

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS COLORADO

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

#### *Legal Components:*

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

Colorado divides its human trafficking law into three statutes: trafficking in adults, trafficking in children, and coercion in involuntary servitude. Colorado's trafficking in children law, Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children), applies to any minor under 18 and does not require force, fraud, or coercion. Colo. Rev. Stat. Ann. § 18-3-502(1) states,

A person commits trafficking in children if he or she:

- (a) Sells, exchanges, barter, or leases a child<sup>2</sup> and receives any money or other consideration or thing of value for that child as a result of such transaction; or
- (b) Receives a child as a result of a transaction described in paragraph (a) of this subsection (1).

<sup>1</sup> Unless otherwise specified, all references to Colorado statutes were taken from the Colorado Revised Statutes Annotated (LEXIS through 2012 1st Reg. Sess.), 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> Colo. Rev. Stat. Ann. § 18-3-502(2) defines "child" as "a person under eighteen years of age."

Colorado’s trafficking in children statute does not specifically include trafficking of children for purposes of commercial sexual acts. The fact that trafficking in children is an “unlawful sex offense”<sup>3</sup> pursuant to Colo. Rev. Stat. Ann. § 18-3-411(1) (Sex offenses against children), however, indicates the intent to include sex trafficking, though the intent of the statute remains unclear.

A conviction under Colo. Rev. Stat. Ann. § 18-3-502(1) is punishable as a Class 2 felony by imprisonment for 8–24 years,<sup>4</sup> a fine of \$5,000–\$1,000,000,<sup>5</sup> or both. Colo. Rev. Stat. Ann. §§ 18-3-502(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A), and is a “crime of violence,”<sup>6</sup> pursuant to Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I) (Mandatory sentences for violent crimes), when the “defendant caused bodily injury<sup>7</sup> to the victim or in which the defendant used threat, intimidation, or force against the victim.”

- 1.1.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) to clarify its applicability to child sex trafficking by expressly defining trafficking in children to include the use of a minor under 18 in a commercial sex act without regard to use of force, fraud, or coercion in commission of the offense.<sup>8</sup>

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<sup>3</sup> An “unlawful sex offense,” as defined in Colo. Rev. Stat. Ann. § 18-3-411(1) (Sex offenses against children), includes the following offenses: Colo. Rev. Stat. Ann. § 18-3-305 (Enticement of a child), § 18-3-405 (Sexual assault on a child), § 18-3-502 (Trafficking in children), § 18-6-403 (Sexual exploitation of a child), § 18-6-404 (Procurement of a child for sexual exploitation), § 18-7-402 (Soliciting for child prostitution), § 18-7-403 (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404 (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), § 18-7-405.5 (Inducement of child prostitution), § 18-7-406 (Patronizing a prostituted child), § 18-3-306(3) (Internet luring of a child) (when a Class 4 felony), § 18-3-405.4 (Internet sexual exploitation of a child), or “criminal attempt, conspiracy, or solicitation to commit” any of these crimes.

<sup>4</sup> Unless otherwise specified, the sentences of imprisonment for all felonies provided throughout this report are based on the assumption that the defendant has no prior felony convictions and that none of the aggravating factors listed in Colo. Rev. Stat. Ann. § 18-1.3-401(8) or (9) (Felonies classified—presumptive penalties) are present. “The court may consider aggravating circumstances such as serious bodily injury caused to the victim or the use of a weapon in the commission of a crime, notwithstanding the fact that such factors constitute elements of the offense.” Colo. Rev. Stat. Ann. § 18-1.3-401(8)(f). If a defendant has 2 prior felony convictions, the defendant “shall not be eligible to receive a fine in lieu of any sentence to imprisonment. . . but shall be sentenced to at least the minimum sentence specified.” Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(E).

<sup>5</sup> The fines cited in this report are applicable to felonies committed on or after July 1, 1985, while the sentences of imprisonment apply to felonies committed after July 1, 1993. Sentencing ranges for felonies committed before July 1, 1993 are laid out in Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(I), (II), and (IV).

<sup>6</sup> A “crime of violence” is an aggravating factor pursuant to Colo. Rev. Stat. Ann. § 18-1.3-401(8)(a)(I) and includes all felony unlawful sex offenses as defined in Colo. Rev. Stat. Ann. § 18-3-411(1) (Sex offenses against children) “in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.” Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I). A defendant convicted of a crime of violence must be sentenced “for a term of incarceration of at least the midpoint in, but not more than twice the maximum of, the presumptive range” for the offense. Colo. Rev. Stat. Ann. § 18-1.3-406(1)(a). However, where an “unlawful sex offense,” as defined in Colo. Rev. Stat. Ann. § 18-3-411(1) is also a “sex offense,” as defined in Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a), and “the defendant caused bodily injury to the victim or . . . used threat, intimidation, or force against the victim,” the offense becomes a sex offense constituting a crime of violence and the defendant “shall be sentenced to the department of corrections for an indeterminate term of incarceration of at least the midpoint in the presumptive range specified in section 18-1.3-401(1)(a)(V)(A) up to a maximum of the person’s natural life, as provided in section 18-1.3-1004 (1).” Colo. Rev. Stat. Ann. §§ 18-1.3-406(1)(b), (2)(b)(I), 18-1.3-1004(1)(b). Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-401(1)(b)(III), a defendant convicted of a crime of violence may not be sentenced to pay a fine in lieu of imprisonment. Additionally, “A person convicted of two or more separate crimes of violence arising out of the same incident shall be sentenced for such crimes so that sentences are served consecutively rather than concurrently.” Colo. Rev. Stat. Ann. § 18-1.3-406(1)(a).

<sup>7</sup> “Bodily injury” is defined in Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I) by referring to Colo. Rev. Stat. Ann. § 18-1-901(3)(c), which defines the term as “physical pain, illness, or any impairment of physical or mental condition.”

<sup>8</sup> Subsequent recommendations in this report referring to the state human trafficking law(s) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

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<sup>9</sup> make CSEC a distinct crime in Colorado<sup>10</sup>:

1. Colo. Rev. Stat. Ann. § 18-6-403(3) (Sexual exploitation of a child) states,

A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:

- (a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct<sup>11</sup> for the making of any sexually exploitative material;<sup>12</sup> or
- ...
- (d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

<sup>9</sup> All crimes laid out in Section 1.2 are unlawful sexual offenses pursuant to Colo. Rev. Stat. Ann. § 18-3-411(1) (Sex offenses against children). As such, they are also crimes of violence pursuant to Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I) (Mandatory sentences for violent crimes) if “the defendant caused bodily injury to the victim or [if] the defendant used threat, intimidation, or force against the victim.” See *supra* note 3 for details about unlawful sex offenses and *supra* note 6 for details about crimes of violence.

<sup>10</sup> The penalty enhancements provided in the Colorado Sex Offender Lifetime Supervision Act of 1998, Colo. Rev. Stat. Ann. §§ 18-1.3-1001 to -1012, apply to all offenses listed in Section 1.2. These penalty enhancements are either mandatory or discretionary, depending on the offense. Under Colo. Rev. Stat. Ann. § 18-1.3-1004(1)(a), “Except as otherwise provided in this subsection (1) and in subsection (2) of this section, the district court . . . shall sentence a sex offender . . . for an indeterminate term of at least the minimum of the presumptive range . . . for the level of offense committed and a maximum of the sex offender’s natural life.” Colorado has two definitions of “sex offender.” First, Colo. Rev. Stat. Ann. § 18-1.3-1003(4) defines “sex offender” as “a person who is convicted of or pleads guilty or nolo contendere to a sex offense.” A “sex offense” is defined in Colo. Rev. Stat. Ann. § 18-1.3-1003(4), (5) to include the following: Colo. Rev. Stat. Ann. § 18-3-405 (Sexual assault on a child), § 18-3-305 (Enticement of a child), § 18-7-406 (Patronizing a prostituted child), § 18-3-306(3) (Internet luring of a child), if it is a Class 4 felony, or § 18-3-405.4 (Internet sexual exploitation of a child). These offenses are subject to mandatory penalty enhancement provided in Colo. Rev. Stat. Ann. § 18-1.3-1004(1)(a). See *People v. Harrison*, 165 P.3d 859, 860 (Colo. App. 2007) (stating that “indeterminate sentencing [under Colo. Rev. Stat. Ann. § 18-1.3-1004(1)(a)] is (1) mandatory for the fourteen types of inchoate or completed [sex] offenses enumerated in § 18-1.3-1003(5), and (2) also appropriate, but only under certain circumstances (including the need for a sexually violent predator assessment), for nine other types of offenses specified in § 18-1.3-1004(4)”). In addition, Colo. Rev. Stat. Ann. § 18-1.3-401(1)(b)(II.5) provides that a defendant convicted of a sex offense, as defined in Colo. Rev. Stat. Ann. § 18-1.3-1003(5), may not be sentenced to pay a fine in lieu of imprisonment. Secondly, “sex offender” is defined in Colo. Rev. Stat. Ann. § 18-1.3-1003(4) as “any person sentenced as a sex offender pursuant to section 18-1.3-1004 (4).” Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-1004(4), if a defendant is convicted of or pleads guilty or nolo contendere to Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children), § 18-6-403 (Sexual exploitation of children), § 18-6-404 (Procurement of a child for sexual exploitation), § 18-7-402 (Soliciting for child prostitution), § 18-7-403 (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404 (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), or § 18-7-405.5 (Inducement of child prostitution) and “[a]n assessment of the person pursuant to section 16-11.7-104, C.R.S., determines that the person is likely to commit one or more of the offenses specified in section 18-3-414.5(1)(a)(II), under the circumstances described in section 18-3-414.5(1)(a)(III),” the defendant may be sentenced to “an indeterminate term of at least the minimum of the presumptive range specified in section 18-1.3-401 for the level of offense committed and a maximum of the sex offender’s natural life.” Colo. Rev. Stat. Ann. § 18-1.3-1004(1)(a), (4)(a), (4)(b).

<sup>11</sup> Colo. Rev. Stat. Ann. § 18-6-403(2)(e) defines “explicit sexual conduct” as “sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.”

<sup>12</sup> Colo. Rev. Stat. Ann. § 18-6-403(2)(j) defines “sexually exploitative material” as “any photograph, motion picture, video, video tape, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.”

A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(a), (d) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-403(5)(a), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

2. Colo. Rev. Stat. Ann. § 18-6-404 (Procurement of a child for sexual exploitation) provides, “Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of sexual exploitation of a child commits procurement of a child for sexual exploitation, which is a class 3 felony.” A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

3. Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution) makes it a crime when any person

(a) Solicits another for the purpose of prostitution of a child<sup>13</sup> or by a child;<sup>14</sup>

(b) Arranges or offers to arrange a meeting of persons for the purpose of prostitution of a child or by a child; or

(c) Directs another to a place knowing such direction is for the purpose of prostitution of a child or by a child

A conviction under Colo. Rev. Stat. Ann. § 18-7-402(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

4. Colo. Rev. Stat. Ann. § 18-7-403(1) (Pandering of a child) provides,

Any person who does any of the following for money or other thing of value commits pandering of a child:

(a) Inducing a child by menacing or criminal intimidation to commit prostitution; or

(b) Knowingly arranging or offering to arrange a situation in which a child may practice prostitution.

A conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(a) is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both, while a conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(b) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-403(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

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<sup>13</sup> Colo. Rev. Stat. Ann. § 18-7-401(7) (Definitions) defines “prostitution of a child” as,

either inducing a child to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child’s spouse by coercion or by any threat or intimidation or inducing a child, by coercion or by any threat or intimidation or in exchange for money or other thing of value, to allow any person not the child’s spouse to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with or upon such child. Such coercion, threat, or intimidation need not constitute an independent criminal offense and shall be determined solely through its intended or its actual effect upon the child.

<sup>14</sup> Colo. Rev. Stat. Ann. § 18-7-401(6) (Definitions) defines “prostitution by a child” as,

either a child performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child’s spouse in exchange for money or other thing of value or any person performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any child not the person’s spouse in exchange for money or other thing of value.

5. Colo. Rev. Stat. Ann. § 18-7-403.5 (Procurement of a child) provides, “Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of prostitution of the child commits procurement of a child, which is a class 3 felony.”

A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

6. Colo. Rev. Stat. Ann. § 18-7-404(1) (Keeping a place of child prostitution) states,

Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who performs any one or more of the following commits keeping a place of child prostitution if he:

- (a) Knowingly grants or permits the use of such place for the purpose of prostitution of a child or by a child; or
- (b) Permits the continued use of such place for the purpose of prostitution of a child or by a child after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for purposes of such prostitution.

A conviction under Colo. Rev. Stat. Ann. § 18-7-404(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-404(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

7. Colo. Rev. Stat. Ann. § 18-7-405 (Pimping of a child) states, “Any person who knowingly lives on or is supported or maintained in whole or in part by money or other thing of value earned, received, procured, or realized by a child through prostitution commits pimping of a child, which is a class 3 felony.” A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

8. Colo. Rev. Stat. Ann. § 18-7-405.5(1) (Inducement of child prostitution) states, “Any person who by word or action, other than conduct specified in section 18-7-403 (1)(a) [Pandering of a child], induces a child to engage in an act which is prostitution by a child, as defined in section 18-7-401 (6) [Definitions], commits inducement of child prostitution.” A conviction under Colo. Rev. Stat. Ann. § 18-7-405.5(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-405.5(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

9. Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child) provides,

Any person who performs any of the following with a child not his spouse commits patronizing a prostituted child:

- (a) Engages in an act which is prostitution of a child or by a child, as defined in section 18-7-401(6) or (7); or
- (b) Enters or remains in a place of prostitution with intent to engage in an act which is prostitution of a child or by a child . . . .

A conviction under Colo. Rev. Stat. Ann. § 18-7-406(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000, which may not be imposed

in lieu of a prison sentence. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(X).<sup>15</sup>

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

1. Colo. Rev. Stat. Ann. § 18-3-305(1) (Enticement of a child) states,

A person commits the crime of enticement of a child if he or she invites or persuades, or attempts to invite or persuade, a child under the age of fifteen years to enter any vehicle, building, room, or secluded place with the intent to commit sexual assault or unlawful sexual contact upon said child. It is not necessary to a prosecution for attempt under this subsection (1) that the child have perceived the defendant's act of enticement.

A conviction under Colo. Rev. Stat. Ann. § 18-3-305(1) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-305(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). If the enticement results in bodily injury to the child or the defendant has a prior conviction for enticement of a child or Colo. Rev. Stat. Ann. § 18-3-405 (Sexual assault on a child), a conviction is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-305(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000, which may not be imposed in lieu of a prison sentence, and the Class 3 felony must be enhanced to 4 years to life and a possible fine of \$3,000–\$750,000, which may not be imposed in lieu of a prison sentence. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(VII).<sup>16</sup>

2. Colo. Rev. Stat. Ann. § 18-3-405(1) (Sexual assault on a child) states,

Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim.

A conviction under Colo. Rev. Stat. Ann. § 18-3-405(1) generally is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000, which may not be imposed in lieu of a prison sentence. Colo. Rev. Stat. Ann. §§ 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(IV), 18-3-405(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).<sup>17</sup> A conviction under Colo. Rev. Stat. Ann. § 18-3-405(1) is punishable as a Class 3 felony under certain circumstances involving a pattern of sexual abuse or the use of force or threats against the victim.<sup>18</sup> To the extent that a defendant is convicted of a Class 3 felony

<sup>15</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-7-406.

<sup>16</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-305.

<sup>17</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.

<sup>18</sup> Pursuant to Colo. Rev. Stat. Ann. § 18-3-405(2), a conviction under Colo. Rev. Stat. Ann. § 18-3-405(1) is a Class 3 felony when,

(a) The actor applies force against the victim in order to accomplish or facilitate sexual contact; or

violation of Colo. Rev. Stat. Ann. § 18-3-405, Colo. Rev. Stat. Ann. § 18-3-405(3) requires that the penalty be even further enhanced as a crime of violence pursuant to Colo. Rev. Stat. Ann. § 18-1.3-406(1)(b) (Mandatory sentences for violent crimes), under which the prison sentence is enhanced to an indeterminate sentence of at least 8 years to life imprisonment and a possible fine.<sup>19</sup> Colo. Rev. Stat. Ann. §§ 18-1.3-406(1)(b), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

3. Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) provides,

An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication . . . describes explicit sexual conduct<sup>20</sup> as defined in section 18-6-403(2)(e), and, in connection with that description, makes a statement persuading or inviting that person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

A conviction under Colo. Rev. Stat. Ann. § 18-3-306(1) generally is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). It is punishable as a Class 4 felony by imprisonment for 2–6 years, a possible fine of \$2,000–\$500,000, or both, where the actor intended to engage in sexual exploitation under Colo. Rev. Stat. Ann. § 18-6-403 or sexual contact<sup>21</sup> under Colo. Rev. Stat. Ann. § 18-3-401.<sup>22</sup> Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to an indeterminate prison sentence of at least 2 years to life and possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XI).

4. Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) provides,

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(b) The actor, in order to accomplish or facilitate sexual contact, threatens imminent death, serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor has the present ability to execute the threat; or

(c) The actor, in order to accomplish or facilitate sexual contact, threatens retaliation by causing in the future the death or serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor will execute the threat; or

(d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse, whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1) (a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

<sup>19</sup> See *supra* note 6 for discussion of the “crime of violence” penalty enhancement potentially applicable to this offense.

<sup>20</sup> See *supra* note 11 for the definition of “explicit sexual conduct.”

<sup>21</sup> Colo. Rev. Stat. Ann. § 18-3-401(4) (Definitions) defines “sexual contact” as

the knowing touching of the victim’s intimate parts by the actor, or of the actor’s intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.

<sup>22</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-306, when it is punishable as a Class 4 felony. Additionally, Colo. Rev. Stat. Ann. § 18-1.3-406 (Mandatory sentences for violent crimes) may impose enhanced penalties on defendants who violate Colo. Rev. Stat. Ann. § 18-7-406(1).

An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

- (a) Expose or touch the person's own or another person's intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message; or
- (b) Observe the actor's intimate parts via a computer network or system, telephone network, or data network or by a text message or instant message.

A conviction under Colo. Rev. Stat. Ann. § 18-3-405.4(1) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405.4(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty is enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XII).<sup>23</sup>

*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.*

None of Colorado's CSEC statutes refer to Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children). Colo. Rev. Stat. Ann. § 18-7-201 (Prostitution) also does not refer to Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) when a minor is involved.

- 1.3.1 Recommendation: Amend Colorado's CSEC laws and Colo. Rev. Stat. Ann. § 18-7-201 (Prostitution) when a minor is involved to refer to Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) to ensure the identification of 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.*

The government may prosecute traffickers and facilitators under the Colorado Organized Crime Control Act.<sup>24</sup> Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities) which provides,

- (1) (a) It is unlawful for any person who knowingly has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity<sup>25</sup> or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.  
.....
- (2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) It is unlawful for any person employed by, or associated with, any enterprise to knowingly conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

<sup>23</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a "sex offense," which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.4.

<sup>24</sup> Colo. Rev. Stat. Ann. § 18-17-101 et seq.

<sup>25</sup> For additional information on racketeering offenses, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHI-WhitePaperFederalStateRacketeeringGangCrimeLaws.pdf>.



(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), (2), or (3) of this section.

Colo. Rev. Stat. Ann. § 18-17-103(5) (Definitions) defines “racketeering activity” as

to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any conduct defined as “racketeering activity” under 18 U.S.C. § 1961 (1) (A), (1) (B), (1) (C), and (1) (D) [Racketeer Influenced and Corrupt Organizations Act]<sup>26</sup>; or

(b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:

(I) Offenses against the person, [including Colo. Rev. Stat. Ann. § 18-3-502 (trafficking in children)];

...

(V) Offenses involving the family relation, as defined in section 18-6-403 (sexual exploitation of children);

(VI) Offenses relating to morals, as defined in sections . . . 18-7-203 (pandering), 18-7-206 (pimping), 18-7-402 (soliciting for child prostitution), 18-7-403 (pandering of a child), 18-7-404 (keeping a place of child prostitution), and 18-7-405 (pimping of a child);

....

“Pattern of racketeering activity” is defined as “engaging in at least two acts of racketeering activity which are related to the conduct of the enterprise, if at least one of such acts occurred in this state after July 1, 1981, and if the last of such acts occurred within ten years (excluding any period of imprisonment) after a prior act of racketeering activity.” Colo. Rev. Stat. Ann. § 18-17-103(3).

A conviction under Colo. Rev. Stat. Ann. § 18-17-104 is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both, and an additional fine of up to \$25,000 or, where the trafficker “derived pecuniary value, or . . . caused personal injury or property damage or other loss, . . . a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.” Colo. Rev. Stat. Ann. §§ 18-17-105(1)(a), (2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

A defendant convicted of racketeering under Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities) is subject to mandatory criminal asset forfeiture. Colo. Rev. Stat. Ann. § 18-17-105(1)(b) (Criminal penalties) requires traffickers convicted under Colo. Rev. Stat. Ann. § 18-17-104 to

[f]orfeit to the state any interest, including proceeds, he has acquired or maintained in violation of section 18-17-104 and any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has established, operated, controlled, conducted, or participated in the conduct of in violation of section 18-17-104.

Additionally, where the offender is convicted of Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities), Colo. Rev. Stat. Ann. § 18-17-106 (Civil remedies) authorizes the victim to file a civil action. Under Colo. Rev. Stat. Ann. § 18-17-106(7), the victim may be able to receive triple damages, attorney fees and the costs of the investigation to a victim in a civil action.

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<sup>26</sup> 18 U.S.C. 1961(1)(B) defines “racketeering activity” in part as “any act which is indictable under any of the following provisions of title 18, United States Code: . . . sections 1581–1592 (relating to peonage, slavery, and trafficking in persons) . . . sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children) . . . .”

- 1.4.1 Recommendation: Amend the definition of “racketeering activity” in Colo. Rev. Stat. Ann. § 18-17-103(5) (Definitions) to include as predicate activity CSEC offenses which apply specifically to buyers.

***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 laws differentiate buying sex acts with an adult and buying sex acts with a minor under 18.*
- 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
- 2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*
- 2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*
- 2.7 *Base penalties for buying sex acts with a minor 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.*

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***Legal Analysis:***

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

Colo. Rev. Stat. Ann. § 18-3-502(1)(b) states, “A person commits trafficking in children if he or she . . . [r]eceives a child as a result of a transaction described in paragraph (a) of this subsection (1).” Pursuant to Colo. Rev. Stat. Ann. § 18-3-502(a), “A person commits trafficking in children if he or she . . . [s]ells, exchanges, barter, or leases a child and receives any money or other consideration or thing of value for that child as a result of such transaction.” However, Colo. Rev. Stat. Ann. § 18-3-502(1)(b) (Trafficking in children)<sup>27</sup> fails to specify transactions for the purpose of commercial sexual activity, making it inapplicable to buyers of commercial sex acts with minors.

- 2.1.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) to specifically include purchasing commercial sex acts with minors as prohibited conduct.

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

Colorado’s CSEC laws include the crime of buying sex with a minor. Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child) applies to any person who “[e]ngages in an act which is prostitution of a child or by a child,”<sup>28</sup> or “[e]nters or remains in a place of prostitution with intent to engage in an act which is prostitution of a child or by a child.”<sup>29</sup>

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<sup>27</sup> See *supra* Section 1.1 for the provisions of Colo. Rev. Stat. Ann. § 18-3-502(1).

<sup>28</sup> See *supra* note 13 for the definition of “prostitution of a child” and note 14 for the definition of “prostitution by a child.”

<sup>29</sup> Colo. Rev. Stat. Ann. § 18-7-401(2) (Definitions) defines a “child” as “a person under the age of eighteen years.”

Under Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution),<sup>30</sup> a buyer could be prosecuted for soliciting “another for the purpose of prostitution of a child or by a child.”

Finally, a buyer may be prosecuted under Colo. Rev. Stat. Ann. § 18-7-405.5 (Inducement of child prostitution) if the buyer “by word or action, other than conduct specified in section 18-7-403 (1)(a) [Pandering of a child], induces a child to engage in an act which is prostitution by a child.”

A conviction under any of the above provisions is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-7-402(2), 18-7-405.5(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, for Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child), as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(X).<sup>31</sup>

Several of Colorado’s sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.<sup>32</sup>

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

Colorado law differentiates between patronizing a child and an adult for prostitution. Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child)<sup>33</sup> and Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution)<sup>34</sup> apply to buyers who patronize or solicit children. A violation of either statute is a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both.<sup>35</sup> Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-7-402(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for patronizing a prostituted child under Colo. Rev. Stat. Ann. § 18-7-406(1) is enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(X).

In contrast, Colo. Rev. Stat. Ann. § 18-7-205(1) (Patronizing a prostitute), Colorado’s age-neutral patronizing prostitution law, states,

Any person who performs any of the following with a person not his spouse commits patronizing a prostitute:

- (a) Engages in an act of sexual intercourse or of deviate sexual conduct with a prostitute; or
- (b) Enters or remains in a place of prostitution with intent to engage in an act of sexual intercourse or deviate sexual conduct.

A conviction under Colo. Rev. Stat. Ann. § 18-7-205(1) is punishable as a Class 1 misdemeanor by imprisonment for 6–18 months, a fine of \$500–\$5,000, or both, as well as an additional fine of up to \$5,000. Colo. Rev. Stat. Ann. §§ 18-7-205(2), 18-1.3-501(1)(a).

<sup>30</sup> See *People v. Emerterio*, 819 P.2d 516, 518 (Colo. App. 1991) (“Defendant’s status as the person seeking the illicit acts does not change the fact that he also solicited victim to provide him with children to perform those acts for money. Thus, defendant’s conduct was proscribed by the statute . . .”), *rev’d on other grounds*, 839 P.2d 1161 (Colo. 1992).

<sup>31</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-7-406.

<sup>32</sup> See *supra* Section 1.2 for a full discussion of applicable sexual offense laws.

<sup>33</sup> See *supra* Section 1.2 for the provisions of Colo. Rev. Stat. Ann. § 18-7-406(1).

<sup>34</sup> See *supra* note 30.

<sup>35</sup> See *supra* note 10.

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

Convictions under Colo. Rev. Stat. Ann. § 18-7-405.5 (Inducement of child prostitution) and § 18-7-402(1) (Soliciting for child prostitution)<sup>36</sup> are punishable as Class 3 felonies by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both.<sup>37</sup> Colo. Rev. Stat. Ann. §§ 18-7-405.5(2), 18-7-402(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

Convictions under Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child) are also subject to imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000.<sup>38</sup> Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(X).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>39</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 buyer has a prior conviction for a federal sex offense<sup>40</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>41</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>42</sup>

- 2.4.1 Recommendation: Amend the definition of “sex offense” in Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions—Lifetime Supervision Of Sex Offenders) to add § 18-7-405.5 (Inducement of child prostitution), and § 18-7-402(1) (Soliciting for child prostitution) to the list of enumerated offenses, thereby requiring an indeterminate sentence up to life in prison and making defendants convicted under these provisions ineligible to receive a fine penalty in lieu of imprisonment.

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<sup>36</sup> See *supra* note 30.

<sup>37</sup> See *supra* note 6 for discussion of the “crime of violence” penalty enhancement potentially applicable to these offenses.

<sup>38</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-7-406.

<sup>39</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>40</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>41</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>42</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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.*

Colorado has enacted two laws, which although not expressly commercial, directly address use of the Internet to lure, entice, or purchase minors for the purpose of sexual conduct. First, Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) provides,

An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

(a) Expose or touch the person's own or another person's intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message; or

(b) Observe the actor's intimate parts via a computer network or system, telephone network, or data network or by a text message or instant message.

A conviction under Colo. Rev. Stat. Ann. § 18-3-405.4(1) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405.4(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000.<sup>43</sup> Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XII).

Additionally, Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) states,

An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication by computer, computer network, telephone network, data network, text message, or instant message, describes explicit sexual conduct<sup>44</sup> as defined in section 18-6-403(2)(e), and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

A conviction under Colo. Rev. Stat. Ann. § 18-3-306(1) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both, unless the crime was “committed with the intent to meet for the purpose of engaging in sexual exploitation as defined in section 18-6-403 or sexual contact as defined in section 18-3-401,” in which case the violation will be a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XI).<sup>45</sup>

2.5.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-405.4 (Internet sexual exploitation of a child) and § 18-3-306(1) (Internet luring of a child) to expressly include use of the Internet to solicit or purchase commercial sex acts with any minor under 18 years of age.

<sup>43</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.4.

<sup>44</sup> See *supra* note 11 for the definition of “explicit sexual conduct.”

<sup>45</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-306, when it is punishable as a Class 4 felony.

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

There is no mistake of age defense available to buyers who are convicted under Colo. Rev. Stat. Ann. § 18-7-402 (Soliciting for child prostitution),<sup>46</sup> § 18-7-405.5 (Inducement of child prostitution), or § 18-7-406 (Patronizing a prostituted child). Colo. Rev. Stat. Ann. § 18-7-407 (Criminality of conduct) states, “In any criminal prosecution under sections 18-7-402 to 18-7-407, it shall be no defense that the defendant did not know the child’s age or that he reasonably believed the child to be eighteen years of age or older.”

There is no provision expressly prohibiting a mistake of age defense for Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) or § 18-3-405.4 (Internet sexual exploitation of a child).

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

None of Colorado’s CSEC laws that are applicable to buyers stagger penalties based on the age of the minor victim.

However, Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) and § 18-3-405.4(1) (Internet sexual exploitation of a child) apply only where the buyer knew or believed the victim to be under 15 years old, leaving minors who are 15–18 years old unprotected.

- 2.7.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) and § 18-3-405.4(1) to protect all minors under 18 years of age.

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

Buyers convicted of Colo. Rev. Stat. Ann. § 18-7-402(1)(a) (Soliciting for child prostitution),<sup>47</sup> § 18-7-405.5(1) (Inducement of child prostitution), or § 18-7-406(1) (Patronizing a prostituted child), all Class 3 felonies, may be required to pay a fine of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-405.5(2), 18-7-406(2), 18-1.3-401(1)(a)(III)(A).

The court is mandated to consider orders of restitution in cases involving any felony or misdemeanor conviction. Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-603(1)<sup>48</sup> (Assessment of restitution—corrective orders),

(1) Every order of conviction of a felony [or] misdemeanor . . . shall include consideration of restitution.”<sup>49</sup>

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims.

. . . .

Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides in part that “[a]ny victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person’s own name.” Under Colo. Rev. Stat. Ann. § 16-18.5-109(1), (2) (Declined or unclaimed restitution), even if the victim initially declines restitution or cannot be located when

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<sup>46</sup> See *supra* note 30.

<sup>47</sup> See *supra* note 30.

<sup>48</sup> The text of Colo. Rev. Stat. Ann. § 18-1.3-603 included here and elsewhere in this report includes amendments made by the passage of House Bill 1151, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

<sup>49</sup> Colo. Rev. Stat. Ann. § 18-1.3-602(3)(a) defines “restitution” as “any pecuniary loss suffered by the victim and . . . does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.” See *infra* Section 5.10 for further discussion of restitution available to victims.

an order for restitution is entered, defendant must pay the state and the victim can claim the restitution within 2 years of the final determination of the case.

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414 (Payment of treatment costs for the victim or victims of a sexual offense against a child), when a victim is under the age of 15, a court may order the person convicted of an unlawful sex offense, including Colo. Rev. Stat. Ann. § 18-3-502(1) (Trafficking in children), § 18-7-402(1)(a) (Soliciting for child prostitution), § 18-7-405.5(1) (Inducement of child prostitution), § 18-7-406(1) (Patronizing a prostituted child), or § 18-6-403(3)(b.5) (Sexual exploitation of a child), to pay for part or all of the victim's treatment. Colo. Rev. Stat. Ann. §§ 18-3-414(1), 18-3-411(1).

Colo. Rev. Stat. Ann. § 16-13-303(1)(a)<sup>50</sup> (Class 1 public nuisance) provides a basis for mandatory, civil forfeiture<sup>51</sup> of a buyer's vehicle, by stating that "every vehicle . . . shall be deemed a class 1 public nuisance when . . . [u]sed as a public or private place of prostitution."<sup>52</sup> Since the prostitution statute is age-neutral, forfeiture under this statute may be applicable to patronizing or soliciting commercial sex acts with minors, although such application is not specifically provided. Otherwise, it does not appear that asset forfeiture exists to reach the assets of buyers convicted under Colorado's CSEC laws.

Seizure of this property is governed by Colo. Rev. Stat. Ann. §16-13-315 which provides,

- (1) Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:
  - (a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or
  - (b) Under the authority of a search warrant; or
  - (c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

Disposition of forfeited property is governed by Colo. Rev. Stat. Ann. §16-13-311 which provides, in relevant part,

- (3) . . . Property forfeited under this section or proceeds therefrom shall be distributed or applied in the following order:
  - (I) To payment of the balances due on any liens . . . the order of their priority;
  - (II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;
  - (III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;
  - (IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;
  - (V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;
  - (VI) One percent of the value of the property to the clerk of the court for administrative costs

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<sup>50</sup> The text of Colo. Rev. Stat. Ann. § 16-13-303 included here and elsewhere in this report includes amendments made by the passage of House Bill 1151, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

<sup>51</sup> For additional information on asset forfeiture laws and procedures, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>.

<sup>52</sup> "Place of prostitution" is not defined within Part 3 of Article 13, Title 16. However, under Colo. Rev. Stat. Ann. § 18-7-204(1) (Keeping a place of prostitution) a person "commits keeping a place of prostitution" if the person "exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution" and knowingly or negligently permits prostitution to occur in the place of prostitution.



associated with compliance with this section;

(VII) The balance shall be delivered, upon order of the court, as follows:

(A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement; and

(B) The remaining amount to the managed service organization contracting with the unit within the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance abuse treatment. Moneys appropriated to the managed service organization shall be in addition to, and shall not be used to supplant, other funding appropriated to such unit.

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

Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) (Sexual exploitation of a child) criminalizes the possession of child pornography. Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) provides that “[a] person commits sexual exploitation of a child if, for any purpose he or she knowingly: . . . [p]ossesses or controls any sexual exploitative material for any purpose.” A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) is punishable as a Class 6 felony by imprisonment for 1–1½ years, a fine of \$1,000–\$100,000, or both, unless it is the defendant’s second offense or the material in possession is a video or motion picture or more than 20 sexually exploitative items, in which case it is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-403(5)(b), 18-1.3-401(1)(a)(III)(A), 18-1.3-401(1)(a)(V)(A).

In comparison, a federal conviction for possession of child pornography<sup>53</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>54</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>55</sup>

2.9.1 Recommendation: Increase the penalty for those who possess child pornography under Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) (Sexual exploitation of a child) to align with federal penalties.

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

Under Colo. Rev. Stat. Ann. § 16-22-103(1)(a) (Sex offender registration),

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<sup>53</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>54</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>55</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).

Effective July 1, 1998, the following persons shall be required to register pursuant to the provisions of section 16-22-108 and shall be subject to the requirements and other provisions specified in this article:

- (a) Any person who was convicted on or after July 1, 1991, in the state of Colorado, of an unlawful sexual offense, as defined in section 18-3-411 (1),<sup>56</sup> C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.

Additionally, buyers of sex with minors who are convicted of unlawful sexual behavior will be required to register as a sex offender. Colo. Rev. Stat. Ann. § 16-22-103(2)(a). “Unlawful sexual behavior” includes convictions under Colo. Rev. Stat. Ann. § 18-7-402(1)(a) (Soliciting for child prostitution),<sup>57</sup> § 18-7-405.5(1) (Inducement of child prostitution), § 18-7-406(1) (Patronizing a prostituted child), or § 18-6-403(3)(b.5) (Sexual exploitation of a child). Colo. Rev. Stat. Ann. § 16-22-102(9).

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<sup>56</sup> See *supra* note 3 for the definition of “unlawful sexual offense.”

<sup>57</sup> See *supra* note 30.

***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.*

***Legal Analysis:***

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

A conviction under Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-502(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). Traffickers may also be prosecuted under several of Colorado’s CSEC laws. A conviction under Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).<sup>58</sup>

Colo. Rev. Stat. Ann. § 18-7-403(1) (Pandering of a child) may also be used to prosecute traffickers. A conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(a) is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both, while a conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(b) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-403(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

Traffickers also may be prosecuted under Colo. Rev. Stat. Ann. § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), and § 18-7-405.5(1), (2) (Inducement of child prostitution). A conviction under any of these provisions is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-403.5, 18-7-404(2), 18-7-405, 18-7-405.5(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

A trafficker also could be prosecuted under Colo. Rev. Stat. Ann. § 18-5-309(1) (Money laundering), which provides,

A person commits money laundering if he or she:

- (a) Conducts or attempts to conduct a financial transaction that involves money or any other thing of value that he or she knows or believes to be the proceeds, in any form, of a criminal offense:
  - (I) With the intent to promote the commission of a criminal offense; or
  - (II) With knowledge or a belief that the transaction is designed in whole or in part to:
    - (A) Conceal or disguise the nature, location, source, ownership, or control of the proceeds of a criminal offense; or
    - (B) Avoid a transaction reporting requirement under federal law;
- (b) Transports, transmits, or transfers a monetary instrument or moneys:
  - (I) With the intent to promote the commission of a criminal offense; or

<sup>58</sup> See *supra* Section 1.2 for the relevant substantive provisions of the Colorado statutes listed in this section.

- (II) With knowledge or a belief that the monetary instrument or moneys represent the proceeds of a criminal offense and that the transportation, transmission, or transfer is designed, in whole or in part, to:
  - (A) Conceal or disguise the nature, location, source, ownership, or control of the proceeds of a criminal offense; or
  - (B) Avoid a transaction reporting requirement under federal law; or
- (c) Intentionally conducts a financial transaction involving property that is represented to be the proceeds of a criminal offense, or involving property that the person knows or believes to have been used to conduct or facilitate a criminal offense, to:
  - (I) Promote the commission of a criminal offense;
  - (II) Conceal or disguise the nature, location, source, ownership, or control of property that the person believes to be the proceeds of a criminal offense; or
  - (III) Avoid a transaction reporting requirement under federal law.

A conviction under Colo. Rev. Stat. Ann. § 18-5-309(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-5-309(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>59</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>60</sup> against a minor.

3.1.1 Recommendation: Amend the definition of “sex offense” in Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) to add Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) and all of Colorado’s CSEC laws to the list of enumerated offenses, thereby requiring an indeterminate sentence up to life in prison and making defendants convicted under this provision ineligible to receive a fine penalty in lieu of imprisonment.

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

Colo. Rev. Stat. Ann. § 18-6-403(3) (Sexual exploitation of a child) criminalizes the creation and distribution of child pornography. Specifically Colo. Rev. Stat. Ann. § 18-6-403(3) provides,

- A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:
- (a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct<sup>61</sup> for the making of any sexually exploitative material;<sup>62</sup> or
  - (b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or
  - (c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or
  - (d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

<sup>59</sup> See *supra* note 39.

<sup>60</sup> See *supra* note 40 for the definition of “federal sex offense.”

<sup>61</sup> See *supra* note 11 for the definition of “explicit sexual conduct.”

<sup>62</sup> See *supra* note 12 for the definition of “sexually exploitative material.”

A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(a), (b), (c), or (d) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-403(5)(a), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>63</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>64</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>65</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>66</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.*

Colorado has enacted two laws that relate to using the Internet to lure, entice, recruit, or purchase minors for the purpose of sexual conduct. However, Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) is not expressly commercial and is unlikely to apply to the conduct of traffickers. Section 18-3-405.4(1) provides,

An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

(a) Expose or touch the person’s own or another person’s intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message . . .

. . . .

A conviction under Colo. Rev. Stat. Ann. § 18-3-405.4(1)(a) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405.4(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-

<sup>63</sup> See *supra* note 40 for the definition of “federal sex offense.”

<sup>64</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>65</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>66</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).

1004(1)(a), 18-1.3-1003(4), (5)(a)(XII).<sup>67</sup>

Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) may apply to traffickers in certain circumstances. Section 18-3-306(1) states,

An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication by computer, computer network, telephone network, data network, text message, or instant message, describes explicit sexual conduct<sup>68</sup> as defined in section 18-6-403(2)(e), and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

A conviction under Colo. Rev. Stat. Ann. § 18-3-306(1) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both, unless the crime was “committed with the intent to meet for the purpose of engaging in sexual exploitation as defined in section 18-6-403 or sexual contact as defined in section 18-3-401,” in which case a violation is a Class 4 felony punishable by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for Class 4 felony internet luring must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XI).<sup>69</sup>

- 3.3.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-306 (Internet luring of a child) to apply an enhanced penalty when the crime is committed for the purpose of meeting with a minor to violate Colo. Rev. Stat. Ann. § 18-3-502(1) (Trafficking in children) or any other CSEC offense.
- 3.3.2 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-405.4 (Internet sexual exploitation of a child) to specifically criminalize use of the Internet to lure, to entice, or to recruit any minor under 18 years of age for purposes of commercial sexual exploitation.

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

Traffickers convicted of Colo. Rev. Stat. Ann. § 18-7-402 (Soliciting for child prostitution), § 18-7-403(1)(b) (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), § 18-7-405.5 (Inducement of child prostitution), § 18-7-405 (Pimping a child), or § 18-5-309 (Money laundering), all Class 3 felonies, may be required to pay fines of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-403(2), 18-7-403.5, 18-7-404(2), 18-7-405.5(2), 18-7-405, 18-5-309(2), 18-1.3-401(1)(a)(III)(A). A court must consider ordering traffickers to make restitution to their victims. Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-603(1)<sup>70</sup> (Assessment of restitution—corrective orders),

(1) Every order of conviction of a felony [or] misdemeanor . . . shall include consideration of restitution.”<sup>71</sup>

<sup>67</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.4.

<sup>68</sup> See *supra* note 11 for the definition of “explicit sexual conduct.”

<sup>69</sup> See *supra* note 10 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-306, when it is punishable as a Class 4 felony.

<sup>70</sup> The text of Colo. Rev. Stat. Ann. § 18-1.3-603 included here and elsewhere in this report includes amendments made by the passage of House Bill 1151, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

<sup>71</sup> See *infra* Section 5.10 for further discussion of restitution available to victims.

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims.

...

Colo. Rev. Stat. Ann. § 18-1.3-602(4)(e) expressly defines a “victim” as “a person less than eighteen years of age who has been trafficked by an offender, as described in section 18-3-502 [Trafficking in children], or coerced into involuntary servitude, as described in section 18-3-503 [Coercion of involuntary servitude].”<sup>72</sup> Furthermore, Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides that “[a]ny victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person’s own name.”

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414(1) (Payment of treatment costs for the victim or victims of a sexual offense against a child) when a victim is under the age of 15, a court may order a person who is convicted of Colo. Rev. Stat. Ann. § 18-3-502(1) (Trafficking in children), § 18-7-402(1)(a) (Soliciting for child prostitution), § 18-6-403(3)(b.5) (Sexual exploitation of a child), § 18-7-403(1)(b) (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), § 18-7-405.5 (Inducement of child prostitution), § 18-3-305 (Enticement of a child), or § 18-6-404 (Procurement of a child for sexual exploitations) to pay for part or all of the victim’s treatment.

Mandatory civil asset forfeiture is provided for, pursuant to Colo. Rev. Stat. Ann. § 16-13-303(1)(a)<sup>73</sup> (Class 1 public nuisance), which states,

Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

- (a) Used as a public or private place of prostitution or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S., pandering, as defined in section 18-7-203, C.R.S., keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; pimping, as defined in section 18-7-206, C.R.S.; trafficking in adults, as defined in section 18-3-501, C.R.S.; trafficking in children, as defined in section 18-3-502, C.R.S.; or coercion of involuntary servitude, as defined in section 18-3-503, C.R.S. occurs;

...

Similarly, asset forfeiture may be available as a financial penalty for domestic minor sex trafficking under Colo. Rev. Stat. Ann. § 16-13-304(1)(b) (Class 2 public nuisance), which defines a Class 2 public nuisance in part as “[a]ny public or private place or premises which encourages . . . solicitation for prostitution.”

Seizure of this property is governed by Colo. Rev. Stat. Ann. §16-13-315 which provides,

(1) Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:

- (a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or
- (b) Under the authority of a search warrant; or
- (c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

Disposition of forfeited property is governed by Colo. Rev. Stat. Ann. §16-13-311 which provides, in relevant part,

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<sup>72</sup> The text of Colo. Rev. Stat. Ann. § 18-1.3-602 included here and elsewhere in this report includes amendments made by the passage of House Bill 1151, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

<sup>73</sup> See *supra* note 50.

(3) . . . Property forfeited under this section or proceeds therefrom shall be distributed or applied in the following order:

- (I) To payment of the balances due on any liens . . . the order of their priority;
- (II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;
- (III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;
- (IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;
- (V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;
- (VI) One percent of the value of the property to the clerk of the court for administrative costs associated with compliance with this section;
- (VII) The balance shall be delivered, upon order of the court, as follows:
  - (A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement; and
  - (B) The remaining amount to the managed service organization contracting with the unit within the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance abuse treatment. Moneys appropriated to the managed service organization shall be in addition to, and shall not be used to supplant, other funding appropriated to such unit.

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

Traffickers convicted under Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) or any of the Colorado CSEC laws applicable to traffickers will be required to register as sex offenders. Under Colo. Rev. Stat. Ann. § 16-22-103(1)(a),

Effective July 1, 1998, the following persons shall be required to register pursuant to the provisions of section 16-22-108 and shall be subject to the requirements and other provisions specified in this article:

- (a) Any person who was convicted on or after July 1, 1991, in the state of Colorado, of an unlawful sexual offense, as defined in section 18-3-411 (1),<sup>74</sup> C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.

The definition of “unlawful sexual offense” in Colo. Rev. Stat. Ann. § 18-3-411 includes Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) and all of the CSEC laws applicable to traffickers.<sup>75</sup>

### 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.*

Colorado’s laws relating to the termination of parental rights do not expressly include a violation of Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) or any of Colorado’s CSEC laws as grounds for terminating parental rights. Instead, Colo. Rev. Stat. Ann. § 19-3-604 (Criteria for termination) provides,

<sup>74</sup> See *supra* note 3 for the definition of “unlawful sexual offense.”

<sup>75</sup> See *supra* Section 3.1 for the CSEC offenses applicable to traffickers.



(1) The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following:

....  
(b) That the child is adjudicated dependent or neglected and the court finds that no appropriate treatment plan can be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

....  
(II) A single incident resulting in serious bodily injury or disfigurement of the child;  
(III) Long-term confinement of the parent of such duration that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the long-term confinement of the parent of such duration that the parent is not eligible for parole for at least thirty-six months after the date the child was adjudicated dependent or neglected and the court has found by clear and convincing evidence that no appropriate treatment plan can be devised to address the unfitness of the parent or parents;

....  
(V) An identifiable pattern of habitual abuse to which the child or another child has been subjected and, as a result of which, a court has adjudicated another child as neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such abuse has caused the death of another child;

(VI) An identifiable pattern of sexual abuse of the child; or

(VII) The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent;

....  
(2) In determining unfitness, conduct, or condition for purposes of paragraph (c) of subsection (1) of this section, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious bodily injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care to include, at a minimum, nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions. In making such determinations, the court shall consider, but not be limited to, the following:

....  
(b) Conduct towards the child of a physically or sexually abusive nature;

....  
3.6.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 19-3-604(1) (Criteria for termination) to include a violation of Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children), or any of Colorado's CSEC laws, as grounds for terminating parental rights.

***Legal Components:***

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

***Legal Analysis:***

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

Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) does not apply to facilitators who have assisted or financially benefitted from domestic minor sex trafficking; however, Colo. Rev. Stat. Ann. § 18-7-403.5 (Procurement of a child) and § 18-7-404(1) (Keeping a place of child prostitution), both Class 3 felonies, may be used to prosecute facilitators. Colo. Rev. Stat. Ann. §§ 18-7-403.5, 18-7-404(2). A facilitator who “[d]irects another to a place knowing such direction is for the purpose of prostitution of a child or by a child,” could face prosecution under Colo. Rev. Stat. Ann. § 18-7-402(1)(c) (Soliciting for child prostitution), also a Class 3 felony. Colo. Rev. Stat. Ann. § 18-7-402(2). A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

A facilitator also could be prosecuted under Colo. Rev. Stat. Ann. § 18-5-309(1) (Money laundering).<sup>76</sup> A conviction under Colo. Rev. Stat. Ann. § 18-5-309(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-5-309(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

- 4.1.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) to include those who knowingly assist, enable, or financially benefit from domestic minor sex trafficking.

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

Facilitators convicted of Colo. Rev. Stat. Ann. § 18-7-402 (Soliciting for child prostitution), § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), or § 18-5-309(1) (Money laundering), all Class 3 felonies, may be required to pay fines of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-403.5, 18-7-404(2), 18-5-309(2), 18-1.3-401(1)(a)(III)(A). A facilitator convicted of violating Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities), a Class 2 felony, may be required to pay a fine of \$5,000–\$1,000,000 and an additional fine of up to \$25,000 or, where the facilitator “derived pecuniary value, or . . . caused personal injury or property damage or other loss” the greater of 3 times “the gross value gained” or “the gross loss caused.” Colo. Rev. Stat. Ann. §§ 18-17-105(1), (2), 18-1.3-401(1)(a)(III)(A).

Where a facilitator is convicted, the court must consider ordering restitution for the victims. Colo. Rev. Stat. Ann. § 18-1.3-603(1) (Assessment of restitution—corrective orders) requires the court in any conviction for a felony or misdemeanor to consider ordering restitution. Furthermore, Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides that “[a]ny victim in whose name a restitution order has been

<sup>76</sup> See *supra* Section 3.1 for the definition of “money laundering.”

entered shall have a right to pursue collection of the amount of restitution owed to such person in such person's own name."

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414(1) (Payment of treatment costs for the victim or victims of a sexual offense against a child),<sup>77</sup> when a defendant is convicted of an unlawful sexual offense and the victim is under the age of 15, a court may order the defendant to pay all or part of the victim's treatment.

Facilitators who permit their property to be used for minor sex trafficking shall face mandatory, civil asset forfeiture under Colo. Rev. Stat. Ann. § 16-13-303(1)(a)<sup>78</sup> (Class 1 public nuisance), which provides,

Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

- (a) Used as a public or private place of prostitution or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S., pandering, as defined in section 18-7-203, C.R.S., keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; pimping, as defined in section 18-7-206, C.R.S.; trafficking in adults, as defined in section 18-3-501, C.R.S.; trafficking in children, as defined in section 18-3-502, C.R.S.; or coercion of involuntary servitude, as defined in section 18-3-503, C.R.S. occurs;

. . .

Similarly, asset forfeiture may be available as a financial penalty for facilitators of domestic minor sex trafficking under Colo. Rev. Stat. Ann. § 16-13-304(1)(b), which defines a Class 2 public nuisance in part as "[a]ny public or private place or premises which encourages . . . solicitation for prostitution."

Seizure of this property is governed by Colo. Rev. Stat. Ann. §16-13-315 which provides,

- (1) Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:
  - (a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or
  - (b) Under the authority of a search warrant; or
  - (c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

Disposition of forfeited property is governed by Colo. Rev. Stat. Ann. §16-13-311 which provides, in relevant part,

- (3) . . . Property forfeited under this section or proceeds therefrom shall be distributed or applied in the following order:
  - (I) To payment of the balances due on any liens . . . the order of their priority;
  - (II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;
  - (III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;
  - (IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;
  - (V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;

<sup>77</sup> See *supra* Section 2.8 for the provisions of Colo. Rev. Stat. Ann. § 18-3-414(1).

<sup>78</sup> See *supra* note 50.

(VI) One percent of the value of the property to the clerk of the court for administrative costs associated with compliance with this section;

(VII) The balance shall be delivered, upon order of the court, as follows:

(A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement; and

(B) The remaining amount to the managed service organization contracting with the unit within the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse, serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance abuse treatment. Moneys appropriated to the managed service organization shall be in addition to, and shall not be used to supplant, other funding appropriated to such unit.

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

There is no provision in the Colorado statutes prohibiting child sex tourism.

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

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

Colo. Rev. Stat. Ann. § 18-6-403(3)(b), (c) (Sexual exploitation of a child) criminalizes the promotion and sale of child pornography. Specifically Colo. Rev. Stat. Ann. § 18-6-403(3) provides,

A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:

...

(b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material;<sup>79</sup> or

...

(c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material;

....

A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(b), (c) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both.<sup>80</sup> Colo. Rev. Stat. Ann. §§ 18-6-403(5)(a), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

Colo. Rev. Stat. Ann. § 18-6-404 (Procurement of a child for sexual exploitation) also may apply to facilitators, including those who transport a child for the purpose of sexual exploitation of a child. Colo. Rev. Stat. Ann. § 18-6-404 criminalizes when a person “intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of sexual exploitation of a child.” A conviction under Colo. Rev. Stat. Ann. § 18-6-404 is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-404, 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A).

<sup>79</sup> See *supra* note 12 for the definition of “sexually exploitative material.”

<sup>80</sup> If the defendant “caused bodily injury to the victim or . . . used threat, intimidation, or force against the victim,” enhanced penalties apply under Colo. Rev. Stat. Ann. § 18-1.3-406 (Mandatory sentences for violent crimes). Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I). See *supra* note 6 for the provisions of Colo. Rev. Stat. Ann. § 18-1.3-406.



**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 is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into protection of child protective services.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or 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.*

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**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 purposes of Colorado’s laws relating to restitution, Colo. Rev. Stat. Ann. § 18-1.3-602(4)(e) (Definitions) states, “Notwithstanding any other provision of this section, ‘victim’ includes a person less than eighteen years of age who has been trafficked by an offender, as described in section 18-3-502 [Trafficking in children], or coerced into involuntary servitude, as described in section 18-3-503 [Coercion of involuntary servitude].”

Under the Crime Victim Compensation Act, Colo. Rev. Stat. Ann. § 24-4.1-102(10) (Definitions),

(a) “Victim” means any of the following persons who suffer property damage, economic loss, injury, or death as a result of a compensable crime<sup>81</sup> perpetrated or attempted in whole or in part in this state:

(I) Any person against whom a compensable crime is perpetrated or attempted. Such person shall be referred to as a “primary victim”.

. . . .

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<sup>81</sup> Colo. Rev. Stat. Ann. § 24-4.1-102(4)(a)(I) defines “compensable crime” in part as “[a]n intentional, knowing, reckless, or criminally negligent act of a person . . . that results in residential property damage to or bodily injury or death of another person or results in loss of or damage to eyeglasses, dentures, hearing aids, or other prosthetic or medically necessary devices and which, if committed by a person of full legal capacity, is punishable as a crime in this state.”

(b) “Victim” also means a person who suffers injury or death, the proximate cause of which is a compensable crime perpetrated or attempted in the person’s presence against a primary victim.

(c) “Victim” also means a person who is a resident of this state and who is a victim of a crime that occurred outside of this state, where the crime would be a compensable crime had it occurred in this state and where the state or country in which the crime occurred does not have a crime victim compensation program for which the person would be eligible.

....

Lastly, as used within Colo. Rev. Stat. Ann. § 18-3-405 (Sexual assault on a child) and § 18-3-405.4 (Internet sexual exploitation of a child), Colo. Rev. Stat. Ann. § 18-3-401(7) (Definitions) defines a “victim” as “the person alleging to have been subjected to a criminal sexual assault.”

5.1.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 24-4.1-102(10) (Definitions) to expressly include commercially sexually exploited children as victims.

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.*

Neither Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) nor any of Colorado’s CSEC laws expressly prohibits a defendant from using a minor’s consent to a commercial sex act as a defense to the crime. However, Colo. Rev. Stat. Ann. § 18-1-505 (Consent) explains,

(1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is not a defense unless the consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(2) When conduct is charged to constitute an offense because it causes or threatens bodily injury, consent to that conduct or to the infliction of that injury is a defense only if the bodily injury consented to or threatened by the conduct consented to is not serious, or the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport, or the consent establishes a justification under sections 18-1-701 [Execution of public duty] to 18-1-707 [Use of physical force in making an arrest or in preventing an escape].

(3) Unless otherwise provided by this code or by the law defining the offense, assent does not constitute consent if:

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

(b) It is given by a person who, by reason of immaturity, mental disease or mental defect, or intoxication, is manifestly unable and is known or reasonably should be known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

(c) It is given by a person whose consent is sought to be prevented by the law defining the offense; or

(d) It is induced by force, duress, or deception.

(4) Any defense authorized by this section is an affirmative defense.

5.2.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-1-505 (Consent) to expressly prohibit a defendant from using a minor’s consent to a commercial sex act as a defense to Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) and Colorado’s CSEC laws .

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

Although Colorado’s law prohibiting prostitution, Colo. Rev. Stat. Ann. § 18-7-201(1) (Prostitution prohibited), is age-neutral, stating that “[a]ny person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not his spouse in exchange

for money or other thing of value commits prostitution,” Colo. Rev. Stat. Ann. § 18-1-604 (Exemptions from liability based upon behavior of another) provides that “[u]nless otherwise provided by the statute defining the offense, a person shall not be legally accountable for behavior of another constituting an offense if he is a victim of that offense or the offense is so defined that his conduct is inevitably incidental to its commission.” Colo. Rev. Stat. Ann. § 18-1-604 could make commercially sexually exploited children, as victims of Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) and Colorado’s CSEC laws, immune from prosecution for Colo. Rev. Stat. Ann. § 18-7-201(1) to the extent that it is “inevitably incidental to” the commission of one of those crimes.

5.3.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-7-201 (Prostitution prohibited) to expressly make a minor immune from a prostitution charge.

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.*

Colo. Rev. Stat. Ann. § 19-3-304(1)(a) (Persons required to report child abuse or neglect) requires certain medical professionals, social workers, school employees, and members of the clergy, among others, who have “reasonable cause to know or suspect that a child has been subjected to abuse or neglect . . . shall immediately upon receiving such information report or cause a report to be made . . . to the county department or a local law enforcement agency.”

Reports of known or suspected child abuse must “be made immediately to the county department or the local law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report.” Colo. Rev. Stat. Ann. § 19-3-307(1). “The county department shall respond immediately upon receipt of any report of a known or suspected incident of intrafamilial abuse<sup>82</sup> or neglect to assess the abuse involved and the appropriate response to the report.” Colo. Rev. Stat. Ann. § 19-3-308(1)(a). However, where the abuse reported is not intrafamilial, Colo. Rev. Stat. Ann. § 19-3-308(5.3)(a) provides in part,

Local law enforcement agencies shall have the responsibility for the coordination and investigation of all reports of third-party abuse or neglect<sup>83</sup> by persons ten years of age or older. Upon receipt of a report, if the local law enforcement agency reasonably believes that the protection and safety of a child is at risk due to an act or omission on the part of persons responsible for the child’s care, such agency shall notify the county department of social services for an assessment regarding neglect or dependency. In addition, the local law enforcement agency shall refer to the county department of social services any report of third-party abuse or neglect in which the person allegedly responsible for such abuse or neglect is under age ten. Upon the completion of an investigation, the local law enforcement agency shall forward a copy of its investigative report to the county department of social services. The county department shall review the law enforcement investigative report and shall determine whether the report contains information that constitutes a case of confirmed child abuse and requires it to be submitted to the state department . . . .

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<sup>82</sup> Colo. Rev. Stat. Ann. § 19-1-103(67) provides,

“Intrafamilial abuse”, as used in part 3 of article 3 of this title, means any case of abuse, as defined in subsection (1) of this section, that occurs within a family context by a child’s parent, stepparent, guardian, legal custodian, or relative, by a spousal equivalent, as defined in subsection (101) of this section, or by any other person who resides in the child’s home or who is regularly in the child’s home for the purpose of exercising authority over or care for the child; except that “intrafamilial abuse” shall not include abuse by a person who is regularly in the child’s home for the purpose of rendering care for the child if such person is paid for rendering care and is not related to the child.

<sup>83</sup> Colo. Rev. Stat. Ann. § 19-1-103(108) defines “third-party abuse” as “a case in which a child is subjected to abuse, as defined in subsection (1) of this section, by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, as defined in subsection (101) of this section, or any other person not included in the definition of intrafamilial abuse, as defined in subsection (67) of this section.”



Child protective services may also be available to a minor victim of third party abuse while investigation by law enforcement is pending if requested by law enforcement pursuant to Colo. Rev. Stat. Ann. § 19-3-308(5.3)(b), which provides, “If, before an investigation is completed, the local law enforcement agency determines that social services are necessary for the child and, if applicable, the child’s family or that assistance from the county department of social services is otherwise required, the agency may request said services or assistance from the county department. The county department shall immediately respond to a law enforcement agency’s request for services or assistance in a manner deemed appropriate by the county department.” Colorado law also encourages the creation of child protection teams<sup>84</sup> to review investigatory reports of abuse. Colo. Rev. Stat. Ann. § 19-3-308(6)(a), (b). The team must “meet no later than one week after receipt of a report to evaluate such report of child abuse.” Colo. Rev. Stat. Ann. § 19-3-308(9).

Colo. Rev. Stat. Ann. § 19-3-401 (Taking children into custody) provides in part,

(1) A child may be taken into temporary custody by a law enforcement officer without order of the court:

(a) When the child is abandoned, lost, or seriously endangered in such child’s surroundings or seriously endangers others and immediate removal appears to be necessary for such child’s protection or the protection of others;

(b) When there are reasonable grounds to believe that such child has run away or escaped from such child’s parents, guardian, or legal custodian and the child’s parents, guardian, or legal custodian has not made a report to a law enforcement agency that the child has run away from home; or

...

(1.3) A child shall be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe the child has run away from the child’s parents, guardian, or legal custodian and the child’s parents, guardian, or legal custodian has made a report to a law enforcement agency that the child has run away from home.

(1.5) An emergency exists and a child is seriously endangered as described in paragraph (a) of subsection (1) of this section whenever the safety or well-being of a child is immediately at issue and there is no other reasonable way to protect the child without removing the child from the child’s home. If such an emergency exists, a child shall be removed from such child’s home and placed in protective custody regardless of whether reasonable efforts to preserve the family have been made.

....

Protective custody may also be available to protect commercially sexually exploited children pursuant to Colo. Rev. Stat. Ann. § 19-3-405(1), (2) (Temporary protective custody), which authorizes the court to issue temporary custody orders when law enforcement, social services, or a hospital administrator requests one based on a reasonable belief that the child has been abused or neglected.

When a child is taken into temporary custody, Colo. Rev. Stat. Ann. § 19-3-402(1) (Duty of officer—notification—release or detention) requires the detaining law enforcement officer to notify the child’s parent, guardian, or legal custodian. Unless it is in the child’s best interest to remain outside the home, the child must then be released to the care of parents or other responsible adult. Colo. Rev. Stat. Ann. § 19-3-402(2). If the child is not released, then the child will “be taken directly to the court or to the place of detention, or a temporary holding facility, or a shelter designated by the court without unnecessary delay.” Colo. Rev. Stat. Ann. § 19-3-402(3)(b). A child may be placed in detention where the child requires physical restraint. Colo. Rev. Stat. Ann. § 19-3-403(2).

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<sup>84</sup> Pursuant to Colo. Rev. Stat. Ann. § 19-1-103(22), a “child protection team” is defined as a “multidisciplinary team consisting, where possible, of a physician, a representative of the juvenile court or the district court with juvenile jurisdiction, a representative of a local law enforcement agency, a representative of the county department, a representative of a mental health clinic, a representative of a county, district, or municipal public health agency, an attorney, a representative of a public school district, and one or more representatives of the lay community, at least one of whom shall be a person who serves as a foster parent in the county.”

If the child is placed in a “shelter facility or a temporary holding facility not operated by the department of human services designated by the court,” a hearing must be held within 48 hours to decide whether the child requires further detention; however, if the child “is placed with the county department of social services pursuant to this section or section 19-3-405 [Temporary protective custody],” a hearing must be held within 72 hours. Colo. Rev. Stat. Ann. § 19-3-403(2), (3.5). However, children who are alleged runaways from another state “may be held in a shelter care or other appropriate facility for up to seven days.” Colo. Rev. Stat. Ann. § 19-3-403(3.7).

To commence the process for a child to be declared a neglected or dependent child<sup>85</sup> by the court,<sup>86</sup> Colo. Rev. Stat. Ann. § 19-3-501(2)(a) (Petition initiation—preliminary investigation—informal adjustment) provides, “Upon receipt of a report filed by a law enforcement agency, or any other person required to report pursuant to section 19-3-304 (2) indicating that a child has suffered abuse as defined in section 19-1-103 (1) and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.” Additionally, Colo. Rev. Stat. Ann. § 19-3-501(2)(b) provides, “Upon receipt of a report, as described in paragraph (a) of this subsection (2), from any person other than those specified in said paragraph (a), the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.”<sup>87</sup>

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<sup>85</sup> Colo. Rev. Stat. Ann. § 19-3-102 (Neglected or dependent child) provides,

- (1) A child is neglected or dependent if:
  - (a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;
  - (b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;
  - (c) The child’s environment is injurious to his or her welfare;
  - (d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;
  - (e) The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;
  - (f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;
- .....
- (2) A child is neglected or dependent if:
  - (a) A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse; and
  - (b) Such parent, guardian, or legal custodian has been the respondent in another proceeding under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent’s, guardian’s, or legal custodian’s abuse or neglect has caused the death of another child; and
  - (c) The pattern of habitual abuse described in paragraph (a) of this subsection (2) and the type of abuse described in the allegations specified in paragraph (b) of this subsection (2) pose a current threat to the child.

<sup>86</sup> Pursuant to Colo. Rev. Stat. Ann. § 19-1-104(1)(a), (b) (Jurisdiction), “Except as otherwise provided by law, the juvenile court shall have exclusive original jurisdiction in proceedings: (a) Concerning any child committing a delinquent act, as defined in section 19-1-103 (36); (b) Concerning any child who is neglected or dependent, as set forth in section 19-3-102.”

<sup>87</sup> While Colo. Rev. Stat. Ann. § 19-3-501(2) seems to suggest that the court may commence a dependency proceeding based on any report of abuse submitted to the court, the court in *McCall v. District Court of County of Montezuma*, 651 P.2d 392, 394 (Colo. 1982) clarified by stating, “We conclude that the state is the exclusive party to bring neglect and dependency proceedings. The [private party] could request the county department of social services to bring such a proceeding or refer the matter to the juvenile court as provided in section 19-3-101(2), but she could not bring a neglect and dependency petition on her own.”

If following the filing of a petition under Colo. Rev. Stat. Ann. § 19-3-501(2), the court adjudicates a child to be neglected or dependent, Colo. Rev. Stat. Ann. § 19-3-508(1)(a)–(c) (Neglected or dependent child—disposition—concurrent planning) authorizes the court to, among other things, place the child in the custody of his or her parents, a relative, or the county department of social services for placement in foster care.

Despite these protections, a commercially sexually exploited child may still be detained for conduct committed as a result of the child’s exploitation. Colo. Rev. Stat. Ann. § 19-1-103(36) (Definitions) defines a “delinquent act” as “a violation of any statute, ordinance, or order enumerated in section 19-2-104(1)(a) [Jurisdiction].” Offenses listed under Colo. Rev. Stat. Ann. § 19-2-104(1)(a)(I) include “[a]ny federal or state law, except nonfelony state traffic, game and fish, and parks and recreation laws or rules.” Colo. Rev. Stat. Ann. § 19-1-103(71) defines a “juvenile delinquent” as “a juvenile who has been found guilty of a delinquent act.” Under these definitions, a commercially sexually exploited child may be considered a juvenile delinquent for having violated Colo. Rev. Stat. Ann. § 18-7-201(1) (Prostitution prohibited).

Colo. Rev. Stat. Ann. § 19-2-502 (Taking juvenile into custody) provides,

- (1) A juvenile may be taken into temporary custody by a law enforcement officer without order of the court when there are reasonable grounds to believe that he or she has committed a delinquent act.
- (2) A juvenile may be taken into temporary custody by a law enforcement officer executing a lawful warrant taking a juvenile into custody issued pursuant to section 19-2-503 [Issuance of a lawful warrant taking a juvenile into custody].
- .....
- (4) A juvenile may be detained temporarily by an adult other than a law enforcement officer if the juvenile has committed or is committing a delinquent act in the presence of such adult. Any person detaining a juvenile shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said juvenile.
- (5) The taking of a juvenile into temporary custody under this section is not an arrest, nor does it constitute a police record.

When a juvenile is taken into custody under Colo. Rev. Stat. Ann. § 19-2-502, Colo. Rev. Stat. Ann. § 19-2-507(1) (Duty of officer—screening teams—notification—release or detention) requires the detaining officer to notify a “screening team for the judicial district,” which will “notify the juvenile’s parent, guardian, or legal custodian without unnecessary delay and inform him or her that, if the juvenile is placed in detention or a temporary holding facility, all parties have a right to a prompt hearing to determine whether the juvenile is to be detained further.” Colo. Rev. Stat. Ann. § 19-2-507(2) allows the juvenile to be detained where “the law enforcement officer or the court determines that the juvenile’s immediate welfare or the protection of the community require that the juvenile be detained.” Otherwise, the juvenile must be released to the juvenile’s parents or other responsible adult. Colo. Rev. Stat. Ann. § 19-2-507(3). If the juvenile is not released, the juvenile will “be taken directly to the court, or to a place of detention, a temporary holding facility or a shelter designated by the court.” Colo. Rev. Stat. Ann. § 19-2-507(4)(b). Colo. Rev. Stat. Ann. § 19-2-508(1) (Detention and shelter—hearing—time limits—findings—reviews—confinement with adult offenders—restrictions) provides that “[a] juvenile who must be taken from his or her home but who does not require physical restriction shall be given temporary care in a shelter facility designated by the court or the county department of social services and shall not be placed in detention.” When a juvenile is detained, a detention hearing must be held within 48 hours and “the court may further detain the juvenile if the court is satisfied from the information provided at the hearing that the juvenile is a danger to himself or herself or to the community.” Colo. Rev. Stat. Ann. § 19-2-508(3)(a)(I), (III). After the detention hearing, pursuant to Colo. Rev. Stat. Ann. § 19-2-508(3)(a)(IV),

- [T]he court shall enter one of the following orders:
- (A) That the juvenile be released to the custody of a parent, guardian, or legal custodian without the posting of bond;
  - (B) That the juvenile be placed in a shelter facility;

- (C) That bail be set and that the juvenile be released upon the posting of that bail;
- (D) That no bail be set and that the juvenile be detained without bail upon a finding that such juvenile is a danger to himself or herself or to the community. . . .
- (E) That no bail be set and that, upon the court’s finding that the juvenile is a danger to himself or herself or to the community, the juvenile be placed in a preadjudication service program established pursuant to section 19-2-302. . . .

Colo. Rev. Stat. Ann. § 19-2-508(4)(b) provides that “[w]henever a juvenile is held pursuant to a direct filing or transfer in a facility where adults are held, the juvenile shall be physically segregated from the adult offenders,” while Colo. Rev. Stat. Ann. § 19-2-508(4)(g) specifies,

A juvenile court shall not order a juvenile offender who is under eighteen years of age at the time of sentencing to enter a secure setting or secure section of an adult jail or lockup as a disposition for an offense or as a means of modifying the juvenile offender’s behavior.

Juveniles may avoid an adjudication of delinquency and detention through both diversion<sup>88</sup> and restorative justice programs.<sup>89</sup> Under Colo. Rev. Stat. Ann. § 19-2-704 (Diversion), “As an alternative to a petition filed pursuant to section 19-2-512, an adjudicatory trial pursuant to part 8 of this article, or disposition of a juvenile delinquent pursuant to section 19-2-907, the district attorney may agree to allow a juvenile to participate in a diversion program established in accordance with section 19-2-303 [Juvenile diversion program—authorized].” If instead, a petition is filed and a juvenile is adjudicated a delinquent juvenile, pursuant to Colo. Rev. Stat. Ann. § 19-2-907(1) (Sentencing schedule—options),

- Upon completion of the hearing, pursuant to 19-2-906, the court shall enter a decree of sentence or commitment imposing any of the following sentences or combination of sentences, as appropriate:
- (a) Commitment to the department of human services, as provided in section 19-2-909 [authorizing the court to commit a juvenile for up to 2 years where adjudicated a juvenile delinquent for an offense constituting a misdemeanor or felony if committed by an adult];
  - (b) Confinement in the county jail or in community corrections, as provided in section 19-2-910;
  - (c) Detention, as provided in section 19-2-911;
  - (d) Placement of legal custody of the juvenile with a relative or other suitable person, as provided in section 19-2-912;
  - (e) Probation, as provided in section 19-2-913;
  - (f) Commitment to the community accountability program, as provided in section 19-2-914;

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<sup>88</sup> Colo. Rev. Stat. Ann. § 19-1-103(44) (Definitions) defines “diversion” as

a decision made by a person with authority or a delegate of that person that results in specific official action of the legal system not being taken in regard to a specific juvenile or child and in lieu thereof providing individually designed services by a specific program. The goal of diversion is to prevent further involvement of the juvenile or child in the formal legal system. Diversion of a juvenile or child may take place either at the prefiling level as an alternative to the filing of a petition pursuant to section 19-2-512 [Petition initiation] or at the postadjudication level as an adjunct to probation services following an adjudicatory hearing pursuant to section 19-3-505 [Adjudicatory hearing] or a disposition as a part of sentencing pursuant to section 19-2-907 [Sentencing schedule—options]. . . .

<sup>89</sup> Colo. Rev. Stat. Ann. § 19-1-103(94.1) (Definitions) defines “restorative justice” as

those practices that emphasize repairing the harm to the victim and the community caused by criminal acts. Restorative justice practices may include victim-offender conferences attended voluntarily by the victim, a victim advocate, the offender, community members, and supporters of the victim or the offender that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the crime and to participate in setting consequences to repair the harm. Consequences recommended by the participants may include, but need not be limited to, apologies, community service, restoration, and counseling. The selected consequences are incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

(g) Placement of legal custody of the juvenile in the county department of social services or a child placement agency, as provided in section 19-2-915;

(l) Participation in an evaluation to determine whether the juvenile would be suitable for restorative justice practices that would be a part of the juvenile's sentence; . . . .

5.4.1 Recommendation: Establish a mandatory response law directing any minor involved in prostitution, pornography or sexual performance away from the criminal justice system and into a protective system.

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

Trafficking in children and crimes associated with child prostitution are identified as abuse and neglect under Colorado's child protection statutes. Colo. Rev. Stat. Ann. § 19-1-103(1)(a)(II) defines "abuse" and "child abuse or neglect" for purposes of Colorado's laws on child abuse or neglect, as "an act or omission in one of the following categories that threatens the health or welfare of a child," including "[a]ny case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102(9), C.R.S. [Definitions]." Colo. Rev. Stat. Ann. § 16-22-102(9) includes violations of Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children), § 18-3-405 (Sexual assault on a child), § 18-3-305 (Enticement of a child), § 18-6-403 (Sexual exploitation of children), § 18-6-404 (Procurement of a child for sexual exploitation), § 18-7-402 (Soliciting for child prostitution), § 18-7-403 (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404 (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), § 18-7-405.5 (Inducement of child prostitution), § 18-7-406 (Patronizing a prostituted child), § 18-3-306(3) (Internet luring of a child) (where a Class 4 felony), and § 18-3-405.4 (Internet sexual exploitation of a child) within the definition of "unlawful sexual behavior."

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

Colo. Rev. Stat. Ann. § 19-1-103(35) (Definitions) defines a "custodian" as "a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court." This definition is broad enough to include a trafficker (pimp) in custody or control of a child in order to bring a trafficked child into 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.*

Crime victims' compensation may be available to domestic minor sex trafficking victims pursuant to Colo. Rev. Stat. Ann. § 24-4.1-102(10)(a) (Definitions) to the extent that the victim<sup>90</sup> suffers "property damage, economic loss, injury, or death as a result of a compensable crime." A "compensable crime" is defined in part as "[a]n intentional, knowing, reckless or criminally negligent act . . . that results in residential property damage to or bodily injury or death of another person." Colo. Rev. Stat. Ann. § 24-4.1-102(4)(a)(I).

Even where a domestic minor sex trafficking victim is eligible to be an applicant for compensation, certain criteria in Colo. Rev. Stat. Ann. § 24-4.1-108 (Awarding compensation) may limit the ability of a commercially exploited child to obtain compensation. Under Colo. Rev. Stat. Ann. § 24-4.1-108(1)(b), (f),<sup>91</sup> to receive an award, a victim must have reported the crime to law enforcement within 72 hours of the crime's commission

<sup>90</sup> See *supra* Section 5.1 for the definition of "victim."

<sup>91</sup> As amended by House Bill 1053, Colo. Rev. Stat. Ann. § 24-4.1-108(f) further states, "For purposes of this paragraph (f), 'good cause' may include but is not limited to circumstances in which a crime has remained unsolved for more than one year." The text of Colo. Rev. Stat. Ann. § 24-4.1-108 included here and elsewhere in this report includes amendments made by the passage of House Bill 1053, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

and file a claim for compensation within 1 year of the crime unless the board finds good cause for failure to do so. Colo. Rev. Stat. Ann. § 24-4.1-108(1)(c) further requires the victim to have “cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant [unless] the board has found good cause exists for the failure to cooperate.” Lastly, Colo. Rev. Stat. Ann. § 24-4.1-108(1)(e) requires that “[t]he death of or injury to the victim was not substantially attributable to [the victim’s] wrongful act or substantial provocation of his assailant.” Despite these limitations, Colo. Rev. Stat. Ann. § 24-4.1-108(2) authorizes the board to waive any of the requirements for compensation if justice so requires.

5.7.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 24-4.1-108 (Awarding compensation) to create exceptions for victims of domestic minor sex trafficking to the ineligibility criteria in Colo. Rev. Stat. Ann. § 24-4.1-108(1).

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

Colorado affords some protections to commercially exploited children who are victims of Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) and Colorado’s CSEC crimes.

Colo. Rev. Stat. Ann. § 18-3-411(3)–(5) (Sex offenses against children) provides certain protections to victims of an “unlawful sexual offense.”<sup>92</sup> Colo. Rev. Stat. Ann. § 18-3-411(3)–(5) provides,

(3) Out-of-court statements made by a child describing any act of sexual contact, intrusion, or penetration, as defined in section 18-3-401 [Definitions], performed with, by, or on the child declarant, not otherwise admissible by a statute or court rule which provides an exception to the objection of hearsay, may be admissible in any proceeding in which the child is a victim of an unlawful sexual offense pursuant to the provisions of section 13-25-129 [Statements of child victim of unlawful sexual offense against a child or of child abuse—hearsay exception], C.R.S.

(4) All cases involving the commission of an unlawful sexual offense shall take precedence before the court; the court shall hear these cases as soon as possible after they are filed.

(5) The statutory privilege between the husband and the wife shall not be available for excluding or refusing testimony in any prosecution of an unlawful sexual offense.

Additionally, Colo. Rev. Stat. Ann. § 18-3-413 (Video tape depositions—children—victims of sexual offenses) provides,

(1) When a defendant has been charged with an unlawful sexual offense . . . and when the victim at the time of the commission of the act is a child less than fifteen years of age, the prosecution may apply to the court for an order that a deposition be taken of the victim’s testimony and that the deposition be recorded and preserved on video tape.

. . . .

(3) Upon timely receipt of the application, the court shall make a preliminary finding regarding whether, at the time of trial, the victim is likely to be medically unavailable or otherwise unavailable within the meaning of rule 804(a) of the Colorado rules of evidence. Such finding shall be based on, but not be limited to, recommendations from the child’s therapist or any other person having direct contact with the child, whose recommendations are based on specific behavioral indicators exhibited by the child. If the court so finds, it shall order that the deposition be taken, pursuant to rule 15 (d) of the Colorado rules of criminal procedure, and preserved on video tape. . . .

(4) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of rule 804 (a) of the Colorado rules of evidence, the court may admit the video tape of the victim’s deposition as former testimony under rule 804 (b) (1) of the Colorado rules of evidence.

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<sup>92</sup> See *supra* note 3 for the definition of “unlawful sexual offense.”

(5) Nothing in this section shall prevent the admission into evidence of any videotaped statements of children which would qualify for admission pursuant to section 13-25-129, C.R.S., or any other statute or rule of evidence.

Colo. Rev. Stat. Ann. § 18-3-417 (Reports of sexual assault by applicants, registrants, or licensed professionals) makes victims' advocates available to victims of Colo. Rev. Stat. Ann. § 18-3-405 (Sexual assault on a child), § 18-3-405.4 (Internet sexual exploitation of a child), or any unlawful sexual offense. Colo. Rev. Stat. Ann. § 18-3-417 requires a victim's advocate to "make reasonable efforts to advise the victim of the right to pursue criminal action, the right to pursue civil action, the applicable statutes of limitations, and contact information for the police, sheriff, and community-based resources in the jurisdiction where the alleged offense occurred." When a victim is under the age of 15, pursuant to Colo. Rev. Stat. Ann. § 18-3-414 (Payment of treatment costs for the victim or victims of a sexual offense against a child), a court may order an offender convicted of "an unlawful sexual offense" to pay for the victim's treatment.

Pursuant to Colo. Rev. Stat. Ann. § 18-3-407(1) (Victim's and witness's prior history—evidentiary hearing—victim's identity—protective order),

(1) Evidence of specific instances of the victim's or a witness's prior or subsequent sexual conduct, opinion evidence of the victim's or a witness's sexual conduct, and reputation evidence of the victim's or a witness's sexual conduct may be admissible only at trial and shall not be admitted in any other proceeding except at a proceeding pursuant to paragraph (c) of subsection (2) of this section. At trial, such evidence shall be presumed to be irrelevant except:

- (a) Evidence of the victim's or witness' prior or subsequent sexual conduct with the actor;
- (b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse offered for the purpose of showing that the act or acts charged were or were not committed by the defendant.

In prosecutions for "class 4 felony internet luring of a child, as described in section 18-3-306(3) . . . and 18-6-404 [Procurement of a child for sexual exploitation]," among other sex offenses, Colo. Rev. Stat. Ann. § 18-3-407(2) provides that "evidence, that is not excepted under subsection (1) of this section, of specific instances of the victim's or a witness's prior or subsequent sexual conduct, or opinion evidence of the victim's or a witness's sexual conduct, or reputation evidence of the victim's or a witness's sexual conduct, or evidence that the victim or a witness has a history of false reporting of sexual assaults," shall only be admitted upon the following of certain procedures set out in the statute.

Other rights are more generally afforded to all victims of crimes. Colo. Rev. Stat. Ann. § 24-4.1-302.5(1) (Rights afforded to victims) provides certain enumerated rights for victims, including the following:

- . . . .
- (b.7) For a victim of a sex offense, the right to be informed of the filing of a petition by the perpetrator of the offense to terminate sex offender registration . . .
- (c) (I) Except as otherwise provided in subparagraph (II) of this paragraph (c):
  - (A) The right to be informed, upon request by the victim, when a person who is accused or convicted of a crime against the victim is released or discharged from county jail;
  - (B) The right to be informed, upon written request by the victim, when a person who is accused or convicted of a crime against the victim is released or discharged from custody other than county jail, is paroled, escapes from a secure or nonsecure correctional facility or program, or absconds from probation or parole.

. . . .  
5.8.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 16-10-402 (Use of closed-circuit television—child or developmentally disabled witnesses) to protect all children 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.*

Colo. Rev. Stat. Ann. § 19-1-306<sup>93</sup> (Expungement of juvenile delinquent records) sets forth the criteria establishing when a minor may expunge juvenile delinquent records.<sup>94</sup> Under Colo. Rev. Stat. Ann. § 19-1-306(5)(d),

The court shall order expunged all records in the custody of the court and any record in the custody of any other agency or official that pertain to the petitioner's conviction for prostitution, as described in section 18-7-201, C.R.S.; soliciting for prostitution, as described in section 18-7-202, C.R.S.; keeping a place of prostitution, as described in section 18-7-204, C.R.S.; public indecency, as described in section 18-7-301, C.R.S.; soliciting for child prostitution, as described in section 18-7-402, C.R.S., or any corresponding municipal code or ordinance if, at the hearing, the court finds that the petitioner who is the subject of the hearing has established by a preponderance of the evidence that, at the time he or she committed the offense, he or she:

- (I) Had been sold, exchanged, bartered, or leased by another person, as described in section 18-3-501 [Trafficking in adults] or 18-3-502 [Trafficking in children], C.R.S., for the purpose of performing the offense; or
- (II) Was coerced by another person, as described in section 18-3-503 [Coercion of involuntary servitude], C.R.S., to perform the offense.

Under Colo. Rev. Stat. Ann. § 19-1-306(6),

A person is eligible to petition for an expungement order:

....

- (a.5) At any time for the purposes described in paragraph (d) of subsection (5) of this section;

....

Colo. Rev. Stat. Ann. § 19-1-306(5)(c) further provides,

The court may order expunged all records in the petitioner's case in the custody of the court and any records in the custody of any other agency or official if at the hearing the court finds that:

- (I) The petitioner who is the subject of the hearing has not been convicted of a felony or of a misdemeanor and has not been adjudicated a juvenile delinquent since the termination of the court's jurisdiction or the petitioner's unconditional release from parole supervision;

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<sup>93</sup> The text of Colo. Rev. Stat. Ann. § 19-1-306 included here and elsewhere in this report includes amendments made by the passage of House Bill 1151, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

<sup>94</sup> If a victim is adjudicated in the criminal justice system, Colo. Rev. Stat. Ann. § 24-72-308.7(2)<sup>94</sup> provides for the sealing of conviction records.

(II) If a petition is filed . . . for the sealing of a record of conviction for prostitution, as described in Section 18-7-201, C.R.S.; soliciting for prostitution, as described in section 18-7-202, C.R.S.; keeping a place of prostitution, as described in section 18-7-204, C.R.S., or public indecency, as described in section 18-7-301, C.R.S., the court shall order the record sealed after:

- (A) The petition is filed;
- (B) The filing fee is paid; and
- (C) The defendant establishes by a preponderance of the evidence that, at the time he or she committed the offense, he or she had been sold, exchanged, bartered, or leased by another person, as described in Section 18-3-501 [Trafficking in adults] or 18-3-502 [Trafficking in children], C.R.S., for the purpose of performing the offense, or he or she was coerced by another person, as described in section 18-3-503 [Coercion of involuntary servitude], C.R.S., to perform the offense.



- (II) No proceeding concerning a felony, misdemeanor, or delinquency action is pending or being instituted against the petitioner;
- (III) The rehabilitation of the petitioner has been attained to the satisfaction of the court; and
- (IV) The expungement is in the best interests of the petitioner and the community.

*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.*

Victims may be able to receive restitution from their offenders. Colo. Rev. Stat. Ann. § 18-1.3-602(4)(e) expressly defines a “victim” as “a person less than eighteen years of age who has been trafficked by an offender, as described in section 18-3-502 [Trafficking in children], or coerced into involuntary servitude, as described in section 18-3-503 [Coercion of involuntary servitude].” Colo. Rev. Stat. Ann. § 18-1.3-603(1) (Assessment of restitution—corrective orders) states,

Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense, except any order of conviction for a state traffic misdemeanor offense issued by a municipal or county court in which the prosecuting attorney is acting as a special deputy district attorney pursuant to an agreement with the district attorney’s office, shall include consideration of restitution. Each such order shall include one or more of the following:

- (a) An order of a specific amount of restitution be paid by the defendant;
- (b) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety-one days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined;
- (c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or
- (d) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.

Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides that “[a]ny victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person’s own name.” Under Colo. Rev. Stat. Ann. § 16-18.5-109(1), (2) (Declined or unclaimed restitution), even if the victim initially declines restitution or cannot be located when an order for restitution is entered, the victim can receive restitution within 2 years of the final determination of the case.

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414 (Payment of treatment costs for the victim or victims of a sexual offense against a child), when the victim is under the age of 15 the offender may be required to pay for all or part of the victim’s treatment if the offender is convicted of an unlawful sexual offense.

Additionally, where the offender is convicted of Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities), Colo. Rev. Stat. Ann. § 18-17-106 (Civil remedies) authorizes the victim to file a civil action. Under Colo. Rev. Stat. Ann. § 18-17-106(7), the victim may be able to receive triple damages, attorney fees and the costs of the investigation to a victim in a civil action.

Colo. Rev. Stat. Ann § 13-21-127(1)<sup>95</sup> states that a minor is “entitled to recover damages and to obtain injunctive relief from any person who commits . . . trafficking in children, as described in Section 18-3-502 [Trafficking in children] C.R.S.” The defendant in the civil action need not have been convicted for trafficking in order for the victim to sustain their cause of action. Colo. Rev. Stat. Ann. § 13-21-127(2).

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<sup>95</sup> The text of Colo. Rev. Stat. Ann. § 13-21-127 included here and elsewhere in this report includes amendments made by the passage of House Bill 1151, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

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.*

Colorado has no statute of limitations for criminal prosecutions of Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) or for any of Colorado’s CSEC laws. Colo. Rev. Stat. Ann. § 16-5-401(1)(a) (Limitation for commencing criminal proceedings and juvenile delinquency proceedings)<sup>96</sup> provides that no statute of limitations applies to “any sex offense against a child” or any “attempt, conspiracy, or solicitation to commit any sex offense against a child.”<sup>97</sup>

In regard to civil claims, Colo. Rev. Stat. Ann. § 13-80-103.7 (General limitation of actions—sexual assault or sexual offense against a child—six years) provides for a six year statute of limitation. The statute provides,

(1) Notwithstanding any other statute of limitations specified in this article, or any other provision of law that can be construed to reduce the statutory period set forth in this section, any civil action based on a sexual assault or a sexual offense against a child shall be commenced within six years after a disability has been removed for a person under disability, as such term is defined in subsection (3.5) of this section, or within six years after a cause of action accrues, whichever occurs later, and not thereafter. . . .

(3) For the purposes of this section, “sexual offense against a child” shall include all offenses listed in section 18-3-411, C.R.S.

(3.5) (a) For the purpose of this section, “person under disability” means any person who is a minor under eighteen years of age, a mental incompetent, or a person under other legal disability and who does not have a legal guardian. . . . For the purpose of this section, where the plaintiff is a victim of a series of sexual assaults or sexual offenses against a child, the plaintiff need not establish which act of a series of acts caused the plaintiff’s injury, and the statute of limitations set forth in this section shall commence with the last in the series of acts, subject to the provisions of this section regarding disability. However, as elements of the cause of action, a person under disability who is psychologically or emotionally unable to acknowledge the assault or offense and the harm resulting therefrom shall have the burden of proving that the assault or offense occurred and that such person was actually psychologically or emotionally unable to acknowledge the assault or offense and the harm resulting therefrom.

(c) If the plaintiff brings a civil action under this subsection (3.5) fifteen years or more after the plaintiff attains the age of eighteen, the plaintiff may only recover damages for medical and counseling treatment and expenses, plus costs and attorney fees.

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<sup>96</sup> “It is the intent of the general assembly in enacting the provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children to apply an unlimited statute of limitations to sex offenses against children committed on or after July 1, 1996, and to sex offenses against children committed before July 1, 1996, for which the applicable statute of limitations in effect prior to July 1, 2006, has not yet run on July 1, 2006.” Colo. Rev. Stat. Ann. § 16-5-401(1.5)(c).

<sup>97</sup> Colo. Rev. Stat. Ann. § 16-5-401(1)(c)(IV) states that a “sex offense against a child” has the same meaning as an “unlawful sexual offense” in Colo. Rev. Stat. Ann. § 18-3-411(1). *See supra* note 3 for crimes that constitute an “unlawful sexual offense.”

***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 posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
- 6.5 *Using the Internet to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

***Legal Analysis:***

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

Colorado does not mandate that law enforcement receive training on human trafficking or domestic minor sex trafficking. The establishment of law enforcement training requirements falls under the P.O.S.T. board’s (peace officers standards and training board) oversight. Colo. Rev. Stat. Ann. § 24-31-303(1).<sup>98</sup> However, Colo. Rev. Stat. Ann. § 24-31-303, which sets out the P.O.S.T board’s duties, does not specifically mandate that the P.O.S.T. board establish requirements for law enforcement training on human trafficking or domestic minor sex trafficking.

- 6.1.1 Recommendation: Enact a law mandating training on domestic minor sex trafficking for law enforcement.

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

Colorado permits single party consent to audio-taping. Colo. Rev. Stat. Ann. § 18-9-304(1)(a) (Eavesdropping prohibited—penalty) provides that “[a]ny person not visibly present during a conversation or discussion commits eavesdropping if he: (a) Knowingly overhears or records such conversation or discussion without the consent of at least one of the principal parties thereto, or attempts to do so.”

Similarly, Colo. Rev. Stat. Ann. § 18-9-303(1)(a) (Wiretapping prohibited—penalty) states,

- Any person not a sender or intended receiver of a telephone or telegraph communication commits wiretapping if he:
  - (a) Knowingly overhears, reads, takes, copies, or records a telephone, telegraph, or electronic communication without the consent of either a sender or a receiver thereof or attempts to do so . . .

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

Investigations related to violations of Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) or any of Colorado’s CSEC laws are not included as enumerated offenses in Colo. Rev. Stat. Ann. § 16-15-102(1)(a) (Ex parte order authorizing the interception of wire, oral, or electronic communications) for which “the interception of any wire, oral, or electronic communication may be issued.”

<sup>98</sup> The text of Colo. Rev. Stat. Ann. § 24-31-303(1) included here and elsewhere in this report includes amendments made by the passage of House Bill 1345, 68th Gen. Assemb. 1st Reg. Sess. (Colo. 2012) (effective August 8, 2012).

6.3.1 Recommendation: Add Colo. Rev. Stat. Ann. § 18-3-502 (Trafficking in children) and the statutes related to the prohibition of child prostitution codified in Title 18, Article 7, Part 4 to the enumerated list of crimes for which interception of communications is permitted in Colo. Rev. Stat. Ann. § 16-15-102(1) (Ex parte order authorizing the interception of wire, oral, or electronic communications).

6.4 *Using a law enforcement 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.*

No statute expressly authorizes the use of a decoy by law enforcement in the investigation of prostitution or sex trafficking. However, a close analogy is the use of the Internet to investigate traffickers and buyers of minors. Under Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child), “An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age,” which appears to contemplate a defendant communicating with a law enforcement decoy. Additionally, Colo. Rev. Stat. Ann. § 18-3-306(2) further provides, “It shall not be a defense to this section that a meeting did not occur.” Similarly, Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) states in part, “An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor . . . .”

Colorado’s entrapment statute, Colo. Rev. Stat. Ann. § 18-1-709 (Entrapment), does not specifically state that use of a decoy is not a defense to the purchase of sex with a minor and states in part that “[m]erely affording a person an opportunity to commit an offense is not entrapment even though representations or inducements calculated to overcome the offender’s fear of detection are used.”

6.4.1 Recommendation: Enact a statute explicitly permitting the use of a decoy to investigate domestic minor sex trafficking related crimes.

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

Colorado law does not expressly authorize law enforcement officers to use the Internet to investigate buyers and traffickers of domestic minor sex trafficking; however, such tactics are likely permissible. Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) states in part, “An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor . . . .” Similarly, Colo. Rev. Stat. Ann. § 18-3-306 (Internet luring of a child) makes it a crime when a person

knowingly communicates over a computer or computer network . . . to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication . . . describes explicit sexual conduct . . . and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

The use of the language “believes to be under fifteen years of age” suggests that it is permissible for law enforcement to be involved in the investigation of Colo. Rev. Stat. Ann. § 18-3-405.4 and § 18-3-306.

6.5.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-405.4 (Internet sexual exploitation of a child) and § 18-3-306 (Internet luring of a child) to specifically permit law enforcement officers to investigate buyers and traffickers using the Internet.

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

Colorado requires the reporting of both missing and rescued children. Colo. Rev. Stat. Ann. § 16-2.7-102(1) (Missing person reports—acceptance) provides that “[a]ny person with relevant, credible information suggesting that a person is missing may make a missing person report to a law enforcement agency.” Colo. Rev. Stat. Ann. 16-2.7-102(2) requires the law enforcement agency that receives the report to accept the report without delay if

- (a) The missing person resides, or was last known to reside, within the jurisdiction of the law enforcement agency and the missing person’s last-known location is the missing person’s residence or his or her location is unknown; or
- (b) There is credible information indicating that the missing person was last believed to be within the jurisdiction of the law enforcement agency.

Colo. Rev. Stat. Ann. § 24-33.5-415.1(2)(a) directs the bureau to “compile, maintain, and distribute a list of missing children,”<sup>99</sup> and Colo. Rev. Stat. Ann. § 24-33.5-415.1(5) directs the bureau to distribute this list to all school districts in Colorado. Colo. Rev. Stat. Ann. § 24-33.5-415.1(3) (List of missing children) provides,

[E]very law enforcement agency in this state shall, upon receipt of information that a child is believed to be missing, send a missing child report containing identifying and descriptive information about the child to the bureau as soon as possible but no later than twenty-four hours after obtaining such information. If, at a later time, the law enforcement agency determines that the missing child has been located, the agency shall send notification to the bureau no later than twenty-four hours after making such determination.

Colo. Rev. Stat. Ann. § 24-33.5-415.1(5) further requires school districts to “immediately notify the bureau if it comes in contact with a child whose name appears on the list of missing children . . . and, if a missing child is identified, the bureau shall, in turn, notify the law enforcement agency that submitted the missing child report.” The bureau also may distribute the list of missing children “to any other person or entity the bureau determines might be instrumental in the identification and location of missing children.” Colo. Rev. Stat. Ann. § 24-33.5-415.1(6).

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<sup>99</sup> Colo. Rev. Stat. Ann. § 24-33.5-415.1(1) (List of missing children) provides, “For the purposes of this section, ‘missing child’ means a child whose whereabouts are unknown, whose domicile at the time he was first reported missing was Colorado, and whose age at the time he was first reported missing was seventeen years of age or younger.”