

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS ARKANSAS

### 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 sex 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 *Commercial sexual exploitation of children (CSEC) or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*
- 1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

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

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a sex 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.*

Arkansas's trafficking of persons law, Ark. Code Ann. § 5-11-108, fails to distinguish the commercial sexual exploitation of children as a specific form of trafficking and requires a showing of force, fraud, or coercion for all cases of trafficking, regardless of whether a minor was involved. Ark. Code Ann. § 5-11-108(b)(1) creates the crime of trafficking of persons when a person "[r]ecruits, harbors, transports, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to: (A) Involuntary servitude; (B) Peonage; (C) Debt bondage; (D) Slavery; (E) Marriage; (F) Adoption; or (G) Sexual conduct."<sup>2</sup>

<sup>1</sup> Unless otherwise specified, all references to Arkansas statutes were taken from the Arkansas Code of 1987 Annotated Official Edition (LEXIS through 2012 Fiscal Sess. and Updates) and all federal statutes were taken from United States Code (LEXIS through PL 112-173, approved 8/16/12). This report includes legislation enacted before August 1, 2012.

<sup>2</sup> Under Ark. Code Ann. § 5-11-108(a)(4), "sexual conduct" has the same meaning as set forth in Ark. Code Ann. § 5-27-401, which defines the term as any of the following: "(A) Actual or simulated sexual intercourse; (B) Deviate sexual activity; (C) Sexual bestiality; (D) Masturbation; (E) Sadomasochistic abuse; or (F) Lewd exhibition of the genitals or pubic area of any person or a breast of a female."

- 1.1.1 Recommendation: Amend Ark. Code Ann. § 5-11-108 (Trafficking of persons) to parallel federal law by removing the requirement of showing force, fraud, or coercion when a minor is trafficked for purposes of commercial sex acts or enact a separate sex trafficking of minors statute.<sup>3</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.*

The following laws criminalize CSEC in Arkansas:

1. Ark. Code Ann. § 5-70-104(a)(2), (b) (Promoting prostitution in the first degree) creates a Class D felony if a person “knowingly . . . (2) Advances prostitution or profits from prostitution of a person less than eighteen (18) years of age.” This crime is punishable by imprisonment up to 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-4-201(a)(2), 5-4-401(a)(5).
2. Ark. Code Ann. § 5-27-303(a) (Engaging children in sexually explicit conduct for use in visual or print medium) creates a crime when a person “employs, uses, persuades, induces, entices, or coerces any child<sup>4</sup> to engage in or who has a child assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting sexually explicit conduct.” A first offense is a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-303(a)(1), 5-4-401(a)(3), 5-4-201(a)(1). Subsequent offenses are Class A felonies punishable by imprisonment for 6-30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-303(a)(2), 5-4-401(a)(2), 5-4-201(a)(1).
3. Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) states,
  - (a) A person commits the offense of transportation of a minor for prohibited sexual conduct if the person transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor, and the actor:
    - (1) Knows or has reason to know that prostitution or sexually explicit conduct involving the minor will be commercially exploited by any person; and
    - (2) Acts with the purpose that the minor will engage in:
      - (A) Prostitution; or
      - (B) Sexually explicit conduct.

This crime is a Class A felony punishable by imprisonment for 6–30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-305(b), 5-4-401(a)(2), 5-4-201(a)(1).

4. Under Ark. Code Ann. § 5-27-402(a) (Employing or consenting to the use of a child in a sexual performance), “It is unlawful for a person, knowing the character and content of the performance, to employ, authorize, or induce a child under eighteen (18) years of age to engage in a sexual performance.”<sup>5</sup>

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<sup>3</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.

<sup>4</sup> “Child” is defined for purposes of subchapter 3 (Arkansas Protection of Children Against Exploitation Act of 1979) as “any person under eighteen (18) years of age.” Ark. Code Ann. § 5-27-302(1).

<sup>5</sup> “Performance” is defined for purposes of subchapter 4 (Use of children in sexual performance) as “any play, dance, act, drama, piece, interlude, pantomime, show, scene, or other three-dimensional presentation or a part of a play, dance, act, drama, piece, interlude, pantomime, show, scene, or other three-dimensional presentation, whether: (A) Performed live or photographed; (B) Filmed; (C) Videotaped; or (D) Visually depicted by any other photographic, cinematic, magnetic, or electronic means.” Ark. Code Ann. § 5-27-401(1).

A first offense is a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-402(c)(1), 5-4-401(a)(4), 5-4-201(a)(2). Second and subsequent offenses are Class B felonies punishable by imprisonment for 5-20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-402(c)(2), 5-4-401(a)(3), 5-4-201(a)(1).

5. Ark. Code Ann. § 5-27-403(a) (Producing, directing, or promoting a sexual performance by a child) makes it a crime for a person “knowing the character and content of the material, to produce, direct, or promote a performance that includes sexual conduct by a child under eighteen (18) years of age.” This crime is a Class B felony punishable by imprisonment for 5-20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-403(b), 5-4-401(a)(3), 5-4-201(a)(1).

Additionally, although not expressly commercial, the following offenses could apply to cases of domestic minor sex trafficking:

1. Ark. Code Ann. § 5-27-306(a)(1), (2) (Internet stalking of a child) makes it a crime for a person over the age of 21 to knowingly use the Internet to do the following:
  - (1) Seduce, solicit, lure, or entice a child fifteen (15) years of age or younger [or, for purposes of subsection (2), an individual believed to be 15 or younger] in an effort to arrange a meeting with the child for the purpose of engaging in:
    - (A) Sexual intercourse;
    - (B) Sexually explicit conduct; or
    - (C) Deviate sexual activity;
  - ....

If the individual merely “attempts to arrange a meeting” with a real child or a person believed to be a child, this crime is a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(1), (2), 5-4-401(a)(3), 5-4-201(a)(1). If the meeting with the child actually occurs, even if the sexual activity does not occur, the crime is a Class A felony punishable by imprisonment for 6–30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(3), 5-4-401(a)(2), 5-4-201(a)(1) .

2. Ark. Code Ann. § 5-27-306(a)(3), (4) (Internet stalking of a child) makes it a crime for a person over the age of 21 to knowingly use the Internet to do the following:
  - (3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger [or, for purposes of subsection (4), on an individual that the person believes to be 15 or younger] in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in:
    - (A) Sexual intercourse;
    - (B) Sexually explicit conduct; or
    - (C) Deviate sexual activity;
  - ....

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“Sexual performance” is defined for purposes of subchapter 4 (Use of children in sexual performance) as “any performance or part of a performance that includes sexual conduct by a child under eighteen (18) years of age.” Ark. Code Ann. § 5-27-401(5).

If the individual merely “attempts to arrange a meeting,” with either a real child or a person believed to be a child this crime is a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(1), (2), 5-4-401(a)(3), 5-4-201(a)(1). If the meeting with the child actually occurs, even if the sexual activity does not occur, the crime is a Class A felony punishable by imprisonment for 6-30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(3), 5-4-401(a)(2), 5-4-201(a)(1) .

3. Ark. Code Ann. § 5-27-603(a) (Computer child pornography) establishes a crime when a person knowingly “(1) Compiles, enters into, or transmits by means of computer, makes, prints, publishes, or reproduces by other computerized means, knowingly causes or allows to be entered into or transmitted by means of computer or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement or any child’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexually explicit conduct of or with any child or another individual believed by the person to be a child, or the visual depiction of the conduct; or (2) Utilizes a computer online service, internet service, or local bulletin board service to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another individual believed by the person to be a child, to engage in sexually explicit conduct.” This crime is a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-603(b), 5-4-401(a)(3), 5-4-201(a)(1).
4. Ark. Code Ann. § 5-27-605(a)(1) (Computer exploitation of a child) establishes the crime of computer exploitation in the first degree when a person “(A) Causes or permits a child to engage in sexually explicit conduct; and (B) Knows, has reason to know, or intends that the prohibited conduct may be: (i) Photographed; (ii) Filmed; (iii) Reproduced; (iv) Reconstructed in any manner, including on the internet; or (v) Part of an exhibition or performance.” A first offense of this crime is a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-605(a)(2)(A), 5-4-401(a)(3), 5-4-201(a)(1). Subsequent offenses are Class A felonies punishable by imprisonment for 6-30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-605(a)(2)(B), 5-4-401(a)(2), 5-4-201(a)(1).
5. Ark. Code Ann. § 5-27-605(b)(1) (Computer exploitation of a child) establishes the crime of second degree computer exploitation of a child if the individual does either of the following: “(A) Photographs or films a child engaged in sexually explicit conduct; or (B) Uses any device, including a computer, to reproduce or reconstruct the image of a child engaged in sexually explicit conduct.” This crime is a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-605(b)(2), 5-4-401(a)(4), 5-4-201(a)(2).
6. Ark. Code Ann. § 5-14-103(a)(3)(A) (Rape) establishes a crime when a person “engages in sexual intercourse or deviate sexual activity with another person . . . [w]ho is less than fourteen (14) years of age.” However, subsection (3)(B) creates an affirmative defense to this provision if “the actor was not more than three (3) years older than the victim.” Rape is a Class Y felony punishable by imprisonment for 25–40 years or a life sentence. Ark. Code Ann. §§ 5-14-103(c), 5-4-401(a)(1).
7. Ark. Code Ann. § 5-14-125(a)(3)(A) (Sexual assault in the second degree) establishes a crime when a person over 18 “engages in sexual contact with another person who is: (A) Less than fourteen (14) years of age.” This crime is a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-14-125(b)(1), 5-4-401(a)(3), 5-4-201(a)(1).
8. Ark. Code Ann. § 5-14-127(a)(1)(A) (Sexual assault in the fourth degree) establishes a crime if a person 20 or older “[e]ngages in sexual intercourse or deviate sexual activity with another person who is: (i) Less than sixteen (16) years of age; and (ii) Not the person’s spouse.” For a violation of this subsection, a person is

guilty of a Class D felony punishable by imprisonment not to exceed 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-14-127(b)(1), 5-4-401(a)(5), 5-4-201(a)(2). The statute also makes it a crime when a person “[e]ngages in sexual contact with another person who is: (i) Less than sixteen (16) years of age; and (ii) Not the person’s spouse.” Ark. Code Ann. § 5-14-127(a)(1)(B). This crime is a Class A misdemeanor, which may be punishable by imprisonment not to exceed 1 year and a possible fine not to exceed \$2,500. Ark. Code Ann. §§ 5-14-127(b)(2), 5-4-401(b)(1), 5-4-201(b)(1).

9. A violation of Ark. Code Ann. § 5-14-110(a)(1) (Sexual indecency with a child) occurs if

- (1) Being eighteen (18) years of age or older, the person solicits<sup>6</sup> another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in:
  - (A) Sexual intercourse;
  - (B) Deviate sexual activity; or
  - (C) Sexual contact.

The crime is a Class D felony punishable by imprisonment not to exceed 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-14-110(b), 5-4-401(a)(5), 5-4-201(a)(2).

1.3 *Commercial sexual exploitation of children (CSEC) or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

Arkansas CSEC statutes do not refer to Ark. Code Ann. § 5-11-108 (Trafficking of persons) to clarify the status of the victim. The trafficking law, however, does refer to the definitional provision for the subchapter on “Use of Children in Sexual Performances.” Similarly, Ark. Code Ann. § 5-70-102(a) (Prostitution) does not refer to the trafficking of persons law when the person engaged in prostitution is a minor to clarify the status of the minor as a victim of sex trafficking.

- 1.3.1 Recommendation: Amend Ark. Code Ann. § 5-70-104 (Promoting prostitution in the first degree), § 5-27-303 (Engaging children in sexually explicit conduct for use in visual or print medium), § 5-27-305 (Transportation of minors for prohibited sexual conduct), § 5-27-402 (Employing or consenting to the use of a child in a sexual performance) and § 5-27-403 (Producing, directing, or promoting a sexual performance by a child), and § 5-70-102(a) (Prostitution) when the person engaged in prostitution is a minor, to refer to Ark. Code Ann. § 5-11-108 (Trafficking of persons) to identify commercially sexually exploited children as human trafficking victims.

1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

Ark. Code Ann. § 5-74-104 (Engaging in a continuing criminal gang, organization, or enterprise) states,

- (a)
  - (1) A person commits the offense of engaging in a continuing criminal gang, organization, or enterprise in the first degree if he or she:
    - (A) Commits or attempts to commit or solicits to commit a felony predicate criminal offense; and
    - (B) That offense is part of a continuing series of two (2) or more predicate criminal offenses

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<sup>6</sup>In *Heape v. State*, the court “h[e]ld that the evidence was sufficient to show that appellant, by offering the girl money in exchange for sex, solicited her to engage in sexual intercourse, deviate sexual activity, or sexual contact.” *Heape v. State*, 192 S.W.3d 281, 286 (Ark. Ct. App. 2004).

that are undertaken by that person in concert with two (2) or more other persons with respect to whom that person occupies a position of organizer, a supervisory position, or any other position of management.

- (2) A person who engages in a continuing criminal gang, organization, or enterprise in the first degree is guilty of a felony two (2) classifications higher than the classification of the highest underlying predicate offense referenced in subdivision (a)(1)(A) of this section.
- (b)
  - (1) A person commits the offense of engaging in a continuing criminal gang, organization, or enterprise in the second degree if he or she:
    - (A) Commits or attempts to commit or solicits to commit a felony predicate criminal offense; and
    - (B) That offense is part of a continuing series of two (2) or more predicate criminal offenses that are undertaken by that person in concert with two (2) or more other persons, but with respect to whom that person does not occupy the position of organizer, a supervisory position, or any other position of management.
  - (2) A person who engages in a continuing criminal gang, organization, or enterprise in the second degree is guilty of a felony one (1) classification higher than the classification of the highest underlying predicate offense referenced in subdivision (b)(1)(A) of this section.
- (c) A person who engages in a continuing criminal gang, organization, or enterprise when the underlying predicate offense is a Class A felony or a Class Y felony is guilty of a Class Y felony.
- (d) Any sentence of imprisonment imposed pursuant to this section is in addition to any sentence imposed for the violation of a predicate criminal offense.

Under Ark. Stat. Ann. 5-74-103(4) “Predicate criminal offense” means any violation of Arkansas law that is a crime of violence or a crime of pecuniary gain.

1.4.1 Recommendation: Amend Ark. Stat. Ann. 5-74-103(4) to expressly include human trafficking and pursuant to Ark. Code Ann. § 5-11-108 (trafficking in persons) and CSEC offenses.

**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 commercial sexual exploitation of children (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 under 18 are sufficiently high 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 sex with a victim of domestic minor sex trafficking.*

Ark. Code Ann. § 5-11-108(b)(1) (Trafficking of persons) states that “[a] person commits the offense of trafficking of persons if he or she: (1) Recruits, harbors, transports, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to: . . . (G) Sexual conduct.”<sup>7</sup> Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),<sup>8</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>9</sup> a person under 18 to engage in commercial sex.<sup>10</sup> It is unsettled whether the courts will uphold this interpretation of the TVPA. However, although the statute does include the word, “obtains,” it still requires a showing that the buyer “obtain[ed] [the] person for labor or services through the use of force, fraud, or coercion” and, therefore, is unlikely to cover buyers.

- 2.1.1 Recommendation: Amend Ark. Code Ann. § 5-11-108(b)(1) (Trafficking of persons) to clarify that the statute is applicable to buyers of commercial sex with minors.

- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*

<sup>7</sup> See *supra* note 2.

<sup>8</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>9</sup> 18 U.S.C. 1591(a).

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

A buyer of commercial sex acts with a minor may be found in violation of Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) under certain circumstances. Ark. Code Ann. § 5-27-305(a) states,

- (a) A person commits the offense of transportation of a minor for prohibited sexual conduct if the person transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor, and the actor:
- (1) Knows or has reason to know that prostitution or sexually explicit conduct involving the minor will be commercially exploited by any person; and
  - (2) Acts with the purpose that the minor will engage in:
    - (A) Prostitution; or
    - (B) Sexually explicit conduct.

This crime is a Class A felony punishable by imprisonment for 6–30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-305(b), 5-4-401(a)(2), 5-4-201(a)(1).

However, if not identified as a child sex trafficking or CSEC case, a buyer of sex with a minor 15–18 may be charged with Ark. Code Ann. § 5-70-103 (Sexual solicitation), the same statute that applies for solicitation of adults. Under this statute a buyer of commercial sex is guilty of a crime when “he or she: (1) Offers to pay a fee to a person to engage in sexual activity with him or her or another person; or (2) Solicits or requests a person to engage in sexual activity with him or her in return for a fee.” Ark. Code Ann. § 5-70-103(a). For the first offense, this crime is only a Class B misdemeanor, and second and subsequent offenses are Class A misdemeanors. Ark. Code Ann. § 5-70-103(b).

Based on the premise that a buyer causes a minor to commit the criminal act of prostitution through solicitation, it is possible that a buyer could be charged with Ark. Code Ann. § 5-27-209(a) (Contributing to the delinquency of a minor), which, in relevant part, makes it a crime when a person “knowingly aids, causes, or encourages a minor to: (1) Do any act prohibited by law; (2) Do any act that if done by an adult would render the adult subject to a prosecution for an offense punishable by imprisonment.” Therefore, a buyer could be charged with this crime by causing a minor to commit the offense of prostitution under Ark. Code Ann. § 5-70-102,<sup>11</sup> a Class A misdemeanor, which may be punishable by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Ark. Code Ann. §§ 5-27-209(b), 5-4-201(b)(1), 5-4-401(b)(1).

Similarly, the buyer could be charged with Ark. Code Ann. § 5-27-220(a) (Contributing to the delinquency of a juvenile), which creates a Class A misdemeanor when a person “willfully causes, aids, or encourages any minor to do or perform any act which, if done or performed, would make the minor a delinquent juvenile or juvenile in need of supervision within the meaning of this section and the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.” A “delinquent juvenile” is defined in Ark. Code Ann. § 9-27-303(15)(A) as “any juvenile: (A) Ten (10) years old or older who has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation,” which can include the offense of prostitution under Ark. Code Ann. § 5-70-102.<sup>12</sup> Ark. Code Ann. §§ 5-27-220(d)(1). However, Ark. Code Ann. § 5-27-220 goes on to state in subsection (d)(2) that “the court may suspend or postpone enforcement of any part of the sentence or fine levied under this section if in the judgment of the court the suspension or postponement is in the best interest of the minor that was caused, aided, or encouraged.”

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<sup>11</sup> See *infra* Section 5.3 regarding the applicability of Ark. Code Ann. § 5-70-102 (Prostitution) to prosecute prostituted minors.

<sup>12</sup> See *infra* note Section 5.3 regarding the applicability of Ark. Code Ann. § 5-70-102 (Prostitution) to prosecute prostituted minors.

Several sexual offense statutes exist that could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of human trafficking under Ark. Code Ann. § 5-11-108(b)(1) (Trafficking of persons).<sup>13</sup> Ark. Code Ann. § 5-14-110(a)(1) (Sexual indecency with a child) occurs when an adult “solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in: (A) Sexual intercourse; (B) Deviate sexual activity; or (C) sexual contact.” The crime is a Class D felony punishable by imprisonment not to exceed 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-14-110(b), 5-4-401(a)(5), 5-4-201(a)(2).

2.2.1 Recommendation: Amend Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) to criminalize the purchase of sex acts with a minor under any circumstance, or amend Ark. Code Ann. § 5-70-103 (Sexual solicitation) to provide a heightened penalty for solicitation of a minor under 18 for commercial sex acts.

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

Arkansas’s solicitation for prostitution law does not distinguish the purchase of commercial sex acts with children from those with adults. Ark. Code Ann. § 5-70-103(a) (Sexual solicitation) states, “A person commits the offense of sexual solicitation if he or she: (1) Offers to pay a fee to a person to engage in sexual activity with him or her or another person; or (2) Solicits or requests a person to engage in sexual activity with him or her in return for a fee.” A first offense is a Class B misdemeanor, and subsequent offenses are Class A misdemeanors. Ark. Code Ann. § 5-70-103(b).

2.3.1 Recommendation: Amend Ark. Code Ann. § 5-70-103(a) (Sexual solicitation) to make the purchase of commercial sex acts with a child a separate crime that refers to Ark. Code Ann. § 5-11-108(b)(1) (Trafficking of persons) for prosecution.

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

If a buyer can be convicted of violating Ark. Code Ann. § 5-11-108 (Trafficking of persons), the buyer will be guilty of a Class A felony punishable by imprisonment for 6–30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-11-108(c), 5-4-401(a)(2), 5-4-201(a)(1).

If convicted under Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) a buyer will be guilty of a Class A felony punishable by imprisonment for 6–30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-305(b), 5-4-401(a)(2), 5-4-201(a)(1).

When the minor is under 15 and the buyer is convicted of violating Ark. Code Ann. § 5-14-110(a)(1) (Sexual indecency with a child), the crime is a Class D felony punishable by imprisonment not to exceed 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-14-110(b), 5-4-401(a)(5), 5-4-201(a)(2).

If convicted of violating either Ark. Code Ann. § 5-27-209(a) (Contributing to the delinquency of a minor) or Ark. Code Ann. § 5-27-220 (Contributing to the delinquency of a juvenile), the buyer is subject to a Class A misdemeanor, which may be punishable by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Ark. Code Ann. §§ 5-27-209(b), 5-27-220(d)(1), 5-4-201(b)(1), 5-4-401(b)(1).

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<sup>13</sup> See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

Under Ark. Code Ann. § 5-70-103 (Sexual solicitation), a first time offense is a Class B misdemeanor regardless of the prostituted person's age. Ark. Code Ann. § 5-70-103(b)(1)., A Class B misdemeanor may be punished by imprisonment up to 90 days and a possible fine not to exceed \$1,000. Ark. Code Ann. § 5-4-401(b)(2), 5-4-201(b)(2). A second offense is a Class A misdemeanor, which may be punished by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Ark. Code Ann. §§ 5-70-103(b)(2), 5-4-201(b)(1), 5-4-401(b)(1).

Sexual offenses that are not specific to commercial sexual exploitation but may be used to prosecute a buyer are felonies. Under Ark. Code Ann. § 5-27-306(a) (Internet stalking of a child), if a buyer over 21 attempts to arrange a meeting with a child under 15 for sexual purposes and the meeting never occurs, the buyer is guilty of a Class B felony. Ark. Code Ann. § 5-27-306(b)(1). As a Class B felony this crime is punishable by imprisonment for 5-20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-4-401(a)(3), 5-4-201(a)(1). If the meeting actually occurs, regardless of whether actual sexual intercourse, sexually explicit conduct, or deviate sexual activity occurs, the person is guilty of a Class A felony punishable by imprisonment for 6-30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(3), 5-4-401(a)(2), 5-4-201(a)(1).

When the victim is less than fourteen (14), the buyer could be charged with a Class Y felony under Ark. Code Ann. § 5-14-103 (Rape), punishable by imprisonment for 25–40 years or a life sentence. Ark. Code Ann. §§ 5-14-103(c), 5-4-401(a)(1).

If the buyer is over 18 and charged with a Class B felony under Ark. Code Ann. § 5-14-125 (Sexual assault in the second degree), the buyer is subject to imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-14-125(a)(3)(A), (b)(1), 5-4-401(a)(3), 5-4-201(a)(1). If the buyer is 20 or older and charged with the Class D felony of Ark. Code Ann. § 5-14-127 (Sexual assault in the fourth degree), the buyer is subject to imprisonment not to exceed 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-14-127(a)(1)(A), (b)(1), 5-4-401(a)(5), 5-4-201(a)(2).

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>14</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>15</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>16</sup>

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<sup>14</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>15</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>16</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,

2.4.1 Recommendation: To ensure that the penalty for buying commercial sex acts with a minor aligns with federal penalties, amend Ark. Code Ann. § 5-70-103(a) (Sexual solicitation) to make purchasing commercial sex acts with a person under 18 years of age a separate crime that refers to Ark. Code Ann. § 5-11-108(b)(1) (Trafficking of persons) for prosecution.

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.*

Ark. Code Ann. § 5-27-306(a) (Internet stalking of a child) states in part,

A person commits the offense of internet stalking of a child if the person being twenty-one (21) years of age or older knowingly uses a computer online service, internet service, or local internet bulletin board service to:

(1) Seduce, solicit, lure, or entice a child fifteen (15) years of age or younger in an effort to arrange a meeting with the child for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

...

(3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

....

If the individual “attempts to arrange a meeting,” the buyer is guilty of a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(1), (2), 5-4-401(a)(3), 5-4-201(a)(1). If the meeting with the child actually occurs, even if the sexual activity does not occur, the person is guilty of a Class A felony punishable by imprisonment for 6-30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(3), 5-4-401(a)(2), 5-4-201(a)(1).

It is also possible that a buyer could be prosecuted under Ark. Code Ann. § 5-27-603 (Computer child pornography), which states that it is a Class B felony for a person to “[u]tilize[] a computer online service, internet service, or local bulletin board service to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another individual believed by the person to be a child, to engage in sexually explicit conduct.” Ark. Code Ann. § 5-27-603(a)(2), (b). For the purpose of this statute, a child is defined as “any person under seventeen (17) years of age.” Ark. Code Ann. § 5-27-601(1).

2.5.1 Recommendation: Amend Ark. Code Ann. § 5-27-603 (Computer child pornography) and § 5-27-306(a) (Internet stalking of a child) to raise the age of the minor victim to under 18 in order to protect all minors.

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

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

Neither Ark. Code Ann. § 5-11-108 (Trafficking of persons) nor § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) prohibits a buyer from asserting a mistake of age defense.

Ark. Code Ann. § 5-27-602(c) (Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child) states, “It is an affirmative defense to a prosecution under this section that the defendant in good faith reasonably believed that the person depicted in the matter was seventeen (17) years of age or older.” In addition, traffickers (and potentially facilitators) who commit subchapter 4 (Use of Children in Sexual Performances) offenses can assert an affirmative defense pursuant to Ark. Code Ann. § 5-27-404 (Good faith defense) “that the defendant in good faith reasonably believed that the person who engaged in the sexual conduct was eighteen (18) years of age or older.”

Similarly, there are no specific provisions prohibiting a defendant charged under Ark. Code Ann. § 5-27-209 (Contributing to the delinquency of a minor) and Ark. Code Ann. § 5-27-220 (Contributing to the delinquency of a juvenile) from using the age mistake defense for buying commercial sex with a minor. In general, a mistake of fact defense is only allowed if “the actor engaged in the conduct charged to constitute the offense under a mistaken belief of fact if: (1) The statute defining the offense or a statute relating to the offense expressly provides that a mistaken belief of fact constitutes a defense; or (2) Mistaken belief of fact establishes a defense of justification provided by § 5-2-601 et seq. [provisions unrelated to CSEC or sexual offenses against children].” Ark. Code Ann. § 5-2-206(a).<sup>17</sup>

2.6.1 Recommendation: Amend Ark. Code Ann. § 5-27-602(c) (Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child) and § 5-27-404 (Good faith defense) to repeal the affirmative defenses provided under those provisions.

2.6.2 Recommendation: Amend Ark. Code Ann. § 5-11-108 (Trafficking of persons) and Ark. Code Ann. § 5-11-108 (Trafficking of persons) nor § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) to prohibit a mistake of age defense in trafficking or CSEC prosecutions.

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

Ark. Code Ann. § 5-11-108(b)(1) (Trafficking of persons) and § 5-27-305(a) (Transportation of minors for prohibited sexual conduct) do not stagger penalties based on the age of the minor victim. In contrast, a buyer of sex acts with a minor age 15–18 faces only a Class A misdemeanor under Ark. Code Ann. § 5-27-220 (Contributing to the delinquency of a juvenile) or Ark. Code Ann. § 5-27-209 (Contributing to the delinquency of a minor). Ark. Code Ann. §§ 5-27-220(d)(1), 5-27-209(b), 5-25-101(4). A Class A misdemeanor is punishable by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Ark. Code Ann. §§ 5-4-201(b)(1), 5-4-401(b)(1).

Penalties under Ark. Code Ann. § 5-27-306(a) (Internet stalking of a child) are also restricted to minors 15 or younger (or believed to be 15 or younger). For purposes of Ark. Code Ann. § 5-27-603 (Computer child pornography), a child is defined as “any person under seventeen (17) years of age.” Ark. Code Ann. § 5-27-601(1).

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

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<sup>17</sup> Ark. Code Ann. § 5-2-206(e) (Ignorance or mistake) states, “A mistake of law other than as to the existence or meaning of the statute under which the defendant is prosecuted is relevant to disprove the specific culpable mental state required by the statute under which the defendant is prosecuted.”

Fines for trafficking and CSEC crimes range greatly. In the unlikely event that a buyer can be convicted of violating Ark. Code Ann. § 5-11-108 (Trafficking of persons), a possible fine not to exceed \$15,000 may be assessed for the Class A felony. Ark. Code Ann. §§ 5-11-108(c), 5-4-201(a)(1). If convicted of violating Ark. Code Ann. § 5-14-110(a)(1) (Sexual indecency with a child), a fine not to exceed \$10,000 may be assessed for this Class D felony. Ark. Code Ann. §§ 5-14-110(b), 5-4-201(a)(2). If convicted of violating either Ark. Code Ann. § 5-27-209(a) (Contributing to the delinquency of a minor) or Ark. Code Ann. § 5-27-220(a) (Contributing to the delinquency of a juvenile), the buyer is subject to a Class A misdemeanor, which may be punishable by a fine not to exceed \$2,500. Ark. Code Ann. §§ 5-27-209(b), 5-27-220(d)(1), 5-4-201(b)(1). A first time offense of Ark. Code Ann. § 5-70-103 (Sexual solicitation) is a Class B misdemeanor subject to a possible fine not to exceed \$1,000, and a second offense is a Class A misdemeanor with a possible fine not to exceed \$2,500. Ark. Code Ann. §§ 5-70-103(b), 5-4-201(b).

If convicted of Ark. Code Ann. § 5-27-306(a) (Internet stalking of a child), potentially applicable to CSEC crimes, even if the meeting never occurs, the buyer is still guilty of a Class B felony with a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(1), 5-4-201(a)(1). If the meeting does occur, the person is guilty of a Class A felony and subject to a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(3), 5-4-201(a)(1).

If the buyer is convicted of violating Ark. Code Ann. § 5-14-125(a)(3)(A) (Sexual assault in the second degree), the buyer is guilty of a Class B felony and is subject to a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-14-125(a)(3), (b)(1), 5-4-201(a)(1). Ark. Code Ann. § 5-14-127(a)(1)(A) (Sexual assault in the fourth degree) is a Class D felony with a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-14-127, (b)(1), 5-4-201(a)(2).

A buyer could also be required to pay restitution to the victim under Ark. Code Ann. § 5-4-205(a)(1) (Restitution), which states that “[a] defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution.” The restitution is based on the “actual economic loss caused to a victim by the offense” and if bodily injury has occurred, the restitution order may require the defendant to, among other things, “[p]ay the cost of a necessary medical or related professional service or device relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing; . . . [p]ay the cost of necessary physical and occupational therapy and rehabilitation; [and] . . . [r]eimburse the victim for income lost by the victim as a result of the offense,” with a maximum income reimbursement of \$50,000. Ark. Code Ann. § 5-4-205(b)(1), (2).

Under Ark. Code Ann. § 5-5-101(a) (Disposition of contraband and seized property), “Any seized property shall be returned to the rightful owner or possessor of the seized property except contraband owned by a defendant.” Pursuant to Ark. Code Ann. § 5-5-101(b)(1) contraband is defined as including the following:

- (A) Article possessed under a circumstance prohibited by law;
- (B) Weapon or other instrument used in the commission or attempted commission of a felony;
- (C) Visual, print, or electronic medium that depicts sexually explicit conduct involving a child prohibited under § 5-27-304;
- (D) Visual, print, or electronic medium that contains a sexual performance of a child prohibited under § 5-27-403;
- (E) Item the possession of which is prohibited by § 5-27-602 [Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child];
- (F) Item the production of which is prohibited by § 5-27-603 [Computer child pornography];
- (G) Item the production of which is prohibited by § 5-27-605 [Computer exploitation of a child]; or
- (H) Other article designated “contraband” by law.

Contraband listed in Ark. Code Ann. § 5-5-101(b)(1)(C)-(H) shall be destroyed. Ark. Code Ann. § 5-5-101(c)(1). Other contraband may be retained for use by law enforcement or sold, the proceeds to be used to reimburse the rightful owner or to be “paid into the general fund of the county, city, or town whose law enforcement agency performed the seizure.” Ark. Code Ann. § 5-5-101(g).

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

Two Arkansas statutes establish crimes for buying and possessing child pornography in Arkansas.

Under Ark. Code Ann. § 5-27-304(a)(2) (Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child) it is illegal to “[k]nowingly solicit, receive, purchase, exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.” A first violation of this section is a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-304(b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent violations are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-304(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).

Under Ark. Code Ann. § 5-27-602(a)(2) (Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child), it is illegal for someone to “knowingly: . . . (2) Possess[] or view[] through any means, including on the internet, any photograph, film, videotape, computer program or file, computer-generated image, video game, or any other reproduction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct.” A first offense is a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-602(b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent offenses are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-602(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).

In comparison, a federal conviction for possession 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>

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

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

Ark. Code Ann. § 12-12-905(a)(1) applies the registration requirements to, among others, “a person who: (1) Is adjudicated guilty on or after August 1, 1997, of a sex offense, aggravated sex offense, or sexually violent offense.” Ark. Code Ann. § 12-12-903(12)(A)(i) states,

“Sex offense” includes, but is not limited to:

- (i) The following offenses:
  - (a) Rape, § 5-14-103;
  - (b) Sexual indecency with a child, § 5-14-110;
  - (c) Sexual assault in the first degree, § 5-14-124;
  - (d) Sexual assault in the second degree, § 5-14-125;
  - (e) Sexual assault in the third degree, § 5-14-126;
  - (f) Sexual assault in the fourth degree, § 5-14-127;
  - ...
  - (k) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
  - ...
  - (w) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;
  - (x) Internet stalking of a child, § 5-27-306;
  - ....

However, Ark. Code Ann. § 5-11-108 (Trafficking of persons), Ark. Code Ann. § 5-70-103 (Sexual solicitation), Ark. Code Ann. § 5-27-220 (Contributing to the delinquency of a juvenile) and Ark. Code Ann. § 5-27-209 (Contributing to the delinquency of a minor) are not specifically mentioned as sex offenses. Ark. Code Ann. § 12-12-903(12)(A). Those crimes not enumerated are nevertheless not specifically excluded because “[t]he sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (12)(A)(i) of this section” unless the state assembly “expresses its intent not to consider the offense to be a true sex offense for the purposes of this subchapter.” Ark. Code Ann. § 12-12-903(12)(B).

- 2.10.1 Recommendation: Amend Ark. Code Ann. § 12-12-903 (Definitions) to include the crimes of Ark. Code Ann. § 5-11-108 (Trafficking of persons), Ark. Code Ann. § 5-70-103 (Sexual solicitation), § 5-27-305(a) (Transportation of minors for prohibited sexual conduct), Ark. Code Ann. § 5-27-220 (Contributing to the delinquency of a juvenile), and Ark. Code Ann. § 5-27-209 (Contributing to the delinquency of a minor) when commercial sexual exploitation of a child is involved, to avoid relying on the discretion of the court and ensure that all buyers involved in these crimes are required to register as sex offenders.

***Legal Components:***

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

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***Legal Analysis:***

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*<sup>21</sup>

Ark. Code Ann. § 5-11-108 (Trafficking of persons) is a Class A felony punishable by imprisonment for 6-30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-11-108(c), 5-4-401(a)(2), 5-4-201(a)(1).

Additionally, a trafficker could be charged with violating Ark. Code Ann. § 5-70-104(a)(2) (Promoting prostitution in the first degree) “if he or she knowingly: . . . (2) Advances prostitution or profits from prostitution of a person less than eighteen (18) years of age.” As a Class D felony, this crime is punishable by imprisonment not to exceed 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-4-401(a)(5), 5-4-201(a)(2). Similarly, a trafficker could be charged with Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct). This crime is a Class A felony punishable by imprisonment for 6–30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-305(b), 5-4-401(a)(2), 5-4-201(a)(1). A first time conviction under Ark. Code Ann. § 5-27-402(a) (Employing or consenting to the use of a child in a sexual performance) is a Class C felony punishable by imprisonment for 3-10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-402(c)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent offenses are Class B felonies punishable by imprisonment for 5-20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-402(c)(2), 5-4-401(a)(3), 5-4-201(a)(1).

Additional criminal statutes could be employed to prosecute traffickers. Under Ark. Code Ann. § 5-74-104 (Engaging in a continuing criminal gang, organization, or enterprise), a trafficker can be charged with engaging in a continuing criminal gang in the first degree if he “(A) Commits or attempts to commit or solicits to commit a felony predicate criminal offense; and (B) That offense is part of a continuing series of two (2) or more predicate criminal offenses that are undertaken by that person in concert with two (2) or more other persons with respect to whom that person occupies a position of organizer, a supervisory position, or any other position of management.” Ark. Code Ann. § 5-74-104(a)(1). A “predicate criminal offense” that can be used to bring an action under this chapter includes a “crime of pecuniary gain,” which is defined as “any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value.” Ark. Code Ann. § 5-74-103(1), (4). If guilty of this crime as an organizer, the individual “is guilty of a felony two (2) classifications higher than the classification of the highest underlying predicate offense.” Ark. Code Ann. § 5-74-104(a)(2). If the underlying offense is Class A felony or Class Y felony, it becomes a Class Y felony. Ark. Code Ann.

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<sup>21</sup> See discussion of relevant provisions *supra* Section 1.2.

§ 5-74-104(c). A person who is guilty of a violation of this crime but is not the organizer, is guilty in the second degree and the offense is classified only one degree higher than the predicate offense. Ark. Code Ann. § 5-74-104(b).

Additionally, a trafficker could be charged with Ark. Code Ann. § 5-74-203(a) (Soliciting or recruiting a minor to join or to remain a member of a criminal gang, organization, or enterprise). This crime occurs when a person “by intimidation or duress causes, aids, abets, encourages, solicits, or recruits a minor to become or to remain a member of any group that the person knows to be a criminal gang, organization, or enterprise that falls into the definition and intent” of the subchapter on “Recruiting Gang Members.” A “criminal gang, organization, or enterprise” is defined in Ark. Code Ann. § 5-74-202(3) as “any group of three (3) or more individuals who commit a continuing series of two (2) or more predicate criminal offenses that are undertaken in concert with each other.” A trafficker’s operation can be considered a criminal gang, organization, or enterprise because “predicate criminal offenses” include “crimes of pecuniary gain,” which are defined as “any violation of Arkansas law that results, or was intended to result, in the defendant’s receiving income, benefit, property, money, or anything of value.” Ark. Code Ann. § 5-74-202(1), (4). The crime is punishable as a Class B felony with imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-74-203(b), 5-4-401(a)(3), 5-4-201(a)(1).

A trafficker could be charged with Ark. Code Ann. § 5-42-204 (Criminal use of property or laundering criminal proceeds), which creates a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000 when a person “[u]ses or makes available for use any property in which he or she has any ownership or lawful possessory interest to facilitate a predicate criminal offense.” Ark. Code Ann. §§ 5-42-204(a)(2), (b), 5-4-401(a)(4), 5-4-201(a)(2). A “predicate criminal offense” is defined as “any violation of Arkansas law that is a crime of violence or a crime of pecuniary gain.” Ark. Code Ann. § 5-42-203(7). “Crime of violence is defined as “any violation of Arkansas law in which a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person, specifically including rape,” and “crime of pecuniary gain” is defined as “any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value,” and thus includes crimes by which a trafficker intends to make a profit. Ark. Code Ann. § 5-42-203(3), (7).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>22</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>23</sup> against a minor.

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

A person is guilty of the violating Ark. Code Ann. § 5-27-303(a) (Engaging children in sexually explicit conduct for use in visual or print medium), a CSEC offense, when he “employs, uses, persuades, induces, entices, or coerces any child to engage in or who has a child assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting sexually explicit conduct.”

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<sup>22</sup> See *supra* note 8.

<sup>23</sup> See *supra* note 14.

A first offense is a Class B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-303(a)(1), 5-4-401(a)(3), 5-4-201(a)(1). Subsequent offenses are Class A felonies punishable by imprisonment for 6-30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-303(a)(2), 5-4-401(a)(2), 5-4-201(a)(1).

Pornography crimes applicable to a trafficker include the following:

1. Ark. Code Ann. § 5-27-304(a)(2) (Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child) makes it illegal to “[w]ith knowledge of the character of the visual or print medium involved, . . . [k]nowingly solicit, receive, purchase, exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.” A first violation of this section is a Class C felony punishable by imprisonment for 3-10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-304(b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent violations are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-304(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).
2. Under Ark. Code Ann. § 5-27-403(a) (Producing, directing, or promoting a sexual performance by a child) it is a crime for a person “knowing the character and content of the material, to produce, direct, or promote a performance that includes sexual conduct by a child under eighteen (18) years of age.” As a Class B felony this crime is punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-403(b), 5-4-401(a)(3), 5-4-201(a)(1).
3. Pursuant to Ark. Code Ann. § 5-27-602(a)(1) (Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child), a person is guilty of a Class C felony punishable by imprisonment for 3-10 years and a possible fine not to exceed \$10,000 for a first offense, when he “[r]eceives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers, or agrees to offer through any means, including the internet, any photograph, film, videotape, computer program or file, video game, or any other reproduction or reconstruction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct.” Ark. Code Ann. §§ 5-27-602(a)(1), (b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent offenses are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-602(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>24</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>25</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>26</sup> Subsequent convictions, however,

<sup>24</sup> See *supra* note 14.

<sup>25</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>26</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).

are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>27</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.*

Ark. Code Ann. § 5-27-306(a) (Internet stalking of a child) makes it a crime if a person over 21 “knowingly uses a computer online service, internet service, or local internet bulletin board service to: . . . (3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in: (A) Sexual intercourse; (B) Sexually explicit conduct; or (C) Deviate sexual activity.” If the person merely “attempts to arrange a meeting,” this crime is a Class B felony punishable by imprisonment for 5-20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(1), 5-4-401(a)(3), 5-4-201(a)(1). If the meeting actually occurs, even if sexual activity does not occur, the person is guilty of a Class A felony punishable by imprisonment for 6–30 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-306(b)(3), 5-4-401(a)(2), 5-4-201(a)(1).

3.3.1 Recommendation: Amend Ark. Code Ann. § 5-27-306(a) (Internet stalking of a child) to apply to any offense involving a minor under 18.

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

Fines exist for the various crimes with which the state could charge a trafficker. Ark. Code Ann. § 5-11-108 (Trafficking of persons) establishes a class A felony punishable by a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-11-108(c), 5-4-201(a)(1). Ark. Code Ann. § 5-70-104 (Promoting prostitution in the first degree), establishes a Class D felony punishable by a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-70-104(a)(2), (b), 5-4-201(a)(2). Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct), establishes a Class A felony punishable by a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-305(b), 5-4-201(a)(1). For a first time offense of Ark. Code Ann. § 5-27-402 (Employing or consenting to the use of a child in a sexual performance), as a Class C felony, the trafficker can receive a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-402 (c)(1), 5-4-201(a)(2). For subsequent offenses, a trafficker faces a Class B felony with a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-402(c)(2), 5-4-201(a)(1).

When a trafficker is charged with violating Ark. Code Ann. § 5-74-203 (Soliciting or recruiting a minor to join or remain a member of a criminal gang, organization, or enterprise), a Class B felony, the trafficker could be subject to a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-74-203(b), 5-4-201(a)(1).

A trafficker could also be required to pay discretionary restitution to the victim under Ark. Code Ann. § 5-4-205(a)(1) (Restitution), which states that “[a] defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution.” The restitution is based on the “actual economic loss caused to a victim by the offense,” and if bodily injury has occurred, the restitution order may require the defendant to, among other things, “[p]ay the cost of a necessary medical or related professional service or device relating to physical, psychiatric, and psychological care, including nonmedical care and

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<sup>27</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).

treatment rendered in accordance with a recognized method of healing; . . .[p]ay the cost of necessary physical and occupational therapy and rehabilitation; [and] . . . [r]eimburse the victim for income lost by the victim as a result of the offense” with a maximum income reimbursement of \$50,000. Ark. Code Ann. § 5-4-205(b)(1), (2).

A violation of Ark. Code Ann. § 5-42-204(a)(2) (Criminal use of property or laundering criminal proceeds) occurs when a person “[u]ses or makes available for use any property in which he or she has any ownership or lawful possessory interest to facilitate a predicate criminal offense.” A “predicate criminal offense” includes a “crime of pecuniary gain,” which is defined as “any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value.” Ark. Code Ann. § 5-42-203(3), (7). The violator may face a civil action brought by a prosecuting attorney “for damages in an amount equal to property, funds, or a monetary instrument involved in the violation as well as the proceeds acquired by any person involved in the enterprise or by reason of conduct in furtherance of the violation, together with costs incurred for resources and personnel used in the investigation and prosecution of both criminal and civil proceedings.” Ark. Code Ann. § 5-42-204(c)(1). Therefore, when a trafficker uses funds to further any offense relating to child pornography, the trafficker may become liable in a civil proceeding for damages.

Finally, a trafficker may face forfeiture of certain illegal assets.<sup>28</sup> Under Ark. Code Ann. § 5-5-101(a) (Disposition of contraband and seized property), “Any seized property shall be returned to the rightful owner or possessor of the seized property except contraband owned by a defendant.”

Under Ark. Code Ann. § 5-5-101(a) (Disposition of contraband and seized property), “Any seized property shall be returned to the rightful owner or possessor of the seized property except contraband owned by a defendant.” Pursuant to Ark. Code Ann. § 5-5-101(b)(1) contraband is defined as including the following:

- (A) Article possessed under a circumstance prohibited by law;
- (B) Weapon or other instrument used in the commission or attempted commission of a felony;
- (C) Visual, print, or electronic medium that depicts sexually explicit conduct involving a child prohibited under § 5-27-304;
- (D) Visual, print, or electronic medium that contains a sexual performance of a child prohibited under § 5-27-403;
- (E) Item the possession of which is prohibited by § 5-27-602 [Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child];
- (F) Item the production of which is prohibited by § 5-27-603 [Computer child pornography];
- (G) Item the production of which is prohibited by § 5-27-605 [Computer exploitation of a child]; or
- (H) Other article designated “contraband” by law.

Contraband listed in Ark. Code Ann. § 5-5-101(b)(1)(C)-(H) shall be destroyed. Ark. Code Ann. § 5-5-101(c)(1). Other contraband may be retained for use by law enforcement or sold, the proceeds to be used to reimburse the rightful owner or to be “paid into the general fund of the county, city, or town whose law enforcement agency performed the seizure.” Ark. Code Ann. § 5-5-101(g)

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

A person who is guilty “of a sex offense, aggravated sex offense, or sexually violent offense” must register as a sex offender. Ark. Code Ann. § 12-12-905(a)(1). Ark. Code Ann. § 12-12-903(12)(A)(i) states,

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<sup>28</sup> For additional information on asset forfeiture rules and procedures, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>.

“Sex offense” includes, but is not limited to:

(i) The following offenses:

...

(h) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(i) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(j) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(k) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(l) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(m) Promoting prostitution in the first degree, § 5-70-104;

...

(q) Kidnapping pursuant to § 5-11-102(a) when the victim is a minor and the offender is not the parent of the victim;

(r) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;

(s) Permitting abuse of a minor, § 5-27-221;

(t) Computer child pornography, § 5-27-603;

(u) Computer exploitation of a child, § 5-27-605;

(v) Permanent detention or restraint, § 5-11-106, when the offender is not the parent of the victim;

(w) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;

(x) Internet stalking of a child, § 5-27-306;

....

A sex offense also includes “[a]n attempt, solicitation, or conspiracy to commit any of the offenses” listed above, and includes “[a]n adjudication of guilt for an offense of the law of another state, for a federal offense, for a tribal court offense, or for a military offense: (a) Which is similar to any of the offenses enumerated in subdivision (12)(A)(i) of this section; or (b) When that adjudication of guilt requires registration under another state’s sex offender registration laws.” Ark. Code Ann. § 12-12-903(12)(A)(ii), (iii).

The crimes of Ark. Code Ann. § 5-11-108 (Trafficking of persons), Ark. Code Ann. § 5-70-103 (Sexual solicitation), Ark. Code Ann. § 5-27-220 (Contributing to the delinquency of a juvenile) and Ark. Code Ann. § 5-27-209 (Contributing to the delinquency of a minor) are not specifically mentioned as sex offenses. Ark. Code Ann. § 12-12-903(12)(A). Those crimes not enumerated are nevertheless not specifically excluded because “[t]he sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (12)(A)(i) of this section” unless the state assembly “expresses its intent not to consider the offense to be a true sex offense for the purposes of this subchapter.” Ark. Code Ann. § 12-12-903(12)(B).

3.5.1 Recommendation: Amend Ark. Code Ann. § 12-12-903 (Definitions) to include the crimes of Ark. Code Ann. § 5-11-108 (Trafficking of persons), Ark. Code Ann. § 5-70-103 (Sexual solicitation), Ark. Code Ann. § 5-27-220 (Contributing to the delinquency of a juvenile), and Ark. Code Ann. § 5-27-209 (Contributing to the delinquency of a minor) when commercial sexual exploitation of a child is involved to ensure that all traffickers involved in these crimes are required to register as sex offenders.

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

Under Ark. Code Ann. § 9-27-341(b)(3) (Termination of parental rights), to terminate parental rights permanently, the court must base its order on “a finding by clear and convincing evidence: (A) That it is in the best interest of the juvenile, including consideration of the following factors: (i) The likelihood that the juvenile will be adopted if the termination petition is granted; and (ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents.” Ark Code Ann. § 9-27-341(b)(3)(B) specifies that the court must also find “clear and convincing evidence” of one of a number of grounds, including,

- (vi) (a) The court has found the juvenile or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation,<sup>29</sup> any of which was perpetrated by the juvenile’s parent or parents or step-parent or step-parents.
- (b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;
- ....
- (ix) (a) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:
  - ....
  - (2) Have committed a felony battery that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery that results in serious bodily injury to any juvenile;
  - (3) (A) Have subjected any juvenile to aggravated circumstances.
  - (B) “Aggravated circumstances” means:
    - (i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification; or
    - (ii) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months;
- ....

Under subsection (b)(3)(B)(ix)(b), “This subchapter does not require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed in subdivision (b)(3)(B)(ix)(a) of this section.”

- 3.6.1 Recommendation: Amend Ark. Code Ann. § 9-27-341(b)(3) (Termination of parental rights) to include a conviction under the human trafficking or CSEC offenses as grounds for terminating parental rights.

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<sup>29</sup> Pursuant to Ark. Code. Ann. § 9-27-303(53) (Definitions—Arkansas Juvenile Code),

- “Sexual exploitation” includes:
- (A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:
    - (i) Prostitution;
    - (ii) Obscene photographing; or
    - (iii) Obscene filming; or
  - (B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose;

***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.*

Ark. Code Ann. § 5-11-108 (Trafficking of persons) criminalizes facilitation of trafficking by establishing a Class A felony when a person “[b]enefits financially or benefits by receiving anything of value from participation in a venture” in which a person “[r]ecruits, harbors, transports, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to: (A) Involuntary servitude; (B) Peonage; (C) Debt bondage; (D) Slavery; (E) Marriage; (F) Adoption; or (G) Sexual conduct.” Ark. Code Ann. § 5-11-108(b), (c).

Facilitation is also included in Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct), which establishes a Class A felony when a person “transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor, and . . . (1) Knows or has reason to know that prostitution or sexually explicit conduct involving the minor will be commercially exploited by any person; and (2) Acts with the purpose that the minor will engage in: (A) Prostitution; or (B) Sexually explicit conduct.”

In addition, the crime of facilitation, is included in Ark. Code Ann. § 5-70-104(a)(2) (Promoting prostitution in the first degree), which makes it a crime when a person knowingly “[a]dvances prostitution or profits from prostitution of a person less than eighteen (18) years of age.” A person “advances prostitution,” when “acting other than as a prostitute or a patron of a prostitute, that person knowingly: . . . (C) Provides a person or premises for prostitution purposes; (D) Operates or assists in the operation of a house of prostitution or a prostitution enterprise; or (E) Engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.” Ark. Code Ann. § 5-70-101(1)(C), (D), (E). Promoting prostitution is a Class D felony punishable by imprisonment not to exceed 6 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-70-104(b), 5-4-401(a)(5), 5-4-201(a)(2).

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

Facilitators convicted under Ark. Code Ann. § 5-11-108 (Trafficking of persons) face a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-11-108(c), 5-4-401(a)(2), 5-4-201(a)(1), and if convicted under Ark. Code Ann. § 5-27-305(a) (Transportation of minors for prohibited sexual conduct), facilitators face a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-305(b), 5-4-401(a)(2), 5-4-201(a)(1).

Under Ark. Code Ann. § 5-5-101(a)<sup>30</sup> (Disposition of contraband and seized property), “Any seized property shall be returned to the rightful owner or possessor of the seized property except contraband owned by a defendant.” Pursuant to Ark. Code Ann. § 5-5-101(b)(1) contraband is defined as including the following:

- (A) Article possessed under a circumstance prohibited by law;
- (B) Weapon or other instrument used in the commission or attempted commission of a felony;
- (C) Visual, print, or electronic medium that depicts sexually explicit conduct involving a child prohibited under § 5-27-304;
- (D) Visual, print, or electronic medium that contains a sexual performance of a child prohibited under § 5-27-403;
- (E) Item the possession of which is prohibited by § 5-27-602 [Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child];
- (F) Item the production of which is prohibited by § 5-27-603 [Computer child pornography];
- (G) Item the production of which is prohibited by § 5-27-605 [Computer exploitation of a child]; or
- (H) Other article designated “contraband” by law.

Contraband listed in Ark. Code Ann. § 5-5-101(b)(1)(C)-(H) shall be destroyed. Ark. Code Ann. § 5-5-101(c)(1). Other contraband may be retained for use by law enforcement or sold, the proceeds to be used to reimburse the rightful owner or to be “paid into the general fund of the county, city, or town whose law enforcement agency performed the seizure.” Ark. Code Ann. § 5-5-101(g).

A facilitator could also be required to pay discretionary restitution to the victim under Ark. Code Ann. § 5-4-205(a)(1) (Restitution), which states that “[a] defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution.” The restitution is based on the “actual economic loss caused to a victim by the offense,” and if bodily injury has occurred, the restitution order may require the defendant to, among other things, “[p]ay the cost of a necessary medical or related professional service or device relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing; . . . [p]ay the cost of necessary physical and occupational therapy and rehabilitation; [and] . . . [r]eimbursed the victim for income lost by the victim as a result of the offense” with a maximum income reimbursement of \$50,000. Ark. Code Ann. § 5-4-205(b)(1), (2).

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

Arkansas does not have a specific sex tourism statute.

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

#### 4.4 *Promoting and selling child pornography is illegal.*

Pornography crimes applicable to a facilitator of trafficking include:

- 1. Ark. Code Ann. § 5-27-304(a) (Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child) makes it illegal to “[w]ith knowledge of the character of the visual or print medium involved . . . : (1) Knowingly advertise for sale or distribution, sell, distribute, transport, ship, exhibit, display, or receive for the purpose of sale or distribution any visual or print medium depicting a child participating or engaging in sexually explicit conduct; or (2) Knowingly solicit, receive, purchase,

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<sup>30</sup> See *supra* note 28.

exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.” A first violation of this section is a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000. Ark. Code Ann. §§ 5-27-304(b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent violations are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-304(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).

2. Under Ark. Code Ann. § 5-27-403(a) (Producing, directing, or promoting a sexual performance by a child) it is a crime for a person “knowing the character and content of the material, to produce, direct, or promote a performance that includes sexual conduct by a child under eighteen (18) years of age.” As a Class B felony, this crime is punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-403(b), 5-4-401(a)(3), 5-4-201(a)(1).
3. Pursuant to Ark. Code Ann. § 5-27-602(a)(1) (Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child), a person is guilty of a Class C felony punishable by imprisonment for 3–10 years and a possible fine not to exceed \$10,000 for a first offense, when he knowingly “[r]eceives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers, or agrees to offer through any means, including the internet, any photograph, film, videotape, computer program or file, video game, or any other reproduction or reconstruction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct.” Ark. Code Ann. §§ 5-27-602(a)(1), (b)(1), 5-4-401(a)(4), 5-4-201(a)(2). Subsequent offenses are Class B felonies punishable by imprisonment for 5–20 years and a possible fine not to exceed \$15,000. Ark. Code Ann. §§ 5-27-602(b)(2), 5-4-401(a)(3), 5-4-201(a)(1).

***Legal Components:***

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*
- 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 *Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*
- 5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (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 delinquency 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 for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (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 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*

For the purposes of the subchapter on “Crime Victims Reparations,” “victim” is defined as “a person who suffers personal injury<sup>31</sup> or death as a result of criminally injurious conduct committed either within the State of Arkansas or against any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible.” Ark. Code Ann. § 16-90-703(11)(A) (Definitions—Crime Victims Reparations). “Criminally injurious conduct” is defined in relevant part as “an act which occurs or is attempted in this state that results in personal injury or death to a victim, which act is punishable by fine, imprisonment, or death.” Ark. Code Ann. § 16-90-703(5)(A)(i) . Given the definition of “personal injury” and “criminally injurious conduct,” and since all CSEC crimes and Ark. Code Ann. § 5-11-108 (Trafficking of persons) are punishable by a possible fine and imprisonment, a domestic minor sex trafficking victim would be considered a victim for the purposes of the subchapter entitled “Crime Victims Reparations.” However, the statute fails to specifically identify these victims.

<sup>31</sup> “Personal injury” is defined in Ark. Code Ann. § 16-90-703(10) as “actual bodily harm, including pregnancy or mental anguish which is the direct result of a violent criminal act.”

For the purposes of the subchapter on “Rights of Victims of Crime,” a “victim” is defined as “a victim of a sex offense or an offense against a victim who is a minor<sup>32</sup> and a victim of any violent crime,<sup>33</sup> but does not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan and does not include a governmental entity.” Ark. Code Ann. § 16-90-1101(8) (Definitions—Rights of Victims of Crime). Ark. Code Ann. § 16-90-1101(6) includes many CSEC offenses in the definition of a “sex offense,” including,

- (H) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
- (I) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- (J) Employing or consenting to use of a child in sexual performance, § 5-27-402;
- (K) Producing, directing, or promoting a sexual performance, § 5-27-403;
- (L) Promoting prostitution in the first degree, § 5-70-104;
- ...
- (N) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (6);
- (O) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (6);
- (P) Computer child pornography, § 5-27-603;
- (Q) Computer exploitation of a child in the first degree, § 5-27-605(a); or
- (R) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (6).

For purposes of victim restitution by the defendant, under Ark. Stat. Ann. § 5-4-205(c)(1) (Restitution), “Victim” is defined as “any person, partnership, corporation, or governmental entity or agency that suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode.” This broad definition would include trafficking in persons and CSEC crimes, but does not expressly identify victims of domestic minor sex trafficking and the injury requirement may exclude some victims.

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<sup>32</sup> “Offense against a victim who is a minor” is defined in Ark. Code Ann. § 16-90-1101(3) as,

- (A) Kidnapping pursuant to § 5-11-102(a)(4) when the victim is a minor and the offender is not the parent of the victim;
- (B) False imprisonment in the first degree pursuant to § 5-11-103 when the victim is a minor and the offender is not the parent of the victim;
- (C) Permanent detention or restraint pursuant to § 5-11-106 when the victim is a minor and the offender is not the parent of the victim;
- (D) Any sex offense when the victim is a minor;
- (E) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (3);
- (F) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (3); or
- (G) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (3).

<sup>33</sup> “Violent crime” is defined in Ark. Code Ann. § 16-90-1101(9) as “any felony which resulted in physical injury to the victim, any felony involving the use of a deadly weapon, terroristic threatening in the first degree, § 5-13-301(a), and stalking, as defined in § 5-71-229.”

Ark. Code Ann. § 5-11-108 (Trafficking of persons) is not included in the definition of “sex offense,” and given the definition of “victim,” if a court considers a CSEC victim partly responsible for the conduct of her prostitution, then the minor may not be considered a victim for the purposes of the subchapter entitled “Rights of Victims of Crime.”

- 5.1.1 Recommendation: Amend Ark. Code Ann. § 16-90-1101 to include Ark. Code Ann. § 5-11-108 (Trafficking of persons) for commercial sexual exploitation of minors as a “sex offense” and to clarify that a domestic minor sex trafficking victim is not disqualified from victim status as a result of committing crimes as a consequence of the trafficking.
- 5.1.2 Recommendation: Amend the definitions of “victim” in Ark. Code Ann. § 16-90-703(5)(A)(i) (Definitions—Crime Victims Reparations) and § 5-4-205(c)(1) (Restitution) to expressly include minor victims of Ark. Code Ann. § 5-11-108 (Trafficking of persons) for commercial sexual exploitation and the state CSEC offenses.

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.*

A defense based on the minor’s consent to the commercial sex act is not expressly mentioned in Ark. Code Ann. § 5-11-108 (Trafficking of persons), § 5-70-104(a)(2) (Promoting prostitution in the first degree), § 5-27-303 (Engaging children in sexually explicit conduct for use in visual or print medium), § 5-27-305 (Transportation of minors for prohibited sexual conduct), § 5-27-402 (Employing or consenting to the use of a child in a sexual performance), or § 5-27-403(a) (Producing, directing, or promoting a sexual performance by a child). However, the code does not specifically prohibit a defendant from raising such a defense. Ark. Code Ann. § 5-11-108(b)(1) (Trafficking of persons) requires proof of the use of force, fraud, or coercion in the trafficking of all victims; therefore, a trafficker could assert consent as a defense to prove the lack of force, fraud, or coercion

Notably, sex offense statutes related to intercourse with minors expressly do not allow the defense of consent, including Ark. Code Ann. § 5-14-103(b) (Rape), Ark. Code Ann § 5-14-124(b) (Sexual assault in the first degree), Ark. Code Ann. §5-14-125(a)(4)(B) (Sexual assault in the second degree), and Ark. Code Ann. § 5-14-126(b) (Sexual assault in the third degree).

- 5.2.1 Recommendation: Amend Ark. Code Ann. § 5-11-108 (Trafficking of persons), § 5-70-104(a)(2) (Promoting prostitution in the first degree), § 5-27-303 (Engaging children in sexually explicit conduct for use in visual or print medium), § 5-27-305 (Transportation of minors for prohibited sexual conduct), § 5-27-402 (Employing or consenting to the use of a child in a sexual performance and § 5-27-403(a) (Producing, directing, or promoting a sexual performance by a child) to clarify that a minor victim’s consent is not a defense to these crimes.

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

Ark. Code Ann. § 5-70-102(a) (Prostitution) does not establish immunity from prosecution for minors and states without exceptions that “[a] person commits prostitution if in return for or in expectation of a fee he or she engages in or agrees or offers to engage in sexual activity with any other person.” The crime is a Class B misdemeanor for the first offense, which may be punishable by imprisonment for up to 90 days and a possible fine not to exceed \$1,000. Ark. Code Ann. §§ 5-70-102(b)(1), 5-4-201(b)(2), 5-4-401(b)(2). Subsequent offenses are Class A misdemeanors, which may be punishable by imprisonment for up to 1 year and a possible fine not to exceed \$2,500. Ark. Code Ann. §§ 5-70-102(b)(2), 5-4-201(b)(1), 5-4-401(b)(1).

- 5.3.1 Recommendation: Amend Ark. Code Ann. § 5-70-102(a) (Prostitution) to specify that a minor involved in prostitution is immune from prosecution and shall be deemed a victim of trafficking of persons under Ark. Code Ann. § 5-11-108 (Trafficking of persons).

5.4 *Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*

No specific provisions exist in Arkansas providing that a domestic minor sex trafficking victim should receive a child protective response, and as a result, the victim could enter either the juvenile justice system or the child protective system through various avenues.

Pursuant to Ark. Code Ann. § 9-27-313(a)(1) (Taking into custody), a juvenile may be taken into custody without a warrant only in one of the following ways:

- (A) Pursuant to an order of the circuit court under this subchapter;
- (B) By a law enforcement officer without a warrant under circumstances as set forth in rule 4.1 of the Arkansas Rules of Criminal Procedure [which includes if the officer has reasonable cause to believe that such person has committed any violation of law in the officer’s presence]; or
- (C) By a law enforcement officer or by a duly authorized representative of the Department of Human Services if there are clear, reasonable grounds to conclude that the juvenile is in immediate danger and that removal is necessary to prevent serious harm from his or her surroundings or from illness or injury and if parents, guardians, or others with authority to act are unavailable or have not taken action necessary to protect the juvenile from the danger and there is not time to petition for and to obtain an order of the court before taking the juvenile into custody.

Additionally, emergency custody of the juvenile may be taken if “there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent the juvenile’s removal from the state . . . .” Ark. Code Ann. § 9-27-314(a)(1).

A domestic minor sex trafficking victim could be considered a “dependent-neglected juvenile,” which is defined as including “any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile: . . . (iii) Sexual abuse; (iv) sexual exploitation.” Ark. Code Ann. § 9-27-303(18)(A). “Sexual exploitation” is defined in Ark. Code Ann. § 9-27-303(53) as including the following:

- (A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:
  - (i) Prostitution;
  - (ii) Obscene photographing; or
  - (iii) Obscene filming; or
- (B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose.

“Sexual abuse” is defined in Ark. Code Ann. § 9-27-303(51) as including,

- (A) By a person thirteen (13) years of age or older to a person younger than eighteen (18) years of age:
  - (i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;
  - (ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion;
  - (iii) Indecent exposure; or
  - (iv) Forcing the watching of pornography or live human sexual activity;

- (B) (i) By a person eighteen (18) years of age or older to a person who is younger than fifteen (15) years of age and is not his or her spouse:
  - (a) Sexual intercourse, deviant sexual activity, or sexual contact;
  - (b) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or
  - (c) Solicitation of sexual intercourse, solicitation of deviate sexual activity, or solicitation of sexual contact.
- (ii) By a person twenty (20) years of age or older to a person who is younger than sixteen (16) years of age who is not his or her spouse:
  - (a) Sexual intercourse, deviant sexual activity, or sexual contact;
  - (b) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or
  - (c) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;
- (C) By a caretaker to a person younger than eighteen (18) years of age:
  - (i) Sexual intercourse, deviant sexual activity, or sexual contact;
  - (ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact;
  - (iii) Forcing or encouraging the watching of pornography;
  - (iv) Forcing, permitting, or encouraging the watching of live sexual activity;
  - (v) Forcing listening to a phone sex line; or
  - (vi) An act of voyeurism;
- (D) By a person younger than thirteen (13) years of age to a person younger than eighteen (18) years of age:
  - (i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion; or
  - (ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion.

Assuming any requirement for family services are met, the court can order juveniles found to be dependent-neglected to be “removed from the custody of a parent, guardian, or custodian and placed in the custody of the department or other licensed agency responsible for the care of juveniles or with a relative or other individual.” Ark. Code Ann. § 9-27-328(b)(1). To do so, the court must initially find information about the following: “(A) Whether it is contrary to the welfare of the juvenile to remain at home; (B) Whether the removal and the reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile; and (C) Whether the removal is in the best interest of the juvenile.” Ark. Code Ann. § 9-27-328(b)(1). Ark. Code Ann. § 9-27-328(b)(2) sets out additional findings to be made within 60 days of removal. For a juvenile found to be dependent-neglected, the court may, among other things, “transfer custody of the juvenile to the Department of Human Services, to another licensed agency responsible for the care of juveniles, or to a relative or other individual” if it is in the child’s best interest. Ark. Code Ann. § 9-27-334(a)(2)(A). If custody of the dependent-neglected child is given to the Department of Human Services, “the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency.” Ark. Code Ann. § 9-27-334(a)(2)(B).

A “delinquent juvenile” is defined in Ark. Code Ann. § 9-27-303(15)(A) as including “any juvenile: (A) Ten (10) years old or older who has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state or who has violated § 5-73-119 [Handguns – possession by minor or possession on school property].” Therefore, if a domestic minor sex trafficking victim is charged with Ark. Code Ann. § 5-70-102 (Prostitution), the minor could be considered a delinquent juvenile. Since Ark. Code Ann. § 5-70-102 (Prostitution) is a misdemeanor, the case would proceed as a delinquency hearing pursuant to Ark. Code Ann. § 9-27-318(a), which provides

that “[t]he state may proceed with a case as a delinquency only when the case involves a juvenile: . . . (2) Less than eighteen (18) years of age when he or she engages in conduct that if committed by an adult would be any misdemeanor.”

A prosecuting attorney may choose to proceed with diversion in some delinquency cases if “it is in the best interests of the juvenile and the community” and the relevant persons consent. Ark. Code Ann. § 9-27-323(a). Diversion cases are subject to conditions, including the juvenile admitting her involvement in the delinquent act. Ark. Code Ann. § 9-27-323(c)(1)(A). Pursuant to Ark. Code Ann. § 9-27-323(e) (Diversion),

- (e) Diversion agreements shall be limited to providing for:
  - (1) Nonjudicial probation under the supervision of the intake officer or probation officer for a period during which the juvenile may be required to comply with specified conditions concerning his or her conduct and activities;
  - (2) Participation in a court-approved program of education, counseling, or treatment;
  - (3) Participation in a court-approved teen court;
  - (4) Participation in a juvenile drug court program; and
  - (5) Enrollment in the Regional Educational Career Alternative School.

If the prosecuting attorney does not enter into a diversionary agreement and the court adjudicates the domestic minor sex trafficking victim to be a delinquent, pursuant to Ark. Code Ann. § 9-27-330(a) (Disposition—Delinquency—Alternatives), the court has a number of disposition options, “based upon the best interest of the juvenile,” including,

- (1) (A) Transfer legal custody of the juvenile to any licensed agency responsible for the care of delinquent juveniles or to a relative or other individual.
  - (B) (i) Commit the juvenile to the Division of Youth Services of the Department of Human Services using the risk assessment system for Arkansas juvenile offenders distributed and administered by the Administrative Office of the Courts.
    - . . . .
    - (iii) (a) In an order of commitment, the court may recommend that a juvenile be placed in a treatment program or community-based program instead of a youth services center and shall make specific findings in support of such a placement in the order.
      - . . . .
      - (iv) Upon receipt of an order of commitment with recommendations for placement, the division shall consider the recommendations of the committing court in placing a juvenile in a youth services facility or a community-based program.
        - . . . .
- (3) Grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court and that no further services or periodic reviews are required;
- (4) (A) Place the juvenile on probation . . . .
  - . . . .
  - (11) (A) (i) Order that the juvenile remain in a juvenile detention facility for an indeterminate period not to exceed ninety (90) days.
    - . . . .
    - (12) Place the juvenile on residential detention with electronic monitoring, either in the juvenile’s home or in another facility as ordered by the court;
      - . . . .

5.4.1 Recommendation: Enact a mandatory protective response law that directs any minor who is a victim of trafficking away from the criminal justice system and into a protective system.

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 a type of abuse in Arkansas’s child protection statutes. A “dependent-neglected juvenile” is defined in Ark. Code Ann. § 9-27-303(18)(A) as including “any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile: (i) Abandonment; (ii) Abuse; (iii) Sexual Abuse; (iv) Sexual exploitation; (v) Neglect; . . .” Similarly, “neglect” includes “[f]ailure to take reasonable action to protect the juvenile [or child] from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known.” Ark. Code Ann. §§ 9-27-303 (36)(A)(iii). “Abuse,” pursuant to Ark. Code Ann. § 9-27-303(3)(A), occurs when “a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile’s care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile’s welfare” is involved in “(i) Extreme or repeated cruelty to a juvenile; (ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ; (iii) Injury to a juvenile’s intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile’s ability to function within the juvenile’s normal range of performance and behavior . . .” Ark. Code Ann. § 9-27-303(3)(A).

“Sexual abuse” is defined in Ark. Code Ann. § 9-27-303(51).<sup>34</sup> “Sexual exploitation” is defined in Ark. Code Ann. § 9-27-303(53) as including the following:

- (A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:
  - (i) Prostitution;
  - (ii) Obscene photographing; or
  - (iii) Obscene filming; or
- (B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose.

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.*

Arkansas uses the term “caretaker” in its code. For purposes of the subchapter entitled “Arkansas Juvenile Code,” in the title on family law, the term is defined as “a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child’s care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child’s welfare.” Ark. Code Ann. § 9-27-303(8). For purposes of the chapter entitled “Child Maltreatment Act” in the title on law enforcement, emergency management, and military affairs, “caretaker” is defined as “a parent, guardian, custodian, foster parent, or any person thirteen (13) years of age or older who is entrusted with a child’s care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, child care

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<sup>34</sup> See *supra* Section 5.4 for definition of “sexual abuse.”

facility, public or private school, or any person responsible for a child's welfare." Ark. Code Ann. § 12-18-103(3).

5.6.1 Recommendation: Amend Ark. Code Ann. § 9-27-303(8) and § 12-18-103(3) to expand the definition to include as a "caretaker" any person in control or physical custody of a minor, which would include traffickers.

5.7 *Crime victims' compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*

Several problematic conditions could make domestic minor sex trafficking victims ineligible for Crime Victims Reparations. Under Ark. Code Ann. § 16-90-712(a),

(a) Reparations shall not be awarded:

(1) Unless the claim has been filed with the Crime Victims Reparations Board within one (1) year after the injury or death upon which the claim is based, unless the board finds good cause for the failure to file a timely claim;

(2) To a claimant who was the offender or an accomplice of the offender;

...

(5) To any claimant who has been convicted of a felony involving criminally injurious conduct;

(6) Unless the criminally injurious conduct resulting in injury or death was reported to the proper authorities within seventy-two (72) hours after its occurrence, or the board finds there was good cause for the failure to report within that time;

....

Under subsection (b), "Reparations otherwise payable to a claimant shall be diminished to the extent: . . .

(2) Of the degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the board." Ark. Code Ann. § 16-90-712(b). Furthermore, under subsection (c), an award may be reduced, denied, or withdrawn if it is found that the victim did not cooperate with law enforcement. Ark. Code Ann. § 16-90-712(c).

5.7.1 Recommendation: Amend Ark. Code Ann. § 16-90-712 (Conditions for reparations) to clarify that a claimant who is a victim of domestic minor sex trafficking is exempt from the conditions contained therein.

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

Ark. Code Ann. § 16-42-101(b) (Admissibility of evidence of victim's prior sexual conduct), which, subject to the provisions in the section, prevents the introduction of "opinion evidence, reputation evidence, or evidence of specific instances of the victim's prior sexual conduct" applies only "[i]n any criminal prosecution under § 5-14-101 et seq. [Sexual Offenses including rape, sexual indecency with a child, public sexual indecency, sexual Assault] or § 5-26-202 [Incest], or for criminal attempt to commit, criminal solicitation to commit, or criminal conspiracy to commit an offense defined in any of those sections . . . ." Ark. Code Ann. § 16-42-101(b). Therefore, the statute does not apply to domestic minor sex trafficking victims if the perpetrators are not charged with the crimes listed.

Additionally, Ark. Code Ann. § 16-41-101(Rule 803)(25) (Hearsay exceptions—availability of declarant immaterial)<sup>35</sup> states in part,

A statement made by a child under ten (10) years of age concerning any act or offense against that child involving sexual offenses, child abuse, or incest is admissible in any criminal proceeding in a court of this state, provided:

1. The court finds, in a hearing conducted outside the presence of the jury, that the statement offered possesses a reasonable likelihood of trustworthiness using the following criteria:
  - a. the spontaneity and consistency of repetition of the statement by the child;
  - b. the mental state of the child;
  - c. the child's use of terminology unexpected of a child of similar age;
  - d. the lack of a motive by the child to fabricate the statement.
2. Before the hearsay testimony is admitted by the court and without regard to the determination of competency, the court will examine the child on the record in camera. This examination shall be considered along with the criteria set forth in subdivisions (25)1.a.- d. as to the admissibility of the hearsay statements. The court shall not require this examination nor shall it require the attendance of the child at the hearing if the court determines the examination and attendance will be against the best interest of the child.

....

Similarly, "In any prosecution for a sexual offense or inchoate offense to a sexual offense, upon motion of the prosecuting attorney and after notice to opposing counsel, the court may, for good cause shown, allow the presence of the parent, stepparent, guardian, custodian, or other person with custody of an alleged minor victim of a sexual offense or inchoate offense to a sexual offense during the examination and cross-examination of the minor at any hearing, deposition, or trial." Ark. Code Ann. § 16-42-102.

However, for child victims of any crime, including domestic minor sex trafficking crimes, it is possible that a child's testimony may be taken via closed circuit television. Ark. Code Ann. § 16-43-1001(a)(1). Under Ark. Code Ann. § 16-43-1001(a)(1) (Closed-circuit television) in criminal proceedings, upon motion by the prosecution or defense, "the court may, upon a showing of clear and convincing evidence that testifying in open court would be harmful or detrimental to the child, order that the testimony of a victim or witness who is a child twelve (12) years of age or under be taken outside the courtroom." Finally, Ark. Code Ann. § 16-43-1202 (Safeguards for child victims testifying in judicial and administrative proceedings) requires that the "prosecuting attorney, victim-witness coordinator, attorney ad litem, or Office of Chief Counsel attorney" provide the child with information about the proceedings and protect the testifying child from "argumentative or harassing questioning" by objecting appropriately. Ark. Code Ann. § 16-43-1202(1), (7). The child is permitted, upon motion by the "prosecuting attorney, attorney ad litem, or Office of Chief Counsel attorney," a "comfort item," "support person," or both during the testimony "[i]f it is in the child's best interests." Ark. Code Ann. § 16-43-1202(5), (6).

- 5.8.1 Recommendation: Amend Ark Code Ann. § 16-42-101 (Admissibility of evidence of victim's prior sexual conduct) to include child victims of § 5-11-108 (Trafficking of persons), § 5-70-104(a)(2) (Promoting prostitution in the first degree), § 5-27-303 (Engaging children in sexually explicit conduct for use in visual or print medium), § 5-27-305 (Transportation of minors for prohibited sexual conduct), § 5-27-402 (Employing or consenting to the use of a child in a sexual performance

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<sup>35</sup> Pursuant to the Arkansas Code Revision Commission notes on this section on Lexis, "Rule 803(25) of the Arkansas Rules of Evidence has been amended by Per Curiam Order of the Supreme Court of Arkansas, dated May 11, 1992. The amendments to Rule 803(25) by Acts 1992 (1st Ex. Sess.), No. 66, § 1, and by the Per Curiam Order dated May 11, 1992 are not identical."

and § 5-27-403(a) (Producing, directing, or promoting a sexual performance by a child) where commercial sexual abuse of a child is involved.

5.9 *Expungement or sealing of juvenile delinquency 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.*

Arkansas allows for “[a] person who is convicted of a nonviolent felony committed while the person was under the age of eighteen (18) years and who was incarcerated or whose sentence was suspended, or who was placed on probation” to “petition the convicting court to have the record of the conviction expunged upon the completion of the sentence or expiration of the suspension or probation period or at any time thereafter.” Ark. Code Ann. § 16-90-602(a) (Confidentiality of records).

However, under Ark. Code Ann. § 9-27-309(b)-(c),

- (b) (1) (A) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be kept for ten (10) years after the last adjudication of delinquency or the date of a plea of guilty or nolo contendere or a finding of guilt as an adult.  
(B) Thereafter they may be expunged.
- (2) The court may expunge other juvenile records at any time and shall expunge all the records of a juvenile upon his or her twenty-first birthday, in other types of delinquency, dependency-neglect, or families in need of services cases.
- (3) For purposes of this section, “expunge” means to destroy.
- (c) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult or until the juvenile’s twenty-first birthday, whichever is longer.

5.9.1 Recommendation: Amend Ark Code Ann. § 9-27-309 (Confidentiality of records) to eliminate the 10 year waiting period for delinquency adjudications of minors whose victims of trafficking.

5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*

A domestic minor sex trafficking victim could receive restitution under Ark. Code Ann. § 5-4-205(a)(1) (Restitution), which states that “[a] defendant who is found guilty or who enters a plea of guilty or nolo contendere to an offense may be ordered to pay restitution.” The restitution is based on the “actual economic loss caused to a victim by the offense,” and if bodily injury has occurred, the restitution order may require the defendant, among other things, to “[p]ay the cost of a necessary medical or related professional service or device relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing; . . . [p]ay the cost of necessary physical and occupational therapy and rehabilitation; [and] . . . [r]eimburse the victim for income lost by the victim as a result of the offense” with a maximum income reimbursement of \$50,000. Ark. Code Ann. § 5-4-205(b)(1), (2).

Any victim of a felony offense, including domestic minor sex trafficking victims, may bring a civil action. Specifically, under Ark. Code Ann. § 16-118-107(a)(1) (Civil action by crime victim), “Any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law may file a civil action to recover damages based on the conduct.”

A violation of Ark. Code Ann. § 5-42-204(a)(2) (Criminal use of property or laundering criminal proceeds) occurs when a person “[u]ses or makes available for use any property in which he or she has

any ownership or lawful possessory interest to facilitate a predicate criminal offense.” A “predicate criminal offense” includes a “crime of pecuniary gain,” which is defined as “any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value.” Ark. Code Ann. § 5-42-203(3), (7). The violator may face a civil action brought by a prosecuting attorney “for damages in an amount equal to property, funds, or a monetary instrument involved in the violation as well as the proceeds acquired by any person involved in the enterprise or by reason of conduct in furtherance of the violation, together with costs incurred for resources and personnel used in the investigation and prosecution of both criminal and civil proceedings.” Ark. Code Ann. § 5-42-204(c)(1).

5.10.1. Recommendation: Amend Ark. Code Ann. § 5-4-205(a)(1) (Restitution) to make restitution mandatory for victims of domestic minor sex trafficking and to expand the basis for restitution so that victims do not need to prove bodily injury before receiving restitution to cover the costs of psychiatric and psychological care.

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

The statute of limitations is not eliminated for criminal domestic minor sex trafficking statutes; however, it is significantly extended for certain related offenses. Pursuant to Ark. Code Ann. § 5-1-109(a)(2) (Statute of limitations),

A prosecution may be commenced for a violation of the following offenses, if, when the alleged violation occurred, the offense was committed against a minor, the violation has not been previously reported to a law enforcement agency or prosecuting attorney, and the victim has not reached the age of twenty-eight (28) years of age:

- (A) Rape, Section 5-14-103;
- (B) Sexual assault in the first degree, Section 5-14-124;
- (C) Sexual assault in the second degree, Section 5-14-125;
- (D) Sexual assault in the third degree, Section 5-14-126;
- (E) Sexual assault in the fourth degree, Section 5-14-127;
- ...
- (I) Engaging children in sexually explicit conduct for use in visual or print medium, Section 5-27-303;
- (J) Transportation of minors for prohibited sexual conduct, Section 5-27-305;
- (K) Employing or consenting to the use of a child in a sexual performance, Section 5-27-402;
- (L) Producing, directing, or promoting a sexual performance by a child, Section 5-27-403;
- (M) Computer child pornography, Section 5-27-603; and
- (N) Computer exploitation of a child in the first degree, Section 5-27-605.

For civil actions related to domestic minor sex trafficking, the statute of limitations is not eliminated. However, for all actions when the person is under 21, “that person may bring the action within three (3) years next after attaining full age.” Ark. Code Ann. § 16-56-116(a).

5.11.1 Recommendation: Amend Ark. Code Ann. § 5-1-109(a)(2) (Statute of limitations) to include Ark. Code Ann. § 5-70-104(a)(2) (Promoting prostitution in the first degree) and Ark. Code Ann. § 5-11-108(b)(1)(G) (Trafficking of persons) when the victim is a minor, or eliminate the statute of limitations for bringing prosecutions of these offenses.

***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 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*
- 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.*

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***Legal Analysis:***

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

Arkansas does not require training on domestic minor sex trafficking, but training on related topics is required. Under Ark. Code Ann. § 12-9-113(a)(1) (Domestic violence training), new law enforcement officers must receive “at least twenty (20) hours of training in domestic violence and twenty (20) hours of training in child abuse.” The training on “child abuse victim interview techniques” must include the following: “(1) Current law, including the Child Maltreatment Act, § 12-18-101 et seq., and the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.; (2) Child sexual abuse; and (3) Physical and behavioral indicators.” Ark. Code Ann. §12-9-113(c).

Additionally, all law enforcement officers must receive 20 hours of training on sexual assaults. Ark. Code Ann. § 12-9-114(a)(1). Ark. Code Ann. § 12-9-114(b) (Training concerning sexual assaults) states, “At a minimum, the training shall cover the following topics: (1) The dynamics of sexual assault; (2) The laws concerning sexual assault; (3) Sexual assault victim interview techniques; and (4) Support services available to sexual assault victims.”

- 6.1.1 Recommendation: Enact a law similar to Ark. Code Ann. § 12-9-113 (Domestic violence training) and Ark. Code Ann. § 12-9-114 (Training concerning sexual assaults) to mandate that law enforcement officers receive training on domestic minor sex trafficking issues.

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

Arkansas law allows for single party consent to audiotaping. Pursuant to Ark. Code Ann. § 5-60-120(a) (Interception and recording), “It is unlawful for a person to intercept a wire, landline, oral, telephonic communication, or wireless communication, and to record or possess a recording of the communication unless the person is a party to the communication or one (1) of the parties to the communication has given prior consent to the interception and recording.” Furthermore, § 5-60-120(c)(1) states, “It is not unlawful for the act to be committed by a person acting under the color of law.”

6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*

Ark. Code Ann. § 5-60-120(c)(1) (Interception and recording) states, “It is not unlawful for the act [of intercepting a wire, landline, oral, telephonic communication, or wireless communication, and to record or possess a recording of the communication] to be committed by a person acting under the color of law.”

6.3 *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.*

As noted below in Section 6.5, Ark. Code Ann. §§ 5-27-603 and 5-27-306 use language that indicates a decoy may be used in prosecutions. However, the trafficking in persons statute and other CSEC statutes are silent on the permissibility of using a law enforcement officer or adult agent of law enforcement as a decoy in investigating the sex trafficking of children.

6.4.1 Recommendation: Enact a law to specifically allow law enforcement to investigate sex trafficking of children through the use of decoys.

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

Use of the Internet is allowed for some investigations of traffickers under Ark. Code Ann. § 5-27-306(a) (Internet stalking of a child) when a person 21 or older “knowingly uses a computer online service, internet service, or local internet bulletin board service to” do any of the following:

(2) Seduce, solicit, lure, or entice an individual that the person believes to be fifteen (15) years of age or younger in an effort to arrange a meeting with the individual for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity;

...

(4) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on an individual that the person believes to be fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the individual for the purpose of engaging in:

- (A) Sexual intercourse;
- (B) Sexually explicit conduct; or
- (C) Deviate sexual activity.

Use of the phrase, “believes to be fifteen (15) years of age or younger,” in both of these subsections, implies that law enforcement officers are allowed to use the Internet to investigate domestic minor sex trafficking cases when the victim is 15 or younger.

It is also possible that a law enforcement officer could investigate violations of Ark. Code Ann. § 5-27-603 (Computer child pornography) against a child under 17 through the Internet. This crime prohibits using “a computer online service, internet service, or local bulletin board service to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another individual believed by the person to be a child, to engage in sexually explicit conduct.” Ark. Code Ann. § 5-27-603(a)(2), (b).

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

Ark. Code Ann. § 12-12-205(d) provides that “[u]pon receiving notice of a missing child, a law enforcement agency shall complete a missing person report and immediately enter identifying and descriptive information about the missing child into the computerized system of the clearinghouse.” Additionally, under Ark. Code Ann. § 12-12-801(a)(1) (Report of missing child–Notation on records), “When either a law enforcement officer or the Attorney General is notified by the parents, guardian, or other person having custody of a child that the child is missing, the law enforcement officer or the Attorney General shall: (1) Ensure that the missing child information is entered into the Missing Persons Information Clearinghouse within the Arkansas Crime Information Center under Section 12-12-205 and the National Crime Information Center.” Ark. Code Ann. § 12-12-205(d)(3) specifies that the computer entry should be canceled “when the missing child . . . is located or returned.”

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