition does not apply to, among other things,

(3) A law enforcement officer who intercepts a wire, oral, or electronic communication, if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer;

(4) A person who is not a law enforcement officer and who intercepts a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or Constitution of the United States or 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.*

Wiretapping may be used to investigate certain designated offenses, including Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio’s CSEC laws. Ohio Rev. Code Ann. § 2933.52(B). Ohio Rev. Code Ann. § 2933.52(B)(1) (Interception of wire, oral or electronic communications) permits wiretapping conducted pursuant to an interception warrant. Ohio Rev. Code Ann. § 2933.54(A) (Conditions for issuance of warrant; denial; termination; finding of objective) authorizes a court to issue an interception warrant if

the judge determines, on the basis of the facts submitted by the person who made the application and all affiants, that all of the following exist:

- (1) The application and affidavits comply with section 2933.53 [Application for interception warrant] of the Revised Code.
- (2) There is probable cause to believe that a particular person is committing, has committed, or is about to commit a designated offense.
- (3) There is probable cause to believe that particular communications concerning the designated offense will be obtained through the interception of wire, oral, or electronic communications.
- (4) Normal investigative procedures with respect to the designated offense have been tried and have failed or normal investigative procedures with respect to the designated offense reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ in order to obtain evidence.
- (5) Except as provided in division (G)(1) of section 2933.53 of the Revised Code, there is probable cause to believe that the communication facilities from which the communications are to be intercepted, or the place at which oral communications are to be intercepted, are being used or are about to be used in connection with the commission of the designated offense or are leased to, listed in the name of, or commonly used by a person who is the subject of the interception warrant.
- (6) The investigative officer has received training that satisfies the minimum standards established by the attorney general and the Ohio peace officer training commission under section 2933.64 [Training in wiretapping and electronic surveillance] of the Revised Code in order to intercept the wire, oral, or electronic communication and is able to execute the interception sought.

Ohio Rev. Code Ann. § 2933.51(I) (Definitions) defines a “designated offense” as any of,

(1) A felony violation of section 1315.53 [Duty to report transactions, keep records; money laundering prohibitions], 1315.55 [Additional money laundering prohibitions], . . . 2905.01 [Kidnapping], 2905.02 [Abduction], . . . 2905.32 [Compulsion to involuntary servitude], 2907.02 [Rape], 2907.21 [Compelling prostitution], 2907.22 [Promoting prostitution], . . . 2923.32 [Engaging in pattern of corrupt activity; forfeiture], . . . of the Revised Code;

. . . .

- (4) Complicity in the commission of a felony violation of a section listed in division (I)(1), (2), or (3) of this section;
- (5) An attempt to commit, or conspiracy in the commission of, a felony violation of a section listed in division (I)(1), (2), or (3) of this section, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

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 neither Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) or Ohio’s CSEC laws expressly authorize the use of a decoy by law enforcement in the investigation of those crimes, Ohio Rev. Code Ann. § 2907.21(A)(2)–(5) (Compelling prostitution) suggests that a law enforcement officer may pose as a minor to investigate solicitation of commercial sexual activity with a minor. These provisions use the phrase “a person the offender believes to be a minor,” which suggests that it is permissible for law enforcement to pose as a minor to investigate a violation of Ohio Rev. Code Ann. § 2907.21(A)(2)–(5).

6.4.1 Recommendation: Enact a law expressly permitting law enforcement to use a decoy to investigate Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio’s CSEC laws.

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

While Ohio Rev. Code Ann. § 2905.32 (Compulsion to involuntary servitude) and Ohio’s CSEC laws do not expressly authorize law enforcement to use the Internet to investigate those crimes, Ohio Rev. Code Ann. § 2907.07 (Importuning) permits law enforcement officers to use the Internet to investigate solicitation of sex with a minor. Ohio Rev. Code Ann. § 2907.07(C)(2), (D)(2) make it illegal for a person to solicit “a law enforcement officer posing as a person who is less than [13 or 16] years of age, and the offender believes that the other person is less than [13 or 16] years of age or is reckless in that regard.”

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

Ohio Rev. Code Ann. § 2901.30(B) (Missing child report; notice to child’s school; notice of return) directs a law enforcement agency to take the report of a missing child¹⁰¹ and act promptly to locate the missing child. The law enforcement agency must gather information about the missing child and enter “it into the national crime information center computer,” notify the child’s school to mark the child’s records, and notify other law enforcement agencies within its jurisdiction. Ohio Rev. Code Ann. § 2901.30(C)–(E). Ohio Rev. Code Ann. § 2901.30(H) states,

A missing child’s parents, parent who is the residential parent and legal custodian, guardian, or legal custodian, or any other persons responsible for the care of a missing child, immediately shall notify the law enforcement agency with which they filed the missing child report whenever the child has returned to their home or to their care, custody, and control, has been released if the missing child was the victim of an offense listed in division (A)(3)(b)¹⁰² of this section, or otherwise has been located. Upon such notification or upon otherwise learning that a missing child has returned to the home of, or to the care, custody, and control of the missing child’s parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person responsible for the missing child’s care, has been released if the missing child was the victim of an offense listed in division (A)(3)(b) of this section, or otherwise has been located, the law enforcement agency involved promptly shall integrate the fact that the minor no longer is a missing child into the national crime information center computer and shall inform any school that was notified under division (D) of this section that the minor is no longer a missing child.

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¹⁰¹ Ohio Rev. Code Ann. § 2901.30(A)(3) defines “missing children” or a “missing child” as

(a) A minor who has run away from or who otherwise is missing from the home of, or the care, custody, and control of, the minor’s parents, parent who is the residential parent and legal custodian, guardian, legal custodian, or other person having responsibility for the care of the minor;

(b) A minor who is missing and about whom there is reason to believe the minor could be the victim of a violation of section 2905.01 [Kidnapping], 2905.02 [Abduction], 2905.03 [Unlawful restraint], or 2919.23 [Interference with custody] of the Revised Code or of a violation of section 2905.04 [Repealed] of the Revised Code as it existed prior to July 1, 1996.

¹⁰² See *supra* note 101 for the provisions of Ohio Rev. Code Ann. § 2901.30(A)(3)(b).