

# PROTECTED INNOCENCE INITIATIVE

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



## ANALYSIS AND RECOMMENDATIONS OKLAHOMA

### FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

#### *Legal Components:*

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

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

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

Oklahoma's human trafficking law does not distinguish between the sex trafficking of adults and children, but does impose heightened penalties if the victim is under the age of 18. In all instances, however, a conviction for human trafficking requires the use of deception, force, fraud, or coercion in the commission of the crime.

Specifically, Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking) states, "It shall be unlawful to knowingly engage in human trafficking." "Human trafficking" is defined as "modern-day slavery that includes, but is not limited to, extreme exploitation<sup>2</sup> and the denial of freedom or liberty of an individual for purposes of deriving benefit from that individual's commercial sex act or labor." Okla. Stat. Ann. tit.21, § 748(A)(4). Okla. Stat. Ann. tit. 21, § 748(A)(6) additionally defines "human trafficking for commercial sex" as

<sup>1</sup> Unless otherwise specified, all references to Oklahoma statutes were taken from Oklahoma Statutes Annotated (LEXIS through chapters effective Aug. 26, 2011 of the 53rd Leg. 1st Reg. Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-54, approved 11/12/11).

<sup>2</sup> Okla. Stat. Ann. tit. 21, § 748 (Human trafficking) does not define "extreme exploitation."

- a. recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion<sup>3</sup> for purposes of engaging the person in a commercial sex act, or
- b. benefiting, financially or by receiving anything of value, from participating in a venture that has engaged in an act of trafficking for commercial sex.

Okla. Stat. Ann. tit. 21, § 748(A)(2) defines “commercial sex” as “any form of commercial sexual activity such as sexually explicit performances, prostitution, participation in the production of pornography, performance in a strip club, or exotic dancing or display.”

A conviction under this statute is punishable as a felony by imprisonment for at least 5 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit.21, § 748(C). If the victim is under the age of 18, however, a conviction is punishable by imprisonment for at least 10 years, a fine not to exceed \$20,000, or both. Okla. Stat. Ann. tit.21, § 748(C).

- 1.1.1 Recommendation: Amend Okla. Stat. Ann. tit. 21, § 748 (Human trafficking) to eliminate the requirement to prove deception, force, fraud, or coercion in the sex trafficking of a minor and to specifically include the crime of purchasing sex acts with minors under the age of 18.<sup>4</sup>

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.*

Oklahoma has several statutes that specifically criminalize CSEC, including the following:

- 1. Okla. Stat. Ann. tit. 21, § 1029 (Engaging in prostitution, etc.—soliciting or procuring—residing or being in place for prohibited purpose—aiding, abetting or participating—child prostitution) states,

- A. It shall further be unlawful:
  - 1. To engage in prostitution,<sup>5</sup> lewdness,<sup>6</sup> or assignation;

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<sup>3</sup> Okla. Stat. Ann. tit. 21, § 748(A)(1) states,

- 1. “Coercion” means compelling, forcing or intimidating a person to act by:
  - a. threats of harm or physical restraint against any person,
  - b. any act, scheme, plan, or pattern intended to cause a person to believe that performing, or failing to perform, an act would result in serious physical, financial, or emotional harm or distress to or physical restraint against any person,
  - c. the abuse or threatened abuse of the law or legal process,
  - d. knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport, labor or immigration document, or other government identification document, including but not limited to a driver license or birth certificate, of another person,
  - e. facilitating or controlling a person’s access to any addictive or controlled substance other than for legal medical purposes,
  - f. blackmail,
  - g. demanding or claiming money, goods, or any other thing of value from or on behalf of a prostituted person where such demand or claim arises from or is directly related to the act of prostitution,
  - h. determining, dictating or setting the times at which another person will be available to engage in an act of prostitution with a third party,
  - i. determining, dictating or setting the places at which another person will be available for solicitation of, or to engage in, an act of prostitution with a third party, or
  - j. determining, dictating or setting the places at which another person will reside for purposes of making such person available to engage in an act of prostitution with a third party.

<sup>4</sup> Subsequent recommendations in this report referring to the state human trafficking law(s) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

<sup>5</sup> Okla. Stat. Ann. tit. 21, § 1030(1) (Definitions) defines “prostitution” as,

2. To solicit, induce, entice, or procure another to commit an act of lewdness, assignation, or prostitution, with himself or herself;
  3. To reside in, enter, or remain in any house, place, building, or other structure, or to enter or remain in any vehicle, trailer, or other conveyance with the intent of committing an act of prostitution, lewdness, or assignation; or
  4. To aid, abet, or participate in the doing of any of the acts prohibited in paragraph 1, 2 or 3 of this subsection.
- B. Any prohibited act described in paragraph 1, 2, 3 or 4 of subsection A of this section committed with a person under sixteen (16) years of age shall be deemed child prostitution, as defined in Section 1030 [Definitions] of this title,<sup>7</sup> and shall be punishable as provided in Section 1031 of this title.

Pursuant to Okla. Stat. Ann. tit.21, § 1031(C) (Punishment for violations), if the victim is under the age of 16, a conviction under Okla. Stat. Ann. tit. 21, § 1029(B) is punishable as a felony by imprisonment up to 10 years and a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. In contrast, if the victim is 16 years of age or older, a conviction is punishable as a misdemeanor by imprisonment in a county jail for 30 days to 1 year, a fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions, or by both fine and imprisonment. Okla. Stat. Ann. tit.21, § 1031(A). In addition, the court may also order that the offender serve 40–80 hours of community service.<sup>8</sup> Okla. Stat. Ann. tit.21, § 1031(A).

2. Okla. Stat. Ann. tit. 21, §1087(A)(Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment) makes it a crime to
  1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;
  2. Receive or to offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or
  3. Direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

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- a. the giving or receiving of the body for sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse or lewdness with any person not his or her spouse, in exchange for money or any other thing of value, or
  - b. the making of any appointment or engagement for sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse or lewdness with any person not his or her spouse, in exchange for money or any other thing of value.

<sup>6</sup> Okla. Stat. Ann. tit. 21, § 1030(6) defines “lewdness” as,

- a. any lascivious, lustful or licentious conduct,
- b. the giving or receiving of the body for indiscriminate sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse, or lascivious, lustful or licentious conduct with any person not his or her spouse, or
- c. any act in furtherance of such conduct or any appointment or engagement for prostitution.

<sup>7</sup> Okla. Stat. Ann. tit. 21, § 1030(2) defines “child prostitution” as “prostitution or lewdness as defined in this section with a person under sixteen (16) years of age, in exchange for money or any other thing of value.”

<sup>8</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 1031(D), enhanced penalties apply if the offense occurred within 1,000 feet of a school or church. In such instances, a conviction under Okla. Stat. Ann. tit. 21, § 1028, § 1029, or § 1030 is punishable as a felony by imprisonment up to 5 years and carries the same schedule of fines and community service associated with a conviction under Okla. Stat. Ann. tit. 21, § 1029(A). The court also may order such an offender to 40–80 hours of community service.

A conviction under Okla. Stat. Ann. tit. 21, § 1087(A) is punishable as a felony by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit.21, §§ 1087(B)(1), 64(B).<sup>9</sup> Additionally, Okla. Stat. Ann. tit. 21, § 1087(B)(2) states, “Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under his control or of which he has possession shall, upon conviction for the first offense, be guilty of a misdemeanor” punishable by imprisonment in a county jail for 6 months to 1 year and a fine of \$500–\$5,000, with subsequent convictions punishable as felonies by imprisonment for 1–10 years, a fine of \$5,000–\$25,000, or both. Okla. Stat. Ann. tit.21, § 1087(B)(2).

3. Okla. Stat. Ann. tit. 21, § 1088(A) (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment) provides,

A. No person shall:

1. By promise, threats, violence, or by any device or scheme, including but not limited to the use of any controlled dangerous substance prohibited pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, cause, induce, persuade, or encourage a child under eighteen (18) years of age to engage or continue to engage in prostitution or to become or remain an inmate of a house of prostitution or other place where prostitution is practiced;
2. Keep, hold, detain, restrain, or compel against his will, any child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or other place where prostitution is practiced or allowed; or
3. Directly or indirectly keep, hold, detain, restrain, or compel or attempt to keep, hold, detain, restrain, or compel a child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or any place where prostitution is practiced or allowed for the purpose of compelling such child to directly or indirectly pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred by such child.

A conviction under Okla. Stat. Ann. tit. 21, § 1088(A) is punishable as a felony by imprisonment for 1–25 years and a fine of \$5,000–\$25,000. Okla. Stat. Ann. tit.21, § 1088(B)(1). Additionally, Okla. Stat. Ann. tit. 21, § 1088(B)(2) states,

Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits a violation of this section in any house, building, room, tent, lot or premises under his control or of which he has possession, upon conviction for the first offense, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a period of not less than six (6) months nor more than one (1) year, and by a fine of not more than Five Thousand Dollars (\$ 5,000.00).

Subsequent convictions are punishable as felonies by imprisonment for 1–10 years and a fine of \$5,000–\$25,000. Okla. Stat. Ann. tit.21, § 1088(B)(2).

4. Okla. Stat. Ann. tit. 21, § 1021.2(A) (Minors—Procuring for participation in pornography) states, “Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography<sup>10</sup> or who knowingly possesses, procures, or manufactures, or causes to be sold or

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<sup>9</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 64(B), “Upon a conviction for any felony punishable by imprisonment in any jail or prison, in relation to which no fine is prescribed by law, the court or a jury may impose a fine on the offender not exceeding Ten Thousand Dollars (\$ 10,000.00) in addition to the imprisonment prescribed.”

<sup>10</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 1024.1(A) (Definitions), “child pornography,” as it is used in Okla. Stat. Ann. tit. 21, §§ 1021, 1021.1, through 1021.3, Sections 1022 through 1024, and 1040.8 through 1040.24, is defined as

any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, electronic or photo-optical format, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an

distributed any child pornography shall be guilty, upon conviction, of a felony . . .” A conviction under this statute is punishable as a felony by imprisonment up to 20 years, a fine not to exceed \$25,000, or both. Okla. Stat. Ann. tit. 21, § 1021.2(A). Additionally, “Persons convicted under this section shall not be eligible for a deferred sentence.” Okla. Stat. Ann. tit. 21, § 1021.2(A).

5. Okla. Stat. Ann. tit. 21, § 866(A)(1)(a) (Elements of offense) states,

A. 1. The crime of trafficking in children is defined to consist of any of the following acts or any part thereof:

a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at anytime, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child,<sup>11</sup> except as ordered by the court or except as otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes.

A first conviction under this statute is punishable as a felony by imprisonment for 1–3 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 867(A), 64(B). A subsequent conviction, however, is punishable as a felony by imprisonment for at least 3 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 867(B), 64(B).

6. Okla. Stat. Ann. tit. 21, § 1021.3(A) (Guardians—Parents—Custodians—Consent to participation of minors in child pornography) makes it a crime if “[a]ny parent, guardian or individual having custody of a minor under the age of eighteen (18) years . . . knowingly permits or consents to the participation of a minor in any child pornography . . .” A conviction under Okla. Stat. Ann. tit. 21, § 1021.3(A) is punishable as a felony by imprisonment up to 20 years, a fine not to exceed \$25,000, or both, with no eligibility for a deferred sentence. Okla. Stat. Ann. tit. 21, § 1021.3(A).

7. Okla. Stat. Ann. tit. 21, § 843.5(H)–(J) (Child abuse—Child neglect—Child sexual abuse—Child sexual exploitation—Enabling—Penalties) states,

H. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment except as provided in subsection I of this section for a child victim under twelve (12) years of age. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. As used in this subsection, “child sexual exploitation” means the willful or malicious sexual exploitation, as defined by subparagraph c of paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another.

I. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of

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animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual conduct, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals, buttocks or, if such minor is a female, the breast, has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions.

<sup>11</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 865(1), “‘Child’ means an unmarried or unemancipated person under the age of eighteen (18) years.”



the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

J. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, “enabling child sexual exploitation” means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by subparagraph c of paragraph 2 of Section 1-1-105 of Title 10A of the Oklahoma Statutes, of a child under eighteen (18) years of age by another. As used in this subsection, “permit” means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

8. Okla. Stat. Ann. tit. 21, § 1040.13a(A), (B)(Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor) states,

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology,<sup>12</sup> or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. . . .

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.

A conviction under this statute is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit.21, § 1040.13a(D).

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

1. Okla. Stat. Ann. tit. 21, § 1021(A), (B) (Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors)<sup>13</sup>states,

A. Every person who willfully and knowingly either:

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<sup>12</sup> Okla. Stat. Ann. tit. 21, § 1040.13a(A) states,

For purposes of this subsection, “by use of any technology” means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD-ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any transmission of any written or text message, audio or sound message, photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device.

<sup>13</sup> The text of Okla. Stat. Ann. tit. 21, § 1021 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 446 during Oklahoma’s 53rd Legislative Session. 2011 Okla. Sess. Laws 186 (effective November 1, 2011).

1. Lewdly exposes his or her person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby . . . ;
  2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;
  3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any obscene material or child pornography; or
  4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or child pornography,
- shall be guilty, upon conviction, of a felony . . . .

B. Every person who:

1. Willfully solicits or aids a minor child to perform; or
2. Shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in, any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty of a felony. . . .

A conviction under Okla. Stat. Ann. tit. 21, § 1021(A) is punishable as a felony by imprisonment for 30 days to 10 years, a fine of \$500–\$20,000, or both. Okla. Stat. Ann. tit.21, § 1021(A)(4). A conviction under Okla. Stat. Ann. tit. 21, § 1021(B) is punishable as a felony by imprisonment for 10–30 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit.21, §§ 1021(B)(2), 64(B). If the victim is under the age of 12, however, a conviction under Okla. Stat. Ann. tit. 21, § 1021(B) is punishable as a felony by imprisonment for at least 25 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit.21, §§ 1021(B)(2), 64(B). In addition, a person convicted under this statute is not eligible for a deferred sentence. Okla. Stat. Ann. tit.21, § 1021(C).

2. Pursuant to Okla. Stat. Ann. tit. 21, § 1123(A) (Lewd or indecent proposals or acts as to child under 16) (Second version),<sup>14</sup>

A. It is a felony for any person to knowingly and intentionally:

1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or
2. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or
3. Ask, invite, entice, or persuade any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or
4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or
5. In a lewd and lascivious manner and for the purpose of sexual gratification:

<sup>14</sup> Two different versions of Okla. Stat. Ann. tit. 21, § 1123 are currently in effect. The first version was amended by 2002 Okla. Sess. Laws 455, § 6, and the second version was amended by 2010 Okla. Sess. Laws 226, § 5. Although the differences between these two current versions are not extensive, they are substantive. For example, the first version punishes a conviction by imprisonment for 1–20 years, while the second version punishes a conviction by imprisonment for 3–20 years. Therefore, because the second version includes higher penalties and other additional language, it is the only version discussed in this report. This report also recommends that the first version (2002 Okla. Sess. Laws 455, § 6) be repealed, and any additional recommendations solely be applied to the second version (2010 Okla. Sess. Laws 226, § 5).

- a. urinate or defecate upon a child under sixteen (16) years of age,
- b. ejaculate upon or in the presence of a child,
- c. cause, expose, force or require a child to look upon the body or private parts of another person,
- d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen(16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,
- e. cause, expose, force or require a child to look upon sexual acts performed in the presence of the child, or
- f. force or require a child to touch or feel the body or private parts of said child or another person.

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A first conviction<sup>15</sup> under this statute is punishable as a felony by imprisonment for 3–20 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). If the victim is under the age of 12, however, a first conviction is punishable as a felony by imprisonment for at least 25 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). Second convictions are punishable by the same penalties, but the offender “shall not be eligible for probation, suspended or deferred sentence.” Okla. Stat. Ann. tit. 21, § 1123(A). In addition to not being eligible for probation, suspension or a deferred sentence, third and subsequent convictions are punishable as a felony by imprisonment for life or life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). Additionally, a conviction under this statute by a person who has two prior convictions for any violation or attempted violation of Okla. Stat. Ann. tit. 21, § 1114(A) (Rape in the first degree), § 888 (Forcible sodomy), or § 843.5 (Child sexual abuse) is punishable as a felony by imprisonment for life or life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B).

3. Okla. Stat. Ann. tit. 21, § 1111(A)(1) (Rape defined) states,

A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

- 1. Where the victim is under sixteen (16) years of age.

A conviction under this statute is rape in the first degree if, among other things, the victim is under the age of 14 and the offender is either 18 years of age or older or force or threat of force was used in the commission of the crime. Okla. Stat. Ann. tit. 21, §§ 1111(A)(1), 1114(A)(1), (A)(5). Rape, in the absence of the factors listed in Okla. Stat. Ann. tit. 21, § 1114(A) is rape in the second degree. Okla. Stat. Ann. tit. 21, § 1114(B).

Pursuant to Okla. Stat. Ann. tit. 21, § 1115 (Punishment for rape in first degree) (Second version),<sup>16</sup> a first conviction for rape in the first degree is punishable as a felony by death or imprisonment for 5 years to life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit.21, §§1115, 64(B). Second convictions are punishable by the same penalties, but the offender “shall not be eligible for

<sup>15</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 1123(A), “The provisions of this subsection shall not apply unless the accused is at least three (3) years older than the victim, except when accomplished by the use of force or fear.”

<sup>16</sup> Two different versions of Okla. Stat. Ann. tit. 21, § 1115 are currently in effect. The first version was amended by 2002 Okla. Sess. Laws 455, § 5, and the second version was amended by 2009 Okla. Sess. Laws 234, § 241. Although the differences between these two current versions are not substantive, the second version does include additional penalties for subsequent convictions, and, therefore, is the only version referenced throughout this report. This report also recommends that the first version (2002 Okla. Sess. Laws 455, § 5) be repealed, and any additional recommendations solely be applied to the second version (2009 Okla. Sess. Laws 234, § 241).



any form of probation.” Okla. Stat. Ann. tit. 21, § 1115. Additionally, a conviction under this statute by a person who has two prior convictions for any violation or attempted violation of Okla. Stat. Ann. tit. 21, §1114(A) (Rape in first degree), §888 (Forcible sodomy), § 1123 (Lewd or indecent proposals or acts as to child under 16), or § 843.5 (Child sexual abuse) is punishable as a felony and “shall be punished by imprisonment in the custody of the Department of Corrections for life or life without parole” and face a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1115, 64(B). In contrast, pursuant to Okla. Stat. Ann. tit. 21, § 1116 (Rape in second degree a felony) rape in the second degree is punishable as a felony by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1116, 64(B).

4. Okla. Stat. Ann. tit. 21, § 1111.1 (Rape by instrumentation) provides,

Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person. Provided, further, that at least one of the circumstances specified in Section 1111 [Rape defined] of this title has been met . . . .

If the victim is under the age of 14 or the offense results in bodily harm, a conviction under this statute is rape in the first degree. Okla. Stat. Ann. tit. 21, § 1114(A)(1), (6). If the victim is 14 years of age or older, however, and the offense does not result in bodily harm, a conviction is rape in the second degree. Okla. Stat. Ann. tit. 21, § 1114(B). Pursuant to Okla. Stat. Ann. tit. 21, § 1115 (Punishment for rape in first degree) (Second version),<sup>17</sup> a first conviction for rape in the first degree is punishable as a felony by death or imprisonment for 5 years to life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit.21, §§ 1115, 64(B). Second convictions are punishable by the same penalties, but the offender “shall not be eligible for any form of probation.” Okla. Stat. Ann. tit. 21, § 1115. Additionally, a conviction under this statute by a person who has two prior convictions for any violation or attempted violation of Okla. Stat. Ann. tit. 21, § 1114(A) (Rape in first degree), § 888 (Forcible sodomy), § 1123 (Lewd or indecent proposals or acts as to child under 16), or § 843.5 (Child sexual abuse) is punishable as a felony and “shall be punished by imprisonment in the custody of the Department of Corrections for life or life without parole” and face a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1115, 64(B). In contrast, pursuant to Okla. Stat. Ann. tit. 21, § 1116 (Rape in second degree a felony), rape in the second degree is punishable as a felony by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1116, 64(B).

5. Okla. Stat. Ann. tit. 21, § 843.5(E)–(G) (Child abuse—Child neglect—Child sexual abuse—Child sexual exploitation—Enabling—Penalties) states,

E. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, except as provided in Section 51.1a of [Title 21 of the Oklahoma Statutes] or as otherwise provided in subsection F of this section for a child victim under twelve (12) years of age. . . . As used in this section, “child sexual abuse” means the willful or malicious sexual abuse, as defined by subparagraph b of paragraph 2 of Section 1-1-105 [Definitions]<sup>18</sup> of Title 10A

<sup>17</sup> See *supra* note 16.

<sup>18</sup> Pursuant to Okla. Stat. Ann. tit. 10A, § 1-1-105(2)(b) (Definitions),

b. “Sexual abuse” includes but is not limited to rape, incest, and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the health, safety, or welfare of the child.

[Children and juvenile code] of the Oklahoma Statutes, of a child under eighteen (18) years of age by another.

F. Any parent or other person who shall willfully or maliciously engage in sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

G. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. . . .<sup>19</sup>

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

Oklahoma’s CSEC statutes do not refer to Okla. Stat. Ann. tit.21, § 748(B) (Human trafficking).

1.3.1 Recommendation: Amend Oklahoma’s CSEC laws to refer to Okla. Stat. Ann. tit.21, § 748(B) (Human trafficking) to ensure that CSEC victims are properly identified as victims.

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<sup>19</sup> Okla. Stat. Ann. tit. 21, § 843.5(G) goes on to state,

As used in this subsection, “enabling child sexual abuse” means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by subparagraph b of paragraph 2 of Section 1-1-105 [Definitions] of Title 10A [Children and juvenile code] of the Oklahoma Statutes, of a child under the age of eighteen (18) by another. As used in this subsection, “permit” means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

**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.*

It is at least arguable that Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking) may apply to buyers of commercial sex with minors. Okla. Stat. Ann. tit. 21, § 748(B) states, “It shall be unlawful to knowingly engage in human trafficking.” Okla. Stat. Ann. tit. 21, § 748(A)(6)(a) defines “human trafficking for commercial sex” as “recruiting, enticing, harboring, maintaining, transporting, providing or obtaining, by any means, another person through deception, force, fraud, threat or coercion<sup>20</sup> for purposes of engaging the person in a commercial sex act.” Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),<sup>21</sup> have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”<sup>22</sup> a person under 18 to engage in commercial sex.<sup>23</sup> It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in Oklahoma’s trafficking statute may be similarly applied, and could, therefore, implicate buyers under Okla. Stat. Ann. tit. 21, § 748(B). Even if applied, however, Okla. Stat. Ann. tit. 21, § 748(A)(6)(a) requires the buyer to use force, fraud, or coercion in committing the crime. This requirement makes it less likely that Okla. Stat. Ann. tit. 21, § 748(B) would be applicable against buyers.

- 2.1.1 Recommendation: Amend Okla. Stat. Ann. tit. 21, § 748(A)(6)(a) (Human trafficking) to clarify that the statute applies to buyers of commercial sex with minors, without regard to the buyer’s use of deception, force, fraud, threat, or coercion.

<sup>20</sup> See *supra* note 3.

<sup>21</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>22</sup> 18 U.S.C. § 1591(a).

<sup>23</sup> See, e.g., Indictment at 1, United States v. Oflyng, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

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

Oklahoma’s CSEC law expressly prohibits buying sex with minors under the age of 16. Okla. Stat. Ann. tit. 21, § 1029(A)(2)(Engaging in prostitution, etc.) makes it illegal for a person “[t]o solicit, induce, entice, or procure another to commit an act of . . . prostitution. . . .” If the victim is under 16 years of age, a violation of Okla. Stat. Ann. tit. 21, § 1029(A)(2) is deemed “child prostitution”<sup>24</sup> and punishable in accordance with Okla. Stat. Ann. tit.21, § 1031 (Punishment for violations). Okla. Stat. Ann. tit.21, § 1029(B). Pursuant to Okla. Stat. Ann. tit.21, § 1031(C), a conviction under Okla. Stat. Ann. tit. 21, § 1029(B) is punishable as a felony by imprisonment up to 10 years and a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. In contrast, if the victim is 16 years of age or older, a conviction is punishable as a misdemeanor by imprisonment in a county jail for 30 days to 1 year, a fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions, or by both fine and imprisonment. Okla. Stat. Ann. tit.21, § 1031(A). In addition, the court may also order that the offender serve 40–80 hours of community service.<sup>25</sup> Okla. Stat. Ann. tit.21, § 1031(A).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of human trafficking under Okla. Stat. Ann. tit. 21, § 748 (Human trafficking).

- 2.2.1 Recommendation: Amend Okla. Stat. Ann. tit.21, § 1029(B)(Engaging in prostitution, etc.) and § 1030(2) (Definitions) to apply to all minors under 18 years of age.

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

Oklahoma’s solicitation law differentiates between buying sex with an adult and buying sex with a minor under the age of 16. Okla. Stat. Ann. tit. 21, § 1029(A)(2)(Engaging in prostitution, etc.) makes it illegal for a person to “solicit . . . another to commit an act of . . . prostitution. . . .” If the victim is a minor under 16 years of age, a violation of Okla. Stat. Ann. tit. 21, § 1029(A)(2) is deemed “child prostitution”<sup>26</sup> and is punishable in accordance with Okla. Stat. Ann. tit.21, § 1031 (Punishment for violations).

- 2.3.1 Recommendation: Amend Okla. Stat. Ann. tit.21, § 1029(B)(Engaging in prostitution, etc.) and § 1030(2) (Definitions) to apply to all minors under 18 years of age.

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

If the victim is under the age of 18, a buyer convicted under Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking) is guilty of a felony punishable by imprisonment for at least 10 years, a fine not to exceed \$20,000, or both. Okla. Stat. Ann. tit.21, § 748(C). A buyer convicted under Okla. Stat. Ann. tit. 21, § 1029(B)(Engaging in prostitution, etc.) for purchasing sex with a minor under 16 years of age is guilty of a felony punishable by imprisonment up to 10 years and a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. Okla. Stat. Ann. tit.21, § 1031(C). If the victim is 16 years of age or older, however, a conviction is punishable as a misdemeanor by imprisonment in a county jail for 30 days to 1 year, a fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions, or by both fine and imprisonment. Okla. Stat. Ann. tit.21, § 1031(A). In addition, the court may also order that the offender serve 40–80 hours of community service.<sup>27</sup> Okla. Stat. Ann. tit.21, § 1031(A).

<sup>24</sup> See *supra* note 7.

<sup>25</sup> See *supra* note 8.

<sup>26</sup> See *supra* note 7.

<sup>27</sup> See *supra* note 8.

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 buyer has a prior conviction for a federal sex offense<sup>28</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>29</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>30</sup>

2.4.1 Recommendation: Amend Okla. Stat. Ann. tit.21, § 748(C) (Human trafficking) to mandate longer sentences and higher fines similar to those provided under the TVPA.

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, Okla. Stat. Ann. tit. 21, § 1040.13a(A), (B) (Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor) makes it illegal for a person to use the Internet to “facilitate, encourage, offer or solicit sexual conduct with a minor.” Specifically, Okla. Stat. Ann. tit. 21, § 1040.13a(A) states,

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology,<sup>31</sup> or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. . . .

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.

A conviction under this statute is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit.21, § 1040.13a(D).

<sup>28</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>29</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

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

<sup>31</sup> *See supra* note 12 for the definition of “by any use of any technology.”



Additionally, Okla. Stat. Ann. tit. 21, § 1123(A)(1) (Lewd or indecent proposals or acts as to child under 16) (Second version)<sup>32</sup> prohibits a person from making “any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age . . . for the child to have unlawful sexual relations or sexual intercourse with any person.” A first conviction<sup>33</sup> under this statute is punishable as a felony by imprisonment for 3–20 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). If the victim is under the age of 12, however, a first conviction is punishable as a felony by imprisonment for at least 25 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). Second convictions are punishable by the same penalties, but the offender “shall not be eligible for probation, suspended or deferred sentence.” Okla. Stat. Ann. tit. 21, § 1123(A). In addition to not being eligible for probation, suspension or a deferred sentence, third and subsequent convictions are punishable as a felony by imprisonment for life or life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). Additionally, a conviction under this statute by a person who has two prior convictions for any violation or attempted violation of Okla. Stat. Ann. tit. 21, § 1114(A) (Rape in the first degree), § 888 (Forcible sodomy), or § 843.5 (Child sexual abuse) is punishable as a felony by imprisonment for life or life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B).

2.5.1 Recommendation: Amend Okla. Stat. Ann. tit.21, § 1123 (Lewd or indecent proposals or acts as to child under 16) to include all minors under 18.

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

Neither Okla. Stat. Ann. tit.21, § 748 (Human trafficking) nor Oklahoma’s CSEC laws expressly prohibit an offender from asserting an age defense.

2.6.1 Recommendation: Amend Okla. Stat. Ann. tit.21, § 748 (Human trafficking) and Oklahoma’s CSEC laws to prohibit a defendant from asserting a defense based on age mistake.

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.*

Okla. Stat. Ann. tit. 21, § 748 (Human trafficking) applies the same penalties in cases where the victim is a minor under the age of 18. Specifically, if the victim is a minor under the age of 18, a conviction under Okla. Stat. Ann. tit. 21, § 748(B) is punishable by imprisonment for a minimum of 10 years. Okla. Stat. Ann. tit.21, § 748(C). In contrast, Okla. Stat. Ann. tit. 21, § 1029(B)(Engaging in prostitution, etc.) staggers its penalties by imposing heightened penalties if the victim is under the age of 16.

2.7.1 Recommendation: Amend Okla. Stat. Ann. tit. 21, § 1030(2) to make the definition of “child prostitution” include all minors under the age of 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 convicted under Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking) or Oklahoma’s CSEC laws are subject to fines ranging from \$2,500–\$25,000. Pursuant to Okla. Stat. Ann. tit.21, § 748(C), if the victim is a minor under the age of 18, a conviction under Okla. Stat. Ann. tit. 21, § 748(B) is punishable by a possible fine not to exceed \$20,000. Pursuant to Okla. Stat. Ann. tit.21, § 1031(C) (Punishment for violations), if the victim is under the age of 16, a conviction under Okla. Stat. Ann. tit. 21, § 1029(B) (Engaging in prostitution, etc.) is punishable by a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. In contrast, if the victim is 16 years of age or older, a conviction under Okla.

<sup>32</sup> See *supra* note 14.

<sup>33</sup> See *supra* note 15.

Stat. Ann. tit. 21, § 1029(A) is punishable by a possible fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions. Okla. Stat. Ann. tit.21, § 1031(A).

Additionally, the court may require a convicted buyer to make restitution. Specifically, Okla. Stat. Ann. tit. 21, § 748(C) (Human trafficking) provides, “The court shall also order the defendant to pay restitution<sup>34</sup> to the victim<sup>35</sup> as provided in Section 991f [Restitution] of Title 22 [Criminal procedure] of the Oklahoma Statutes.” Buyers convicted of other crimes that cause injury to the victim are also required to make restitution under Okla. Stat. Ann. tit. 22, § 991f(C)(1) (Restitution), which provides,

Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution. Restitution may be ordered in addition to the punishments prescribed by law.

Okla. Stat. Ann. tit. 21, § 68 (Conviction does not work forfeiture) prohibits asset forfeiture unless it “is expressly imposed by law,” and although Okla. Stat. Ann. tit. 21, § 1738(A)(1) (Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc. used in attempt or commission of certain crimes)<sup>36</sup> expressly authorizes equipment and vehicle forfeiture for violations of Okla. Stat. Ann. tit.21, § 748 (Human trafficking), § 1029 (Engaging in prostitution, etc.), or § 1030 (Definitions), limiting language in Okla. Stat. Ann. tit. 21, § 1738(A)(1) makes the forfeiture provisions for the CSEC offenses not applicable to buyers. Okla. Stat. Ann. tit. 21, § 1738(A)(1) specifically provides,

Any commissioned peace officer of this state is authorized to seize any equipment, vehicle, airplane, vessel or any other conveyance that is used in the commission of . . . any human trafficking offense in violation of Section 748 [Human trafficking] of this title, or used by any defendant when such vehicle or other conveyance is used in any manner by a prostitute, pimp or panderer to facilitate or participate in the commission of any prostitution offense in violation of Sections . . . 1029 [Engaging in prostitution, etc.] or 1030 [Definitions] of this title; provided, however, that the vehicle or conveyance of a customer or anyone merely procuring the services of a prostitute shall not be included.

Okla. Stat. Ann. tit. 21, § 1738(B), (9)–(12) states,

In addition to the property described in subsection A of this section, the following property is also subject to forfeiture pursuant to this section: . . .

9. All property used in the commission of, or in any manner to facilitate, a violation of Section 1040.12a [Aggravated possession of child pornography] of this title;
10. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used or intended to be used, in any manner or part, to commit a violation of

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<sup>34</sup> Okla. Stat. Ann. tit. 22, § 991f(A)(1) (Restitution) defines “restitution” as “the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant.” Okla. Stat. Ann. tit. 22, § 991f(A)(3) defines “economic loss” as,

[A]ctual financial detriment suffered by the victim consisting of medical expenses actually incurred, damage to or loss of real and personal property and any other out-of-pocket expenses, including loss of earnings, reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included as an economic loss for purposes of this section.

<sup>35</sup> Okla. Stat. Ann. tit. 22, § 991f(A)(2) defines a “victim” as “any person, partnership, corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person.”

<sup>36</sup> The text of Okla. Stat. Ann. tit. 21, § 1738 included here and elsewhere in this report includes amendments made by the passage of House Bill 1604 during Oklahoma’s 53rd Legislative Session. 2011 Okla. Sess. Laws 132 (effective Nov. 1, 2011).

paragraph 1 of subsection A of Section 1021 [Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors] of this title, where the victim of the crime is a minor child, subsection B of Section 1021 of this title, Section 1021.2 [Minors—Procuring for participation in pornography] of this title, paragraph 1 of subsection A of Section 1111 [Rape defined] of this title, or paragraphs 2 and 3 of subsection A of Section 1123 [Lewd or indecent proposals or acts as to child under 16] of this title;

11. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used in any manner or part, to commit any violation of the provisions set forth in Section 748 [Human trafficking] of this title;

12. Any and all property used in any manner or part to facilitate, participate or further the commission of a human trafficking offense in violation of Section 748 of this title, and all property, including monies, real estate, or any other tangible assets or property of or derived from or used by a prostitute, pimp or panderer in any manner or part to facilitate, participate or further the commission of any prostitution offense in violation of Sections 1028 [Setting up or operating place of prostitution], 1029 [Engaging in prostitution, etc.] or 1030 [Definitions] of this title; provided, however, any monies, real estate or any other tangible asset or property of a customer or anyone merely procuring the services of a prostitute shall not be included.

Additional property may be seized pursuant to Okla. Stat. Ann. tit. 21, § 1024.3 (Seizure of evidentiary copy of obscene material or all copies of explicit child pornography), which authorizes the seizure of “all copies of explicit child pornography found in the possession or under the control of” a person arrested for a violation of Okla. Stat. Ann. tit. 21, § 1024.2 (Purchase, procurement or possession of child pornography).

Buyers may be subject to additional civil penalties. To the extent buyers may be prosecuted under Okla. Stat. Ann. tit. 21, § 748 (Human trafficking), Okla. Stat. Ann. tit. 21, § 748.2(B) (Guidelines for treatment of human trafficking victims—Right to civil action) provides,

Any person aggrieved by a violation of subsection B of Section 748 of this title may bring a civil action against the person or persons who committed the violation to recover actual and punitive damages and reasonable attorney fees. A criminal case or prosecution is not a necessary precedent to the civil action. The statute of limitations for the cause of action shall not commence until the latter of the victim's emancipation from the defendant or the victim's twenty-first birthday.

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

Okla. Stat. Ann. tit. 21, § 1024.2 (Purchase, procurement or possession of child pornography) makes it illegal for a person to buy or possess child pornography. Okla. Stat. Ann. tit. 21, § 1024.2 states, “It shall be unlawful for any person to buy, procure, or possess child pornography<sup>37</sup> in violation of Sections 1024.1 [Definitions] through 1024.4 [Destruction of obscene material or child pornography upon conviction]. . . .” A conviction under this statute is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$5,000, or both. Okla. Stat. Ann. tit. 21, § 1024.2. Additionally, Okla. Stat. Ann. tit. 21, § 1021.2 (Minors—Procuring for participation in pornography) makes it a crime if a person “knowingly” possess child pornography. A conviction under this statute is punishable as a felony by imprisonment up to 20 years without the possibility of a deferred sentence, a fine not to exceed \$25,000, or both. Okla. Stat. Ann. tit. 21, § 1021.2(A). Lastly, pursuant to Okla. Stat. Ann. tit. 21, § 1040.12a(A) (Aggravated possession of child pornography—Penalties—Definitions), “[a]ny person who, with knowledge of its contents, possesses one hundred (100) or more separate materials depicting child pornography shall be, upon conviction, guilty of aggravated possession of child pornography.” A conviction under this statute is punishable by imprisonment up to life and a fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, § 1040.12a(A).

<sup>37</sup> See *supra* note 10 for the definition of “child pornography.”

In comparison, a federal conviction for possession of child pornography<sup>38</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>39</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>40</sup>

- 2.9.1 Recommendation: Increase the penalties for a violation of Okla. Stat. Ann. tit.21, § 1024.2 (Purchase, procurement or possession of child pornography) to correspond with those provided under federal law.

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

Pursuant to Oklahoma’s Sex Offenders Registration Act,<sup>41</sup> Okla. Stat. Ann. tit. 57, § 582(A) (Persons and crimes to which act applies) states that a person “residing, working or attending school within the State of Oklahoma” with any of the following convictions after November 1, 1989 must register as a sex offender: Okla. Stat. Ann. tit. 21, §1021.2 [Minors—Procuring for participation in pornography], § 1024.2 [Purchase, procurement or possession of child pornography], §1040.12a [Aggravated possession of child pornography—Penalties—Definitions], §1040.13a [Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor], §1111.1 [Rape by instrumentation], §1114 [Rape in the first degree—Second degree], or §1123 [Lewd or indecent proposals or acts as to child under 16].

Pursuant to this statute, buyers convicted under Okla. Stat. Ann. tit. 21, §748 (Human trafficking) or § 1029 (Engaging in prostitution, etc.) are not required to register as sex offenders.

- 2.10.1 Recommendation: Amend Okla. Stat. Ann. tit.57, § 582(A) (Persons and crimes to which act applies) to require sex offender registry for convictions under Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking) or § 1029 (Engaging in prostitution, etc.) when the victim is a minor under 18.

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<sup>38</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>39</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

<sup>41</sup> Okla. Stat. Ann. tit. 57, §§ 581–590.2.

**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.

If the victim is under the age of 18, a trafficker’s conviction under Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking)<sup>42</sup> is punishable by imprisonment for at least 10 years, a fine not to exceed \$20,000, or both. Okla. Stat. Ann. tit.21, § 748(C).

Traffickers may be convicted under Okla. Stat. Ann. tit. 21, § 1029(B) (Engaging in prostitution, etc.)<sup>43</sup> for aiding or abetting a person to “solicit, induce, entice, or procure” a minor under the age of 16 to commit an act of prostitution. Okla. Stat. Ann. tit. 21, § 1029(A)(2), (4), (B). Pursuant to Okla. Stat. Ann. tit.21, § 1031(C) (Punishment for violations),if the victim is under the age of 16, a conviction under Okla. Stat. Ann. tit. 21, § 1029(B) is punishable as a felony by imprisonment up to 10 years and a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. In contrast, if the victim is 16 years of age or older, a conviction is punishable as a misdemeanor by imprisonment in a county jail for 30 days to 1 year, a fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions, or by both fine and imprisonment. Okla. Stat. Ann. tit.21, § 1031(A). In addition, the court may also order that the offender serve 40–80 hours of community service.<sup>44</sup> Okla. Stat. Ann. tit.21, § 1031(A).

A trafficker convicted under Okla. Stat. Ann. tit. 21, § 1087(A)(1), (A)(2)(Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment),<sup>45</sup> a felony, may be punished by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit.21, §§ 1087(B)(1), 64(B). While a trafficker convicted under Okla. Stat. Ann. tit. 21, § 1088(A)(2), (A)(3) (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment), also a felony,<sup>46</sup> may be punished by imprisonment for 1–25 years and a fine of \$5,000–\$25,000. Okla. Stat. Ann. tit.21, § 1088(B)(1). Additionally, a trafficker may be convicted of Okla. Stat. Ann. tit. 21, § 1040.13a(B) (Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor), which is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit. 21, § 1040.13a(D).

<sup>42</sup> See *supra* Section 1.1 for the specific provisions of Okla. Stat. Ann. tit. 21, § 748(B).

<sup>43</sup> See *supra* Section 1.2 for the specific provisions of Okla. Stat. Ann. tit. 21, § 1029.

<sup>44</sup> See *supra* note 8.

<sup>45</sup> See *supra* Section 1.2 for the substantive provisions of Okla. Stat. Ann. tit. 21, § 1087.

<sup>46</sup> See *supra* Section 1.2 for the substantive provisions of Okla. Stat. Ann. tit. 21, § 1088.



Although not specifically oriented towards sexual exploitation, a trafficker may be prosecuted under Okla. Stat. Ann. tit. 21, § 866(A)(1)(a) (Elements of offense)<sup>47</sup> for the “acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at anytime, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child . . . .”<sup>48</sup> A first conviction under this statute is punishable as a felony by imprisonment for 1–3 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 867(A), 64(B). A subsequent conviction, however, is punishable as a felony by imprisonment for at least 3 years, with no suspension of judgment or sentence permitted, and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 867(B), 64(B).

Traffickers may also face punishment under Oklahoma’s laws related to racketeering. Okla. Stat. Ann. tit. 22, § 1403(A)–(D) (Participation in pattern of racketeering activity or collection of unlawful debt prohibited) states,

- A. No person employed by or associated with any enterprise<sup>49</sup> shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of racketeering activity<sup>50</sup> or the collection of an unlawful debt.
- B. No person, through a pattern of racketeering activity or through the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- C. No person who has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity, or through the collection of any unlawful debt, in which the person participated as a principal, shall use or invest, directly or indirectly, any part of the proceeds or any proceeds derived from the investment or use of any of those proceeds in the acquisition of any right, title, or interest in real property or in the establishment or operation of any enterprise. . . .
- D. No person shall attempt to violate or conspire with others to violate the provisions of subsection A, B or C of this section.

Okla. Stat. Ann. tit. 22, § 1402(10) (Definitions) defines “racketeering activity” as “engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any conduct which is chargeable or indictable as constituting a felony violation of,” among other offenses, Okla. Stat. Ann. tit. 21, § 748 (Human trafficking), § 866 (Elements of offense), § 867 (Trafficking in children a felony), § 1021 (Indecent exposure—Indecent exhibitions—Obscene material or child pornography—

<sup>47</sup> See *supra* Section 1.2 for the substantive provisions of Okla. Stat. Ann. tit. 21, § 866.

<sup>48</sup> See *supra* note 11.

<sup>49</sup> Okla. Stat. Ann. tit. 22, § 1402(2) (Definitions) defines “enterprise” to include,

[A]ny individual, sole proprietorship, partnership, corporation, trust, governmental entity, or other legal entity, or any union, association, unincorporated association or group of persons, associated in fact although not a legal entity, involved in any lawful or unlawful project or undertaking or any foreign organization that the United States Secretary of State has designated a foreign terrorist organization pursuant to Title 8 U.S.C.A., Section 1189.

<sup>50</sup> Pursuant to Okla. Stat. Ann. tit. 22, § 1402(5),

- 5. “Pattern of racketeering activity” means two or more occasions of conduct:
  - a. that include each of the following:
    - (1) constitute racketeering activity,
    - (2) are related to the affairs of the enterprise,
    - (3) are not isolated, and
    - (4) are not so closely related to each other and connected in point of time and place that they constitute a single event, and
  - b. where each of the following is present:
    - (1) at least one of the occasions of conduct occurred after November 1, 1988,
    - (2) the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by any person engaging in the conduct, of a prior occasion of conduct, and
    - (3) for the purposes of Section 1403 of this title each of the occasions of conduct constituted a felony pursuant to the laws of this state.

Solicitation of minors), § 1021.2 (Minors—Procuring for participation in pornography), § 1087 (Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment), § 1088 (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment), § 1123 (Lewd or indecent proposals or acts as to child under 16). Pursuant to Okla. Stat. Ann. tit. 22, § 1404(A), (B) (Penalties for violating § 1403), a conviction under this statute is punishable by imprisonment for at least 10 years, which “shall not be eligible for a deferred sentence, probation, suspension, work furlough, or release from confinement on any other basis until the person has served one-half (1/2) of the sentence,” and, if the trafficker “derived pecuniary value, or . . . caused personal injury, or property damage or other loss,” a possible “fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property ordered forfeited pursuant to the provisions of subsection A of Section 1405 of this title. . . .”

Additionally, “[a]ny parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment” for at least 25 years and by a fine of \$500–\$5,000. Okla. Stat. Ann. tit. 21, § 843.5(I). Furthermore, “[a]ny parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished by imprisonment” for life in the Department of corrections or up to one year in a county jail, a possible fine of \$500–\$5,000, or both. Okla. Stat. Ann. tit. 21, § 843.5(J).<sup>51</sup>

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>52</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>53</sup> against a minor.

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

Oklahoma prohibits both the creation and distribution of child pornography. Okla. Stat. Ann. tit. 21, § 1021(A)(4) (Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors)<sup>54</sup> makes it a crime if a person “[m]akes, prepares, [or] . . . distributes . . . child pornography.”<sup>55</sup> A conviction under Okla. Stat. Ann. tit. 21, § 1021(A) is punishable as a felony by imprisonment for 30 days to 10 years, a fine of \$500–\$20,000, or both. Okla. Stat. Ann. tit. 21, § 1021(A). Additionally, Okla. Stat. Ann. tit. 21, § 1021.2(A) (Minors—Procuring for participation in pornography)<sup>56</sup> makes it a crime if a person “procure[s] or cause[s] the participation of any minor under the age of eighteen (18) years in any child pornography or . . . knowingly . . . manufactures, or causes to be sold or distributed any child pornography . . . .” A conviction under this statute is punishable as a felony by imprisonment up to 20 years without the possibility of a deferred sentence, a fine not to exceed \$25,000, or both. Okla. Stat. Ann. tit. 21, § 1021.2(A).

Similarly, Okla. Stat. Ann. tit. 21, § 1040.8(A) (Publication, distribution or participation in preparation of obscene material or child pornography—Unsolicited mailings) provides,

No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation,

<sup>51</sup> See *supra* Section 1.2 for the substantive provision of Okla. Stat. Ann. tit. 21, § 843.5.

<sup>52</sup> See *supra* note 21.

<sup>53</sup> See *supra* note 28.

<sup>54</sup> See *supra* note 13.

<sup>55</sup> See *supra* note 10.

<sup>56</sup> See *supra* Section 1.2 for the substantive provisions of Okla. Stat. Ann. tit. 21, § 1021.2(A).

or other article which is obscene material or child pornography, as defined in Section 1024.1 of this title. . . .

A conviction under this statute that involves child pornography<sup>57</sup> is punishable as a felony by imprisonment up to 20 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit. 21, § 1040.8(C).

A person who is a parent, guardian, or has custody of a child under the age of 18, may also be prosecuted under Okla. Stat. Ann. tit. 21, § 1021.3(A) (Guardians—Parents—Custodians—Consent to participation of minors in child pornography) if the person “knowingly permits or consents to the participation of a minor in any child pornography. . . .” A conviction under this statute is punishable as a felony by imprisonment up to 20 years, a fine not to exceed \$25,000, or both, and is not eligible for a deferred sentence. Okla. Stat. Ann. tit.21, § 1021.3(A).

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 offense<sup>58</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>59</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>60</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>61</sup>

### 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 not expressly commercial, Okla. Stat. Ann. tit. 21, § 1040.13a(A),(B)(Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor) makes it illegal for a person to use the Internet to “facilitate, encourage, offer or solicit sexual conduct with a minor.” Specifically, Okla. Stat. Ann. tit. 21, § 1040.13a(A),(B) states,

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology<sup>62</sup>. . . .

B. A person is guilty of violating the provisions of this section if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly

<sup>57</sup> See *supra* note 10.

<sup>58</sup> See *supra* note 28.

<sup>59</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>60</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>61</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>62</sup> See *supra* note 12.

buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor.

A conviction under this statute is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit.21, § 1040.13a(D).

Additionally, Okla. Stat. Ann. tit. 21, § 1123(A)(1)(Lewd or indecent proposals or acts as to child under 16)<sup>63</sup> prohibits a person from making “any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age.” A first conviction<sup>64</sup> under this statute is punishable as a felony by imprisonment for 3–20 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). If the victim is under the age of 12, however, a first conviction is punishable as a felony by imprisonment for at least 25 years and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). Second convictions are punishable by the same penalties, but the offender “shall not be eligible for probation, suspended or deferred sentence.” Okla. Stat. Ann. tit. 21, § 1123(A). In addition to not being eligible for probation, suspension or a deferred sentence, third and subsequent convictions are punishable as a felony by imprisonment for life or life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B). Additionally, a conviction under this statute by a person who has two prior convictions for any violation or attempted violation of Okla. Stat. Ann. tit. 21, § 1114(A) (Rape in the first degree), § 888 (Forcible sodomy), or § 843.5 (Child sexual abuse) is punishable as a felony by imprisonment for life or life without the possibility of parole and a possible fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, §§ 1123(A), 64(B).

3.3.1 Recommendation: Amend Okla. Stat. Ann. tit. 21, § 1123(Lewd or indecent proposals or acts as to child under 16) to expressly include commercial sexual activity and raise the age to protect all minors under 18.

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

Traffickers convicted under Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking) or Oklahoma’s CSEC laws are subject to fines ranging from \$2,500–\$25,000. A trafficker convicted under Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking), if the victim is under the age of 18, is subject to a possible fine not to exceed \$20,000. Okla. Stat. Ann. tit.21, § 748(C). Pursuant to Okla. Stat. Ann. tit.21, § 1031(C) (Punishment for violations), if the victim is under the age of 16, a conviction under Okla. Stat. Ann. tit. 21, § 1029(B) (Engaging in prostitution, etc.) is punishable by a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. In contrast, if the victim is 16 years of age or older, a conviction under Okla. Stat. Ann. tit. 21, § 1029(A) is punishable by a possible fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions. Okla. Stat. Ann. tit.21, § 1031(A).

Although traffickers convicted under Okla. Stat. Ann. tit. 21, § 1087(A)(Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment) are not expressly required to pay a fine, they are subject to a possible fine not to exceed \$10,000 pursuant to Okla. Stat. Ann. tit.21, § 64(B).<sup>65</sup> Additionally, traffickers convicted under Okla. Stat. Ann. tit. 21, § 1088(A) (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment)are subject to a fine of \$5,000–\$25,000. Okla. Stat. Ann. tit.21, § 1088(B)(1).

<sup>63</sup> See *supra* note 14.

<sup>64</sup> See *supra* note 15.

<sup>65</sup> See *supra* note 9.

Lastly, pursuant to Okla. Stat. Ann. tit. 22, § 1404(B) (Penalties for violating § 1403), traffickers convicted under Okla. Stat. Ann. tit. 22, § 1403 (Participation in pattern of racketeering activity or collection of unlawful debt prohibited)<sup>66</sup> “through which the person derived pecuniary value, or by which the person caused personal injury, or property damage or other loss,” are subject to a possible “fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property ordered forfeited pursuant to the provisions of subsection A of Section 1405[Criminal forfeiture procedures] of this title. . . .” Okla. Stat. Ann. tit. 22, § 1405(A) (Criminal forfeiture procedures) states that a person convicted of racketeering under Okla. Stat. Ann. tit. 22, § 1403 must “forfeit to the state . . . any real or personal property used in the course of, intended for use in the course of, derived from, or realized through” the course of the illegal conduct. Also, traffickers who violate Okla. Stat. Ann. tit. 22, § 1403 may be ordered to pay a civil penalty not to exceed \$100,000. Okla. Stat. Ann. tit. 22, § 1409(A), (B).

Additionally, the court may require a convicted trafficker to make restitution. Specifically, Okla. Stat. Ann. tit. 21, § 748(C) (Human trafficking) provides, “The court shall also order the defendant to pay restitution<sup>67</sup> to the victim<sup>68</sup> as provided in Section 991f [Restitution] of Title 22 [Criminal procedure] of the Oklahoma Statutes.” Additionally, traffickers who are convicted of other crimes that cause injury to the victim are also required to make restitution under Okla. Stat. Ann. tit. 22, § 991f(C)(1) (Restitution).

Although Okla. Stat. Ann. tit. 21, § 68 (Conviction does not work forfeiture) prohibits asset forfeiture unless it “is expressly imposed by law,” Okla. Stat. Ann. tit. 21, § 1738(A)(1) (Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc. used in attempt or commission of certain crimes)<sup>69</sup> authorizes equipment and vehicle forfeiture for violations of Okla. Stat. Ann. tit. 21, § 748 (Human trafficking) or § 1029 (Engaging in prostitution, etc.). Additionally, Okla. Stat. Ann. tit. 21, § 1738(B)(10)–(12) states,

B. In addition to the property described in subsection A of this section, the following property is also subject to forfeiture pursuant to this section: . . .

10. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used or intended to be used, in any manner or part, to commit a violation of paragraph 1 of subsection A of Section 1021 [Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors] of this title, where the victim of the crime is a minor child, . . . Section 1021.2 [Minors—Procuring for participation in pornography] of this title, . . . ;

11. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used in any manner or part, to commit any violation of the provisions set forth in Section 748 [Human trafficking] of this title; and

12. Any and all property used in any manner or part to facilitate, participate or further the commission of a human trafficking offense in violation of Section 748 of this title, and all property, including monies, real estate, or any other tangible assets or property of or derived from or used by a prostitute, pimp or panderer in any manner or part to facilitate, participate or further the commission of any prostitution offense in violation of Sections 1028 [Setting up or operating place of prostitution], 1029 [Engaging in prostitution, etc.] or 1030 [Definitions] of this title; provided, however, any monies, real estate or any other tangible asset or property of a customer or anyone merely procuring the services of a prostitute shall not be included.

Lastly, Okla. Stat. Ann. tit. 21, § 1040.54(A) (Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography) authorizes asset forfeiture for “any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing,

<sup>66</sup> See *supra* Section 1.2 for the substantive provision of Okla. Stat. Ann. tit. 21, § 1403.

<sup>67</sup> See *supra* note 34.

<sup>68</sup> See *supra* note 35.

<sup>69</sup> See *supra* note 36.



displaying, advertising, filming, copying, recording, or mailing of . . . child pornography, as defined in subsection A of Section 1024.1 [Definitions] of this title.”

Traffickers may also be subject to additional civil penalties. Pursuant to Okla. Stat. Ann. tit. 21, § 748.2(B) (Guidelines for treatment of human trafficking victims—Right to civil action),

Any person aggrieved by a violation of subsection B of Section 748 of this title may bring a civil action against the person or persons who committed the violation to recover actual and punitive damages and reasonable attorney fees. A criminal case or prosecution is not a necessary precedent to the civil action. The statute of limitations for the cause of action shall not commence until the latter of the victim's emancipation from the defendant or the victim's twenty-first birthday.

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

Pursuant to Oklahoma’s Sex Offenders Registration Act,<sup>70</sup> Okla. Stat. Ann. tit. 57, § 582(A) (Persons and crimes to which act applies) states that a person “residing, working or attending school within the State of Oklahoma” with any of the following convictions or a conviction of an attempt to commit the following crimes must register as a sex offender: Okla. Stat. Ann. tit. 21, §1021.2(A)(Minors—Procuring for participation in pornography), § 1021.3(A) (Guardians—Parents—Custodians—Consent to participation of minors in child pornography), § 1024.2 (Purchase, procurement or possession of child pornography), §1040.12a(A)(Aggravated possession of child pornography—Penalties—Definitions), §1040.13a (Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor), § 1087 (Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment), or § 1088 (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment). Additionally, traffickers “currently serving a sentence or any form of probation or parole for a crime or an attempt to commit a crime provided for in Section 843.5 [Child sexual abuse] of Title 21 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes” are required to register as sex offenders. Okla. Stat. Ann. tit. 57, § 582(A). Additionally, an offender convicted of Okla. Stat. Ann. tit. 21, § 1040.8(A) (Publication, distribution or participation in preparation of obscene material or child pornography—Unsolicited mailings) is “required to register as a sex offender under the Sex Offenders Registration Act.” Okla. Stat. Ann. tit. 21, § 1040.8(C)

Okla. Stat. Ann. tit. 57, § 582(A) does not require traffickers convicted under Okla. Stat. Ann. tit. 21, § 748 (Human trafficking), § 1029 (Engaging in prostitution, etc.), or § 1028 (Setting up or operating place of prostitution) to register as sex offenders.

3.5.1 Recommendation: Amend Okla. Stat. Ann. tit.57, § 582(A) (Persons and crimes to which act applies) to include Okla. Stat. Ann. tit. 21, § 748 (Human trafficking), § 1029 (Engaging in prostitution, etc.), and § 1040.8(A) (Publication, distribution or participation in preparation of obscene material or child pornography—Unsolicited mailings) if the offense involves a commercially sexually exploited minor under the age of 18.

### 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.*

A conviction under Okla. Stat. Ann. tit. 21, § 748 (Human trafficking) is not included as a ground for terminating parental rights under Okla. Stat. Ann. tit. 10A, § 1-4-904(B)(8)(Termination of parental rights in certain situations). Instead, Okla. Stat. Ann. tit. 10A, § 1-4-904(B) provides,

<sup>70</sup> Okla. Stat. Ann. tit. 57, §§ 581–590.2.

B. The court may terminate the rights of a parent to a child based upon the following legal grounds:

....

8. A finding that the parent has been convicted in a court of competent jurisdiction in any state of any of the following acts:

- a. permitting a child to participate in pornography,
- b. rape, or rape by instrumentation,
- c. lewd molestation of a child under sixteen (16) years of age,
- d. child abuse<sup>71</sup> or neglect,
- e. enabling child abuse or neglect,

...

9. A finding that the parent has abused or neglected the child or a sibling of the child or failed to protect the child or a sibling of the child from abuse or neglect that is heinous or shocking;

10. A finding that the parent has previously abused or neglected the child or a sibling of the child or failed to protect the child or a sibling of the child from abuse or neglect and the child or a sibling of the child has been subjected to subsequent abuse;

11. A finding that the child was conceived as a result of rape perpetrated by the parent whose rights are sought to be terminated;

12. A finding that the parent whose rights are sought to be terminated is incarcerated, and the continuation of parental rights would result in harm to the child based on consideration of . . . [several listed]factors. . . .

....

....

3.6.1 Recommendation: Amend Okla. Stat. Ann. tit. 10, § 1-4-904(B)(8) (Termination of parental rights in certain situations) to authorize the court to terminate parental rights where a parent has been convicted under Okla. Stat. Ann. tit.21, § 748(B) (Human trafficking) or any of Oklahoma’s CSEC laws.

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<sup>71</sup> See *infra* Section 5.6 for the definition of “abuse.”

**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.*

Oklahoma’s state human trafficking law applies to facilitators who benefit financially from sex trafficking, as well as to facilitators who assist or enable trafficking by harboring or transporting a victim of human trafficking. Okla. Stat. Ann. tit. 21, § 748(A)(6)(b) (Human trafficking)<sup>72</sup> states that “human trafficking for commercial sex” means “benefiting, financially or by receiving anything of value, from participating in a venture that has engaged in an act of trafficking for commercial sex.” Additionally, “human trafficking for commercial sex” applies to a facilitator who harbors or transports “by any means, another person through deception, force, fraud, threat or coercion<sup>73</sup> for purposes of engaging the person in a commercial sex act.” Okla. Stat. Ann. tit.21, § 748(A)(6)(a). If the victim is a minor under the age of 18, a conviction for “human trafficking for commercial sex” is punishable as a felony by imprisonment for at least 10 years, a fine not to exceed \$20,000, or both. Okla. Stat. Ann. tit.21, § 748(C).

Several of Oklahoma’s CSEC laws may also be used to prosecute facilitators. Facilitators may be convicted under Okla. Stat. Ann. tit. 21, § 1029(A)(4) (Engaging in prostitution, etc.)<sup>74</sup> for aiding or abetting the acts set out in Okla. Stat. Ann. tit.21, § 1029(A)(1)–(3). If the victim is under the age of 16, a conviction is punishable as a felony by imprisonment up to 10 years and a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. Okla. Stat. Ann. tit.21, §§ 1029(B), 1031(A). In contrast, if the victim is 16 years of age or older, a conviction is punishable as a misdemeanor by imprisonment in a county jail for 30 days to 1 year, a fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions, or by both fine and imprisonment. Okla. Stat. Ann. tit.21, § 1031(A). In addition, the court may also order that the offender serve 40–80 hours of community service.<sup>75</sup> Okla. Stat. Ann. tit.21, § 1031(A).

Facilitators may also be prosecuted under either Okla. Stat. Ann. tit. 21, § 1087(B)(2) (Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment) or Okla. Stat. Ann. tit. 21, § 1088(B)(2) (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment).<sup>76</sup> An offender’s first conviction under either of these statutes is punishable as a misdemeanor by 6 months to 1 year imprisonment and a fine not to exceed \$5,000,<sup>77</sup> while subsequent convictions are punishable as felonies by imprisonment for 1–10 years, a fine of \$5,000–\$25,000. Okla. Stat. Ann. tit.21, §§ 1087(B)(2), 1088(B)(2).

<sup>72</sup> See *supra* Section 1.1 for the substantive provisions of Okla. Stat. Ann. tit. 21, § 748(A)(6)(b).

<sup>73</sup> See *supra* note 3.

<sup>74</sup> See *supra* Section 1.2 for the substantive provisions of Okla. Stat. Ann. tit. 21, § 1029.

<sup>75</sup> See *supra* note 8.

<sup>76</sup> See *supra* Section 1.2 for the substantive provisions of Okla. Stat. Ann. tit. 21, §§ 1087(B)(2), 1088(B)(2).

<sup>77</sup> Okla. Stat. Ann. tit. 21, § 1087(B)(2) also has a mandatory minimum fine of \$500.

Facilitators may also face punishment for racketeering under Okla. Stat. Ann. tit. 22, § 1403(A)–(D) (Participation in pattern of racketeering activity or collection of unlawful debt prohibited)<sup>78</sup> if they “participate in, directly or indirectly, the affairs of the enterprise<sup>79</sup> through a pattern of racketeering activity<sup>80</sup> or the collection of an unlawful debt.” Pursuant to Okla. Stat. Ann. tit. 22, § 1404 (Penalties for violating § 1403), a conviction under this statute is punishable by imprisonment for at least 10 years, which “shall not be eligible for a deferred sentence, probation, suspension, work furlough, or release from confinement on any other basis until the person has served one-half (1/2) of the sentence,” and, pursuant to Okla. Stat. Ann. tit. 22, § 1404(B),

[A]ny person convicted of violating any provision of Section 1403 of this title, through which the person derived pecuniary value, or by which the person caused personal injury, or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property ordered forfeited pursuant to the provisions of subsection A of Section 1405 of this title.

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

Facilitators convicted under Oklahoma’s laws relating to human trafficking and the commercial sexual exploitation of children are subject to fines ranging from \$500–\$25,000. A facilitator convicted under Okla. Stat. Ann. tit. 21, § 748(B) (Human trafficking), if the victim is under the age of 18, is subject to a possible fine not to exceed \$20,000. Okla. Stat. Ann. tit. 21, § 748(C). Pursuant to Okla. Stat. Ann. tit. 21, § 1031(C) (Punishment for violations), if the victim is under the age of 16, a conviction under Okla. Stat. Ann. tit. 21, § 1029(A)(4), (B) (Engaging in prostitution, etc.) is punishable by a fine not to exceed \$5,000 for a first conviction, \$10,000 for a second conviction, or \$15,000 for third and subsequent convictions. In contrast, if the victim is 16 years of age or older, a conviction under Okla. Stat. Ann. tit. 21, § 1029(A)(4), (B) is punishable by a possible fine not to exceed \$2,500 for a first conviction, \$5,000 for a second conviction, or \$7,500 for third and subsequent convictions. Okla. Stat. Ann. tit. 21, § 1031(A).

Facilitators convicted under either Okla. Stat. Ann. tit. 21, § 1087(B)(2) or § 1088(B)(2) are subject to a possible fine of \$500–\$5,000 for a first conviction, and a possible fine of \$5,000–\$25,000 for a subsequent conviction.

Pursuant to Okla. Stat. Ann. tit. 22, § 1404 (Penalties for violating § 1403), facilitators convicted under Okla. Stat. Ann. tit. 22, § 1403 (Participation in pattern of racketeering activity or collection of unlawful debt prohibited)<sup>81</sup> are subject to a possible “fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property ordered forfeited pursuant to the provisions of subsection A of Section 1405[Criminal forfeiture procedures] of this title.”

Additionally, the court may require a convicted facilitator to make restitution. Okla. Stat. Ann. tit. 21, § 748(C) (Human trafficking) states, “The court shall also order the defendant to pay restitution<sup>82</sup> to the victim<sup>83</sup> as provided in Section 991f [Restitution] of Title 22 [Criminal procedure] of the Oklahoma Statutes.” Facilitators convicted of other crimes that caused injury to the victim, shall be subject to make restitution under Okla. Stat. Ann. tit. 22, § 991f(C)(1) (Restitution).<sup>84</sup>

<sup>78</sup> See *supra* Section 3.1 for the substantive provisions of Okla. Stat. Ann. tit. 22, § 1403(A)–(D).

<sup>79</sup> See *supra* note 49.

<sup>80</sup> See *supra* note 50.

<sup>81</sup> See *supra* Section 1.2 for the substantive provision of Okla. Stat. Ann. tit. 21, § 1403.

<sup>82</sup> See *supra* note 34.

<sup>83</sup> See *supra* note 35.

<sup>84</sup> See *supra* Section 2.8 for the substantive provisions of Okla. Stat. Ann. tit. 22, § 991f(C)(1).

Although Okla. Stat. Ann. tit. 21, § 68 (Conviction does not work forfeiture) prohibits asset forfeiture unless it “is expressly imposed by law,” Okla. Stat. Ann. tit. 21, § 1738(A)(1) (Seizure and forfeiture proceedings—Vehicles, airplanes, vessels, etc. used in attempt or commission of certain crimes)<sup>85</sup> authorizes the forfeiture of assets “used in any manner to facilitate or participate in the commission of any human trafficking offense in violation of” Okla. Stat. Ann. tit.21, § 748 (Human trafficking) or § 1029 (Engaging in prostitution, etc.). Additionally, Okla. Stat. Ann. tit. 21, § 1738(B)(10)–(12) states,

B. In addition to the property described in subsection A of this section, the following property is also subject to forfeiture pursuant to this section: . . .

10. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used or intended to be used, in any manner or part, to commit a violation of paragraph 1 of subsection A of Section 1021 [Indecent exposure—Indecent exhibitions—Obscene material or child pornography—Solicitation of minors] of this title, where the victim of the crime is a minor child, . . . Section 1021.2 [Minors—Procuring for participation in pornography] of this title, . . . ;

11. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used in any manner or part, to commit any violation of the provisions set forth in Section 748 [Human trafficking] of this title; and

12. Any and all property used in any manner or part to facilitate, participate or further the commission of a human trafficking offense in violation of Section 748 of this title, and all property, including monies, real estate, or any other tangible assets or property of or derived from or used by a prostitute, pimp or panderer in any manner or part to facilitate, participate or further the commission of any prostitution offense in violation of Sections 1028 [Setting up or operating place of prostitution], 1029 [Engaging in prostitution, etc.] or 1030 [Definitions] of this title; provided, however, any monies, real estate or any other tangible asset or property of a customer or anyone merely procuring the services of a prostitute shall not be included.

Okla. Stat. Ann. tit. 22, § 1405(A) (Criminal forfeiture procedures) states that a person convicted of racketeering under Okla. Stat. Ann. tit. 22, § 1403 (Participation in pattern of racketeering activity or collection of unlawful debt prohibited) must “forfeit to the state . . . any real or personal property used in the course of, intended for use in the course of, derived from, or realized through” the course of the illegal conduct. Also, facilitators who violate Okla. Stat. Ann. tit. 22, § 1403 may be ordered to pay a civil penalty not to exceed \$100,000. Okla. Stat. Ann. tit.22, § 1409(A), (B).

Additionally, Okla. Stat. Ann. tit. 21, § 1040.54(A) (Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography) authorizes asset forfeiture for “any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of. . . child pornography, as defined in subsection A of Section 1024.1 [Definitions] of this title.”

Facilitators may also be subject to additional civil penalties pursuant to Okla. Stat. Ann. tit. 21, § 748.2(B) (Guidelines for treatment of human trafficking victims—Right to civil action).

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

Oklahoma has no law specifically addressing sex tourism.

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<sup>85</sup> See *supra* note 36.



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

4.4 *Promoting and selling child pornography is illegal.*

Oklahoma prohibits the sale of child pornography. Okla. Stat. Ann. tit. 21, § 1021.2(A) (Minors—Procuring for participation in pornography) makes it a crime for a person to knowingly sell or distribute child pornography of a minor under the age of 18.<sup>86</sup> A conviction under this statute is punishable by imprisonment up to 20 years, a fine not to exceed \$25,000, or both. Okla. Stat. Ann. tit. 21, § 1021.2(A). Additionally, “Persons convicted under this section shall not be eligible for a deferred sentence.” Okla. Stat. Ann. tit. 21, § 1021.2(A).

Additionally, a facilitator who advertises child pornography may be convicted under Okla. Stat. Ann. tit. 21, § 1040.8(A) (Publication, distribution or participation in preparation of obscene material or child pornography—Unsolicited mailings), which states in part,

No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography . . . .

A conviction under this statute that involves child pornography is punishable as a felony by imprisonment up to 20 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit. 21, § 1040.8(C). In addition, a person that “possesses one hundred (100) or more separate materials depicting child pornography shall be, upon conviction, guilty of aggravated possession of child pornography,” in violation of Okla. Stat. Ann. tit. 21, § 1040.12a(A) (Aggravated possession of child pornography—Penalties—Definitions). A conviction under Okla. Stat. Ann. tit. 21, § 1040.12a(A) is punishable as a felony by imprisonment up to life and a fine not to exceed \$10,000. Okla. Stat. Ann. tit. 21, § 1040.12a(A).

Lastly, Okla. Stat. Ann. tit. 21, § 1040.13 (Acts prohibited—Felony) specifically prohibits the commercial distribution of child pornography. Okla. Stat. Ann. tit. 21, § 1040.13 states,

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this state for sale or commercial distribution, or in this state prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any obscene material or child pornography or gives information stating when, where, how, or from whom, or by what means obscene material or child pornography can be purchased or obtained, upon conviction, is guilty of a felony . . . .

A conviction under this statute is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Okla. Stat. Ann. tit.21, § 1040.13.

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<sup>86</sup> See *supra* note 10.

**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.*

Pursuant to the Oklahoma Crime Victims Compensation Act,<sup>87</sup> Okla. Stat. Ann. tit. 21, § 142.3(14) (Definitions) defines "victim" as "a person who suffers personal injury or death as a result of criminally injurious conduct<sup>88</sup> and shall include a resident of this state who is injured or killed by an act of terrorism committed outside of the United States." With respect to restitution, Okla. Stat. Ann. tit. 22, § 991f(A)(2) (Restitution) defines "victim" as "any person, partnership, corporation or legal entity that suffers an economic loss<sup>89</sup> as a direct result of the criminal act of another person," and, for purposes of the Oklahoma Victim's Rights Act,<sup>90</sup> Okla. Stat. Ann. tit. 21, § 142A-1(1) (Definitions) defines a "victim" as,

[A]ny person against whom a crime was committed, except homicide, in which case the victim may be a surviving family member including a stepbrother, stepsister or stepparent, or the estate when there are

<sup>87</sup> Okla. Stat. Ann. tit. 21, §§ 142.2–142.20.

<sup>88</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 142.3(5)(a),

5. a. "Criminally injurious conduct" means a misdemeanor or felony which occurs or is attempted in this state, or against a resident of this state in a state that does not have an eligible crime victims compensation program as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, that results in bodily injury, threat of bodily injury or death to a victim which:

(1) may be punishable by fine, imprisonment or death, or

(2) if the act is committed by a child, could result in such child being adjudicated a delinquent child.

<sup>89</sup> See *supra* note 34.

<sup>90</sup> Okla. Stat. Ann. tit. 21, §§ 142A–B.

no surviving family members other than the defendant, and who, as a direct result of the crime, suffers injury,<sup>91</sup> loss of earnings,<sup>92</sup> out-of-pocket expenses,<sup>93</sup> or loss or damage to property, and who is entitled to restitution from an offender pursuant to an order of restitution imposed by a sentencing court under the laws of this state.

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.*

Okla. Stat. Ann. tit. 21, § 748 (Human trafficking), § 1029 (Engaging in prostitution, etc.), § 1087 (Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment), and § 1088 (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment) do not expressly prohibit a defendant from asserting the defense that a minor consented to the commercial sex act. This defense is prohibited, however, in child pornography cases. Okla. Stat. Ann. tit. 21, § 1021.2(B) (Minors—Procuring for participation in pornography) states, “The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.” Similarly, Okla. Stat. Ann. tit. 21, § 1021.3(B) (Guardians—Parents—Custodians—Consent to participation of minors in child pornography) provides, “The consent of the minor to the activity prohibited by this section shall not constitute a defense.”

- 5.2.1 Recommendation: Amend Okla. Stat. Ann. tit. 21, § 748 (Human trafficking), § 1029 (Engaging in prostitution, etc.), § 1087 (Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment), and § 1088 (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment) to expressly provide that the consent of a minor to a commercial sex act is not a defense to the crime.

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

Okla. Stat. Ann. tit. 21, § 1029(A)(1) (Engaging in prostitution, etc.) is age-neutral and simply states that “[i]t shall [] be unlawful . . . [t]o engage in prostitution, lewdness, or assignation.” Pursuant to Okla. Stat. Ann. tit. 21, § 748(D) (Human trafficking), however, “It is an affirmative defense to prosecution for a criminal offense that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking.”

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<sup>91</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 142A-1(2),

“Injury” means any physical, mental, or emotional harm caused by the conduct of an offender and includes the expenses incurred for medical, psychiatric, psychological, or generally accepted remedial treatment of the actual bodily or mental harm, including pregnancy and death, directly resulting from a crime and aggravation of existing physical injuries, if additional losses can be attributed to the direct result of the crime.

<sup>92</sup> Under Okla. Stat. Ann. tit. 21, § 142A-1(3),

“Loss of earnings” means the deprivation of earned income or of the ability to earn previous levels of income as a direct result of a crime and the loss of the cash equivalent of social security, railroad retirement, pension plan, retirement plan, disability, veteran’s retirement, court-ordered child support or court-ordered spousal support, where the payment is the primary source of the victim’s income, and where the victim is deprived of the money as a direct result of the crime.

<sup>93</sup> Pursuant to Okla. Stat. Ann. tit. 21, § 142A-1(5),

“Out-of-pocket loss” means the unreimbursed and nonreimbursable expenses or indebtedness incurred for medical care, nonmedical care, or other services necessary for the treatment of the actual bodily or mental harm, including pregnancy and funeral expenses, directly resulting from the crime and aggravation of existing physical injuries, if additional losses can be attributed directly to the crime; the unreimbursed and nonreimbursable expenses for damage to real and personal property as a direct result of the crime, and unreimbursed and nonreimbursable economic losses incurred as a consequence of participation in prosecution and proceedings related to the crime.

5.3.1 Recommendation: Amend Okla. Stat. Ann. tit. 21, § 1029(A)(1) (Engaging in prostitution, etc.) to make the law inapplicable to minors under the age of 18.

5.4 *Commercially sexually exploited children are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*

Okla. Stat. Ann. tit. 21, § 748.2(A)(1)–(3) (Guidelines for treatment of human trafficking victims—Right to civil action) routes victims of trafficking into shelters and requires that commercially sexually exploited children be treated as victims rather than criminals. Specifically, Okla. Stat. Ann. tit. 21, § 748.2(A)(1)–(3) provides,

A. Human trafficking victims shall:

1. Be housed in an appropriate shelter as soon as practicable;
2. Not be detained in facilities inappropriate to their status as crime victims;
3. Not be jailed, fined, or otherwise penalized due to having been trafficked.

Okla. Stat. Ann. tit. 10A, § 1-2-101(B)(1) (Establishment of statewide centralized hotline for reporting child abuse or neglect—Hotline requirements—Reporting abuse or neglect—Retaliation by employer—Violations) provides, “Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter promptly to the Department of Human Services.” Okla. Stat. Ann. tit. 10A, § 1-2-102 (A)(1),(2) (Department of Human Services—Required actions for reports of child abuse) requires the Department of Human Services to “conduct a safety analysis” upon receipt of a report of child abuse and refer the case to law enforcement if it determines that,

- a. the alleged perpetrator is someone other than a person responsible for the child’s health, safety, or welfare, and
- b. the alleged abuse or neglect of the child does not appear to be attributable to failure on the part of a person responsible for the child’s health, safety, or welfare to provide protection for the child. . . .

Okla. Stat. Ann. tit. 10A, § 1-4-201(A)(1) (Circumstances authorizing taking a child into custody—Joint response by Department of Human Services, law enforcement, and district courts—Safety evaluation) authorizes a law enforcement officer to take a child into custody without a court order and before the filing of a petition if the officer “has reasonable suspicion that:”

- a. the child is in need of immediate protection due to an imminent safety threat, or
- b. the circumstances or surroundings of the child are such that continuation in the child’s home or in the care or custody of the parent, legal guardian, or custodian would present an imminent safety threat to the child.

Additionally, Okla. Stat. Ann. tit. 10A, § 1-4-201(B)(1) states, “By January 1, 2010, the [Department of Human Services] in consultation with law enforcement and the district courts shall develop and implement a system for joint response when a child is taken into protective custody by a peace officer pursuant to [Okla. Stat. Ann. tit. 10A, § 1-4-201(A)(1)].”

Under Okla. Stat. Ann. tit. 10A, § 1-4-201(A)(2), a child may also be taken into custody pursuant to a court order but before a petition is filed if the court determines, based on an application for the district attorney’s office “that a continuation of the child in the home or with the caretaker of the child is contrary to the child’s welfare and there is reasonable suspicion that:”

- a. the child is in need of immediate protection due to an imminent safety threat, or
- b. the circumstances or surroundings of the child are such that continuation in the child’s home or in the care or custody of the parent, legal guardian, or custodian would present an imminent safety threat to the child. . . .

After taking a child into custody under Okla. Stat. Ann. tit.10A, § 1-4-201, Okla. Stat. Ann. tit. 10A, § 1-4-202(A)(1) (Written notification of emergency custody hearing) (First version)<sup>94</sup> states, “The peace officer or an employee of the court shall provide the parent, legal guardian, or custodian of a child immediate written notice of the protective or emergency custody of the child whenever possible.” This notice must state “that the child has been removed from the home,” and “that an emergency custody hearing to determine custody of the child will occur with two (2) judicial days from the date the child was removed from the home.” Okla. Stat. Ann. tit. 10A, § 1-4-202(A)(2). During the emergency custody hearing, the court will, among other things, “release the child to the child’s parents, legal guardian or custodian or other responsible adult,” or “continue the child in or place the child into emergency custody if continuation of the child in the child’s home is contrary to the health, safety or welfare of the child.” Okla. Stat. Ann. tit.10A, § 1-4-202(B)(3)(a)(1),(2). Okla. Stat. Ann. tit. 10A, § 1-4-202(G) requires, generally, that a petition alleging a child to be a deprived child<sup>95</sup> be filed within 5 “judicial days from the date of assumption of custody” or “the emergency custody order will expire.” Upon the district attorney’s request, the time for filing a petition may be extended up to 15 days if compelling reasons for the extension exist. Okla. Stat. Ann. tit. 10A, § 1-4-202(G)(1).

Okla. Stat. Ann. tit. 10A, § 1-4-201(G) prohibits a child taken into custody under Okla. Stat. Ann. tit. 10A, § 1-4-201 from being “confined in any jail, adult lockup, or adult or juvenile detention facility.” Okla. Stat. Ann. tit. 10A, § 1-4-204(A)(1) (Placement preferences) explains that in “determining the placement of a child, a preference shall be given to relatives and persons who have a kinship relationship with the child.”

If a petition alleging a child is deprived is filed in accordance with Okla. Stat. Ann. tit. 10A, § 1-4-301 (Petitions) and the court enters an order adjudicating the child to be a deprived child under Okla. Stat. Ann. tit.10A, § 1-4-603 (Order of adjudication finding child to be deprived), Okla. Stat. Ann. tit. 10A, § 1-4-704(A) (Individualized service plan) states, “The Department of Human Services or licensed child-placing agency shall prepare and maintain a written individualized service plan for any child that has been adjudicated to be a deprived child.” After a child is adjudicated deprived, the court shall hold a dispositional hearing within 40 days, unless good cause is shown for a delay. Okla. Stat. Ann. tit. 10A, § 1-4-706(A)(1). Pursuant to Okla. Stat. Ann. tit. 10A, § 1-4-707(A) (Dispositional orders—Determinations), the court may order, among other things, that the deprived child be placed with a parent, legal guardian or relative under supervision of the department, be placed in the “custody of a private institution or agency,” or placed in the custody of the Department of Human Services. Additionally, the court may “dismiss the petition and terminate its jurisdiction at any time for good cause shown when doing so is in the best interests of the child.” Okla. Stat. Ann. tit. 10A, § 1-4-707(A)(8).

Despite these protections and the provisions of Okla. Stat. Ann. tit. 21, § 748.2(A)(1)–(3), it is still possible that some commercially sexually exploited children may be detained under the provisions of the Oklahoma Juvenile Code.

Pursuant to Okla. Stat. Ann. tit. 10A, § 2-1-103(8) (Definitions), “child or juvenile in need of supervision” includes runaway and habitually truant children, as well as those who have “repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian” or have “been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act.” Pursuant to Okla. Stat. Ann. tit. 10A, § 2-1-103(13), a “delinquent child or juvenile” includes a child who “has violated any federal or

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<sup>94</sup> Two different versions of Okla. Stat. Ann. tit. 10A, § 1-4-202 are currently in effect. The first version was amended by 2009 Okla. Sess. Laws 160, § 1, and the second version was amended by 2009 Okla. Sess. Laws 233, § 19. Because the substantive provisions of the second version are included in the first version, the first version is the only version discussed in this report. This report also recommends that the second version (2009 Okla. Sess. Laws 233, § 19) be repealed, and any additional recommendations solely be applied to the first version (2009 Okla. Sess. Laws 160, § 1).

<sup>95</sup> Pursuant to Okla. Stat. Ann. tit. 10A, § 1-1-105(20)(a)–(c), “deprived child” is defined in part as “a child: a. who is for any reason destitute, homeless, or abandoned, b. who does not have the proper parental care or guardianship, c. who has been abused, neglected, or is dependent.”



state law or municipal ordinance . . . .”

Okla. Stat. Ann. tit. 10A, § 2-2-101(A)(1)(Taking of child into custody—Detention—Medical treatment—Behavioral health treatment—Hearing on order for medical treatment) authorizes law enforcement to take a child into custody without a court order and before the filing of a petition when the officer would be able to arrest an adult without a warrant, a child has run away from the child’s home, or “the surroundings of the child are such as to endanger the welfare of the child.” Under Okla. Stat. Ann. tit.10A, § 2-2-101(B), a child taken into custody under Okla. Stat. Ann. tit. 10A, § 2-2-101(A)“shall be detained, held temporarily in the custodial care of a peace officer or other person employed by a police department, or be released to the custody of the parent of the child, . . . or other responsible adult. . . .” If the child is not released, Okla. Stat. Ann. tit. 10A, § 2-2-101(B) states, “[T]he child shall be taken immediately before a judge of the district court in the county in which the child is sought to be detained, or to the place of detention or shelter designated by the court.” A child may be held 2 judicial days prior to a detention hearing. Okla. Stat. Ann. tit. 10A, § 2-2-291(B). At the hearing, the court will decide whether to continue to detain the child or release the child to the child’s “parent, legal guardian, legal custodian, or other responsible adult or to any other person appointed by the court.” Okla. Stat. Ann. tit.10A, § 2-2-101(B).

Okla. Stat. Ann. tit. 10A, § 2-2-104(A) (Preliminary inquiry—Petition) states that “[a]preliminary inquiry shall be conducted to determine whether the interests of the public or of the child who is within the purview of the Oklahoma Juvenile Code require that further court action be taken.” If it is determined that no further action is necessary and the district attorney agrees, Okla. Stat. Ann. tit. 10A, § 2-2-104(A) allows the child to receive informal adjustment. If it is determined that further action is necessary, Okla. Stat. Ann. tit. 10A, § 2-2-106(A) (Petition—Subsequent pleadings—Amended petitions) states, “If a child has been taken into custody pursuant to the provisions of the Oklahoma Juvenile Code before a petition has been filed, a petition [alleging the child to be a child in need of supervision or a delinquent child] shall be filed and summons issued within five (5) judicial days from the date of such assumption of custody. . . .”

The court will then hold an adjudicative hearing in accordance with Okla. Stat. Ann. tit.10A, § 2-2-402 (Conduct of adjudicative hearings) to determine whether the allegations in the petition are true.<sup>96</sup>Okla. Stat. Ann. tit. 10A, § 2-2-402(D) explains,

If the court finds that the allegations of a petition alleging a child to be delinquent or in need of supervision are supported by the evidence, the court shall sustain the petition, and shall make an order of adjudication setting forth whether the child is delinquent or in need of supervision and shall adjudge the child as a ward of the court.

Pursuant to Okla. Stat. Ann. tit. 10A, § 2-2-404(A) (Deferral of delinquency proceedings)a “court may defer delinquency adjudication proceedings or proceedings to determine if a child is in need of supervision for one hundred eighty (180) days if the child,” allegedly committed a misdemeanor or grand larceny, the child waives 5th Amendment privilege and testifies that the allegations are true, and the child has no prior adjudications of delinquency. During the 180 day deferral period, the court may require the child to participate in, among other things, an alternative diversion program<sup>97</sup> or any other court approved program. Okla. Stat. Ann. tit.10A, § 2-2-

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<sup>96</sup> Pursuant to Okla. Stat. Ann. tit. 10A, § 2-2-401 (Trial by jury),

In adjudicatory hearings to determine if a child is delinquent or in need of supervision, any person entitled to service of summons or the state shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge on the judge’s own motion may call a jury to try any such case. Such jury shall consist of six persons.

<sup>97</sup> Okla. Stat. Ann. tit. 10A, § 2-2-404(D) states,

As used in this section, “alternative diversion program” means a program for juveniles who have been identified by law enforcement personnel, the district attorney, or the court as having committed acts which are not serious enough to warrant adjudication through the juvenile court process, but which do indicate a need for intervention to prevent further

404(B). “The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the requirements of the court have been successfully completed.” Okla. Stat. Ann. tit.10A, § 2-2-404(C).

If the court enters an order adjudicating a child as a delinquent child or a child in need of supervision, the court will hold a dispositional hearing and pursuant to Okla. Stat. Ann. tit. 10A, § 2-2-503(A) (Disposition orders—Revocation, modification and redispotion) and may order, among other things, the child placed “on probation with or without supervision” in the child’s home or that of a suitable person, with a parent or legal guardian, in a private institution or agency, “commit the child to the custody of the Office of Juvenile Affairs,” or may dismiss the action. Pursuant to Okla. Stat. Ann. tit. 10A, § 2-2-503(A)(7)(f),

7. With respect to a child adjudicated a delinquent child, the court may:

....

f. sanction detention in the residence of the child or facility designated by the Department of Juvenile Justice or the juvenile bureau for such purpose for up to five (5) days, order weekend detention in a place other than a juvenile detention facility or shelter, tracking, or house arrest with electronic monitoring.

Okla. Stat. Ann. tit. 10A, § 2-2-503(D) expressly provides, “No child who has been adjudicated in need of supervision may be placed in a secure facility.” Additionally, Okla. Stat. Ann. tit. 10A, § 2-3-101(A),(B) (Conditions of detention of child—Detention or confinement in adult facility)states,

A. When a child is taken into custody pursuant to the provisions of the Oklahoma Juvenile Code, the child shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public.

....

2. No child alleged or adjudicated to be deprived or in need of supervision . . . shall be confined in any jail, adult lockup, or adult detention facility. . . .

3. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, a child in need of supervision, or who appears to be a minor in need of treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care. . . . When a child is taken into custody as a child in need of supervision as a result of being a runaway, the court may order the child placed in a juvenile detention facility pending court proceedings if it finds the detention to be essential for the safety of the child.

B. No child shall be placed in secure detention unless:

1. The child is an escapee from any delinquent placement;
2. The child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction;
3. The child is seriously assaultive or destructive towards others or self;

....

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

Oklahoma’s definition of “abuse” expressly includes the sexual exploitation of a child. Okla. Stat. Ann. tit. 10A, § 1-1-105(2) (Definitions) states,

2. “Abuse” means harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child’s health, safety, or welfare, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation. . . .

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development toward juvenile delinquency. The program shall be administered, pursuant to contract with the Office of Juvenile Affairs, by organizations designated as youth services agencies by law.

- a. “Harm or threatened harm to the health or safety of a child” means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including but not limited to sexual abuse, sexual exploitation, neglect, or dependency.
- b. “Sexual abuse” includes but is not limited to rape, incest, and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the health, safety, or welfare of the child.
- c. “Sexual exploitation” includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the health, safety, or welfare of a child, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by a person responsible for the health, safety, and welfare of the child.

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.*

Although Oklahoma statutes do not provide a definition of “caregiver,” they do provide a definition of “custodian.” Pursuant to Okla. Stat. Ann. tit. 10A, § 1-1-105(16) (Definitions), “custodian” is defined as “an individual other than a parent, legal guardian or Indian custodian, to whom legal custody of the child has been awarded by the court. As used in this title, the term ‘custodian’ shall not mean the Oklahoma Department of Human Services.”

Okla. Stat. Ann. tit. 10A, § 1-1-105(50) defines “person responsible for a child’s health, safety, or welfare” to include “a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child’s parent cohabitates or any other adult residing in the home of the child . . . .” This definition should be broad enough to cover many situations in which a trafficker is in custody or control of a child.

- 5.6.1 Recommendation: Amend the definition of “person responsible for a child’s health, safety, or welfare” to include a person in control and possession of a sexually exploited child, so that a child under the control of a non-familial trafficker can come within the protective mandate of the Department of Human Services.

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

Commercially sexually exploited children may be eligible to receive compensation under the Oklahoma Crime Victims Compensation Act,<sup>98</sup> but certain ineligibility factors may prevent some victims from receiving compensation. Okla. Stat. Ann. tit. 21, § 142.5(A) (Powers of board relating to claims for compensation—Office and staff support) states, “The Crime Victims Compensation Board shall award compensation for economic loss<sup>99</sup> arising from criminally injurious conduct<sup>100</sup> if satisfied by a preponderance of the evidence that the requirements for compensation have been met.”

<sup>98</sup> See *supra* note 87. See also *supra* Section 5.1 for the definition of “victim.”

<sup>99</sup> Okla. Stat. Ann. tit. 21, § 142.3(9) (Definitions) defines “economic loss” as “monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include noneconomic loss.” Okla. Stat. Ann. tit. 21, § 142.3(10) defines “noneconomic detriment” as “pain, suffering, inconvenience, physical impairment and nonpecuniary damage.”

<sup>100</sup> Okla. Stat. Ann. tit. 21, § 142.3(5)(a) defines “criminally injurious conduct” as,

[A] misdemeanor or felony which occurs or is attempted in this state, or against a resident of this state in a state that does not have an eligible crime victims compensation program as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, that results in bodily injury, threat of bodily injury or death to a victim which:

- (1) may be punishable by fine, imprisonment or death, or
- (2) if the act is committed by a child, could result in such child being adjudicated a delinquent child.

Okla. Stat. Ann. tit. 21, § 142.10(A)(1) (Award of compensation—Criteria—Amount—Denial, withdrawal or reduction—Reconsideration) prohibits the Crime Victims Compensation Board (“Board”) from awarding compensation unless a claim is filed within 1 year of the date of the injury occurred, unless “good cause” exists for the failure to file, in which case the Board may extend the deadline to 2 years from the date of the injury. The Board may only extend the deadline beyond 2 years in child assault cases. Okla. Stat. Ann. tit.21, § 142.10(A)(1). Additionally, if “the victim . . . is a child under eighteen (18) years of age, the Board may use the date the criminal incident was disclosed to a responsible adult, when establishing whether or not the claim was timely filed.” Okla. Stat. Ann. tit. 21, § 142.10(A)(1). Pursuant to Okla. Stat. Ann. tit. 21, § 142.10(A)(4), victim compensation is prohibited if the criminally injurious conduct was not reported to law enforcement within 72 hours of the crime’s occurrence, unless “the Board finds there was good cause for the failure to report within that time.”

Additionally, an award of compensation may be reduced based on the “degree of responsibility for the cause of the injury or death attributable to the victim as determined by the Board.” Okla. Stat. Ann. tit.21, § 142.10(B)(2). Lastly, if the Board determines that “the claimant or victim has not fully cooperated with appropriate law enforcement agencies, [it] may deny, withdraw or reduce an award of compensation.” Okla. Stat. Ann. tit.21, § 142.10(C).

- 5.7.1 Recommendation: Amend the Crime Victims Compensation Act to create exceptions from the listed criteria that do not contain a good cause exception for commercially sexually exploited children.

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

Human trafficking victims are expressly provided certain victim-friendly criminal justice procedures and protections under Okla. Stat. Ann. tit.21, § 748.2(A) (Guidelines for treatment of human trafficking victims—Right to civil action). Okla. Stat. Ann. tit. 21, § 748.2(A) states,

### A. Human trafficking victims shall:

1. Be housed in an appropriate shelter as soon as practicable;
2. Not be detained in facilities inappropriate to their status as crime victims;
3. Not be jailed, fined, or otherwise penalized due to having been trafficked;
4. Receive prompt medical care, mental health care, food, and other assistance, as necessary;
5. Have access to legal assistance, information about their rights, and translation services, as necessary; and
6. Be provided protection if the safety of the victim is at risk or if there is a danger of additional harm by recapture of the victim by a trafficker, including:
  - a. taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals, and
  - b. ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

Additionally, Okla. Stat. Ann. tit. 21, § 748.2(C) authorizes the Attorney General “to establish an emergency hotline number for victims of human trafficking to call in order to request assistance or rescue.”

Protections available to other crime victims may also be available to some domestic minor sex trafficking victims. For example, commercially sexually exploited children who are involved in a criminal case “filed pursuant to the Oklahoma Child Abuse Reporting and Prevention Act” or who are the “alleged subject of child abuse or neglect” may be appointed a guardian ad litem under Okla. Stat. Ann. tit.21, § 843.7(A)(1),(B) (Appointment of representatives for child). Additionally, pursuant to Okla. Stat. Ann. tit. 12, § 2412(A), (B) (Sexual offense against another person—Evidence of other sexual behavior inadmissible—Exceptions),

domestic minor sex trafficking victims whose offenders are charged with a sexual offense receive protections in criminal prosecutions under Oklahoma’s rape shield law. Okla. Stat. Ann. tit. 12, § 2412(A), (B) prohibits the admission of “[e]vidence of reputation or opinion regarding other sexual behavior of a victim or the sexual offense alleged” and “[e]vidence of specific instances of [the victim’s] sexual behavior” unless it is being offered to prove something other than consent, including “the source of semen, pregnancy, disease or injury,” “[f]alse allegations of sexual offenses,” or “[s]imilar sexual acts in the presence of the accused with persons other than the accused which occurs at the time of the event giving rise to the sexual offense alleged.”

Additionally, all crime victims<sup>101</sup> receive certain protections under the Oklahoma Victim’s Rights Act.<sup>102</sup> Specifically, Okla. Stat. Ann. tit. 21, § 142A-2(A) (Victims and witnesses rights) provides,

A. The district attorney’s office shall inform the victims and witnesses of crimes of the following rights:

- . . .
- 2. To receive protection from harm and threats of harm arising out of the cooperation of the person with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available and how to access protection;
- 3. To be informed of financial assistance and other social services available as a result of being a witness or a victim, including information on how to apply for the assistance and services;
- . . .
- 5. To be informed of the procedure to be followed in order to apply for and receive any restitution to which the victim is entitled;
- 6. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;
- . . . .

Additionally, Okla. Stat. Ann. tit. 21, § 142A-2(D) provides that in a felony case involving “a violent crime or a sex offense, the district attorney’s office shall inform the victim, as soon as practicable, . . . of the progress of pretrial proceedings which could substantially delay the prosecution of the case.” Under Okla. Stat. Ann. tit. 21, § 142A-3(C) (Informing victim of rights), a rape victim “has the right to be informed by the officer who interviews the victim . . . of the twenty-four-hour statewide telephone communication service established by the Office of the Attorney General for victims of sexual assault . . . .”

Crime victims also have the right to receive some assistance in seeking restitution. Pursuant to Okla. Stat. Ann. tit. 21, § 142A-5 (Restitution form),

The district attorney’s office shall provide all victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. . . .

Okla. Stat. Ann. tit. 21, § 142A-9 (Disclosure of personal information of victim or witness may be prohibited) also allows the court, upon request by the victim or district attorney, to keep the “address, telephone number, place of employment, or other personal information of the victim” confidential.

Okla. Stat. Ann. tit. 21, §1024.4 (Destruction of obscene material or child pornography upon conviction) may serve to further protect the child pornography victim as it authorizes the destruction of child pornography upon the conviction of the offender.

<sup>101</sup> See *supra* Section 5.1 for the definition of “victim.”

<sup>102</sup> See *supra* note 90.



Lastly, Oklahoma’s constitution further emphasizes crime victims’ rights. Okla. Const. art. II, § 34(A) (Rights of victims) states,

To preserve and protect the rights of victims to justice and due process, and ensure that victims are treated with fairness, respect and dignity, and are free from intimidation, harassment, or abuse, throughout the criminal justice process, any victim or family member of a victim of a crime has the right to know the status of the investigation and prosecution of the criminal case, including all proceedings wherein a disposition of a case is likely to occur, and where plea negotiations may occur. The victim or family member of a victim of a crime has the right to know the location of the defendant following an arrest, during a prosecution of the criminal case, during a sentence to probation or confinement, and when there is any release or escape of the defendant from confinement. The victim or family member of a victim of a crime has a right to be present at any proceeding where the defendant has a right to be present, to be heard at any sentencing or parole hearing, to be awarded restitution by the convicted person for damages or losses as determined and ordered by the court, and to be informed by the state of the constitutional rights of the victim.

5.8.1 Recommendation: Amend the sex offense shield law to expressly apply to minor victims of sex trafficking or prostitution.

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.*

For purposes of the Oklahoma Juvenile Code, Okla. Stat. Ann. tit.10A, § 2-6-102(A)(1) (Confidential juvenile records) states that juvenile court records are “confidential and shall not be open to the general public, inspected, or their contents disclosed,” subject to exceptions specified in Okla. Stat. Ann. tit.10A, § 2-6-102 (C), which states,

C. The confidentiality requirements of subsection A of [Okla. Stat. Ann. tit.10A, § 2-6-102] for juvenile court records and law enforcement records shall not apply:

...

4. To a juvenile who is fourteen (14) years of age or older and who has been adjudicated delinquent and who subsequently comes before the juvenile court on a new delinquency matter after July 1, 1995;

...

8. Whenever a juvenile is accepted for placement or treatment in a facility or private treatment facility within this state as a result of or following a conviction or adjudication for an out-of-state offense that would qualify the juvenile as a youthful offender,<sup>103</sup> as defined in Section 2-5-202 [Definitions—Purpose] of this title, had the crime occurred within this state...

<sup>103</sup> Pursuant to Okla. Stat. Ann. tit. 10A, § 2-5-202(A)(1) (Definitions—Purpose),

1. “Youthful offender” means a person:

a. thirteen (13) or fourteen (14) years of age who is charged with murder in the first degree and certified as a youthful offender as provided by Section 2-5-205 [Certification as youthful offender or juvenile] of this title,

b. fifteen (15), sixteen (16), or seventeen (17) years of age and charged with a crime listed in subsection A of Section 2-5-206 [Certain acts mandating youthful offender status—Filing of delinquency petition or youthful offender information—Warrant, certification process—Guidelines] of this title, and

c. sixteen (16) or seventeen (17) years of age and charged with a crime listed in subsection B of Section 2-5-206 of this title,

if the offense was committed on or after January 1, 1998.

Okla. Stat. Ann. tit.10A, § 2-6-102(D) further provides,

Following the first adjudication as a delinquent, the court having jurisdiction shall note on the juvenile court record of the person that any subsequent juvenile court records shall not be confidential; provided, the child is at least fourteen (14) years of age or older. Any juvenile court record which becomes an open juvenile record as provided in this subsection may be expunged as provided in Section 7307-1.8 [Okla. Stat. Ann. tit.10A, § 2-6-109 (Expungement of open juvenile court record) (Okla. Stat. Ann. tit.10, § 7307-1.8 renumbered)] of this title.

The provisions of this subsection shall only apply to the juvenile court records and law enforcement records of juvenile offenders certified, charged or adjudicated on and after July 1, 1995.

Okla. Stat. Ann. tit.10A, § 2-6-109(Expungement of open juvenile court record) states,

A. A person who is the subject of a juvenile court record, that is not confidential as provided by law, may petition the district court in which the juvenile court record is located for an order to expunge all or any part of the record pertaining to the person, except basic identification information; provided:

1. The person has attained twenty-one (21) years of age or older;
2. The person has not been arrested for any adult criminal offense and no charge, indictment, or information has been filed or is pending against the person at the time of the petition for an expungement;
3. The person has not been subject to any deferred prosecution or deferred sentence, and has not been convicted of any criminal offense; and
4. All court costs, restitution, fines and other court-ordered requirements have been completed for all juvenile proceedings.

....

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order the records, or any part thereof except basic identification information, to be expunged. . . .

....

G. Nothing in this section shall be construed to authorize the physical destruction of any juvenile records.

....

J. Any record ordered to be expunged pursuant to this section shall be sealed and, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

....

M. A person who has attained eighteen (18) years of age or older may petition the district or municipal court in which the juvenile court record is located for an order to expunge all or any part of the record pertaining to matters involving truancy provided the person has met the criteria set forth in paragraphs 2 through 4 of subsection A of this section. The petition shall be reviewed by the district or municipal judge with primary responsibility over the juvenile court docket.

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

Okla. Stat. Ann. tit. 21, § 748(C) (Human trafficking) specifically authorizes restitution for human trafficking victims, stating that “[t]he court shall also order the defendant to pay restitution to the victim as provided in Section 991f [Restitution] of Title 22 [Criminal procedure] of the Oklahoma Statutes.” Commercially sexually exploited children whose offenders are convicted of other crimes that cause injury to the child may also be able to receive restitution under Okla. Stat. Ann. tit. 22, § 991f(C)(1) (Restitution).<sup>104</sup> Okla. Stat. Ann. tit. 22, § 991f(A)(1) defines “restitution” as “the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant.” Under Okla. Stat. Ann. tit. 22, § 991f(A)(2), a “victim” is “any person, partnership, corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person,” while Okla. Stat. Ann. tit. 22, § 991f(A)(3) limits “economic loss” to

actual financial detriment suffered by the victim consisting of medical expenses actually incurred, damage to or loss of real and personal property and any other out-of-pocket expenses, including loss of earnings, reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included as an economic loss for purposes of this section.

Additionally, under Okla. Stat. Ann. tit. 21, § 748.2(B) (Guidelines for treatment of human trafficking victims—Right to civil action states), civil remedies are available to minors victimized through sex trafficking. Okla. Stat. Ann. tit. 21, § 748.2(B) states,

Any person aggrieved by a violation of subsection B of Section 748 [Human trafficking] of this title may bring a civil action against the person or persons who committed the violation to recover actual and punitive damages and reasonable attorney fees. A criminal case or prosecution is not a necessary precedent to the civil action. The statute of limitations for the cause of action shall not commence until the latter of the victim’s emancipation from the defendant or the victim’s twenty-first birthday.

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.*

Okla. Stat. Ann. tit. 22, § 152 (Statute of limitations) sets forth the applicable statute of limitations for criminal prosecutions in Oklahoma. Crimes that do not have a statute of limitations specified, including Okla. Stat. Ann. tit. 21, § 748 (Human trafficking), § 1029 (Engaging in prostitution, etc.), § 1087 (Child under 18 years of age—Procuring for prostitution, lewdness or other indecent act—Punishment), and § 1088(A) (Child under 18 years of age—Inducing, keeping, detaining or restraining for prostitution—Punishment), are subject to a 3 year statute of limitations. Okla. Stat. Ann. tit. 22, § 152(H).

Pursuant to Okla. Stat. Ann. tit. 22, § 152(C), prosecutions under Okla. Stat. Ann. tit. 21, § 1021.2(A) (Minors—Procuring for participation in pornography), § 1021.3(A) (Guardians—Parents—Custodians—Consent to participation of minors in child pornography), § 1111 (Rape defined), § 1111.1 (Rape by instrumentation), § 1114 (Rape in first degree—Second degree), § 1123 (Lewd or indecent proposals or acts as to child under 16), § 843.5 (Child sexual abuse), or § 866 (Elements of offense (Trafficking in children)) “shall be commenced within twelve (12) years after the discovery of the crime.” Under Okla. Stat. Ann. tit. 22, § 152(C)(2)(a)–(c), however, prosecutions for any of these offenses may be commenced at any time under the following circumstances:

<sup>104</sup> See *supra* Section 2.8 for the substantive provisions of Okla. Stat. Ann. tit. 22, § 991f(C)(1).

- a. the victim notified law enforcement within twelve (12) years after the discovery<sup>105</sup> of the crime,
- b. physical evidence is collected and preserved that is capable of being tested to obtain a profile from deoxyribonucleic acid (DNA), and
- c. the identity of the offender is subsequently established through the use of a DNA profile using evidence listed in subparagraph b of this paragraph.

For a civil action brought under Okla. Stat. Ann. tit. 21, § 748.2(B) (Guidelines for treatment of human trafficking victims—Right to civil action) states, “The statute of limitations for the cause of action shall not commence until the latter of the victim’s emancipation from the defendant or the victim’s twenty-first birthday.” In civil actions based on damages for injury caused by criminal offenses, Okla. Stat. Ann. tit. 12, § 95(A)(7) (Limitation of other actions) provides,

An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of criminal actions, as defined by the Oklahoma Statutes, may be brought against any person incarcerated or under the supervision of a state, federal or local correctional facility on or after November 1, 2003:

- a. at any time during the incarceration of the offender for the offense on which the action is based, or
- b. within five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility, if the defendant was serving time for the offense on which the action is based.

Additionally, for civil actions based on damages resulting from childhood sexual abuse or exploitation, Okla. Stat. Ann. tit. 12, § 95(A)(6) states,

6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section 1-1-105 [Definitions] of Title 10A of the Oklahoma Statutes or incest can only be brought within the latter of the following periods:

- a. within two (2) years of the act alleged to have caused the injury or condition, or
- b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child reaches the age of eighteen (18) years or until five (5) years after the perpetrator is released from the custody of a state, federal or local correctional facility or jail, whichever is later. . . .

- 5.11.1 Recommendation: Eliminate statutes of limitations for Okla. Stat. Ann. tit. 21, § 748 (Human trafficking) and CSEC offenses.

<sup>105</sup> Okla. Stat. Ann. tit. 22, § 152(L) explains that, for purposes of Okla. Stat. Ann. tit. 22, § 152(C)(1), “‘discovery’ means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years of age is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.”

**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.*

Oklahoma does not mandate that law enforcement receive training on human trafficking or domestic minor sex trafficking. However, Okla. Stat. Ann. tit. 70, § 3311(A) (Council on law enforcement education and training)<sup>106</sup> establishes the Council on Law Enforcement Education and Training (“Council”) and grants it “the authority to exercise the rights, privileges and functions necessary to ensure the professional training and continuing education of law enforcement officers in the State of Oklahoma.” Okla. Stat. Ann. tit. 70, §3311(B)(2) specifically authorizes the Council to “[p]romulgate rules with respect to such matters as certification, revocation, . . . minimum courses of study, . . . minimum standards for basic and advanced in-service courses, and seminars for Oklahoma police and peace officers.”

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

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

Oklahoma permits single party consent to audiotaping. Okla. Stat. Ann. tit. 13, § 176.4(4),(5) (Acts not prohibited) states,

It is not unlawful pursuant to the Security of Communications Act for:

. . .

- 4. a person acting under color of law to intercept a wire, oral or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; or
- 5. a person not acting under color of law to intercept a wire, oral or electronic communication when such person is a party to the communication or when one of the parties to the communication has given prior consent to such interception unless the communication is intercepted for the purpose of committing any criminal act.

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

Oklahoma permits law enforcement to use wiretapping and resulting evidence when authorized by a court order, but does not provide for the issuance of a court order in the investigation of crimes related to domestic minor

<sup>106</sup> Two different versions of Okla. Stat. Ann. tit. 70, § 3311 are currently in effect. The first version was amended by 2011 Okla. Sess. Laws 10, § 1, and the second version was amended by 2011 Okla. Sess. Laws 233, § 1. Although the differences between these two current versions are not substantive, the second version does include additional requirements for police departments to receive state approval, and, therefore, is the only version referenced throughout this report.



sex trafficking. Okla. Stat. Ann. tit. 13, § 176.7 (Court order authorizing interception of communications) states,

The Attorney General, upon application by a district attorney, may make application to a judge of competent jurisdiction for, and such judge may grant in conformity with the Security of Communications Act, an order authorizing the interception of wire, oral or electronic communications by any law enforcement agency of this state or any political subdivision thereof having responsibility for the investigation of the offense as to which the application is made, when such interception may provide evidence of acts of biochemical terrorism, terrorism, terrorism hoax, and biochemical assault as defined in Section 1268.1[Definitions] of Title 21 of the Oklahoma Statutes, the commission of the offense of murder, the cultivation or manufacture or distribution of narcotic drugs or other controlled dangerous substances as defined in the Uniform Controlled Dangerous Substances Act, or trafficking in illegal drugs, as defined in the Trafficking in Illegal Drugs Act, and any conspiracy to commit the crimes specifically enumerated in this section.

Okla. Stat. Ann. tit. 13, § 176.8(E) (Disclosure of information) further provides,

When a law enforcement officer, while engaged in intercepting wire, oral or electronic communications in an authorized manner, intercepts wire, oral or electronic communications relating to offenses for which an order or authorization could have been secured or any offense listed in [Okla. Stat. Ann. tit. 57, § 571],<sup>107</sup> which is other than those specified in the order of authorization, the contents thereof and evidence derived therefrom may be disclosed or used as provided in this section. Such contents and any evidence derived therefrom may be used when authorized by a judge of competent jurisdiction when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of the Security of Communications Act. . . .

6.3.1 Recommendation: Amend Okla. Stat. Ann. tit. 13, § 176.7 (Court order authorizing interception of communications) to permit the issuance of an order authorizing wiretapping when the interception may provide evidence related to Okla. Stat. Ann. tit.21, § 748 (Human trafficking) or Oklahoma’s CSEC laws.

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.*

Okla. Stat. Ann. tit. 21, § 1123(E) (Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16—Sexual battery)(Second version)<sup>108</sup> states that “[t]he fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.”

Additionally, pursuant to Okla. Stat. Ann. tit. 21, § 1040.13a(C) (Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor), “[t]he fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.”

6.4.1 Recommendation: Explicitly permit the use of a decoy to investigate violations of Okla. Stat. Ann. tit.21, § 748 (Human trafficking) and Oklahoma’s CSEC laws.

<sup>107</sup> Okla. Stat. Ann. tit. 57, § 571 (Definitions) lists, in relevant part, child abuse, rape, or lewd or indecent proposition or lewd or indecent act with a child.

<sup>108</sup> See *supra* note 14.

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

Law enforcement may use the Internet to investigate buyers and traffickers under Okla. Stat. Ann. tit. 21, § 1040.13a(C) (Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor), which expressly provides that “[t]he fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.”

Additionally, Okla. Stat. Ann. tit. 74, § 151.1 (Internet crimes against children unit) states,

The Oklahoma State Bureau of Investigation shall establish an Internet Crimes Against Children (ICAC) unit for the primary purpose of investigating Internet crimes committed against children, including, but not limited to, offenses related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses. The unit shall additionally promote safe Internet use among children and their parents by various media or printed-material campaigns or by offering educational programs to schools or communities throughout this state. The Bureau shall employ sufficient employees to investigate and implement the ICAC unit.

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

Although Oklahoma has enacted some laws regarding the reporting of missing children, the reporting of rescued domestic minor sex trafficking victims is not mandated. Okla. Stat. Ann. tit. 63, § 1-323.1(A) (Notification system for identifying missing children) states,

A. The State Commissioner of Health shall establish a system for receiving notification from the Oklahoma State Bureau of Investigation that a person born in the State of Oklahoma and under eighteen (18) years of age has been reported missing, for identifying the birth certificate of such person, and for immediately notifying the Oklahoma State Bureau of Investigation whenever a request for a copy of the birth certificate of such person is made. . . .

Okla. Stat. Ann. tit. 10, § 1628 (Missing children 16 and under—Investigation of disappearance) states,

It is hereby made the duty of any sheriff, chief of police, city marshal, constable, or any other law enforcement officer, upon notification of a report of a missing child sixteen (16) years and under, to immediately initiate an investigation into the disappearance of said child.

Additionally, Okla. Stat. Ann. tit. 10A, § 1-8-106 (Applicability of the Oklahoma Minor Identification Act) provides,

If a child is reported to a law enforcement agency as a missing child, or a custodial parent, legal guardian or legal custodian of a child requests the issuance of a fingerprint card, the provisions of the Oklahoma Minor Identification Act shall apply. With the voluntary and informed consent of the parent, legal guardian, or legal custodian of the child, fingerprints obtained and maintained pursuant to the Oklahoma Minor Identification Act may be used by law enforcement officers.

- 6.6.1 Recommendation: Enact a law that mandates the reporting of information on rescued missing children.

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