

# PROTECTED INNOCENCE INITIATIVE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS SOUTH CAROLINA

### 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.*

South Carolina's human trafficking statute, S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services), does not provide a specific provision for the sex trafficking of minors and requires proof of some type of control in the trafficking of both minors and adults. The law states, "A person who knowingly subjects another person to forced labor or services, or recruits, entices, harbors, transports, provides, or obtains by any means another person knowing that the person will be subjected to forced labor or services, or aids, abets, attempts, or conspires to do any of the above acts is guilty of a felony . . . ." S.C. Code Ann. § 16-3-930(A). The statute defines "forced labor or services" as "any type of labor or services performed or provided by a person rendered through another person's exertion of physical, financial, or other means of control over the person providing the labor or services." S.C. Code Ann. § 16-3-930(B).

<sup>1</sup> Unless otherwise specified, all references to South Carolina statutes were taken from the South Carolina Code of Laws Annotated (LEXIS through legislation enacted in 2010 Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-54, approved 11/12/11).

- 1.1.1 Recommendation: Amend S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services) to eliminate the requirement to prove “forced labor or services” in the sex trafficking of minors under the age of 18.<sup>2</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.*

South Carolina has several statutes specifically criminalizing the commercial sexual exploitation of children. The following laws criminalize CSEC in South Carolina:

1. S.C. Code Ann. § 16-15-415 (Promoting prostitution of a minor defined). This statute states in subsection (A) that “[a]n individual commits the offense of promoting prostitution of a minor if he knowingly: (1) entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or (2) supervises, supports, advises, or promotes the prostitution of or by a minor.” S.C. Code Ann. § 16-15-415(A). This crime is a Class C felony. S.C. Code Ann. § 16-1-90(C). A conviction under this section is punishable by imprisonment for 3–20 years without eligibility for parole or suspended sentence for the first 3 years. S.C. Code Ann. §§ 16-15-415(C), 16-1-20(A)(3).
2. S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined). Under this statute, “An individual commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute,” which includes “(1) soliciting or requesting a minor to participate in prostitution; (2) paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or (3) paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement.” S.C. Code Ann. § 16-15-425(A). This crime is a Class F felony punishable by imprisonment for 2–5 years and the offender is not eligible for parole or suspended sentence for the first 2 years. S.C. Code Ann. §§ 16-15-425(C), 16-1-90(F), 16-1-20(A)(6).
3. S.C. Code Ann. § 16-15-395(A) (First degree sexual exploitation of a minor defined) states,
  - (A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:
    - (1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;
    - (2) permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;
    - (3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or
    - (4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

This crime is a Class C felony punishable by imprisonment for 3–20 years and the offender is not eligible for parole or suspended sentence for the first 3 years. S.C. Code Ann. §§ 16-15-395(D), 16-1-90(C), 16-1-20(A)(3).

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<sup>2</sup> Subsequent recommendations in this report referring to the state human trafficking law are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

4. S.C. Code Ann. § 16-3-820 (Producing, directing or promoting sexual performance by child). Under this statute, “It is unlawful for any person to produce, direct, or promote a performance that includes sexual conduct by a child younger than eighteen years of age.” These acts constitute third degree criminal sexual conduct, a Class E felony punishable by imprisonment up to 10 years. S.C. Code Ann. §§ 16-3-820(b), 16-3-654(2), 16-1-90(E), 16-1-20(A)(5).
5. S.C. Code Ann. § 16-15-387 (Employment of person under eighteen to appear in public in state of sexually explicit nudity). Pursuant to this statute, “It is unlawful for a person to employ a person under the age of eighteen years to appear in a state of sexually explicit nudity, as defined in Section 16-15-375(6),<sup>3</sup> in a public place.” S.C. Code Ann. § 16-15-387(A). This crime is a class E felony punishable by imprisonment up to 10 years, a fine up to \$5,000, or both. S.C. Code Ann. §§ 16-15-387(B), 16-1-90(E), 16-1-20(A)(5).
6. S.C. Code Ann. § 16-15-405(A) (Second degree sexual exploitation of a minor defined) states,
  - (A) An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:
    - (1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor engaged in sexual activity; or
    - (2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

This crime is a class E felony punishable by imprisonment for 2–10 years and the offender is not eligible for parole or suspended sentence for the first 2 years. S.C. Code Ann. §§ 16-15-405(D), 16-1-90(E), 16-1-20(A)(5).

7. S.C. Code Ann. § 16-3-810 (Engaging child for sexual performance). Under this statute, “It is unlawful for any person to employ, authorize, or induce a child younger than eighteen years of age to engage in a sexual performance.” S.C. Code Ann. § 16-3-810(a). This crime qualifies as second degree criminal sexual conduct, a Class C felony, and is punishable by imprisonment up to 20 years. S.C. Code Ann. §§ 16-3-810(b), 16-3-653(2), 16-1-90(C), 16-1-20(A)(3).

Other crimes against children that are not specifically targeted at commercial sexual exploitation but may be used in a case of domestic minor sex trafficking include the following:

8. S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor). This statute states in subsection (A), “A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5)<sup>4</sup> . . . or with the intent to perform a sexual activity in the

<sup>3</sup> S.C. Code Ann. § 16-15-375(6) defines “sexually explicit nudity” as “the showing of: (a) uncovered, or less than opaquely covered human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or (b) covered human male genitals in a discernibly turgid state.”

<sup>4</sup> Pursuant to S.C. Code Ann. § 16-15-375,

- (5) “Sexual activity” includes any of the following acts or simulations thereof:
  - (a) masturbation, whether done alone or with another human or animal;
  - (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;
  - (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;
  - (d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or

presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.” S.C. Code Ann. § 16-15-342(A). This crime is a Class E felony punishable by imprisonment for 10 years, a fine up to \$5,000, or both. S.C. Code Ann. §§ 16-15-342(E), 16-1-90(E), 16-1-20(A)(5).

9. S.C. Code Ann. § 16-15-140 (Committing or attempting lewd act upon child under sixteen) states in pertinent part that “[i]t is unlawful for a person over the age of fourteen years to willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child.” This crime is a Class D felony punishable by imprisonment up to 15 years, a fine “in the discretion of the court,” or both. S.C. Code Ann. §§ 16-15-140, 16-1-90(D), 16-1-20(A)(4).
10. Pursuant to S.C. Code Ann. § 16-15-335 (Permitting minor to engage in any act constituting violation of this article prohibited), a crime is committed when a person at least 18 years of age “knowingly hires, employs, uses, or permits a person under the age of eighteen years to do or assist in doing an act or thing constituting an offense pursuant to this article [Obscenity, material harmful to minors, child exploitation, and child prostitution] and involving any material, act, or thing he knows or reasonably should know to be obscene within the meaning of Section 16-15-305.” This crime is a Class E felony punishable by imprisonment up to 10 years. S.C. Code Ann. §§16-15-335, 16-1-90(E), 16-1-20(A)(5).

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

South Carolina’s CSEC statutes do not refer to S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services) to clarify that a minor involved in CSEC is a victim of human trafficking.

- 1.3.1 Recommendation: Amend S.C. Code Ann. § 16-15-415 (Promoting prostitution of a minor defined), § 16-15-425 (Participating in prostitution of a minor defined), and § 16-15-395(A) (First degree sexual exploitation of a minor defined) to refer to S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services) in order to clarify that the minor involved is a victim of human trafficking.

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female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person’s body, other than the male sexual organ, or of any object into another person’s anus or vagina, except when done as part of a recognized medical procedure.

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

**Legal Analysis:**

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

S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services) might apply to buyers of sex from victims of domestic minor sex trafficking through the term “obtain.” S.C. Code Ann. § 16-3-930(A) states that human trafficking occurs if the person “recruits, entices, harbors, transports, provides, or obtains by any means another person knowing that the person will be subjected to forced labor or services.” Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),<sup>5</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>6</sup> a person under 18 to engage in commercial sex.<sup>7</sup> It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in South Carolina’s human trafficking statute may be similarly applied, and could, therefore, implicate buyers under S.C. Code Ann. § 16-3-930(A). Even if applied, however, the placement of the word “obtain” in S.C. Code Ann. § 16-3-930(A) requires buyers to “know[] that the person will be subjected to forced labor or services.” This requirement makes it less likely that S.C. Code Ann. § 16-3-930(A) would be applicable against buyers.

- 2.1.1 **Recommendation:** Amend S.C. Code Ann. § 16-3-930 to remove the requirement to prove “forced labor or services” in the sex trafficking of a minor and to clarify that it applies buyers of commercial sex with minors.

<sup>5</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>6</sup> 18 U.S.C. § 1591(a).

<sup>7</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.plc.htm>.



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

S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined) specifically targets those who buy sex with minors under 18. The statute states that “[a]n individual commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute.” S.C. Code Ann. § 16-15-425(A). The statute defines “patronizing a minor prostitute” as “(1) soliciting or requesting a minor to participate in prostitution; (2) paying or agreeing to pay a minor, either directly or through the minor’s agent, to participate in prostitution; or (3) paying a minor, or the minor’s agent, for having participated in prostitution, pursuant to a prior agreement.” S.C. Code Ann. § 16-15-425(A). A minor is defined as a person under 18. S.C. Code Ann. § 16-15-375(3).

The statute does not refer to the human trafficking statute in order to emphasize that the minor involved is a victim of human trafficking.

- 2.2.1 Recommendation: Amend S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined) to add reference to S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services) to clarify that the minor involved is a victim of human trafficking.

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

South Carolina’s solicitation laws differentiate between buying sex with an adult and buying sex with a minor, with the crimes appearing in different code title sections. S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined) appears in Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution), whereas S.C. Code Ann. § 16-15-90 (Prostitution) falls within Chapter 15, Article 1, (Miscellaneous offenses). Buying sex with a minor is punishable as a Class F felony by imprisonment for 2–5 years, with the convicted offender ineligible for parole or a suspended sentence in the first two years. S.C. Code Ann. §§ 16-15-425(C), 16-1-90(F), 16-1-20(A)(6). In contrast the punishment for engaging in prostitution with an adult is punishable by a fine not to exceed \$200 or imprisonment up to 30 days for the first offense. S.C. Code Ann. § 16-15-110(1). For third and subsequent offenses, the crime is punishable by a fine not to exceed \$3,000, imprisonment for a minimum of one year, or both. S.C. Code Ann. § 16-15-110(3).

## 2.4 *Penalties for buyers of commercial sex with minors are as high as those for federal trafficking offenders of domestic minor sex trafficking.*

A conviction for buying sex with a minor under S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined) is punishable by imprisonment for 2–5 years without eligibility for parole for 2 years.

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>8</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under

<sup>8</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

other federal CSEC laws,<sup>9</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>10</sup>

2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*

No specific statute or sentencing enhancement exists for using the Internet to purchase sex with a minor. The criminal solicitation statute, S.C. Code Ann. § 16-15-342(A), may apply to Internet solicitation as it states in part that “[a] person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) . . . or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.” A conviction under this section is punishable as a Class E felony by imprisonment up to 10 years, a fine up to \$5,000, or both. S.C. Code Ann. §§ 16-15-342(E), 16-1-90(E), 16-1-20(A)(5).

2.5.1 Recommendation: Amend S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor) to specifically criminalize, with an enhanced penalty, the use of the Internet to lure, entice, or recruit a minor for purposes of commercial sexual exploitation.

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

S.C. Code Ann. § 16-15-425(B) (Participating in prostitution of a minor defined) precludes a mistake of age defense by stating, “Mistake of age is not a defense to a prosecution under this section.”

Likewise, S.C. Code Ann. § 16-15-405(C) (Second degree sexual exploitation of a minor defined) specifically states that “[m]istake of age is not a defense to a prosecution under this section.”

Finally, pursuant to S.C. Code Ann. § 16-3-830 (Reasonable belief as to majority of child as affirmative defense), “It is an affirmative defense to a prosecution under this article [Sexual performance by children] that the defendant, in good faith, reasonably believed that the person who engaged in the sexual conduct was eighteen years of age or older.”

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.*

S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor defined) provides the same penalty for buying sex with any minor, which is defined as any person under 18 years. S.C. Code Ann. § 16-15-375(3). A

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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>9</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>10</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).

conviction is punishable by imprisonment for 2–5 years, without the possibility of parole or suspended sentence for the first 2 years. S.C. Code Ann. §§ 16-15-425(C), 16-1-90(F), 16-1-20(A)(6).

S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor), which includes communicating with a person under 18 to “engage or participate in a sexual activity as defined in Section 16-15-375(5)<sup>11</sup> . . . or with the intent to perform a sexual activity in the presence of the person under the age of eighteen,” also carries the same penalty for offenders against all minors under 18. A violation is punishable by imprisonment for 10 years, a fine not to exceed \$5,000, or both. S.C. Code Ann. §§ 16-15-342(A), (E), 16-1-90(E), 16-1-20(A)(5).

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.*

Most crimes that buyers of commercial sex can be charged with do not have financial penalties. However, under S.C. Code Ann. § 16-15-342(E) (Criminal solicitation of a minor), which includes soliciting a minor for sexual purposes, a buyer can receive a fine not to exceed \$5,000. Also, S.C. Code Ann. § 16-15-140 (Committing or attempting lewd act upon child under sixteen) permits a fine “in the discretion of the court.”

In addition, the asset forfeiture law within Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution) allows for forfeiture for some crimes a buyer may commit. S.C. Code Ann. § 16-15-445(A) (Seizure and forfeiture of equipment used in committing violation) states,

All equipment used directly by a person in committing a violation of Sections 16-15-305 [Disseminating, procuring or promoting obscenity unlawful], 16-15-342[Criminal solicitation of a minor], 16-15-395 [First degree sexual exploitation of a minor defined], 16-15-405 [Second degree sexual exploitation of a minor defined], or 16-15-410 [Third degree sexual exploitation of a minor defined], including necessary software, may be seized by the law enforcement agency making the arrest and ordered forfeited by the court in which the conviction was obtained.

2.8.1 Recommendation: Amend S.C. Code Ann. § 16-3-930 (Human trafficking) to include financial penalties and asset forfeiture provisions for those convicted of these crimes.

2.8.2 Recommendation: Amend S.C. Code Ann. § 16-15-342(E) (Criminal solicitation of a minor) to raise the fine and make it mandatory in cases of commercial sexual exploitation of a child.

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

A buyer of child pornography can be charged under S.C. Code Ann. § 16-15-405 (Second degree sexual exploitation of a minor defined), which states in part, “(A) An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he: . . . (2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.” S.C. Code Ann. § 16-15-405(A)(2). A violation of this statute is punishable by imprisonment for 2–10 years and the offender will not be eligible for parole or a suspended sentence for the first 2 years of the sentence. S.C. Code Ann. § 16-15-405(D).

Additionally, a buyer could be charged with S.C. Code Ann. § 16-15-410 (Third degree sexual exploitation of a minor defined), which states in subsection (A), “An individual commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.” A violation of this statute is punishable by imprisonment up to 10 years. S.C. Code Ann. § 16-15-410(C).

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<sup>11</sup> See *supra* note 4.



In comparison, a federal conviction for possession of child pornography<sup>12</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>13</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>14</sup>

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

In South Carolina, a buyer must register when convicted of various offenses related to domestic minor sex trafficking. S.C. Code Ann. § 23-3-430 (Sex offender registry). Specifically, registration is required for, among other things, a violation of S.C. Code Ann. § 16-3-930 (Trafficking in persons) and any offense falling within Title 16, Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution) when a minor is involved, which includes S.C. Code Ann. § 16-15-425 (Participating in prostitution of a minor) and § 16-15-342 (Criminal solicitation of a minor). S.C. Code Ann. § 23-3-430(A), (C)(13), (17).

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<sup>12</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>13</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>14</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).

**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 the offense of sex trafficking or CSEC offenses in order to remove the children of traffickers from their control and potential exploitation.

**Legal Analysis:**

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

A convicted trafficker under S.C. Code Ann. § 16-3-930 (Trafficking in persons), which requires “forced labor or services” even for minor victims, is guilty of a Class A felony punishable by imprisonment up to 15 years. S.C. Code Ann. §§ 16-1-90(A), 16-3-930(A).

Under S.C. Code Ann. § 16-15-415 (Promoting prostitution of a minor defined), “(A) An individual commits the offense of promoting prostitution of a minor if he knowingly: (1) entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or (2) supervises, supports, advises, or promotes the prostitution of or by a minor.” A conviction under this statute is a Class C felony punishable by imprisonment for 3–20 years. S.C. Code Ann. §§ 16-15-415(A), (C), 16-1-90(C), 16-1-20(A)(3). The trafficker is not eligible for parole or suspended sentence during the first 3 years. S.C. Code Ann. § 16-15-415(C).

S.C. Code Ann. § 16-15-395(A) (First degree sexual exploitation of a minor defined), which includes when a person “uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity,” is a Class C felony punishable by imprisonment for 3–20 years. S.C. Code Ann. §§ 16-15-395(A), (D), 16-1-90(C), 16-1-20(A)(3). The trafficker would not be eligible for parole or suspended sentence in the first 3 years. S.C. Code Ann. § 16-15-395(D).

S.C. Code Ann. § 16-3-810 (Engaging child for sexual performance), a Class C felony, criminalizes, among other things, employing or inducing a child less than 18 “to engage in a sexual performance.” S.C. Code Ann. §§ 16-3-810(a), 16-1-90(C). A violation of this section is punishable by imprisonment for a maximum of 20 years. S.C. Code Ann. §§ 16-3-810(b), 16-3-653(2), 16-1-90(C), 16-1-20(A)(3).

Lastly, a trafficker can be found guilty of the Class E felony under S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor), “if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) . . . or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.” A violation of this section is a Class E felony punishable by imprisonment up to 10 years, a fine not to exceed \$5,000, or both. S.C. Code Ann. §§ 16-15-342(A), (E), 16-1-90(E), 16-1-20(A)(5).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>15</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>16</sup> against a minor.

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

Under S.C. Code Ann. § 16-3-810 (Engaging child for sexual performance), a person who “employ[s], authorize[s], or induce[s] a child younger than eighteen years of age to engage in a sexual performance” is guilty of second degree criminal sexual conduct, which is punishable by imprisonment up to 20 years. S.C. Code Ann. §§ 16-3-810, 16-3-653(2).

Similarly, under S.C. Code Ann. § 16-15-405 (Second degree sexual exploitation of a minor defined), a person who, among other things, “knowing the character or content of the material, . . . (1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor engaged in sexual activity” will face between 2 and 10 years imprisonment. S.C. Code Ann. § 16-15-405(A)(1), (D). The offender will not be eligible for parole or suspended sentence for the first 2 years. S.C. Code Ann. § 16-15-405(D).

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>17</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>18</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>19</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>20</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.*

S.C. Code Ann. § 16-15-342(A) (Criminal solicitation of a minor) states, “A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or

<sup>15</sup> See *supra* note 5.

<sup>16</sup> See *supra* note 8 for the definition of “federal sex offense.”

<sup>17</sup> See *supra* note 8 for the definition of “federal sex offense.”

<sup>18</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>19</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>20</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).

attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) . . . or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.” While use of the Internet is not specifically mentioned, it could be one of the forms of communication used. A violation of this statute is a Class E felony punishable by imprisonment for 10 years, a fine up to \$5,000, or both. S.C. Code Ann. §§ 16-15-342(E), 16-1-90(E), 16-1-20(A)(5).

3.3.1. Recommendation: Amend S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor) to specifically criminalize, with an enhanced penalty, the use of the Internet to lure, to entice, or to recruit a minor for purposes of commercial sexual exploitation.

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

S.C. Code Ann. § 16-15-342(A) (Criminal solicitation of a minor) may include as part of the sentence a fine up to \$5,000. S.C. Code Ann. § 16-15-342 (E). Similarly, a person charged with a violation of S.C. Code Ann. § 16-15-387 (Employment of person under eighteen to appear in public state of sexually explicit nudity) could receive a fine not to exceed \$5,000. S.C. Code Ann. § 16-15-387(B).

In addition, the asset forfeiture law within Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution) allows for forfeiture for some crimes a trafficker may commit. S.C. Code Ann. § 16-15-445(A) (Seizure and forfeiture of equipment used in committing violation) states,

All equipment used directly by a person in committing a violation of Sections 16-15-305 [Disseminating, procuring or promoting obscenity unlawful], 16-15-342 [Criminal solicitation of a minor], 16-15-395 [First degree sexual exploitation of a minor defined], 16-15-405 [Second degree sexual exploitation of a minor defined], or 16-15-410 [Third degree sexual exploitation of a minor defined], including necessary software, may be seized by the law enforcement agency making the arrest and ordered forfeited by the court in which the conviction was obtained.

Under S.C. Code Ann. § 16-8-260 (Seizure of firearms, ammunition, electronic records, money, etc.; forfeiture actions), which is part of the “Criminal Gang Prevention Act,”

(2) Any written or electronic communications, records, money, negotiable instruments, or valuables may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the written or electronic communications, records, money, negotiable instruments, or valuables have been used in a pattern of criminal gang activity or have been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. (3) Any contraband, as defined in Section 16-8-230,<sup>21</sup> or other asset owned or titled in the name of the gang or an individual gang member may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the contraband or asset has been used in a pattern of criminal gang activity or has been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

Under S.C. Code Ann. § 16-8-230(4), “pattern of criminal gang activity” is defined as “the commission or attempted commission of, commission as an accessory before or after the fact to, or solicitation or conspiracy to

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<sup>21</sup> “Contraband” is defined in S.C. Code Ann. § 16-8-230(1) as “any real or personal property, including money, that is owned by, in the possession of, or subject to the control of a criminal gang member and which is acquired by, derived from, or traceable to criminal gang activity.”

commit, by a criminal gang member, while knowingly and actively participating in criminal gang activity, four or more of the following offenses occurring within a two-year period, provided that at least three of these offenses occurred after July 1, 2007.” The offenses listed include “a violent offense as defined in Section 16-1-60 committed as a part of criminal gang activity.” S.C. Code Ann. § 16-8-230(4)(a). S.C. Code Ann. § 16-1-60 states,

For purposes of definition under South Carolina law, a violent crime includes the offenses of: . . . criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656) . . . kidnapping (Section 16-3-910); trafficking in persons (Section 16-3-930) . . . engaging a child for a sexual performance (Section 16-3-810) . . . producing, directing, or promoting sexual performance by a child (Section 16-3-820); lewd act upon a child under sixteen (Section 16-15-140); sexual exploitation of a minor first degree (Section 16-15-395); sexual exploitation of a minor second degree (Section 16-15-405); promoting prostitution of a minor (Section 16-15-415); participating in prostitution of a minor (Section 16-15-425) . . . and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses.

- 3.4.1 Recommendation: Add financial penalties to trafficking offenses to further deter traffickers from committing offenses. Enact asset forfeiture laws related to trafficking in order to reach the trafficker’s proceeds from the crimes committed.

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

In South Carolina, a trafficker must register when convicted of various offenses related to domestic minor sex trafficking. S.C. Code Ann. § 23-3-430. Specifically, registration is required for, among other things, a violation of S.C. Code Ann. § 16-3-930 (Trafficking in persons) and any offense falling within Title 16, Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution) when a minor is involved. S.C. Code Ann. § 23-3-430(A), (C)(13), (17).

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.*

Human trafficking and other CSEC convictions may be grounds for termination of parental rights in South Carolina. Pursuant to S.C. Code Ann. § 63-7-2570(9), a parent can lose rights if the court finds termination to be “in the best interest of the child” and if the court also makes one or more findings, including that “[t]he physical abuse of a child resulted in the death or admission to the hospital for in-patient care of that child and the abuse is the act for which the parent has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting an offense against the person as provided for in Title 16, Chapter 3, criminal domestic violence as defined in Section 16-25-20, criminal domestic violence of a high and aggravated nature as defined in Section 16-25-65, or the common law offense of assault and battery of a high and aggravated nature.” Offenses within Title 16, Chapter 3 include S.C. Code Ann. § 16-3-930 (Trafficking in persons), § 16-3-810 (Engaging a child for sexual performance), and § 16-3-820 (Producing, directing or promoting sexual performance by child). Therefore, in cases where the trafficker’s actions resulted in hospitalization of the minor victim, parental rights can be terminated, but if the minor victim was not hospitalized, the statute does not provide for the termination of parental rights. S.C. Code Ann. § 63-7-2570(9).

- 3.6.1 Recommendation: Amend S.C. Code Ann. § 63-7-2570 to remove the requirement that a minor victim must have been hospitalized in order for a termination of parental rights to occur in situations involving S.C. Code Ann. § 16-3-930 (Trafficking in persons). Additionally, include



S.C. Code Ann. § 16-15-415 (Promoting prostitution of a minor) as an offense that qualifies for the termination of parental rights.

## FRAMEWORK ISSUE 4: CRIMINAL PROVISIONS FOR FACILITATORS

### *Legal Components:*

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

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### *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.*

S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services) includes the crime of facilitation, stating that anyone who “recruits, entices, harbors, transports, provides, or obtains by any means another person knowing that the person will be subjected to forced labor or services, or aids, abets, attempts, or conspires to do any of the above acts is guilty of a felony . . .” S.C. Code Ann. § 16-3-930(A). This crime is punishable by imprisonment up to 15 years. S.C. Code Ann. § 16-3-930(A).

Additionally, under S.C. Code Ann. § 16-15-415(A)(1) (Promoting prostitution of a minor defined), “(A) An individual commits the offense of promoting prostitution of a minor if he knowingly: (1) entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution.” This offense is a Class C felony punishable by imprisonment for 3–20 years and the offender is not eligible for parole or suspended sentence for the first 3 years. S.C. Code Ann. §§ 16-15-415(C), 16-1-90(C), 16-1-20(A)(3).

Under S.C. Code Ann. § 16-15-395(A) (First degree sexual exploitation of a minor defined),

(A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;

...

(3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

This crime is a Class C felony punishable by imprisonment for 3–20 years, and the offender is not eligible for parole or suspended sentence for the first 3 years. S.C. Code Ann. § 16-15-395(D), 16-1-90(C), 16-1-20(A)(3).

Although not specifically directed to domestic minor sex trafficking victims, S.C. Code Ann. § 58-23-1320 (Use of taxi for prostitution or lewd act or transporting person to place for such purpose) states, “It shall be unlawful for the driver of any such taxi to permit any person to occupy or use such taxi for the purpose of prostitution or for any other lewd or indecent act, knowing or having reasonable cause to know that it is being used or is to be used for any such purpose, or to direct, take or transport or offer or agree to take or transport any person to any building or place knowing or having reasonable cause to know that the purpose of such directing, taking or transporting is prostitution or any other lewd or indecent act.” A violation of this provision is a misdemeanor punishable by a fine up to \$100 or imprisonment up to 30 days. S.C. Code Ann. § 58-23-1410.

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.*

The asset forfeiture law within Title 16, Chapter 15, Article 3 (Obscenity, material harmful to minors, child exploitation, and child prostitution) only allows for forfeiture in some crimes a facilitator may commit. S.C. Code Ann. § 16-15-445(A) (Seizure and forfeiture of equipment used in committing violation) states,

All equipment used directly by a person in committing a violation of Sections 16-15-305 [Disseminating, procuring or promoting obscenity unlawful], 16-15-342 [Criminal solicitation of a minor], 16-15-395 [First degree sexual exploitation of a minor defined], 16-15-405 [Second degree sexual exploitation of a minor defined], or 16-15-410 [Third degree sexual exploitation of a minor defined], including necessary software, may be seized by the law enforcement agency making the arrest and ordered forfeited by the court in which the conviction was obtained.

- 4.2.1 Recommendation: Add financial penalties to S.C. Code Ann. § 16-3-930 (Trafficking in persons for forced labor or services) to financially penalize facilitators convicted of trafficking, and enact asset forfeiture laws related to trafficking in order to reach the facilitator’s proceeds from the crimes committed.

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

There is no South Carolina law that addresses sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

Under S.C. Code Ann. § 16-3-820(a) (Producing, directing or promoting sexual performance by child), “It is unlawful for any person to produce, direct, or promote a performance that includes sexual conduct by a child younger than eighteen years of age.” “Promote” is defined as “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.” S.C. Code Ann. § 16-3-800(4).

Additionally, S.C. Code Ann. § 16-15-405(A)(2) (Second degree sexual exploitation of a minor defined) criminalizes the facilitating actions of a person who, “knowing the character or content of the material, . . . distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.”

Under S.C. Code Ann. § 16-15-395(A) (First degree sexual exploitation of a minor defined),

(A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity;

...

(3) transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) records, photographs, films, develops, duplicates, produces, or creates a digital electronic file for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

This crime is a Class C felony punishable by imprisonment for 3–20 years, and the offender is not eligible for parole or suspended sentence for the first 3 years. S.C. Code Ann. §§ 16-15-395(D), 16-1-90(C), 16-1-20(A)(3).

**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 action and legal remedies.*

**Legal Analysis:**

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

The South Carolina Constitution defines "victim," for the purpose of the Victims' Bill of Rights, as, in relevant part, "a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him." S.C. Const. Ann. Art. I, § 24(2).

Similarly, for the purpose of the Victim's Compensation Fund, a "victim" is defined in relevant part as "a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime." S.C. Code Ann. § 16-3-1110(8). A "crime" is defined in S.C. Code Ann. § 16-3-1110(6) as "an act which is defined as a crime by state, federal, or common law, including terrorism as defined in Section 2331 of Title 18, United States Code," with the exception of certain vehicular crimes. However, not included in the definition of a victim for purposes of Article 15 (Victim and Witness Service) is a person "who is the subject of an investigation for, who is charged with, or who has been convicted of or pled guilty or nolo contendere to the offense in question" or "who was imprisoned or engaged in an illegal act at the time of the offense." S.C. Code Ann. § 16-3-1510(1).

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.*

Criminal solicitation of a minor under S.C. Code Ann. § 16-15-342 is the only CSEC statute that explicitly addresses consent as a defense. Pursuant to S.C. Code Ann. § 16-15-342,

(B) Consent is a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is at least sixteen years old.

(C) Consent is not a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is under the age of sixteen.

5.2.1 Recommendation: Amend S.C. Code Ann. § 16-3-930 (Trafficking in persons) and § 16-15-415 (Promoting prostitution of a minor) to clarify that the consent of a minor is not a defense.

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

Prostitution laws do not expressly apply only to adults. Pursuant to S.C. Code Ann. § 16-15-90(1), it is a crime to “[e]ngage in prostitution,” and pursuant to S.C. Code Ann. § 16-15-100(4), it is unlawful to “[r]eceive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any female to become a prostitute or an inmate in a house of prostitution.” The statutes do not refer to age and could apply to both minors and adults.

5.3.1 Recommendation: Amend S.C. Code Ann. § 16-15-90 and § 16-15-100 to specify that minors who are prostituted are not guilty of prostitution but rather are victims of a crime.

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.*

South Carolina Children’s Code policy states in part, “This policy shall be interpreted in conjunction with all relevant laws and regulations and shall apply to all children who have need of services including, but not limited to, those mentally, socially, emotionally, physically, developmentally, culturally, educationally or economically disadvantaged or handicapped, those dependent, neglected, abused or exploited and those who by their circumstance or action violate the laws of this State and are found to be in need of treatment or rehabilitation.” S.C. Code Ann. § 63-1-20(B). South Carolina does not specifically exempt commercially exploited children from juvenile justice proceedings in favor of specialized shelter services but does allow for children taken into custody who need placement outside the home to be placed in a facility “other than a secure juvenile detention facility, when these alternatives are appropriate and available.” S.C. Code Ann. § 63-19-820(A).

According to S.C. Code Ann. § 63-7-20 (Definitions), “child abuse or neglect” or “harm” occurs, in part, when a “parent, guardian, or other person responsible for the child’s welfare: . . . (b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child.” An abused child could be taken into emergency protective custody under S.C. Code Ann. § 63-7-620 (Emergency protective custody), which states in part,

(A) A law enforcement officer may take emergency protective custody of a child without the consent of the child’s parents, guardians, or others exercising temporary or permanent control over the child if:

(1) the officer has probable cause to believe that by reason of abuse or neglect the child’s life, health, or physical safety is in substantial and imminent danger if the child is not taken into emergency protective custody, and there is not time to apply for a court order pursuant to Section 63-7-1660. . . .



....

Under S.C. Code Ann. § 63-7-620(B)(2), a child taken into emergency protective custody, as long as emergency medical care is not necessary, is to be placed in, within a reasonable amount of time, a licensed foster home or shelter and may not be placed in a jail or any other criminal detention center.

After taking custody of the child, a law enforcement officer must notify “the parent, guardian, or other person exercising temporary or permanent control over the child as early as reasonably possible of the location of the child unless there are compelling reasons for believing that disclosure of this information would be contrary to the best interests of the child.” S.C. Code Ann. § 63-7-630. After a child is taken into custody via an emergency order, the Department of Social Services (“the department”) must conduct a preliminary investigation to determine if grounds exist “assuming legal custody of the child exist and whether reasonable means exist for avoiding removal of the child from the home of the parent or guardian or for placement of the child with a relative and means for minimizing the emotional impact on the child of separation from the child’s home and family.” S.C. Code Ann. § 63-7-640. If the preliminary investigation shows “probable cause to believe that by reason of abuse or neglect the child’s life, health, or physical safety is in imminent and substantial danger,” then “the department may assume legal custody of the child.”<sup>22</sup> S.C. Code Ann. § 63-7-660. If the department determines that the child should be returned to the parent, guardian, or custodian, then “the department shall consult with the law enforcement officer who took emergency protective custody unless the department and the law enforcement agency have agreed to an alternative procedure.” S.C. Code Ann. § 63-7-670. If, after consulting with the law enforcement officer, “the officer objects to the return of the child, the department must assume legal custody of the child until a probable cause hearing can be held.” S.C. Code Ann. § 63-7-670. Additionally, the department must take legal custody of the child until a probable cause hearing “[i]f a law enforcement officer clearly states to the department at the time the officer delivers physical control of the child to the department that the child is not to be returned to the home or placed with a relative before a probable cause hearing regardless of the outcome of a preliminary investigation” and the department shall, at least, “conduct a preliminary investigation as provided in Section 63-7-640 within seventy-two hours after the child was taken into emergency protective custody and shall make recommendations concerning return of the child to the home or placement with a relative or other person to the family court at the probable cause hearing or take other appropriate action as provided in this chapter.” S.C. Code Ann. § 63-7-700(A).

Certain professional persons, in their professional capacities, are required to report to “to the county department of social services or to a law enforcement agency in the county where the child resides or is found” pursuant to S.C. Code Ann. § 63-7-310 if they “ha[ve] received information which gives [them] reason to believe that a child has been or may be abused or neglected.” S.C. Code Ann. § 63-7-310(A), (D). Under S.C. Code Ann. § 63-7-310(B),

If a person required to report pursuant to subsection (A) has received information in the person’s professional capacity which gives the person reason to believe that a child’s physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child’s welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child’s welfare, the reporter must make a report to the appropriate law enforcement agency.

Law enforcement is then responsible for notifying the county department of social services of these reports. S.C. Code Ann. § 63-7-320.

<sup>22</sup> Under S.C. Code Ann. § 63-7-660, “The department may exercise the authority to assume legal custody only after a law enforcement officer has taken emergency protective custody of the child or the family court has granted emergency protective custody by ex parte order, and the department has conducted a preliminary investigation pursuant to Section 63-7-640.”

If a minor is found committing a violation of the criminal code, such as a prostitution-related offense, law enforcement may take the minor into temporary custody pursuant to S.C. Code Ann. § 63-19-810. Specifically,

(A) When a child found violating a criminal law or ordinance is taken into custody, the taking into custody is not an arrest. The jurisdiction of the court attaches from the time of the taking into custody. When a child is taken into custody, the officer taking the child into custody shall notify the parent, guardian, or custodian of the child as soon as possible. Unless otherwise ordered by the court, the person taking the child into custody may release the child to a parent, a responsible adult, a responsible agent of a court-approved foster home, group home, nonsecure facility, or program upon the written promise, signed by the person, to bring the child to the court at a stated time or at a time the court may direct. The written promise, accompanied by a written report by the officer, must be submitted to the South Carolina Department of Juvenile Justice as soon as possible, but not later than twenty-four hours after the child is taken into custody. If the person fails to produce the child as agreed, or upon notice from the court, a summons or a warrant may be issued for the apprehension of the person or of the child.

....

(D) Juveniles may be held in nonsecure custody within the law enforcement center for only the time necessary for purposes of identification, investigation, detention, intake screening, awaiting release to parents or other responsible adult, or awaiting transfer to a juvenile detention facility or to the court for a detention hearing.

The protective custody provisions and the child protective provisions above may not prevent a criminal justice response from being employed in the case of a domestic minor sex trafficking victim. A child could be sent to a secure juvenile detention facility pursuant to S.C. Code Ann. § 63-19-820(B), which states,

A child is eligible for detention in a secure juvenile detention facility only if the child:

- (1) is charged with a violent crime as defined in Section 16-1-60;<sup>23</sup>
- (2) is charged with a crime which, if committed by an adult, would be a felony or a misdemeanor other than a violent crime, and the child:
  - (a) is already detained or on probation or conditional release or is awaiting adjudication in connection with another delinquency proceeding;
  - (b) has a demonstrable recent record of willful failures to appear at court proceedings;
  - (c) has a demonstrable recent record of violent conduct resulting in physical injury to others; or
  - (d) has a demonstrable recent record of adjudications for other felonies or misdemeanors; and
    - (i) there is reason to believe the child is a flight risk or poses a threat of serious harm to others; or
    - (ii) the instant offense involved the use of a firearm;
- (3) is a fugitive from another jurisdiction;
- (4) requests protection in writing under circumstances that present an immediate threat of serious

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<sup>23</sup> S.C. Code Ann. § 16-1-60 states,

For purposes of definition under South Carolina law, a violent crime includes the offenses of: . . . criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656) . . . kidnapping (Section 16-3-910); trafficking in persons (Section 16-3-930) . . . engaging a child for a sexual performance (Section 16-3-810) . . . producing, directing, or promoting sexual performance by a child (Section 16-3-820); lewd act upon a child under sixteen (Section 16-15-140); sexual exploitation of a minor first degree (Section 16-15-395); sexual exploitation of a minor second degree (Section 16-15-405); promoting prostitution of a minor (Section 16-15-415); participating in prostitution of a minor (Section 16-15-425) . . . and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses.

- physical injury;
- (5) had in his possession a deadly weapon;
- (6) has a demonstrable recent record of wilful failure to comply with prior placement orders including, but not limited to, a house arrest order;
- (7) has no suitable alternative placement and it is determined that detention is in the child’s best interest or is necessary to protect the child or public, or both; or

....

A child who meets the criteria provided in this subsection is eligible for detention. Detention is not mandatory for a child meeting the criteria if that child can be supervised adequately at home or in a less secure setting or program. If the officer does not consent to the release of the child, the parents or other responsible adult may apply to the family court within the circuit for an ex parte order of release of the child. The officer’s written report must be furnished to the family court judge who may establish conditions for the release.

S.C. Code Ann. § 63-19-820 places limitations on secure detention for juveniles including a six-hour limit for confinement in an adult detention center unless the juvenile is required to stand trial as an adult, a twenty-four hour limit for confinement in a juvenile detention center if taken into custody for an offense that would not be a crime if committed by an adult, and a seventy-two hour limit for confinement in a juvenile detention center for violating a valid court order. Juveniles under the age of eleven may not be confined in any type of detention center for any reason. Juveniles aged eleven or twelve may only be confined by order of a family court.

- 5.4.1 Recommendation: Enact a protective response law that removes sexually exploited children from the juvenile justice system and places them in a protective system for appropriate care.

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

Commercial sexual exploitation is not specifically defined as a type of abuse or neglect under the law. However, pursuant to S.C. Code Ann. § 63-7-20(4)(b), “‘Child abuse or neglect’ or ‘harm’ occurs when the parent, guardian, or other person responsible for the child’s welfare: . . . (b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child.” Therefore, commercial sexual exploitation might fall within this definition.

- 5.5.1 Recommendation: Amend S.C. Code Ann. § 63-7-20(4)(b) to add to the definition of “child abuse or neglect” any situation of trafficking in persons and commercial sexual exploitation of a 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 the protection of child protective services.*

South Carolina’s chapter on “Child Protection and Permanency”<sup>24</sup> defines “person responsible for a child’s welfare,” as “includ[ing] the child’s parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 63-13-20, of a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian. An investigation pursuant to

<sup>24</sup> These definitions in S.C. Code Ann. § 63-7-20 also apply in Chapter 9 (Adoptions) and Chapter 11 (Children’s services agencies). The definitions apply to these chapters, “unless the specific context indicates otherwise.”

Section 63-7-920 must be initiated when the information contained in a report otherwise sufficient under this section does not establish whether the person has assumed the role or responsibility of a parent or guardian for the child.” S.C. Code Ann. § 63-7-20(16). This terminology could be broad enough to encompass a trafficker; however, no case law has been identified to provide precedent for this possible usage.

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

The state Victim’s Compensation Fund is codified at S.C. Code Ann. § 16-3-1110 et seq. It defines “victim” as “a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime.” S.C. Code Ann. § 16-3-1110(8). All crimes at the state and federal level are included in the definition of a crime, with the exception of some vehicular crimes. S.C. Code Ann. § 16-3-1110(6). Under S.C. Code Ann. § 16-3-1170(A) (Basis for award), “(A) No award may be made unless: (1) a crime was committed; (2) the crime directly resulted in physical or psychic trauma to the victim; (3) the crime was promptly reported to the proper authority and recorded in police records; and (4) the claimant or other award recipient has fully cooperated with all law enforcement agencies and with the South Carolina Victim’s Compensation Fund.” Under subsection (B), barring the “showing of special circumstances or causes which justify the delay,” crimes reported after more than 48 hours are not “promptly reported.” Furthermore, pursuant to S.C. Code Ann. § 16-3-1200 (Conduct of victim or intervener contributing to infliction of injury), an award may be reduced or rejected based on a determination that “because of his conduct the victim or intervener of such crime contributed to the infliction of his injury . . . .” Similarly, a person is ineligible if he “committed or aided in the commission of the crime upon which the claim is based or engaged in other unlawful activity which contributed to or aggravated the resulting injury.” S.C. Code Ann. § 16-3-1220(1). As a result, since minors can be charged with prostitution in South Carolina, it is possible the minor victim could be disqualified from receiving victims’ compensation from the Fund if it is determined that the prostitution “contributed to or aggravated the resulting injury.” Additionally, a claim must usually be filed within “one hundred eighty days after the latest of the following events: (a) the occurrence of the crime upon which the claim is based; (b) the death of the victim; (c) the discovery by the law enforcement agency that the occurrence was the result of crime; or (d) the manifestation of a mental or physical injury is diagnosed as a result of a crime committed against a minor.” S.C. Code Ann. § 16-3-1230(2). This requirement potentially limits the ability of domestic minor sex trafficking victims to gain compensation dependent upon how the “occurrence” of the crime is defined because many victims may not come forward and report the crime due to the ongoing effects of trafficking. South Carolina allows for extending the filing period “[u]pon good cause shown,” however, “[g]ood cause’ for the above purposes includes reliance upon advice of an official victim assistance specialist who either misinformed or neglected to inform a victim of rights and benefits of the Victim’s Compensation Fund but does not mean simply ignorance of the law.” S.C. Code Ann. § 16-3-1230(3).

5.7.1 Recommendation: Amend S.C. Code Ann. § 16-3-1220(1) and § 16-3-1200 to ensure that domestic minor sex trafficking victims are not ineligible due to crimes their traffickers forced them to commit. Also, amend S.C. Code Ann. § 16-3-1170(B) and § 16-3-1230 to relax the time requirements in cases of domestic minor sex trafficking.

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

South Carolina has a few victim-friendly criminal justice procedures. According to S.C. Code Ann. § 16-3-659.1(1) (Criminal sexual conduct: admissibility of evidence concerning victim’s sexual conduct), evidence of a victim’s past sexual conduct or reputation is inadmissible in certain cases, including cases of first, second, or third degree criminal sexual conduct and in cases of criminal sexual conduct with a minor. However, under the provision, “evidence of the victim’s sexual conduct with the defendant or evidence of specific instances of sexual activity with persons other than the defendant introduced to show source or origin of semen, pregnancy, or disease about which evidence has been introduced previously at trial is admissible if the judge finds that such

evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. Evidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded.”

Also, for victims of rape, S.C. Code Ann. § 16-3-660 (Deposition testimony of rape victim or victim of assault with intent to ravish) states that “the deposition of [the female witness who is alleged to have been assaulted may] be taken at a time and place designated in such order within the county in which the trial is to be had . . . .” The procedure for these depositions requires that only the witness, the accused, and the attorneys be present at the taking of the deposition. S.C. Code Ann. § 16-3-670. According to S.C. Code Ann. § 16-3-700 (Reading deposition to jury), “Such deposition shall be read to the jury upon the trial and shall be considered by them as though such testimony had been given orally in court.” South Carolina also provides for the destruction of these depositions when the case is closed and appeals have both been taken and settled or the time for taking an appeal has elapsed. S.C. Code Ann. § 16-3-720. Finally, S.C. Code Ann. § 16-3-730 (Publishing name of victim of criminal sexual conduct unlawful) states that “[w]hoever publishes or causes to be published the name of any person upon whom the crime of criminal sexual conduct has been committed or alleged to have been committed in this State in any newspaper, magazine or other publication shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or imprisonment of not more than three years. The provisions of this section shall not apply to publications made by order of court.”

S.C. Code Ann. § 17-23-175 allows for out-of-court statements for children under 12 to be admissible if certain conditions are met:

(A) In a general sessions court proceeding or a delinquency proceeding in family court, an out-of-court statement of a child<sup>25</sup> is admissible if:

- (1) the statement was given in response to questioning conducted during an investigative interview of the child;
- (2) an audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except as provided in subsection (F);
- (3) the child testifies at the proceeding and is subject to cross-examination on the elements of the offense and the making of the out-of-court statement; and
- (4) the court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.

5.8.1 Recommendation: Extend victim-friendly criminal justice procedures to victims of domestic minor sex trafficking by amending S.C. Code Ann. § 16-3-659.1, § 16-3-660, § 16-3-720, and § 16-3-730 to include exceptions and extensions of protections for victims of commercial sexual exploitation.

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.*

South Carolina’s Juvenile Justice Code contains a provision for record destruction. It states in S.C. Code Ann. § 63-19-2050(A),

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<sup>25</sup> A “child” for the purposes of this statute include “(1) a person who is under the age of twelve years at the time of the making of the statement or who functions cognitively, adaptively, or developmentally under the age of twelve at the time of making the statement; and (2) a person who is the alleged victim of, or witness to, a criminal act for which the defendant, upon conviction, would be required to register pursuant to the provisions of Article 7, Chapter 3, Title 23 [Sex offender registry].” S.C. Code Ann. § 17-23-175(C).



A person who has been taken into custody for, charged with, or adjudicated delinquent for having committed a status or a nonviolent offense may petition the court for an order destroying all official records relating to:

- (1) being taken into custody;
- (2) the charges filed against the child;
- (3) the adjudication; and
- (4) disposition.

The granting of the order is in the court's discretion. However, a person may not petition the court if he has a prior adjudication for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult. In addition, the court must not grant the order unless it finds that the person who is seeking to have the records destroyed is at least eighteen years of age, has successfully completed any dispositional sentence imposed, and has not been subsequently charged with any criminal offense.<sup>26</sup>

If expungement is granted, it serves to completely eliminate all evidence of the records and to "restore the person in the contemplation of the law to the status the person occupied before being taken into custody." S.C. Code Ann. § 63-19-2050(C).

A child under the age of 17 who has committed a non-violent offense that is either a misdemeanor; Class D, E, or F felony; or is punishable by a maximum sentence of no greater than 15 years is eligible for "youthful offender" status if the minor "has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210 . . ." S.C. Code Ann. § 24-19-10(d)(i). Additionally, a minor who is at least 17 but less than 25 when convicted of an "offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less" falls under the definition of "youthful offender." S.C. Code Ann. § 24-19-10(d)(ii). A youthful offender's criminal record may be expunged once pursuant to S.C. Code Ann. § 22-5-920, which states in part,

Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, after five years from the date of completion of his sentence, including probation and parole, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, to an offense classified as a violent crime in Section 16-1-60, or to an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16-25-30. If the defendant has had no other conviction during the five-year period following completion of his sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have his record expunged pursuant to the provisions of this section.

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<sup>26</sup> Under S.C. Code Ann. § 63-19-2050(D), "For purposes of this section, an adjudication is considered a previous adjudication only if it occurred prior to the date the subsequent offense was committed."

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

No specific criminal or civil restitution or civil remedies are provided in South Carolina’s human trafficking statute or CSEC statutes. However, S.C. Code Ann. § 17-25-322(A) states in part, “When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant’s criminal acts.” The following items may be considered by the court when determining the amount, method, or manner of restitution: “(1) the financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant; (2) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; (3) the anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment; (4) any burden or hardship upon the victim as a direct or indirect result of the defendant’s criminal acts; (5) the mental, physical, and financial well-being of the victim.” S.C. Code Ann. § 17-25-322(B). Additionally, subsection (E) provides, “An offender may not be granted a pardon until the restitution and collection fees required by the restitution order have been paid in full.” S.C. Code Ann. § 17-25-322(E).

5.10.1 Recommendation: Amend S.C. Code Ann. § 16-3-930 (Trafficking in persons) to allow victims of human trafficking to receive restitution from their trafficker for the crimes committed.

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

“South Carolina does not have a general statute of limitations for criminal actions; however, in a few very rare instances, a period of limitations is incorporated in specific criminal statutes.”<sup>27</sup> Civil actions based on sexual abuse or incest may be available to victims of domestic minor sex trafficking. Pursuant to S. C. Code Ann. § 15-3-555 (Statute of limitations for action based on sexual abuse or incest) states, “(A) An action to recover damages for injury to a person arising out of an act of sexual abuse<sup>28</sup> or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.” In the event the crime was perpetrated by a parent, subsection (B) states, “Parental immunity is not a defense against claims based on sexual abuse or incest that occurred before, on, or after this section’s effective date.”

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<sup>27</sup> *Summary Court Judges Bench Book—Substantive and Procedural Law*, SOUTH CAROLINA JUDICIAL DEPARTMENT, <http://www.judicial.state.sc.us/summaryCourtBenchBook/HTML/CriminalA.htm> (last visited July 21, 2011).

<sup>28</sup> S.C. Code Ann. § 17-25-135(2) defines “sexual abuse” as “(a) actual or attempted sexual contact with a child; or (b) permitting, enticing, encouraging, forcing, or otherwise facilitating a child’s participation in prostitution or in a live performance or photographic representation of sexual activity or sexually explicit nudity; by any person including, but not limited to, a person responsible for the child’s welfare, as defined in Section 63-7-20.” However, S. C. Code Ann. § 15-3-555 does not cross reference this definition.

**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.*

Mandated law enforcement training on domestic minor sex trafficking is not codified. However, issues related to domestic minor sex trafficking could be included within other trainings mandated by South Carolina law. Specifically, the Missing Person Information Center (“MPIC”) has the responsibility of “[c]onduct[ing] statewide training sessions and seminars relative to missing and exploited children and missing persons, including, but not limited to, methods to enhance the locating of missing children and missing persons and training regarding the operation of the MPIC.” S.C. Code Ann. § 23-3-260(j). “Exploited children” are defined as “children under the age of eighteen who are placed in positions where they were taken advantage of sexually because of their inability to cognitively assess or resist the contact or who were placed into these positions because of their dependency upon the offender.” S.C. Code Ann. § 23-3-210(4). Therefore, domestic minor sex trafficking may be included in the “exploited children” training section of the Code.

- 6.1.1. Recommendation: Amend S.C. Code Ann. § 23-3-260(j) to specifically include training on domestic minor sex trafficking identification, interrelationships between domestic minor sex trafficking and missing and exploited children, and protocols for intervention.

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

S.C. Code Ann. § 17-30-30(B) permits single party consent to audiotaping. It states, “It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.” Subsection (C) states, “It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.”

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

Investigations related to domestic minor sex trafficking are not authorized to use wiretapping pursuant to S.C. Code Ann. § 17-30-70 (Orders authorizing interception). The offenses for which law enforcement can specifically use wiretapping are “murder (Section 16-3-10); assault and battery with intent to kill (Section 16-3-620); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330(A)); attempted armed robbery (Section 16-11-330(B)); drug trafficking as defined in Sections 44-53-370(e) and 44-53-375(C); arson in the first degree (Section 16-11-110(A)); arson in the second degree (Section 16-11-110(B)); accessory before the fact to commit any of the above offenses (Section 16-1-40); or attempt to commit any of the above offenses (Section 16-1-80).” S.C. Code Ann. § 17-30-70(A)(1).

Additionally, pursuant to S.C. Code Ann. § 17-30-95(A),

(A) Notwithstanding any other provision of this chapter, any agent of the South Carolina Law Enforcement Division specifically designated by the Attorney General or his designated Assistant Attorney General may intercept the wire, oral, or electronic communication if an application for an order approving the interception is made within forty-eight hours after the interception begins to occur, and the agent determines that more likely than not:

- (1) an emergency exists that involves an offense provided for in Section 17-30-70 and an immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner and requires that a wire, oral, or electronic communication be intercepted before an order authorizing the interception can, with due diligence, be obtained; and
- (2) there are grounds upon which an order could be entered under this chapter to authorize the interception.

Therefore, since an offense authorizing emergency wiretapping must involve one of the same offenses listed for normal wiretapping investigations, domestic minor sex trafficking investigations may not use this law enforcement tactic.

6.3.1 Recommendation: Amend S.C. Code Ann. § 17-30-70(A)(1) to include § 16-3-930 (Trafficking in persons), § 16-15-415 (Promoting prostitution of a minor), § 16-15-395 (First degree sexual exploitation of a minor), § 16-3-810 (Engaging child for sexual performance), and § 16-3-820 (Producing, directing or promoting sexual performance by child) as offenses for which law enforcement can utilize wiretapping.

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

Use of a decoy is allowed under S.C. Code Ann. § 16-15-342 (Criminal solicitation of a minor). This statute specifies that it is not a defense that “the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.” S.C. Code Ann. § 16-15-342(D).

6.4.1 Recommendation: Expand the ability of law enforcement to investigate commercial sexual exploitation crimes against children by amending S.C. Code Ann. § 16-3-930 (Trafficking in persons), § 16-15-415 (Promoting prostitution of a minor), § 16-15-425 (Participating in prostitution of a minor), § 16-15-395 (First degree sexual exploitation of a minor defined), § 16-3-820 (Producing, directing or promoting sexual performance by child), § 16-15-387 (Employment of person under eighteen to appear in public in state of sexually explicit nudity), § 16-15-405 (Second degree sexual exploitation of a minor defined), and § 16-3-810 (Engaging child for sexual performance) to eliminate any possible defense that the “victim” was actually a law enforcement agent or officer.

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

Pursuant to S.C. Code Ann. § 16-15-342(D) (Criminal solicitation of a minor), “It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.” The solicitation could occur through the Internet, thereby allowing law enforcement to use the Internet to investigate the crime of buying or selling sex with minors.

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

S.C. Code Ann. § 23-3-200 states that the Missing Person Information Center (“MPIC”) has the purpose of “serv[ing] as a central repository for information regarding missing persons and missing and exploited children, with special emphasis on missing children.” Among other things, the MPIC collects and disseminates information on missing and exploited children and “distribute[s], both intrastate and interstate, a monthly bulletin of missing persons and missing children from South Carolina to law enforcement agencies.” S.C. Code Ann. § 23-3-260(c), (e). Additionally, the MPIC “[m]aintain[s] all available information on any missing person or missing child including, but not limited to, the missing person report, fingerprints, blood types, dental information, and photographs.” S.C. Code Ann. § 23-3-260(i). Pursuant to S.C. Code Ann. § 23-3-250, “A law enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, legal custodian, public or private agency or entity, or any person responsible for a missing person, immediately shall make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, inform all of the agency’s on-duty law enforcement officers of the missing person report, initiate a statewide broadcast to all other law enforcement agencies to be on the lookout for the individual, contact the agency’s local media outlets when appropriate, and transmit a copy of the report to the MPIC.”

Once a missing person is reported located, then the MPIC “shall instigate and confirm the deletion of the individual’s records from the FBI/NCIC’s missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law enforcement agency having jurisdiction of the records.” S.C. Code Ann. § 23-3-270.

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