

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS FLORIDA

### 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.*

Florida law prohibits sex trafficking of minors, without proof of force, fraud or coercion in its human trafficking statute and defines a minor as under the age of 18. Fla. Stat. Ann. § 787.06(3) (Human trafficking)<sup>2</sup> states:

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<sup>1</sup> Unless otherwise specified, all references to Florida statutes were taken from Florida Statutes Annotated (LEXIS through Act 2011-269 of the 2011 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> Here and elsewhere in this report that Fla. Stat. Ann. § 787.06 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 7049 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 97 (effective July 1, 2012). House Bill 7049 repealed Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties), which states, “Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking . . . .” House Bill 7049 also amended Florida’s human

Any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially or by receiving anything of value from participation in a venture<sup>3</sup> that has subjected a person to human trafficking<sup>4</sup>:

. . . .  
(g) For commercial sexual activity in which any child under the age of 18 is involved commits a felony of the first degree, punishable by a term of years not exceeding life . . . . In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 18 years.

(h) For commercial sexual activity in which any child under the age of 15 is involved commits a life felony . . . . In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of 15 years.

Fla. Stat. Ann. § 787.06(2)(b) defines “[c]ommercial sexual activity” as “any violation of chapter 796 [Prostitution]<sup>5</sup> or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.”

Fla. Stat. Ann. § 787.06(3)(g) is punishable as a first degree felony by up to life imprisonment<sup>6</sup> and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 787.06(3)(g), 775.082(3)(b), 775.083(1)(b).<sup>7</sup> A conviction under

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trafficking law, Fla. Stat. Ann. § 787.06, to add new provisions (described above) criminalizing sex trafficking of minors.

<sup>3</sup> As amended by passage of House Bill 7049 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 97 (effective July 1, 2012), Fla. Stat. Ann. § 787.06(2)(k) defines “[v]enture” as “any group of two or more individuals associated in fact, whether or not a legal entity.”

<sup>4</sup> As amended by passage of House Bill 7049 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 97 (effective July 1, 2012), Fla. Stat. Ann. § 787.06(2)(d) defines “[h]uman trafficking” as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

<sup>5</sup> The following offenses are contained in Chapter 796: Fla. Stat. Ann. §§ 796.03 (Procuring a person under age of 18 for prostitution), 796.04 (Forcing, compelling or coercing another to become a prostitute), 796.05 (Deriving support from the proceeds of prostitution), 796.06 (Renting space to be used for lewdness, assignation, or prostitution), 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions), 796.08 (Screening for HIV and sexually transmissible diseases; providing penalties), and 796.035 (Selling or buying of minors into prostitution), which was amended by passage of House Bill 7049 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 97 (effective July 1, 2012). House Bill 7049 also repealed Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties).

<sup>6</sup> Pursuant to Fla. Stat. Ann. § 775.082(3)(b) (Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison), “a person may be punished . . . [f]or a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.”

<sup>7</sup> Pursuant to Fla. Stat. Ann. § 775.084 (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms), an offender may be subject to enhanced penalties if the offender is classified as a “habitual felony offender,” “habitual violent felony offender,” three-time violent felony offender,” or a “violent career criminal.” Offenders may also be subject to enhanced penalties provided under Fla. Stat. Ann. § 775.082(9)(a)(3), which states,

If the state attorney determines that a defendant is a prison releasee reoffender . . . the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant . . . must be sentenced as follows:

Fla. Stat. Ann. § 787.06(3)(h) is punishable as a life felony by up to life imprisonment<sup>8</sup> and a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 787.06(3)(h), 775.082(3)(a)(3.), 775.083(1)(a). Fla. Stat. Ann. § 787.06(3) further states, “For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.

Fla. Stat. Ann. § 787.06(4) prohibits any “parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking.” A conviction under Fla. Stat. Ann. § 787.06(4) is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 787.06(4), 775.082(3)(b), 775.083(1)(b).

Pursuant to Fla. Stat. Ann. § 787.06(7), “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.”<sup>9</sup>

1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*

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- a. For a felony punishable by life, by a term of imprisonment for life;
  - b. For a felony of the first degree, by a term of imprisonment of 30 years;
  - c. For a felony of the second degree, by a term of imprisonment of 15 years; and
  - d. For a felony of the third degree, by a term of imprisonment of 5 years.

Pursuant to Fla. Stat. Ann. § 775.082(9)(a)(1),

“Prison releasee reoffender” means any defendant who commits, or attempts to commit:

- ...
  - d. Sexual battery;
  - ...
  - i. Kidnapping;
  - ...
  - o. Any felony that involves the use or threat of physical force or violence against an individual;
  - ... [or]
  - r. Any felony violation of s. 790.07 [Persons engaged in criminal offense, having weapons], s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], s. 827.03 [Abuse, aggravated abuse, and neglect of a child; penalties], s. 827.071 [Sexual performance by a child; penalties], or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties]; within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

Prison release reoffenders “shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release” and “must serve 100 percent of the court-imposed sentence.” Fla. Stat. Ann. § 775.082(9)(b).

<sup>8</sup> Pursuant to Fla. Stat. Ann. § 775.082(3)(a)(4.) (b.) (Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison), “a life felony committed on or after July 1, 2008, which is a person’s second or subsequent violation of s. 800.04(5)(b) . . .” is punishable by “a term of imprisonment for life.”

<sup>9</sup> See *infra* sections 2.8, 3.4 and 4.2 for discussion of the Florida Contraband Forfeiture Act.

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

1. Fla. Stat. Ann. § 800.04(4) (Lewd or lascivious battery) makes it a crime if a person

- (a) Engages in sexual activity<sup>10</sup> with a person 12 years of age or older but less than 16 years of age; or
- (b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

A conviction under Fla. Stat. Ann. § 800.04(4) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 800.04(4), 775.082(3)(c), 775.083(1)(b).

2. Fla. Stat. Ann. § 787.01(3)(a) (Kidnapping; kidnapping of child under age 13, aggravating circumstances) makes it a crime if a person

commits the offense of kidnapping<sup>11</sup> upon a child under the age of 13 and who, in the course of committing the offense, commits one or more of the following:

- 1. Aggravated child abuse, as defined in s. 827.03;
- 2. Sexual battery, as defined in chapter 794, against the child;
- 3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties];
- 4. A violation of s. 796.03 [Procuring person under age of 18 for prostitution] or s. 796.04 [Forcing, compelling, or coercing another to become a prostitute], relating to prostitution, upon the child; or
- 5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151 [Hiring and employing; infliction of pain or suffering; penalty],

.....

A conviction under Fla. Stat. Ann. § 787.01(3)(a) is punishable as a life felony by imprisonment up to life and a possible fine not to exceed \$15,000.<sup>12</sup> Fla. Stat. Ann. §§ 787.01(3)(a), 775.082(3)(a)(3), 775.083(1)(a).

3. Fla. Stat. Ann. § 787.02(3)(a) (False imprisonment; false imprisonment<sup>13</sup> of child under age 13, aggravating circumstances) states,

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<sup>10</sup> Pursuant to Fla. Stat. Ann. § 800.04(1)(a), “‘Sexual activity’ means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.”

<sup>11</sup> Pursuant to Fla. Stat. Ann. § 787.01(1)(a),

The term “kidnapping” means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

- 1. Hold for ransom or reward or as a shield or hostage.
- 2. Commit or facilitate commission of any felony.
- 3. Inflict bodily harm upon or to terrorize the victim or another person.
- 4. Interfere with the performance of any governmental or political function.

<sup>12</sup> For punishments of life felonies prior to July 1, 1995 see Fla. Stat. Ann. § 775.082(3)(a)(1)–(3).

<sup>13</sup> Fla. Stat. Ann. § 787.02(1) (False imprisonment; false imprisonment of child under age 13, aggravating circumstances ) states,

A person who commits the offense of false imprisonment upon a child under the age of 13 and who, in the course of committing the offense, commits any offense enumerated in subparagraphs 1–5, commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

1. Aggravated child abuse, as defined in s. 827.03;
2. Sexual battery, as defined in chapter 794, against the child;
3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5);
4. A violation of s. 796.03 or s. 796.04, relating to prostitution, upon the child; or
5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151 [Hiring and employing; infliction of pain or suffering; penalty].

A conviction under Fla. Stat. Ann. § 787.02(3)(a) is punishable as a first degree felony by imprisonment up to 30 years, or when the statute permits “a term of years not exceeding life imprisonment” and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(b), 775.083(1)(b).

4. Fla. Stat. Ann. § 827.071(2), (3) (Sexual performance by a child; penalties [Effective October 1, 2011]) states,

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance<sup>14</sup> or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes<sup>15</sup> any performance which includes sexual conduct<sup>16</sup> by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 827.071(2), (3) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

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(a) The term “false imprisonment” means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

<sup>14</sup> Fla. Stat. Ann. § 827.071(1)(i) states, “‘Sexual performance’ means any performance or part of thereof which includes sexual conduct by a child of less than 18 years of age.” Fla. Stat. Ann. § 827.071(1)(c) defines “performance” as “any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.”

<sup>15</sup> Fla. Stat. Ann. § 827.071(1)(d) states, “‘Promote’ means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or to agree to do the same.”

<sup>16</sup> Fla. Stat. Ann. § 827.071(1)(h) states,

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. . . .

5. Fla. Stat. Ann. § 796.03 (Procuring person under age of 18 for prostitution) states, “A person who procures for prostitution, or causes to be prostituted, any person who is under the age of 18 years commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla. Stat. Ann. § 796.03 is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

6. Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) makes it a crime if a person

(2) . . .

(a) Knowingly compiles, enters into, or transmits by use of computer;

(b) Makes, prints, publishes, or reproduces by other computerized means;

(c) Knowingly causes or allows to be entered into or transmitted by use of computer; or

(d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

7. Fla. Stat. Ann. § 796.035 (Selling or buying of minors into prostitution; penalties)<sup>17</sup> prohibits,

[a]ny parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution . . . .

A conviction under this statute is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 796.035, 775.082(3)(b), 775.083(1)(b).

8. Fla. Stat. Ann. § 847.0145(1) (Selling or buying of minors; penalties) makes it a crime if

[a]ny parent, legal guardian, or other person having custody or control of a minor<sup>18</sup> who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either:

(a) With knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;<sup>19</sup>

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<sup>17</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 796.035 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 7049 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 97 (effective July 1, 2012).

<sup>18</sup> Pursuant to Fla. Stat. Ann. § 847.001(8) (Definitions), “Minor” means any person under the age of 18 years.”

<sup>19</sup> Pursuant to Fla. Stat. Ann. § 847.001(16) (Definitions),

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which

or

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

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Fla. Stat. Ann. § 847.0145(2) also makes it a crime if a person

purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor, either:

(a) With knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

.....

A conviction under this statute is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 847.0145, 775.082(3)(b), 775.083(1)(b).

Sexual offense laws that are not expressly commercial but that may apply in cases of CSEC include:

1. Fla. Stat. Ann. § 787.025(2) (Luring or enticing a child) states,

(a) A person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person 18 years of age or older who, having been previously convicted of a violation of paragraph (a), intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, s. 800.04, or s. 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 787.025(2)(a) is punishable as a first degree misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$1,000. Fla. Stat. Ann. §§ 775.082(4)(a), 775.083(1)(d). A conviction under Fla. Stat. Ann. § 787.025(b), (c) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

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constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

2. Fla. Stat. Ann. § 847.0135(3)–(4) (Computer pornography; traveling to meet minor; penalties) makes it unlawful to use a computer or other similar device to solicit a minor for illegal sexual acts and states in part,

(3) Certain uses of computer services or devices prohibited.—Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800 [Lewdness; Indecent exposure], or chapter 827 [Abuse of children], or to otherwise engage in any unlawful sexual conduct<sup>20</sup> with a child or with another person believed by the person to be a child; or

(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

(4) Traveling to meet a minor.—Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child; or

(b) Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0135(3), (4) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b). In some circumstances, a conviction under Fla. Stat. Ann. § 847.0135(3) may be punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

3. Fla. Stat. Ann. § 847.012(4) (Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty) states, “A person may not knowingly use a minor in the production of any material described in subsection (3),<sup>21</sup> regardless of whether the material is intended for distribution to minors or is

<sup>20</sup> Fla. Stat. Ann. § 847.001(16) (Definitions) provides the same definition of sexual conduct as the definition that appears in Fla. Stat. Ann. § 827.071(h). See *supra* note 16, for the definition of sexual conduct.

<sup>21</sup> Fla. Stat. Ann. § 847.012(3) states,



actually distributed to minors.” A conviction under Fla. Stat. Ann. § 847.012(5), is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

4. Fla. Stat. Ann. § 794.05(1) (Unlawful sexual activity with certain minors) states in part, “A person 24 years of age or older who engages in sexual activity<sup>22</sup> with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla. Stat. Ann. § 794.05(1) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).
5. Fla. Stat. Ann. § 800.04(5), (6) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) states,

(5) *Lewd or lascivious molestation.*

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in s. 775.082(3)(a)4.

(c) . . .

2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .

(6) *Lewd or lascivious conduct.*

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years’ of age to commit a lewd or lascivious act commits lewd or lascivious conduct.

(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .

An offender’s first conviction under Fla. Stat. Ann. § 800.04(5)(b) is punishable as a life felony by “(I) A term of imprisonment for life; or (II) A split sentence that is a term of not less than 25 years’ imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person’s natural life . . . .”<sup>23</sup> Fla. Stat. Ann. § 775.082(3)(a)4.a. A subsequent conviction under Fla. Stat.

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A person may not knowingly sell, rent, or loan for monetary consideration to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in s. 847.001 [Definitions], explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and that is harmful to minors.

<sup>22</sup> “As used in this section, ‘sexual activity’ means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose.” Fla. Stat. Ann. § 794.05(1).

<sup>23</sup> For punishments of life felonies prior to September 1, 2005 see Fla. Stat. Ann. § 775.082(3).

Ann. § 800.04(5)(b) is punishable as a life felony by life imprisonment.<sup>24</sup> Fla. Stat. Ann. § 775.082(3)(a)4.b. A conviction under Fla. Stat. Ann. § 800.04(6)(b) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

*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.*

The CSEC statutes (listed above) do not refer to Fla. Stat. Ann. § 787.06 (Human trafficking).<sup>25</sup> Florida's prostitution law, Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions), also does not refer to Fla. Stat. Ann. § 787.06 (Human trafficking) when a minor is engaged in prostitution.

- 1.3.1 Recommendation: Amend Florida's CSEC statutes to specifically refer to Fla. Stat. Ann. § 787.06 (Human trafficking) to ensure CSEC victims are identified as trafficking victims.
- 1.3.2 Recommendation: Amend Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) to refer to Fla. Stat. Ann. § 787.06 (Human trafficking) when a minor is engaged in prostitution to ensure that sexually exploited minors are identified as 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.*

Florida's Racketeering Influenced and Corrupt Organization (RICO) statute<sup>26</sup> is codified at Fla. Stat. Ann. § 895.03 (Prohibited activities and defense) which states,

- (1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity 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 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 conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- (4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

Both human trafficking and CSEC offenses constitute predicate racketeering acts. Fla. Stat. Ann. § 895.02(1), defines "racketeering activity" in part as the following:

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<sup>24</sup> For punishments of life felonies prior to July 1, 2008 see Fla. Stat. Ann. § 775.082(3).

<sup>25</sup> See *supra* note 2.

<sup>26</sup> For additional information, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHI-WhitePaperFederalStateRacketeeringGangCrimeLaws.pdf>.

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

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

.....

26. Chapter 787, relating to kidnapping or human trafficking.

.....

29. Section 796.03 , s. 796.035, s. 796.04 [Forcing, compelling, or coercing another to become a prostitute], s. 796.045,<sup>27</sup> s. 796.05 [Deriving support from the proceeds of prostitution], or s. 796.07 [Prohibiting prostitution, etc.; evidence; penalties; definitions], relating to prostitution and sex trafficking.

.....

36. Section 827.071 [Relating to commercial sexual exploitation of children]

43. Section 847.011 [Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty], s. 847.012, s. 847.013 [Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations], s. 847.06 [Obscene matter; transportation into state prohibited; penalty], or s. 847.07 [Wholesale promotion of obscene materials; penalties], relating to obscene literature and profanity.

“Pattern of racketeering activity” is defined in Fla. Stat. Ann. § 895.02(4) as,

[E]ngaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

Defendants convicted under the racketeering statute also face stiff penalties. Pursuant to Fla. Stat. Ann. § 895.04(1) (Criminal penalties and alternative fine), “[a]ny person convicted of engaging in activity in violation of the provisions of s. 895.03 is guilty of a felony of the first degree and shall be punished as provided in s. 775.082, s. 775.083, or s. 775.084.” Fla. Stat. Ann. § 895.04(2) (Criminal penalties and alternative fine) states in part,

(2) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of s. 895.03 [Prohibited activities and defenses], through which the person derived pecuniary value,<sup>28</sup> or by which he or she caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

Fla. Stat. Ann. § 895.05(2)(a) (Civil remedies), which provides for civil asset forfeiture, states, “All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01–895.05 is subject to civil forfeiture to the state.”

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<sup>27</sup> Fla. Stat. Ann. § 796.045 (Sex trafficking; penalties) was repealed by House Bill 7049 during the 2012 Florida Legislature, 2012 Fla. Laws ch. 97 (effective July 1, 2012).

<sup>28</sup> Pecuniary value is defined in Fla. Stat. Ann. § 895.04(4) for the purposes of subsection (2) as “(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or (b) Any other property or service that has a value in excess of \$ 100.”

- 1.4.1. Recommendation: Amend Florida’s RICO statute to include the following offenses as “racketeering activity”: Fla. Stat. Ann. § 800.04(4) (Lewd or lascivious battery), Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), and Fla. Stat. Ann. § 847.0145(1) (Selling or buying of minors; penalties).

***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.*

Fla. Stat. Ann. § 787.06(3) (Human trafficking)<sup>29</sup> criminalizes the conduct of “[a]ny person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in . . . a venture that has subjected a person to human trafficking.” Therefore application of the trafficking law to buyers depends initially on whether a person who solicits or buys sex with a minor is considered to engage in a “venture,” defined as “any group of two or more individuals associated in fact.”<sup>30</sup> If the relationship between buyer and trafficker satisfies the definition of “venture,” the trafficking law may apply to buyers through the term “obtain” in the definition of “human trafficking.”<sup>31</sup> Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),<sup>32</sup> have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”<sup>33</sup> a person under 18 to engage in commercial sex.<sup>34</sup> It is unsettled whether the courts will uphold this interpretation of the TVPA. If a buyer is considered to engage in “a venture that has

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<sup>29</sup> See *supra* note 2.

<sup>30</sup> Fla. Stat. Ann. § 787.06(2)(k) defines “[v]enture” as “any group of two or more individuals associated in fact, whether or not a legal entity.” See *supra* notes 2, 3.

<sup>31</sup> Fla. Stat. Ann. § 787.06(2)(d) defines “[h]uman trafficking” as “transporting, soliciting, recruiting, harboring, enticing, maintaining, or obtaining another person for the purpose of exploitation.” See *supra* note 2.

<sup>32</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>33</sup> 18 U.S.C. § 1591(a).

<sup>34</sup> See, e.g., Indictment at 1, *United States v. Oflyng*, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

subjected a person to human trafficking” by “obtaining” a minor for the purpose of commercial sex acts, Fla. Stat. Ann. § 787.06(3)(g) and (h) (Human trafficking) may apply to buyers.

2.1.1 Recommendation: Amend Fla. Stat. Ann. § 787.06(3)(g) and (h) (Human trafficking) to clarify that the statute is applicable to buyers of commercial sex with minors.

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

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), in part, may reach some buyers, stating,

(4) Lewd or lascivious battery.—A person who:

...  
(b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits lewd or lascivious battery, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A buyer who purchases information about a minor for the purpose of engaging in sexual conduct with the minor may be prosecuted under Fla. Stat. Ann. § 847.0135(2)(d) (Computer pornography; traveling to meet minor; penalties) which makes it a crime if a person “[b]uys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Several other sexual offense statutes could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of the child and do not refer to the human trafficking statute.<sup>35</sup>

2.2.1 Recommendation: Amend Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) to raise the age of a minor victim to under 18 to protect all minors.

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

Fla. Stat. Ann. § 796.07(2)(f) (Prohibiting prostitution, etc.; evidence; penalties; definitions) does not distinguish between the offense of soliciting a minor and the offense of soliciting an adult for commercial sex acts. Fla. Stat. Ann. § 796.07(2)(f) states, “It is unlawful . . . (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.”

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), in part, may reach solicitation of minors under 16 by buyers, stating, “A person who: . . . (b) Encourages, forces, or entices any person less than 16 years of age to engage in . . . prostitution . . . commits lewd or lascivious battery.”

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<sup>35</sup> See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

- 2.3.1 Recommendation: Amend Fla. Stat. Ann. § 796.07(2)(f) (Prohibiting prostitution, etc.; evidence; penalties; definitions) to specify that purchase of sex with a minor is a violation of Fla. Stat. Ann. § 787.06(3) (Human trafficking) to ensure buyers are subject to the more severe penalty associated with child sex trafficking.

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

If Fla. Stat. Ann. § 787.06(3) (Human trafficking)<sup>36</sup> applies to buyers, a conviction under Fla. Stat. Ann. § 787.06(3)(g) is punishable as a first degree felony by up to life imprisonment and a possible fine not to exceed \$10,000 and a conviction under Fla. Stat. Ann. § 787.06(3)(h) is punishable as a life felony by up to life imprisonment and a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 787.06(3)(g), 775.082(3)(a)(3.), (3)(b), 775.083(1)(a), (b).

If applicable to buyers, Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) is a second degree felony punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b). Additionally, a conviction under Fla. Stat. Ann. § 847.0135(2) or (3) (Computer pornography; traveling to meet minor; penalties)<sup>37</sup> is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c). A conviction under subsection (4) of the previous statute, which addresses traveling to meet a minor, is punishable as a second degree by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) may be used to prosecute buyers who buy “any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of . . . soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.” A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>38</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the

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<sup>36</sup> See *supra* note 2.

<sup>37</sup> See discussion of relevant provisions *supra* Section 1.2.

<sup>38</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).

extent buyers can be prosecuted under other federal CSEC laws,<sup>39</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>40</sup>

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

Fla. Stat. Ann. § 847.0135(2)(d) (Computer pornography; traveling to meet minor; penalties),<sup>41</sup> applies to buyers who buy “any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor. . . .” Fla. Stat. Ann. § 847.0135(2)(d) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000, and is subject to enhanced penalties for repeat offenders pursuant to Fla. Stat. Ann. § 775.084 (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms). Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Although not expressly commercial, Fla. Stat. Ann. § 847.0135(3) (Computer pornography; traveling to meet minor; penalties) reaches the conduct of buyers who use the Internet to solicit or purchase sex with minors.<sup>42</sup> Fla. Stat. Ann. § 847.0135(3)(a) states, “Any person who knowingly uses a computer online service [or] Internet service . . . [to] [s]educ[e], solicit, lure, or entice” or attempt to do the foregoing to secure a child “to commit any illegal act described in chapter 794 [Sexual battery], chapter 800 [Lewdness; Indecent exposure], or chapter 827 [Abuse of children], or to otherwise engage in any unlawful sexual conduct . . . .” A conviction under Fla. Stat. Ann. § 847.0135(3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c). However, pursuant to Fla. Stat. Ann. § 847.0135(3), “[a]ny person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree,” punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

Pursuant to Fla. Stat. Ann. § 847.0135(4)(a),<sup>43</sup> it is a second degree felony for a person to travel in or to Florida to engage in certain illegal acts after initially attempting to solicit the child via the Internet or through other specified electronic methods.

- 2.5.1 Recommendation: Amend Fla. Stat. Ann. § 847.0135(2)(d) (Computer pornography; traveling to meet minor; penalties) to include computer solicitation of minors for the purpose of violating Fla. Stat. Ann. § 787.06(3) (Human trafficking) or Florida’s CSEC laws and provide a heightened penalty under such circumstances.

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

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

<sup>42</sup> *See* discussion of relevant provisions *supra* Section 1.2.

<sup>43</sup> *See* discussion of relevant provisions *supra* Section 1.2.



If applicable to buyers, Fla. Stat. Ann. § 787.06(3)<sup>44</sup> requires that a person act “knowingly, or in reckless disregard of the facts.” However, the provisions applicable to minors, Fla. Stat. Ann. § 787.06(3)(g) and (h) (Human trafficking) both state,

“In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state need not prove that the defendant knew that the person had not attained the age of [18 or 15] years.”

While these provisions eliminate proof of the defendant’s knowledge regarding the minor’s age as an element of the offense, this statute does not specifically preclude the defendant from asserting an affirmative defense based on mistake of age.

If applicable to buyers, Fla. Stat. Ann. § 796.035 (Selling or buying of minors into prostitution; penalties),<sup>45</sup> and § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) also do not expressly prohibit a defense based on mistake of age.

However, a buyer cannot assert a mistake of age defense if charged with a sex offense. Fla. Stat. Ann. § 794.021 (Ignorance or belief as to victim’s age no defense) states, “When, in this chapter [Sexual battery], the criminality of conduct depends upon the victim’s being below a certain specified age, ignorance of the age is no defense. Neither shall misrepresentation of age by such person nor a bona fide belief that such person is over the specified age be a defense.” Fla. Stat. Ann. § 847.011(1)(d) (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states, “A person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent may not be raised as a defense in a prosecution for one or more violations of . . . subsection (2).”

2.6.1 Recommendation: Amend Fla. Stat. Ann. § 794.021 (Ignorance or belief as to victim’s age no defense) to include Fla. Stat. Ann. § 787.06(3) (Human trafficking) § 796.035 (Selling or buying of minors into prostitution; penalties)<sup>46</sup> and § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) as offenses for which a mistake of age defense is expressly prohibited.

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

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)<sup>47</sup> only applies to CSEC crimes against children under 16. Therefore, buyers whose victims are 16 and 17 face a substantially lower penalty under Fla. Stat. Ann. § 796.07(2)(f) (Prohibiting prostitution, etc.; evidence; penalties; definitions), which does not distinguish between the offense of soliciting a minor and the offense of soliciting an adult for commercial sex acts. First violations of Fla. Stat. Ann. § 796.07(2)(f) are second degree misdemeanors while violations of Fla. Stat. Ann. § 800.04(4)(b) are second degree felonies. Fla. Stat. Ann. § 796.07(4)(a), Fla. Stat. Ann. § 800.04(4)(b).

2.7.1 Recommendation: Amend Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) to make the penalty applicable to all minors under 18.

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<sup>44</sup> See *supra* note 2.

<sup>45</sup> See *supra* note 17.

<sup>46</sup> See *supra* note 17.

<sup>47</sup> See discussion of relevant provisions *supra* Section 1.2.

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 are subject to fines, restitution, and asset forfeiture for many of the offenses for which they can be prosecuted. If convicted under Fla. Stat. Ann. § 800.04(4)(b) (Lewd and lascivious offenses committed upon or in the presence of persons less than 16 years of age), the offender faces a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 775.083(1)(b), 800.04(4)(b). A violation of Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minors; penalties) is subject to a fine not to exceed \$5,000. Fla. Stat. Ann. § 775.083(1)(b).

Buyers convicted of sexual offenses that are not expressly commercial also may be required to pay fines.<sup>48</sup>

If Fla. Stat. Ann. § 787.06(3) (Human trafficking)<sup>49</sup> is applicable to buyers, a fine of up to \$10,000 or \$15,000 may be imposed, depending on the age of the minor victim. Also, Fla. Stat. Ann. § 787.06(7) states, “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. However, even if Fla. Stat. Ann. § 787.06(3) is not applicable, Fla. Stat. Ann. §§ 932.701–932.706 (Florida Contraband Forfeiture Act<sup>50</sup>) can also be used to impose significant penalties on the buyer of commercial sex acts with minors if the buyer is charged with any felony. Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions) defines “contraband” in part to mean the following:

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

....

The procedure for asset forfeiture pursuant to Fla. Stat. Ann. §§ 932.701–932.706 is civil. Forfeiture of the contraband is mandatory. The court “shall order the seized property forfeited to the seizing law enforcement agency. Fla. Stat. Ann. § 932.704(8). Seizure of the forfeitable property is governed by Fla. Stat. Ann § 932.703(2)(a).

Pursuant to Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property),

It is unlawful:

- (1) To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.
- (2) To conceal or possess any contraband article.

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<sup>48</sup> See discussion of relevant provisions *supra* Section 1.2.

<sup>49</sup> See *supra* note 2.

<sup>50</sup> For additional information on asset forfeiture and procedure, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>.

(3) To use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(4) To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.

(5) To acquire real or personal property by the use of proceeds obtained in violation of the Florida Contraband Forfeiture Act.

Subject to the provisions in Fla. Stat. Ann. § 932.703 (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

Pursuant to Fla. Stat. Ann. § 794.09 (Forfeiture of retirement benefits),

The retirement benefits of a person convicted of a felony committed on or after October 1, 2008, under this chapter [sexual battery] are subject to forfeiture in accordance with s. 112.3173 or s. 121.091 if the person is a public officer or employee when the offense occurs; the person commits the offense through the use or attempted use of power, rights, privileges, duties, or position of the person's public office or employment position; and the victim is younger than 18 years of age when the offense occurs.

Fla. Stat. Ann. § 775.089(1)(a) (Restitution) states in part,

In addition to any punishment, the court shall order the defendant to make restitution to the victim<sup>51</sup> for:

1. Damage or loss caused directly or indirectly by the defendant's offense; and
2. Damage or loss related to the defendant's criminal episode,

unless it finds clear and compelling reasons not to order such restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with s. 948.03. . . .

Pursuant to subsection (2),

(a) When an offense has resulted in bodily injury to a victim, a restitution order entered under subsection (1) shall require that the defendant:

1. Pay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing.
2. Pay the cost of necessary physical and occupational therapy and rehabilitation.
3. Reimburse the victim for income lost by the victim as a result of the offense.
4. In the case of an offense which resulted in bodily injury that also resulted in the death of a victim, pay an amount equal to the cost of necessary funeral and related services.

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<sup>51</sup> Fla. Stat. Ann. § 775.089(1)(c) defines "victim" for this section and "any provision of law relating to restitution" as "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense."

(b) When an offense has not resulted in bodily injury to a victim, a restitution order entered under subsection (1) may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.

Pursuant to Fla. Stat. Ann. § 775.089, restitution is mandatory and may be made directly to the victim. Fla. Stat. Ann. § 775.089(1)(a)(2) states,

“An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund . . .”

This language suggests that a restitution order may be made either to the Trust Fund or to the victim. Additionally, pursuant to Fla. Stat. Ann. § 775.089(5), “An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.” Thus, a victim may seek to receive restitution directly.

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

Fla. Stat. Ann. § 827.071(5) (Sexual performance by a child; penalties [Effective October 1, 2011]) states in part,

It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense.

A violation of this statute is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

In addition, Fla. Stat. Ann. § 847.0137(2), (3) (Transmission of pornography by electronic device or equipment prohibited; penalties) states,

(2) Notwithstanding ss. 847.012 [Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty ] and 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty], any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001,<sup>52</sup> to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0137(2) or (3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

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<sup>52</sup> Fla. Stat. Ann. § 847.001(3) defines “child pornography” as “any image depicting a minor engaged in sexual conduct.”

Fla. Stat. Ann. § 775.0847 (Possession or promotion of certain images of child pornography; reclassification), reclassifies violations of Fla. Stat. Ann. § 827.071, § 847.0135 (Computer pornography; traveling to meet minor; penalties), § 847.0137, or § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) to the next highest felony degree if,

(2) (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.
2. Sadomasochistic abuse involving a child.
3. Sexual battery involving a child.
4. Sexual bestiality involving a child.
5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

....

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>

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

If Fla. Stat. Ann. § 787.06(g) and (h) (Human trafficking)<sup>56</sup> are applicable to buyers, a buyer convicted under these provisions, or under certain CSEC, child pornography and sex offense provisions, will be required to register as a sexual predator under Fla. Stat. Ann. § 775.21 (The Florida Sexual Predators Act).<sup>57</sup> Pursuant to Fla. Stat. Ann. § 775.21(4)(a),

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

<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).

<sup>56</sup> *See supra* note 2.

<sup>57</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 775.21 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 7049, 2012 Fla. Laws ch. 97 (effective July 1, 2012).

- a. A capital, life, or first-degree felony violation, or any attempt thereof, of . . . s. 794.011 [Sexual battery], s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years' of age], or a violation of a similar law of another jurisdiction; or
- b. Any felony violation, or any attempt thereof, of . . . s. 787.025(2)(c) [Luring or enticing a child], where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b)...(g), or (h) [Human trafficking]. . . s. 794.011, excluding s. 794.011(10); s. 794.05 [Unlawful sexual activity with certain minors]; . . . s. 800.04; . . . or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of . . . s. 787.025(2)(c) , where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; . . . s. 800.04 ; . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6); . . . or a violation of a similar law of another jurisdiction;
- 2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and
- 3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

If Fla. Stat. Ann. § 787.06(g) and (h) apply to buyers, a buyer convicted under these provisions, or certain CSEC, pornography and sex offense provisions, will also be required to register as a sex offender under Fla. Stat. Ann. § 943.0435(2)(a) (Sexual offenders required to register with the department; penalty). Pursuant to Fla. Stat. Ann. § 943.0435(1)(a)<sup>58</sup>, a “sexual offender” subject to the registration requirement in subsection (2)(a) is defined as a person who:

- a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction . . . 787.025(2)(c) [Luring or enticing a child], where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b) . . . (g) or (h) [Human trafficking]; s. 794.011 [Sexual battery], excluding s. 794.011(10); s. 794.05[Unlawful sexual activity with certain minors] . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years' of age]. . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6) . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph. . . .
- . . . .
- b.Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;
- c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction . . . s. 787.025(2)(c) [Computer pornography; traveling to meet

<sup>58</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 943.0435 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 7049 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 97 (effective July 1, 2012).

minor; penalties], where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b) . . . (g) or (h) [Human trafficking]; s. 794.011, excluding s. 794.011(10); s. 794.05 [Unlawful sexual activity with certain minors] . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years' of age] . . . 847.0135, excluding s. 847.0135(6) [Computer pornography; traveling to meet minor; penalties] . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph. . . .

**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.

There are many crimes within the Florida statutes that may be applicable to traffickers. For ease of reading, these criminal provisions and corresponding penalties have been organized into a chart. Many of the crimes are subject to enhanced penalties.<sup>59</sup>

Offense <sup>60</sup>	Crime classification	Penalty (under Fla. Stat. Ann. § 775.082)
Fla. Stat. Ann. § 787.01(3)(a) (Kidnapping; kidnapping of child under age 13, aggravating circumstances)	Life felony	“a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment”
Fla. Stat. Ann. § 787.02(3)(a) (False imprisonment; false imprisonment of child under age 13, aggravating circumstances)	First Degree Felony punishable by life imprisonment	Imprisonment up to 30 years “or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment”
Fla. Stat. Ann. § 787.06(3)(g) (Human trafficking of a minor under 18 for commercial sex) <sup>61</sup>	First Degree Felony punishable by life imprisonment	Imprisonment up to 30 years “or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment” if the victim is under 18;
Fla. Stat. Ann. § 787.06(3)(h) (Human trafficking of a minor under 15 for commercial sex) <sup>62</sup>	Life felony	“a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment”
Fla. Stat. Ann. § 787.06(4) (Human trafficking; sale of minor)	First degree felony	Imprisonment up to 30 years

<sup>59</sup> See *supra* note 7.

<sup>60</sup> See discussion of relevant provisions *supra* Sections 1.1, 1.2.

<sup>61</sup> See *supra* note 2.

<sup>62</sup> See *supra* note 2.



by parent, legal guardian, person with custody) <sup>63</sup>		
Fla. Stat. Ann. § 796.03 (Procuring person under age of 18 for prostitution)	Second Degree Felony	Imprisonment up to 15 years
Fla. Stat. Ann. § 796.035 (Selling or buying of minors into prostitution; penalties) <sup>64</sup>	First Degree Felony	Imprisonment up to 30 years
Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)	Second Degree Felony	Imprisonment up to 15 years
Fla. Stat. Ann. § 827.071(2)–(4) (Sexual performance by a child; penalties)	Second Degree Felony	Imprisonment up to 15 years
Fla. Stat. Ann. § 847.012(4), (5) (Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty)	Third Degree Felony	Imprisonment up to 5 years
Fla. Stat. Ann. § 847.0135(2)–(4) (Computer pornography; traveling to meet minor; penalties)	1) Second Degree Felony 2) Third Degree Felony	1) Imprisonment up to 15 years 2) Imprisonment up to 5 years

Traffickers may face additional penalties pursuant to Fla. Stat. Ann. § 896.101(3) (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity) if they engage in money laundering by doing the following:

- (3) It is unlawful for a person:
- (a) Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity,<sup>65</sup> to conduct or attempt to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity<sup>66</sup>:
1. With the intent to promote the carrying on of specified unlawful activity; or
  2. Knowing<sup>67</sup> that the transaction is designed in whole or in part:

<sup>63</sup> See *supra* note 2.

<sup>64</sup> See *supra* note 17.

<sup>65</sup> Fla. Stat. Ann. § 896.101(2)(a) provides,

“Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (g).

<sup>66</sup> Pursuant to Fla. Stat. Ann. § 896.101(2)(g), “specified unlawful activity” means “any ‘racketeering activity’ as defined in s. 895.02.”

<sup>67</sup> Pursuant to Fla. Stat. Ann. § 896.101(2)(h), “knowing” means,

[T]hat a person knew; or, with respect to any transaction or transportation involving more than \$10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

- a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
  - b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law.
- (b) To transport or attempt to transport a monetary instrument or funds:
- 1. With the intent to promote the carrying on of specified unlawful activity; or
  - 2. Knowing that the monetary instrument<sup>68</sup> or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part:
    - a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
    - b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law.
- (c) To conduct or attempt to conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer, or someone acting under such officer's direction, represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with the intent:
- 1. To promote the carrying on of specified unlawful activity; or
  - 2. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds or property believed to be the proceeds of specified unlawful activity; or
  - 3. To avoid a transaction reporting requirement under state law.

Pursuant to Fla. Stat. Ann. § 896.101(5), a conviction of laundering between \$300–\$19,999.99 in the course of a year is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 896.101(5)(a), 775.082(3)(d), 775.083(1)(c). A conviction of laundering between \$20,000–\$99,999.99 in the course of a year is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 896.101(5)(b), 775.082(3)(c), 775.083(1)(b). A conviction of laundering \$100,000 or more in the course of a year is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 896.101(5)(c), 775.082(3)(b), 775.083(1)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>69</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>70</sup> against a minor.

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

<sup>68</sup> Pursuant to Fla. Stat. Ann. § 896.101(2)(e), “monetary instruments” means “coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.”

<sup>69</sup> See *supra* note 32.

<sup>70</sup> See *supra* note 38 for the definition of “federal sex offense.”

Creating or distributing child pornography is illegal in Florida under several statutes. Fla. Stat. Ann. § 827.071(2), (Sexual performance by a child [Effective October 1, 2011]) makes it illegal for a trafficker, “knowing the character and content thereof,” to employ, authorize, or induce a child in “to engage in a sexual performance,”<sup>71</sup> or, if the offender is the child’s parent, to consent “to the participation by such child in a sexual performance.” Fla. Stat. Ann. § 827.071(3) additionally criminalizes when a trafficker “produces, directs, or promotes”<sup>72</sup> any performance which includes sexual conduct<sup>73</sup> by a child less than 18 years of age,” while Fla. Stat. Ann. § 827.071(4) makes it illegal for a person to possess 3 or more copies of child pornography “with the intent to promote the child pornography.”<sup>74</sup> A conviction under Fla. Stat. Ann. § 827.071(2)–(4) is punishable as a second degree felony by imprisonment up to 15 years and a possible not to exceed \$10,000. Fla. Stat. Ann. §§ 827.071(2)–(4), 775.082(3)(c), 775.083(1)(b).

Fla. Stat. Ann. § 847.011(1) (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states in part,

(1) (a) Except as provided in paragraph (c), any person . . . who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character [for obscene use, or purporting to be for obscene use or purpose]; . . . or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, commits a misdemeanor of the first degree . . . .

. . . .  
(c) A person who commits a violation of paragraph (a) or subsection (2)<sup>75</sup> which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors<sup>76</sup> commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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<sup>71</sup> See *supra* note 14.

<sup>72</sup> See *supra* note 15.

<sup>73</sup> See *supra* note 16.

<sup>74</sup> See discussion of relevant provisions *supra* Sections 1.2.

<sup>75</sup> Fla. Stat. Ann. § 847.011(2) states,

Except as provided in paragraph (1)(c) , a person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, . . . photograph, motion picture film, film, . . . containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

<sup>76</sup> Fla. Stat. Ann. § 847.001(6) (Definitions) states,

“Harmful to minors” means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (a) Predominantly appeals to a prurient, shameful, or morbid interest;
- (b) Is patently offensive to the prevailing standards in the adult community as a whole or with respect to what is suitable material or conduct for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political or scientific value for minors.

....

Fla. Stat. Ann. § 847.012(4) (Harmful materials; sale or distribution to minors or using minors in production prohibited) provides, “A person may not knowingly use a minor in the production of any material described in subsection (3),<sup>77</sup> regardless of whether the material is intended for distribution to minors or is actually distributed to minors.” A conviction under this section is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 847.012(5), 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847 (Possession or promotion of certain images of child pornography; reclassification) states,

- (2) A violation of s. 827.071, s. 847.0135, s. 847.0137. . . shall be reclassified to the next higher degree . . . if:
- (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and
  - (b) The content of at least one image contains one or more of the following:
    1. A child who is younger than the age of 5.
    2. Sadomasochistic abuse involving a child.
    3. Sexual battery involving a child.
    4. Sexual bestiality involving a child.
    5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

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>78</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>79</sup>

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<sup>77</sup> Fla. Stat. Ann. § 847.012(3) states,

A person may not knowingly sell, rent or loan for monetary consideration to a minor:

- (a) Any picture, photography, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- (b) Any book pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct that is harmful to minors.

<sup>78</sup> See *supra* note 38 for the definition of “federal sex offense.”

<sup>79</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).

is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>80</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>81</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.*

Under Fla. Ann. Stat. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) it is a crime if

[a] person who:

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
- (d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082 [Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison], s. 775.083 [Fines], or s. 775.084 [Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms]. . . .

A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 847.0135(3)(a), prohibits any person from, among other things, knowingly using a computer or any type of Internet service to do the following:

Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.

A violation of this statute is punishable as a third degree felony. Any person who misrepresents his or her age in the course of violating this subsection may be convicted of a second degree felony punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

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<sup>80</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>81</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).

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

The trafficking, CSEC and sex offense statutes under which traffickers may be prosecuted carry possible fines ranging from \$5,000 to \$15,000.<sup>82</sup>

In addition to the fines set out in Fla. Stat. Ann. § 775.083, if the trafficker is convicted of laundering money in violation of Fla. Stat. Ann. § 896.101 (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity), he may be fined up to “\$ 250,000 or twice the value of the financial transactions, whichever is greater” for a first time violation and “up to \$ 500,000 or quintuple the value of the financial transactions, whichever is greater” for any subsequent violation. Fla. Stat. Ann. § 896.101(6). Also, the trafficker who violates the money laundering statute may be “liable for a civil penalty of not more than the value of the financial transactions involved or \$ 25,000, whichever is greater.” Fla. Stat. Ann. § 896.101(7).

Traffickers also face asset forfeiture pursuant to the trafficking law. Fla. Stat. Ann. § 787.06(7) (Human trafficking)<sup>83</sup> states, “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. Additionally, Fla. Stat. Ann. §§ 932.701–932.706 (Florida Contraband Forfeiture Act) can be used to impose significant penalties including forfeiture of contraband<sup>84</sup> on traffickers charged with other felonies.<sup>85</sup> Subject to certain provisions in Fla. Stat. Ann. § 932.703 (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act,<sup>86</sup> or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

The procedure for asset forfeiture pursuant to Fla. Stat. Ann. §§ 932.701–932.706 is civil. Forfeiture of the contraband is mandatory. The court “shall order the seized property forfeited to the seizing law enforcement agency. Fla. Stat. Ann. § 932.704(8). Seizure of the forfeitable property is governed by Fla. Stat. Ann § 932.703(2)(a).

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)<sup>87</sup> provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim<sup>88</sup> for . . .” loss or damage caused or related to the

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<sup>82</sup> See *supra* penalties chart in Section 3.1.

<sup>83</sup> See *supra* note 2.

<sup>84</sup> See *supra* Section 2.8 for the definition of “contraband” pursuant to Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions).

<sup>85</sup> Among the statutes for which a trafficker could be charged with a felony are the following: Fla. Stat. Ann. § 787.06 (Human trafficking); § 796.035 (Selling or buying of minors into sex trafficking or prostitution; penalties); § 796.03 (Procuring person under age of 18 for prostitution); § 827.071 (Sexual performance by a child; penalties); § 787.01 (Kidnapping; kidnapping of child under age 13, aggravating circumstances); § 787.02 (False imprisonment; false imprisonment of child under age 13, aggravating circumstances); § 787.025 (Luring or enticing a child); § 796.045 (Sex trafficking; penalties); § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); § 827.04 (Contributing to the delinquency or dependency of a child; penalty); § 827.071 (Sexual performance by a child; penalties); § 847.0145 (Selling or buying of minors; penalties).

<sup>86</sup> See *supra* Section 2.8 for the text of Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property), which describes ways that an offender may violate the Florida Contraband Forfeiture Act.

<sup>87</sup> See discussion of relevant provisions *supra* Section 2.8.

<sup>88</sup> See *supra* note 51.

trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution. . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Pursuant to Fla. Stat. Ann. § 775.089, restitution is mandatory and may be made directly to the victim. Fla. Stat. Ann. § 775.089(1)(a)(2) states,

An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund . . .

This language suggests that a restitution order may be made either to the Trust Fund or to the victim. Additionally, pursuant to Fla. Stat. Ann. § 775.089(5), “An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.” Thus, a victim may seek to receive restitution directly.

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

Perpetrators of domestic minor sex trafficking are required to register under Fla. Stat. Ann. § 775.21 (The Florida Sexual Predators Act).<sup>89</sup> Pursuant to Fla. Stat. Ann. § 775.21(4),

(a) For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:

- a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances] or s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances], where the victim is a minor and the defendant is not the victim’s parent or guardian, or . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age], or s. 847.0145 [Selling or buying of minors; penalties], or a violation of a similar law of another jurisdiction; or
- b. Any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c) [Luring or enticing a child],<sup>90</sup> where the victim is a minor and the defendant is not the victim’s parent or guardian; s. 787.06(3)(b) . . . (g), or (h) [Human trafficking] . . . s. 796.03 [Procuring person under age of 18 for prostitution]; s. 796.035 [Selling or buying of minors into prostitution; penalties]<sup>91</sup>; s. 800.04; . . . s. 827.071; . . . s. 847.0145; . . . or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any

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<sup>89</sup> See *supra* note 57.

<sup>90</sup> Fla. Stat. Ann. § 787.025(2)(c) specifies, “A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, s. 800.04, or s. 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose . . . .”

<sup>91</sup> See *supra* note 17.

violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; . . . s. 796.03; s. 796.035; s. 800.04; . . . s. 827.071 [Sexual performance by a child; penalties]; s. 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty]; s. 847.0135 [Computer pornography; traveling to meet minor; penalties], . . . or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and
3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Traffickers convicted under Fla. Stat. Ann. § 787.06(g) and (h) or certain CSEC, pornography and sex offense provisions, will also be required to register as a sex offender under Fla. Stat. Ann. § 943.0435(2)(a) (Sexual offenders required to register with the department; penalty).<sup>92</sup> Pursuant to Fla. Stat. Ann. § 943.0435(1)(a), a “sexual offender” subject to the registration requirement in subsection (2)(a) is defined as a person who:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances], s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances] . . . s. 787.06(3)(b) . . . (g), or (h) [Human trafficking]. . . s. 796.03 [Procuring person under age of 18 for prostitution]; s. 796.035 [Selling or buying of minors into prostitution; penalties]; s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years' of age] . . . s. 827.071 [Sexual performance by a child; penalties] . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6) . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-paragraph. . . .

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances], s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances] . . . s. 787.06(3)(b) . . . (g), or (h) [Human trafficking] . . . s. 796.03 [Procuring person under age of 18 for prostitution]; s. 796.035 [Selling or buying of minors into prostitution; penalties]; s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years' of age] . . . s. 827.071 [Sexual performance by a child; penalties] . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6) . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph. . . .

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<sup>92</sup> See *supra* note 58.



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.*

Fla. Stat. Ann. § 39.806 (Grounds for termination of parental rights) states in part,

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

....

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated in a state or federal correctional institution and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;
2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084,<sup>93</sup> a habitual violent felony offender as defined in s. 775.084,<sup>94</sup> or a sexual

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<sup>93</sup> Pursuant to Fla. Stat. Ann. § 775.084(d), the defendant is a violent career criminal when,

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:

....

c. Aggravated child abuse, as described in s. 827.03(2);

....

e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04 or s. 847.0135(5) [Computer pornography; traveling to meet minors; penalties];

....

2. The defendant has been incarcerated in a state prison or a federal prison.

3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

<sup>94</sup> Pursuant to Fla. Stat. Ann. § 775.084(b), the defendant is a habitual violent felony offender when,

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

....

b. Sexual battery;

....

d. Kidnapping;

predator as defined in s. 775.21;<sup>95</sup> has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011;<sup>96</sup> or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term “substantially similar offense” means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. . . .

2. The parent or parents have materially breached the case plan. . . .

(f) The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child’s sibling.

...

2. As used in this subsection, the term “egregious conduct” means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(g) The parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse<sup>97</sup> as defined in s. 39.01, or chronic abuse.

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e. Aggravated child abuse;

...

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or

b. Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.

4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

<sup>95</sup> See *supra* Section 3.5 for the criteria that defines a sexual predator.

<sup>96</sup> See *supra* Section 1.2 for details on the sexual batteries that result in capital, life, or first degree felonies.

<sup>97</sup> Fla. Stat. Ann. § 39.01(67)(g) (Definitions) defines “[s]exual abuse of a child for purposes of finding a child to be dependent” to include,

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of sex trafficking as provided in s. 796.035.

Here and elsewhere in this report that Fla. Stat. Ann. § 39.01 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 99 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 105 (effective January 1, 2013).

....

***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.*

The act of assisting or facilitating the crime of sex trafficking is criminalized by the state human trafficking law. Fla. Stat. Ann. § 787.06(3)(g) (Human trafficking)<sup>98</sup> states, “Any person who knowingly, or in reckless disregard of the facts . . . benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking . . . [f]or commercial sexual activity in which any child under the age of 18 is involved commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life,” and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 787.06(3)(g), 775.082(3)(b), 775.083(1)(b). Under Fla. Stat. Ann. § 787.06(3)(h), benefitting or attempting to benefit financially from “participation in a venture that has subjected a person to human trafficking . . . for commercial sexual activity in which any child under the age of 15 is involved commits a life felony. A life felony is punishable by up to life imprisonment and a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 787.06(3)(h), 775.082(3)(a)(3.), 775.083(1)(a).

A facilitator may also be guilty of money laundering in violation of Fla. Stat. Ann. § 896.101(3) (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity). Depending on the amount of money the facilitator helped to conceal, the facilitator may be convicted of a first, second, or third degree felony. Fla. Stat. Ann. § 896.101(5). Additional and more substantial fines may be demanded of the facilitator convicted of money laundering. Fla. Stat. Ann. § 896.101(6), (7).<sup>99</sup>

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

Facilitators may be subject to fines for convictions related to their activities. A first degree felony conviction under Fla. Stat. Ann. § 787.06(3)(g) (Human trafficking)<sup>100</sup> is punishable by a possible fine of up to \$10,000 and a life felony conviction under Fla. Stat. Ann. § 787.06(3)(h) is punishable by a possible fine up to \$15,000. Fla. Stat. Ann. § 775.083(1)(a), (b).

Facilitators also face asset forfeiture under the human trafficking law. Fla. Stat. Ann. § 787.06(7) (Human trafficking) states, “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. Additionally, Fla. Stat. Ann. §§ 932.701–932.706 (Florida

<sup>98</sup> See *supra* note 2.

<sup>99</sup> See *supra* Section 3.4 for a detailed explanation of the fines specifically applicable to money laundering.

<sup>100</sup> See *supra* note 2.

Contraband Forfeiture Act) can be used to impose significant penalties including forfeiture of contraband<sup>101</sup> on facilitators charged with felonies. Subject to certain provisions in Fla. Stat. Ann. § 932.703 (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act,<sup>102</sup> or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

The procedure for asset forfeiture pursuant to Fla. Stat. Ann. §§ 932.701–932.706 is civil. Forfeiture of the contraband is mandatory. The court “shall order the seized property forfeited to the seizing law enforcement agency. Fla. Stat. Ann. § 932.704(8). Seizure of the forfeitable property is governed by Fla. Stat. Ann. § 932.703(2)(a).

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)<sup>103</sup> provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim<sup>104</sup> for . . .” loss or damage caused or related to the trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution. . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Pursuant to Fla. Stat. Ann. § 775.089, restitution is mandatory and may be made directly to the victim. Fla. Stat. Ann. § 775.089(1)(a)(2) states,

An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund . . .

This language suggests that a restitution order may be made either to the Trust Fund or to the victim. Additionally, pursuant to Fla. Stat. Ann. § 775.089(5), “An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.” Thus, a victim may seek to receive restitution directly.

Facilitators who allow their premises to be used for sex trafficking face loss of their property if it is declared a nuisance under Fla. Stat. Ann. § 823.05(1) (Places and groups engaged in criminal gang-related activity declared a nuisance; may be abated and enjoined), which states,

Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly

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<sup>101</sup> See *supra* Section 2.8 for the definition of “contraband” pursuant to Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions).

<sup>102</sup> See *supra* Section 2.8 for the text of Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property), which describes ways that an offender may violate the Florida Contraband Forfeiture Act.

<sup>103</sup> See discussion of relevant provisions *supra* Section 2.8.

<sup>104</sup> See *supra* note 51.

injurious to the morals or manners of the people as described in s. 823.01, or any house or place of prostitution, assignation, lewdness or place . . . or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in ss. 60.05<sup>105</sup> and 60.06.<sup>106</sup>

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

There is no specific provision in the Florida statutes that prohibits child sex tourism. Fla. Stat. Ann. § 847.0135(4) (Computer pornography; traveling to meet minor) may apply where a person travels to or within Florida for the purpose of engaging in certain illegal sex acts with children, but does not specifically address sex tourism.

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

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

Promoting or selling child pornography is illegal in Florida under several statutes. Fla. Stat. Ann. § 847.011 (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states in part,

(1) (a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, . . . picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; . . . commits a misdemeanor of the first degree . . . .

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<sup>105</sup> Fla. Stat. Ann. § 60.05(4) (Abatement of nuisances) states,

On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then on the real estate occupied by the nuisance. No lien shall attach to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within said 5 days. In a proceeding abating a nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has been convicted of an offense under chapter 893 or s. 796.07, the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.

<sup>106</sup> Fla. Stat. Ann. § 60.06 (Abatement of nuisances; enforcement) states, "The court shall make such orders on proper proof as will abate all nuisances mentioned in s. 823.05, and has authority to enforce injunctions by contempt but the jurisdiction hereby granted does not repeal or alter s. 823.01."

(c) A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors<sup>107</sup> commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

....  
(4) Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, . . . . Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree, . . . .

A conviction under Fla. Stat. Ann. § 847.011(1)(a), (4) is punishable as a first degree misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$1,000. Fla. Stat. Ann. §§ 775.082(4)(a), 775.083(1)(d). A conviction under Fla. Stat. Ann. § 847.011(1)(c), (4) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Facilitators could also be convicted of violating Fla. Stat. Ann. § 847.0135(2)<sup>108</sup> (Computer pornography; traveling to meet minor; penalties), which is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 847.0137 (Transmission of pornography by electronic device or equipment prohibited; penalties), states,

(2) Notwithstanding ss. 847.012 [Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty] and 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty], any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001,<sup>109</sup> to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0137(2), (3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847(2) (Possession or promotion of certain images of child pornography; reclassification), reclassifies violations of Fla. Stat. Ann. § 827.071, § 847.0135 (Computer pornography; traveling to meet minor; penalties), § 847.0137, and § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) to the next highest felony degree if,

(2) (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.
2. Sadomasochistic abuse involving a child.

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<sup>107</sup> See *supra* note 76.

<sup>108</sup> See discussion of relevant provisions *supra* Section 1.2.

<sup>109</sup> See *supra* note 52.

3. Sexual battery involving a child.
4. Sexual bestiality involving a child.
5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.



**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.*

Fla. Stat. Ann. § 39.01(76) (Definitions) defines “victim” for the chapter on judicial proceedings related to children as “any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse,<sup>110</sup> neglect, or abandonment, or child-on-child sexual abuse.” Pursuant to Fla. Stat. Ann. § 39.01(67),<sup>111</sup> “sexual abuse of a child” means, in part,

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<sup>110</sup> Fla. Stat. Ann. § 39.01(67) also describes non-commercial sexual offenses in its definition of “sexual abuse of a child,” including the following:

- (a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
- (b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
- (c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.
- (d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 [Prostitution] based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children]; or
3. Participate in the trade of sex trafficking as provided in s. 796.035.<sup>112</sup>

For the purpose of the Florida Crimes Compensation Act, Fla. Stat. Ann. § 960.03(14)<sup>113</sup> (Definitions) defines “victim” as

- (a) A person who suffers personal physical injury or death as a direct result of a crime;
- (b) A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured;
- (c) A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury as defined by s. 827.03 but who was not physically injured; or
- (d) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.

Under Fla. Stat. Ann. § 960.03(3), crime is defined as,

- (a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death, or a felony or misdemeanor offense of child abuse<sup>114</sup> committed by an

- 
1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or
  2. Any act intended for a valid medical purpose.

- (e) The intentional masturbation of the perpetrator’s genitals in the presence of a child.
- (f) The intentional exposure of the perpetrator’s genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

<sup>111</sup> See *supra* note 110.

<sup>112</sup> Fla. Stat. Ann. § 796.035 (Selling or buying minors into prostitution; penalties), as amended by House Bill 7049, no longer references sex trafficking and makes it first degree felony for “[a]ny parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution.” See *supra* note 17.

<sup>113</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 960.03 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 1355 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 155 (effective October 1, 2012).

<sup>114</sup> Pursuant to Fla. Stat. Ann. § 827.03(1) (Abuse, aggravated abuse, and neglect of a child; penalties),

“Child abuse” means:

- (a) Intentional infliction of physical or mental injury upon a child;
- (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child. A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child. . . .

adult or a juvenile which results in a mental injury, as defined in s. 827.03 [Abuse, aggravated abuse, and neglect of a child; penalties], to a person younger than 18 years of age who was not physically injured by the criminal act. The mental injury to the minor must be verified by a psychologist licensed under chapter 490, by a physician licensed in this state under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175. The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

....  
(d) A violation of s. 827.071 [Sexual performance by a child; penalties], s. 847.0135 [Computer pornography; traveling to meet minor; penalties], s. 847.0137 [Transmission of pornography by electronic device or equipment prohibited; penalties], or s. 847.0138 [Transmission of material harmful to a minor by electronic device or equipment prohibited; penalties], related to online sexual exploitation and child pornography.

Furthermore, Fla. Stat. Ann. § 960.03(10) defines “identified victim of child pornography” as “any person who, while under the age of 18, is depicted in any image or movie of child pornography and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children’s Child Victim Identification Program.”

For purposes of restitution orders under Fla. Stat. Ann. § 775.089 (Restitution), a broad definition of “victim” is used, covering any crime but requiring some type of physical or pecuniary injury. “The term ‘victim’ as used in this section and in any provision of law relating to restitution means each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant’s offense or criminal episode . . . .” Fla. Stat. Ann. § 775.089(1)(c).

Other services are made explicitly available to victims of human trafficking and CSEC under Fla. Stat. Ann. § 787.06(1)(d), which requires “the Department of Children and Family Services and other state agencies [to] cooperate with other state and federal agencies to ensure that victims of human trafficking can access social services and benefits to alleviate their plight.” Victims of human trafficking are defined by Fla. Stat. Ann. § 787.06(1)(a) as follows:

Victims of human trafficking are young children, teenagers, and adults. Thousands of victims are trafficked annually across international borders worldwide. Many of these victims are trafficked into this state. Victims of human trafficking also include citizens of the United States and those persons trafficked domestically within the borders of the United States. The Legislature finds that victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.

5.1.1 Recommendation: Amend the definition of “crime” in Fla. Stat. Ann. § 960.03(3) (Definitions) to include violations of Fla. Stat. Ann. § 787.06 (Human trafficking) and CSEC offenses so that the victims of these crimes are expressly included in the definition of “victim” pursuant to Fla. Stat. Ann. § 960.03(14).

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.*

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*See supra* note 113.

Fla. Stat. Ann. § 787.06(3)(g) and (h) (Human trafficking)<sup>115</sup> does not expressly bar the defendant from raising this defense. In contrast, Fla. Stat. Ann. § 800.04(2) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) explicitly precludes consent as a defense and states, “[n]either the victim’s lack of chastity nor the victim’s consent is a defense to the crimes proscribed by” the statute.

5.2.1 Recommendation: Enact a provision, within Fla. Stat. Ann. § 787.06 (Human trafficking), as well as CSEC laws, § 796.035 (Selling or buying of minors into prostitution)<sup>116</sup> and § 847.0145 (Selling or buying of minors), and the pornography offenses, § 847.011(d) (Prohibition of certain acts in connection with obscene, lewd, etc., materials), § 847.012(2) (Harmful materials; sale or distribution to minors or using minors in production prohibited), and § 847.013(2) (Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations) to specifically prohibit a defense to any commercial sexual offense against a minor under 18 based on the child’s consent to the sex act.

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

Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) does not exclude minors from prosecution for prostitution offenses.

5.3.1 Recommendation: Amend Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) to exclude minors under 18 and to refer to minors under 18 used in prostitution as victims of sex trafficking under Fla. Stat. Ann. § 787.06 (Human trafficking).

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.*

#### I. Child Initially Identified as Abused/Neglected

Pursuant to Fla. Stat. Ann. § 39.01(2) (Definitions)<sup>117</sup>, a sexually exploited child is likely to be identified as abused or neglected. However, even if a child is identified as abused or neglected under Fla. Stat. Ann. § 39.01(2), the definition of “caregiver” under Fla. Stat. Ann. § 39.01(10) (Definitions)<sup>118</sup> is not sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

To the extent that a victim of child sex trafficking is identified as abused or neglected, the child may initially come to the attention of law enforcement through the filing of a mandatory report of abuse pursuant to Fla. Stat. Ann. § 39.201(1)(a)-(c)<sup>119</sup> (Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline)<sup>120</sup> or the child may be detained by medical or hospital personnel under Fla. Stat. Ann. § 39.395 (Detaining a child; medical or hospital personnel).

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<sup>115</sup> See *supra* note 2.

<sup>116</sup> See *supra* note 17.

<sup>117</sup> See *infra* section 5.5 for a full analysis of the definition of “abuse” as it relates to identification of sexually exploited children.

<sup>118</sup> See *infra* section 5.6 for a full analysis of the definition of “caregiver.”

<sup>119</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 39.201 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 1355 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 155 (effective October 1, 2012).

<sup>120</sup> See *infra* section 5.5 for a full analysis of mandatory reporting.

*a. Points of contact for initial custody of abused/neglected child*

A child may be taken into custody by law enforcement or medical personnel. Pursuant to Fla. Stat. Ann. § 39.401(1)(b)(1) (Taking a child alleged to be a dependent into custody; law enforcement officers and authorized agents of the department),<sup>121</sup>

A child may only be taken into custody:

...

(b) By a law enforcement officer, or an authorized agent of the department, if the officer or authorized agent has probable cause to support a finding:

1. That the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment.

Pursuant to Fla. Stat. Ann. § 39.401(2)(b),

If the law enforcement officer takes the child into custody, that officer shall:

....

(b) Deliver the child to an authorized agent of the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is abandoned, abused, or neglected, or otherwise dependent.<sup>122</sup> For such a child for whom there is also probable cause to believe he or she has been sexually exploited, the law enforcement officer shall deliver the child to the department. The department may place the child in an appropriate short-term safe house<sup>123</sup> as provided for in s. 409.1678<sup>124</sup> if a short-term safe house is available.

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<sup>121</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 39.401 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 99 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 105 (effective January 1, 2013).

<sup>122</sup> Pursuant to Fla. Stat. Ann. § 39.01(15)(g), “‘Child who is found to be dependent’” means a child who, pursuant to this chapter, is found by the court . . . [t]o have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.” *See supra* note 97.

<sup>123</sup> Pursuant to Fla. Stat. Ann. § 409.1678(1)(b) (Safe harbor for children who are victims of sexual exploitation),

Safe house means a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children who have been adjudicated dependent or delinquent and need to reside in a secure residential facility with staff members who are awake 24 hours a day . . . A safe house serving children who have been sexually exploited must have available staff or contract personnel who have the clinical expertise, credentials, and training to provide services identified in paragraph (2)(b).

Pursuant to Fla. Stat. Ann. § 409.1678(1)(e),

Short term safe house’ means a shelter operated by a licensed residential child-caring agency as defined in s. 409.175, including a runaway youth center as defined in s. 409.441, that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children. In addition to shelter, the house shall provide services and care to sexually exploited children, including food, clothing, medical care, counseling, and appropriate crisis-intervention services at the time they are taken into custody by law enforcement officials or department personnel.

Additionally, pursuant to Fla. Stat. Ann. § 39.395 (Detaining a child; medical or hospital personnel),

Any person in charge of a hospital or similar institution, or any physician or licensed health care professional treating a child may detain that child without the consent of the parents, caregiver, or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such that returning the child to the care or custody of the parents, caregiver, or legal custodian presents an imminent danger to the child's life or physical or mental health. Any such person detaining a child shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of this chapter and shall make every reasonable effort to immediately notify the parents or legal custodian that such child has been detained. . . .

*b. Process following initial custody of abused/neglected child*

Pursuant to Fla. Stat. Ann. § 39.401(3),

If the child is taken into custody by, or is delivered to, an authorized agent of the department, the agent shall review the facts supporting the removal with an attorney representing the department . . . to determine whether there is probable cause for the filing of a shelter petition.

. . . .

(b) If the facts are sufficient and the child has not been returned to the custody of the parent or legal custodian, the department shall file the petition and schedule a hearing, and the attorney representing the department shall request that a shelter hearing be held within 24 hours after the removal of the child. While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care, or in a short-term safe house if the child is a sexually exploited child,<sup>125</sup> or may release the child to a parent or legal custodian or responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a licensed placement, or a responsible adult approved by the department if this is in the best interests of the child. Placement of a child which is not in a licensed shelter must be preceded by a criminal history records check as required under s. 39.0138. In addition, the department may authorize placement of a housekeeper/homemaker in the home of a child alleged to be dependent until the parent or legal custodian assumes care of the child. A child may also be temporarily placed in a shelter following detainment by medical or hospital personnel. Pursuant to Fla. Stat. Ann. § 39.395 (Detaining a child; medical or hospital personnel),

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Here and elsewhere in this report that Fla. Stat. Ann. § 409.1678 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 99 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 105 (effective January 1, 2013).

<sup>124</sup> Pursuant to Fla. Stat. Ann. § 409.1678(2)(b) (Safe harbor for children who are victims of sexual exploitation), “The lead agency, not-for-profit agency, or local governmental entity providing safe-house services is responsible for security, crisis-intervention services, general counseling and victim-witness counseling, a comprehensive assessment, residential care, transportation, access to behavioral health services, recreational activities, food, clothing, supplies, infant care, and miscellaneous expenses associated with caring for these children; for necessary arrangement for or provision of educational services, including life skills services and planning services for the successful transition of residents back to the community; and for ensuring necessary and appropriate health care and dental care. *See supra* note 123.

<sup>125</sup> Pursuant to Fla. Stat. Ann. § 409.1678(1)(d), “‘Sexually exploited child’ means a dependent child who has suffered sexual exploitation as defined in s. 39.01(67)(g) and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.” *See supra* note 123.

If the department determines, according to the criteria set forth in this chapter, that the child should be detained longer than 24 hours, it shall petition the court through the attorney representing the Department of Children and Family Services as quickly as possible and not to exceed 24 hours, for an order authorizing such custody in the same manner as if the child were placed in a shelter. The department shall attempt to avoid the placement of a child in an institution whenever possible.

Pursuant to Fla. Stat. Ann. § 39.401(3),

If the child is taken into custody by, or is delivered to, an authorized agent of the department, the agent shall review the facts supporting the removal with an attorney representing the department . . . to determine whether there is probable cause for the filing of a shelter petition.

. . . .

(b) If the facts are sufficient and the child has not been returned to the custody of the parent or legal custodian, the department shall file the petition and schedule a hearing, and the attorney representing the department shall request that a shelter hearing be held within 24 hours after the removal of the child. While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care, or in a short-term safe house if the child is a sexually exploited child,<sup>126</sup> or may release the child to a parent or legal custodian or responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a licensed placement, or a responsible adult approved by the department if this is in the best interests of the child. Placement of a child which is not in a licensed shelter must be preceded by a criminal history records check as required under s. 39.0138. In addition, the department may authorize placement of a housekeeper/homemaker in the home of a child alleged to be dependent until the parent or legal custodian assumes care of the child.

Alternatively, Fla. Stat. Ann. § 39.402(1)(a) (Placement in a shelter) allows a child taken into custody to be placed in a shelter prior to a hearing when there is probable cause to believe that "(a) The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment . . . ." Fla. Stat. Ann. § 39.01(2) (Definitions)<sup>127</sup> defines "abuse" in part as "any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm<sup>128</sup> that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired." Pursuant to Fla. Stat. Ann. § 39.01(67),

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<sup>126</sup> Pursuant to Fla. Stat. Ann. § 409.1678(1)(d), "Sexually exploited child" means a dependent child who has suffered sexual exploitation as defined in s. 39.01(67)(g) and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq." *See supra* note 123.

<sup>127</sup> *See supra* note 97.

<sup>128</sup> "Harm" is defined in Fla. Stat. Ann. § 39.402(32) in part as the following:

"Harm" to a child's health or welfare can occur when any person:

. . . .

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794 [Sexual battery], or lewd or lascivious acts, as defined in chapter 800 [Lewdness; indecent exposure], against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children].

. . . .

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

Sexual abuse of a child for purposes of finding a child to be dependent means one or more of the following acts:

...

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827; or
3. Participate in the trade of sex trafficking as provided in s. 796.035.

*c. Adjudication of abuse/neglect*

Pursuant to Fla. Stat. Ann § 39.507 (Adjudicatory hearings; orders of adjudication),

(1) (a) The adjudicatory hearing shall be held as soon as practicable after the petition for dependency is filed and in accordance with the Florida Rules of Juvenile Procedure, but no later than 30 days after the arraignment.

(b) Adjudicatory hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases and adjourning the hearings from time to time as necessary. In a hearing on a petition in which it is alleged that the child is dependent, a preponderance of evidence will be required to establish the state of dependency. . . .

...

(4) If the court finds at the adjudicatory hearing that the child named in a petition is not dependent, it shall enter an order so finding and dismissing the case.

(5) If the court finds that the child named in the petition is dependent, but finds that no action other than supervision in the child's home is required, it may enter an order briefly stating the facts upon which its finding is based, but withholding an order of adjudication and placing the child's home under the supervision of the department. If the court later finds that the parents of the child have not complied with the conditions of supervision imposed, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of dependency, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated. If the child is to remain in an out-of-home placement by order of the court, the court must adjudicate the child dependent.

(6) If the court finds that the child named in a petition is dependent, but chooses not to withhold adjudication or is prohibited from withholding adjudication, it shall incorporate that finding in an order of adjudication entered in the case, briefly stating the facts upon which the finding is made, and the court shall thereafter have full authority under this chapter to provide for the child as adjudicated.

...

(8) At the conclusion of the adjudicatory hearing, if the child named in the petition is found dependent, the court shall schedule the disposition hearing within 30 days after the last day of the adjudicatory hearing. All parties shall be notified in writing at the conclusion of the adjudicatory hearing by the clerk of the court of the date, time, and location of the disposition hearing.

(9) An order of adjudication by a court that a child is dependent shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment.

*d. Process outcomes*



Various options are available to the court during a disposition hearing. Pursuant to Fla. Stat. Ann. § 39.521(b) (Disposition hearings; power of disposition), the court may

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a substance abuse assessment or evaluation.
2. Require, if the court deems necessary, the parties to participate in dependency mediation.
3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first.

Additionally, specialized services and placement are available for victims of domestic minor sex trafficking. Fla. Stat. Ann. § 39.524 (Safe harbor placement)<sup>129</sup> states,

Except as provided in s. 39.407 [Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody] or s. 985.801 [Interstate Compact on Juveniles; implementing legislation; legislative findings and policy], a dependent<sup>130</sup> child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01(67)(g)<sup>131</sup> must be assessed for placement in a safe house as provided in s. 409.1678. The assessment shall be conducted by the department or its agent and shall incorporate and address current and historical information from any law enforcement reports; psychological testing or evaluation that has occurred; current and historical information from the guardian ad litem, if one has been assigned; current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; and any other information concerning the availability and suitability of safe-house placement. If such placement is determined to be appropriate as a result of this assessment, the child may be placed in a safe house, if one is available. As used in this section, the term “available” as it relates to a placement means a placement that is located within the circuit or otherwise reasonably accessible.

Pursuant to Fla. Stat. Ann. § 409.1678(2) (Safe harbor for children who are victims of sexual exploitation),

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<sup>129</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 39.524 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 99 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 105 (effective January 1, 2013).

<sup>130</sup> See *supra* note 122.

<sup>131</sup> Pursuant to Fla. Stat. Ann. § 39.01(67)(g),

[S]exual exploitation of a child . . . includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 [Prostitution] based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827; or
3. Participate in the trade of sex trafficking as provided in s. 796.035.

(a) Notwithstanding any other provision of law, pursuant to rules of the department, each circuit of the department shall address the child welfare service needs of sexually exploited children as a component of the circuit's master plan. This determination shall be made in consultation with local law enforcement officials, runaway and homeless youth program providers, local probation departments, local community-based care and social services, local guardians ad litem, public defenders, state attorney's offices, and child advocates<sup>132</sup> and services providers who work directly with sexually exploited youth.

(b) The lead agency, not-for-profit agency, or local governmental entity providing safe-house services is responsible for security, crisis-intervention services, general counseling and victim-witness counseling, a comprehensive assessment, residential care, transportation, access to behavioral health services, recreational activities, food, clothing, supplies, infant care, and miscellaneous expenses associated with caring for these children; for necessary arrangement for or provision of educational services, including life skills services and planning services for the successful transition of residents back to the community; and for ensuring necessary and appropriate health care and dental care.

....  
....

(e) All of the services specified in this section may, to the extent possible provided by law and with funding authorized, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of probation, through a diversion program, through a proceeding under chapter 39, or through a referral from a local community-based care or social service agency.

## *II. Child Initially Identified as a Child In Need Of Services*

A victim of domestic minor sex trafficking might also be brought into custody and placed through the "[c]hild in need of services" procedures. Flat. Stat. Ann. § 984.03(9) (Definitions) defines a "child in need of services" as one who is found by the court to have persistently run away from home, habitually absent from school, or consistently disobedient to the reasonable demands of the parent or guardian. A "child in need of services" may not be the subject of an investigation regarding "abuse, neglect, or abandonment," may not have a pending referral that the child is delinquent, and cannot be under supervision "for an adjudication of dependency or delinquency." Fla. Stat. Ann. § 984.03(9).

### *a. Points of contact for initial custody of a Child In Need Of Services*

Pursuant to Fla. Stat. Ann. § 984.13 (Taking into custody a child alleged to be from a family in need of services or to be a child in need of services),

(1) A child may be taken into custody:

(a) By a law enforcement officer when the officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or other legal custodian.

....

(c) Pursuant to an order of the circuit court based upon sworn testimony before or after a petition is filed under s. 984.15.

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<sup>132</sup> Pursuant to Fla. Stat. Ann. § 409.1678(1)(a), "'Child advocate' means an employee of a short-term safe house who has been trained to work with and advocate for the needs of sexually exploited children. The advocate shall accompany the child to all court appearances, meetings with law enforcement officials, and the state attorney's office and shall serve as a liaison between the short-term safe house and the court."

*See supra* note 123.

(d) By a law enforcement officer when the child voluntarily agrees to or requests services pursuant to this chapter or placement in a shelter.

Under subsection (2),

The person taking the child into custody shall:

- (a) Release the child to a parent, guardian, legal custodian, or responsible adult relative or to a department-approved family-in-need-of-services and child-in-need-of-services provider if the person taking the child into custody has reasonable grounds to believe the child has run away from a parent, guardian, or legal custodian; is truant; or is beyond the control of the parent, guardian, or legal custodian; . . . or
- (b) Deliver the child to the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is from a family in need of services.

*b. Process following initial custody of a Child In Need Of Services*

Pursuant to Fla. Stat. Ann. § 984.13(3),

If the child is taken into custody by, or is delivered to, the department, the appropriate representative of the department shall review the facts and make such further inquiry as necessary to determine whether the child shall remain in custody or be released. Unless shelter is required as provided in s. 984.14(1), the department shall:

- (a) Release the child to his or her parent, guardian, or legal custodian . . . or to a department-approved family-in-need-of-services and child-in-need-of-services provider; or
- (b) Authorize temporary services and treatment that would allow the child alleged to be from a family in need of services to remain at home.

Pursuant to Fla. Stat. Ann. § 984.14(1), children are not ordinarily placed in shelters prior to a hearing. However, placement in a shelter without a hearing is appropriate when it is determined that placement in a shelter is necessary because the “parent, custodian, or guardian is unavailable” or to give time to the child and family to agree to “conditions for the child’s return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement . . . .” Fla. Stat. Ann. § 984.14(1)(a). The child will be placed in a shelter “specifically for runaways and troubled youth . . . .” Fla. Stat. Ann. § 984.14(2). A child who has been involuntarily placed in a shelter must be given a hearing within 24 hours after being taken into custody, Fla. Stat. Ann. § 984.14(3), and must be released after 24 hours “unless an order so directing is made by the court after a shelter hearing finding that placement in a shelter is necessary based on the criteria in subsection (1) and that the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home.” Fla. Stat. Ann. § 984.14(4). The child may not stay in the shelter longer than 35 days, unless permitted by Fla. Stat. Ann. § 984.225 (Powers of disposition; placement in a staff-secure shelter).<sup>133</sup> Fla. Stat. Ann. § 984.14(5).

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<sup>133</sup> Fla. Stat. Ann. § 984.225 states,

- (1) Subject to specific legislative appropriation, the court may order that a child adjudicated as a child in need of services be placed for up to 90 days in a staff-secure shelter if:
  - (a) The child’s parent, guardian, or legal custodian refuses to provide food, clothing, shelter, and necessary parental support for the child and the refusal is a direct result of an established pattern of significant disruptive behavior of the child in the home of the parent, guardian, or legal custodian;
  - (b) The child refuses to remain under the reasonable care and custody of his or her parent, guardian, or legal custodian, as evidenced by repeatedly running away and failing to comply with a court order; or

Pursuant to § 984.15 (Petition for a child in need of services), “[a]ll proceedings seeking an adjudication that a child is a child in need of services shall be initiated by the filing of a petition,” which can be filed by a representative of the department or the child’s parent, legal custodian, or guardian as set out in the statute.

*c. Adjudication of Child In Need Of Services*

Pursuant to Fla. Stat. Ann. § 984.21 (Orders of Adjudication),

- (1) If the court finds that the child named in a petition is not a child in need of services, it shall enter an order so finding and dismissing the case.
- (2) If the court finds that the child named in the petition is a child in need of services, but finds that no action other than supervision in the home is required, it may enter an order briefly stating the facts upon which its finding is based, but withholding an order of adjudication and placing the child and family under the supervision of the department. If the court later finds that the parent, guardian, or custodian of the child have not complied with the conditions of supervision imposed, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of the child in need of services, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated.
- (3) If the court finds that the child named in a petition is a child in need of services, but elects not to proceed under subsection (2), it shall incorporate that finding in an order of adjudication entered in the case, briefly stating the facts upon which the finding is made, and the court shall thereafter have full authority under this chapter to provide for the child as adjudicated.
- (4) An order of adjudication by a court that a child is a child in need of services shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment.

*d. Process outcomes*

When the court adjudicates a child to be in need of services, the court may place the child under the supervision of the department and its program providers, “in the temporary legal custody of an adult willing to care for the child,” or with a licensed childcare agency. Fla. Stat. Ann. § 984.22. The court may even order community service. Fla. Stat. Ann. § 984.22(2)(d). When a child in need of services must be placed “with an adult willing to care for the child, a licensed child-caring agency, [or] the Department of Juvenile Justice, or the Department of Children and Family Services” pursuant to Fla. Stat. Ann. § 984.22(3) (Powers of disposition), “the court shall order the natural or adoptive parents of such child . . . to pay child support to the adult relative caring for the child, the licensed child-caring agency, the Department of Juvenile Justice, or the Department of Children and Family Services.”

Pursuant to Fla. Stat. Ann. § 984.225 (Powers of disposition; placement in a staff-secure shelter), a court may order that a child found to be in need of services be placed in a staff-secure shelter for up to 90 days if other less restrictive means have been exhausted and the parent or guardian will not provide for the needs of the child because of the child’s disruptive behavior, the child refuses to stay at home and repeatedly runs away, or the

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- (c) The child has failed to successfully complete an alternative treatment program or to comply with a court-ordered sanction and the child has been placed in a residential program on at least one prior occasion pursuant to a court order under this chapter.
  - (2) This section applies after other alternative, less-restrictive remedies have been exhausted. . . .

child “failed to successfully complete an alternative treatment program or comply with a court-ordered sanction . . . .”

The court may order an adjudicated child in need of services to be placed in a physically secure setting for up to 90 days when the child has failed to be present for placement in a shelter, failed to comply with a court order related to placement, been found in contempt of court, or has run away from a shelter. Fla. Stat. Ann. § 984.226(3).

### *III. Child Initially Identified as Delinquent*

A “child who has been found to have committed a delinquent act” means a child while who

is found by a court to have committed a violation of law or to be in direct or indirect contempt of court, except that this definition does not include an act constituting contempt of court arising out of a dependency proceeding or a proceeding concerning a child or family in need of services.

#### *a. Point of contact for initial custody of delinquent child*

Where a child is not identified as abused and neglected or as a child in need of services, and is instead taken into custody by law enforcement for a status offense or delinquency offense pursuant to Fla. Stat. Ann. § 985.101(1)–(3) (Taking a child into custody),

(1) A child may be taken into custody under the following circumstances:

- (a) Pursuant to an order of the circuit court issued under this chapter, based upon sworn testimony, either before or after a petition is filed.
- (b) For a delinquent act or violation of law, pursuant to Florida law pertaining to a lawful arrest. . . .

Nothing in this subsection shall be construed to allow the detention of a child who does not meet the detention criteria in part V.

(2) Except in emergency situations, a child may not be placed into or transported in any police car or similar vehicle that at the same time contains an adult under arrest, unless the adult is alleged or believed to be involved in the same offense or transaction as the child.

(3) When a child is taken into custody as provided in this section, the person taking the child into custody shall attempt to notify the parent, guardian, or legal custodian of the child. The person taking the child into custody shall continue such attempt until the parent, guardian, or legal custodian of the child is notified or the child is delivered to a juvenile probation officer under ss. 985.14 and 985.145, whichever occurs first. If the child is delivered to a juvenile probation officer before the parent, guardian, or legal custodian is notified, the juvenile probation officer shall continue the attempt to notify until the parent, guardian, or legal custodian of the child is notified. . . .

Fla. Stat. Ann. § 985.101(4) states, “Taking a child into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence in conjunction therewith is lawful.”

#### *b. Process following initial custody of delinquent child*

Fla. Stat. Ann. § 985.125 (Prearrest or postarrest diversion programs) provides an opportunity for a child arrested for a delinquent act to avoid a record of delinquency by participating in a “prearrest or postarrest

diversion program,” that “may, upon agreement of the agencies that establish the program, provide for the expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582.” Fla. Stat. Ann. § 985.125(3).

Pursuant to Fla. Stat. Ann. § 985.135(2) (Juvenile assessment centers),

The department shall work cooperatively with substance abuse programs, mental health providers, law enforcement agencies, schools, health service providers, state attorneys, public defenders, and other agencies serving youth to establish juvenile assessment centers. Each current and newly established center<sup>134</sup> shall be developed and modified through the local initiative of community agencies and local governments and shall provide a broad array of youth-related services appropriate to the needs of the community where the center is located.

Pursuant to Fla. Stat. Ann. § 985.115 (2)(b),<sup>135</sup> “Unless otherwise ordered by the court under s. 985.255 [Detention criteria; detention hearing] or s. 985.26 [Length of detention], and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child . . . [c]ontingent upon specific appropriation, to a shelter approved by the department or to an authorized agent or short-term safe house under s. 39.401(2)(b).”

*c. Adjudication of delinquent child*

Pursuant to Fla. Stat. Ann. § 985.35 (Adjudicatory hearings; withheld adjudications; orders of adjudication),

(1) The adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations in s. 985.26(2) and (3) apply. (2) Adjudicatory hearings shall be conducted without a jury by the court, applying in delinquency cases the rules of evidence in use in criminal cases; adjourning the hearings from time to time as necessary; and conducting a fundamentally fair hearing in language understandable, to the fullest extent practicable, to the child before the court.

Additionally, under subsection (4),

If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

(a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind, community service, a curfew, urine monitoring, revocation or suspension of the driver's license of the child, or other nonresidential

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<sup>134</sup> Pursuant to Fla. Stat. Ann. § 985.135(1), “‘center’ means a juvenile assessment center comprising community operated facilities and programs which provide collocated central intake and screening services for youth referred to the department.”

<sup>135</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 985.115 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 99 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 105 (effective January 1, 2013).

punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.

(b) If the child is attending public school and the court finds that the victim or a sibling of the victim in the case was assigned to attend or is eligible to attend the same school as the child, the court order shall include a finding pursuant to the proceedings described in s. 985.455, regardless of whether adjudication is withheld.

(c) If the court later finds that the child has not complied with the rules, restrictions, or conditions of the community-based program, the court may, after a hearing to establish the lack of compliance, but without further evidence of the state of delinquency, enter an adjudication of delinquency and shall thereafter have full authority under this chapter to deal with the child as adjudicated.

*d. Process outcomes*

When a child is adjudicated delinquent pursuant to Fla. Stat. Ann § 985.35 (Adjudicatory hearings; withheld adjudications; orders of adjudication), several dispositional outcomes are possible, including physically secure custody in a juvenile correctional facility or juvenile prison pursuant to Fla. Stat. Ann. § 985.465 (Juvenile correctional facilities or juvenile prison). Fla. Stat. Ann. § 985.433 (Disposition hearings in delinquency cases) states,

When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

.....  
(7) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department . . .

(a) The juvenile probation officer shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level<sup>136</sup> most appropriate for the child. . . .

(b) The court shall commit the child to the department at the restrictiveness level identified or may order placement at a different restrictiveness level. . . .

(c) The court may also require that the child be placed in a probation program following the child's discharge from commitment. . . .

(8) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution in money or in kind, a curfew, revocation or suspension of the driver's license of the child, community service, and appropriate educational programs as determined by the district school board.

- .....
- 5.4.1 Recommendation: Amend the definition of sexual abuse of a child under Fla. Stat. Ann. § 39.01(67)(g) (Definitions for proceedings related to children) to refer to Fla. Stat. Ann. § 787.06 (Human trafficking) rather than § 796.035 (Selling or buying of minors in prostitution) to ensure that all minor victims of sex trafficking may be identified as dependent children.
  - 5.4.2 Recommendation: Enact a law requiring that minors taken into custody by law enforcement for prostitution-related offenses or otherwise identified as victims of sex trafficking, be immediately directed to specialized services and safe house placement rather than the

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<sup>136</sup> Under Fla. Stat. Ann. § 985.03(45) restrictiveness levels vary and could be minimum-risk nonresidential, low-risk residential, moderate-risk residential, high-risk residential, and maximum-risk residential. All of these programs vary in the level of access to the outside community that the juvenile receives and style of program.

delinquency process, regardless of whether anyone is being prosecuted in connection with their exploitation.

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

Fla. Stat. Ann. § 39.01(2) (Definitions) defines “abuse” within the general provisions on judicial proceedings involving children, which includes provisions related to child protective investigations and abuse and neglect, as “any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired . . . .” Additionally, “harm” is defined in subsection (32) in part as the following:

“Harm” to a child’s health or welfare can occur when any person:

.....

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794 [Sexual battery], or lewd or lascivious acts, as defined in chapter 800 [Lewdness; indecent exposure], against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children].

.....

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

.....

Moreover, Fla. Stat. Ann. § 39.01(67)(g) defines “sexual abuse of a child” to include

the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 [Prostitution] based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children]; or
3. Participate in the trade of sex trafficking as provided in s. 796.035 [Selling or buying of minors into prostitution].

Fla. Stat. Ann. § 984.03(2) (Definitions) similarly defines “abuse” for the purposes of the chapter on families and children in need of services in part as “any willful act that results in any physical, mental, or sexual injury that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.”

To the extent that a victim of child sex trafficking is identified as abused or neglected, the child may initially come to the attention of law enforcement through the filing of a mandatory report of abuse pursuant to Fla. Stat. Ann. § 39.201(1)(a)-(c)<sup>137</sup> (Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline), which provides,

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, as

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<sup>137</sup> Here and elsewhere in this report that Fla. Stat. Ann. § 39.201 is discussed, it has been updated to reflect the amendments added by the passage of House Bill 1355 during the 2012 regular session of the Florida Legislature, 2012 Fla. Laws ch. 155 (effective October 1, 2012).



defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(b) Any person who knows, or who has reasonable cause to suspect, that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(c) Any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender,<sup>138</sup> as defined in this chapter, shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

5.5.1 Recommendation: Amend the definition of sexual abuse of a child under Fla. Stat. Ann. § 39.01(67)(g)(3) (Definitions for proceedings related to children) to refer to Fla. Stat. Ann. § 787.06 (Human trafficking) rather than § 796.035 (Selling or buying of minors in prostitution) to ensure that all minor victims of sex trafficking may be identified as dependent children.

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.*

Fla. Stat. Ann. § 39.01(10) (Definitions)<sup>139</sup> defines “caregiver” for the purposes of judicial proceedings related to children as a “parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child’s welfare as defined in subsection (47).” Subsection (47) defines “other person responsible for a child’s welfare” in part as

the child’s legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child’s welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child’s care. . . .

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<sup>138</sup> Pursuant to Fla. Stat. Ann. § 39.201(2)(c),

(c) Reports involving a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior shall be made and received by the department.

1. The department shall determine the age of the alleged offender, if known.

2. If the alleged offender is 12 years of age or younger, the central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

*See supra* note 121.

<sup>139</sup> The Department of Children and Families does have operating procedure allowing child abuse investigations for minor victims of human trafficking when the alleged perpetrator is not a caregiver. These procedures, however, are not codified in Florida law. *See Intakes and Investigative Response to Human Trafficking of Children*, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (May 1, 2009), [http://www.dcf.state.fl.us/admin/publications/cfops/175%20Family%20Safety%20\(CFOP%20175-XX\)/CFOP%20175-14,%20Intakes%20and%20Investigative%20Response%20to%20Human%20Trafficking%20of%20Children.pdf](http://www.dcf.state.fl.us/admin/publications/cfops/175%20Family%20Safety%20(CFOP%20175-XX)/CFOP%20175-14,%20Intakes%20and%20Investigative%20Response%20to%20Human%20Trafficking%20of%20Children.pdf) (stating CF Operating Procedure No. 175-14).

5.6.1 Recommendation: Amend the definition of “other person responsible for a child’s welfare” in Fla. Stat. Ann. § 39.01(47) to include persons in control or custody of a minor, which would allow Child Protective Services to act on allegations of abuse perpetrated by a trafficker.

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.*

The Florida Crimes Compensation Act in Fla. Stat. Ann. §§ 960.01–960.28 authorizes the payment of compensation to victims of crime. Under Fla. Stat. Ann. § 960.03(3),<sup>140</sup> “crime” is defined in part as the following:

(a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death, or a felony or misdemeanor offense of child abuse<sup>141</sup> committed by an adult or a juvenile which results in a mental injury, as defined in s. 827.03 [Abuse, aggravated abuse, and neglect of a child; penalties], to a person younger than 18 years of age who was not physically injured by the criminal act. The mental injury to the minor must be verified by a psychologist licensed under chapter 490, by a physician licensed in this state under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175. The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

.....  
(d) A violation of s. 827.071 [Sexual performance by a child; penalties], s. 847.0135 [Computer pornography; traveling to meet minor; penalties], s. 847.0137 [Transmission of pornography by electronic device or equipment prohibited; penalties] or s. 847.0138 [Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties], related to online sexual exploitation and child pornography.

.....  
For the purposes of the Florida Crimes Compensation Act, a “victim” is defined in §960.03(14) as

- (a) A person who suffers personal physical injury or death as a direct result of a crime;
- (b) A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured;
- (c) A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury as defined by s. 827.03 but who was not physically injured; or
- (d) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.

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<sup>140</sup> See *supra* note 113.

<sup>141</sup> Pursuant to Fla. Stat. Ann. § 827.03(1) (Abuse, aggravated abuse, and neglect of a child; penalties),

“Child abuse” means:

- (a) Intentional infliction of physical or mental injury upon a child;
- (b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- (c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child. A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child. . . .

Pursuant to Fla. Stat. Ann. § 960.065(2) (Eligibility for awards), certain persons are ineligible for awards, including any person who

- (a) Committed or aided in the commission of the crime upon which the claim for compensation was based;
- (b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based;
- (c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;
- ....

However, pursuant to Fla. Stat. Ann. § 960.065(5), “A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation as defined in s. 39.01(67)(g).” Fla. Stat. Ann. § 39.01(67)(g) defines sexual exploitation of child to include

the act of a child offering to engage or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in chapter 796 based on such behavior; or allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children]; or
3. Participate in the trade of sex trafficking as provided in s. 796.035 [Selling or buying of minors into prostitution].

Fla. Stat. Ann. § 960.13(1)(a)(2)–(3) (Awards) require that before compensation may be awarded, that the “crime directly resulted in personal injury to, psychiatric or psychological injury to, or death of, the victim or intervenor,” and the “crime was promptly reported to the proper authorities.” Fla. Stat. Ann. § 960.13(b) provides,

In no case may an award be made when the record shows that such report was made more than 72 hours after the occurrence of such crime unless the department, for good cause shown, finds the delay to have been justified. The department, upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the department, may deny, reduce, or withdraw any award, as the case may be.

However, victims of child pornography receive special protection under Fla. Stat. Ann. § 960.03(10) and Fla. Stat. Ann. § 960.197 (Assistance to victims of online sexual exploitation and child pornography), which ensures that they receive compensation as victims of crime. Fla. Stat. Ann. § 960.03(10) defines “identified victim of child pornography” as “any person who, while under the age of 18, is depicted in any image or movie of child pornography and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children’s Child Victim Identification Program.” Pursuant to Fla. Stat. Ann. § 960.197,

- (1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award compensation for counseling and other mental health services to treat psychological injury or trauma to:
  - (a) A child younger than 18 years of age who suffers psychiatric or psychological injury as a direct result of online sexual exploitation under any provision of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, and who does not otherwise sustain a personal injury or death; or

(b) Any person who, while younger than age 18, was depicted in any image or movie, regardless of length, of child pornography as defined in s. 847.001 [Definitions],<sup>142</sup> who has been identified by a law enforcement agency or the National Center for Missing and Exploited Children as an identified victim of child pornography, who suffers psychiatric or psychological injury as a direct result of the crime, and who does not otherwise sustain a personal injury or death.

(2) Compensation under this section is not contingent upon pursuit of a criminal investigation or prosecution.

Also, Fla. Stat. Ann. § 960.07(2) states in part that claims “must be filed not later than 1 year after: (a) The occurrence of the crime upon which the claim is based. . . [or] (b) The death of the victim or intervenor,” but that “for good cause the department may extend the time for filing for a period not exceeding 2 years after such occurrence.” This limit, however, can be extended under subsection (3)(b), which states,

Notwithstanding the provisions of subsection (2) and regardless of when the crime occurred, if the victim or intervenor was under the age of 18 at the time the crime upon which the claim is based occurred, a claim may be filed in accordance with this subsection.

...  
(b) When a victim or intervenor who was under the age of 18 at the time the crime occurred reaches the age of 18, the victim or intervenor has 1 year within which to file a claim.  
... .

Additionally, “[f]or good cause, the department may extend the time period allowed for filing a claim under paragraph (b) for an additional period not to exceed 1 year.” Fla. Stat. Ann. § 960.07(3).

5.7.1 Recommendation: Amend the definition of “crime” under Fla. Stat. Ann. § 960.03(3)(d) (Victim assistance definitions) and the definition of “sexual abuse of a child” under Fla. Stat. Ann. § 39.01(67)(g) (Definitions for proceedings related to children) to refer to Fla. Stat. Ann. § 787.06 (Human trafficking) to ensure that all minor victims of sex trafficking are deemed victims and exempt under Fla. Stat. § 960.065(5) (Eligibility for awards) from ineligibility factors.

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

Child victim witnesses are provided with certain protections throughout the judicial process. Pursuant to Fla. Stat. Ann. § 39.822 (Appointment of guardian ad litem for abused, abandoned, or neglected child), a guardian ad litem shall be appointed “by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.”

As an additional protection, the court may order that the testimony of a witness under the age of 16 be videotaped and shown in open court or taken outside of the courtroom and shown over the television, instead of live testimony, if the court finds that there is a “substantial likelihood” that testifying in open court, in the presence of the defendant, would cause the minor “at least moderate emotional or mental harm.” Fla. Stat. Ann. §§ 92.53(1), 92.54(1).

In determining whether to permit the witness or victim to testify outside of the courtroom by video feed or prerecorded video, the court considers, “[t]he age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant’s presence, and any other fact that the court deems relevant . . . .” Fla. Stat. Ann. § 92.55(2)(a). The court may also limit the number of interviews, prohibit

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<sup>142</sup> See *supra* note 52.

depositions, require advance submission of questions, set conditions for the interview location, and determine who will attend the proceeding. Fla. Stat. Ann. § 92.55(3).

Under Fla. Stat. Ann. § 92.56(3) (Judicial proceedings and court records involving sexual offenses), the state may use a pseudonym to protect the victim's identity in court proceeding involving a "victim of a crime described in chapter 794 [Sexual battery] or chapter 800 [Lewdness; indecent exposure], or of child abuse, aggravated child abuse, or sexual performance by a child under chapter 827 [Abuse of children], or any crime involving the production, possession, or promotion of child pornography as described in chapter 847 [Obscenity] . . . ."

In the event a minor is charged with prostitution, Fla. Stat. Ann. § 796.07(3)(a) (Prohibiting prostitution, etc.; evidence; penalties; definitions) states, "[i]n the trial of a person charged with a violation of this section, . . . testimony concerning the reputation of the defendant is admissible in evidence in support of the charge."

However, if the buyer or trafficker is prosecuted under Fla. Stat. Ann. § 794.011 (Sexual battery), "[n]otwithstanding any other provision of law, reputation evidence relating to a victim's prior sexual conduct or evidence presented for the purpose of showing that manner of dress of the victim at the time of the offense incited the sexual battery shall not be admitted into evidence in a prosecution under s. 794.011." Fla. Stat. Ann. § 794.022(3). The victim of sexual battery receives additional protection pursuant to Fla. Stat. Ann. § 794.022 as "the testimony of the victim need not be corroborated." Fla. Stat. Ann. § 794.022(1). Fla. Stat. Ann. § 794.022(2) states,

Specific instances of prior consensual sexual activity between the victim and any person other than the offender shall not be admitted into evidence in a prosecution under s. 794.011. However, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence may prove that the defendant was not the source of the semen, pregnancy, injury, or disease; or, when consent by the victim is at issue, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence tends to establish a pattern of conduct or behavior on the part of the victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

5.8.1 Recommendation: Amend Fla. Stat. Ann. § 796.07 (Prohibiting prostitution, etc.; evidence; penalties; definitions) to limit a defendant's ability to cross-examine victims of sexual offenses, CSEC, and sex trafficking about their past sexual behavior.

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.*

Pursuant to Fla. Stat. Ann. § 943.0582(1) (Prearrest, postarrest, or teen court diversion program expunction), "the department [Department of Law Enforcement] may provide . . . for the expunction of any non-judicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors as authorized by Fla. Stat. Ann. § 985.125 [Prearrest or postarrest diversion programs]."

Expunctions are available for adults and minors who comply with the requirements set forth in Fla. Stat. Ann. § 943.0585 (Court-ordered expunction of criminal history records). An important prerequisite for expunction is obtaining a certificate of eligibility. Fla. Stat. Ann. § 943.0585(2)(a) provides that the department must issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates . . . [t]hat the criminal history record does not

relate to a violation of . . . § 787.025 [Luring or enticing a child], chapter 794 [Sexual battery], § 796.03 [Procuring person under age of 18 for prostitution], § 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], . . . [or] § 847.0145[Selling or buying of minors; penalties] . . . .

Adults and minors that comply with the requirements of Fla. Stat. Ann. § 943.059 (Court-ordered sealing of criminal history records) become eligible to have their criminal record sealed. Similar to the process of expunction, an important prerequisite for sealing the criminal record is obtaining a certificate of eligibility. Fla. Stat. Ann. § 943.059(2) reads,

The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

. . . .

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

. . . .

*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.*

Fla. Stat. Ann. § 772.102(1)(a)(15) (Definitions) defines “criminal activity” to include the offense of human trafficking for the purpose of allowing victims of trafficking to obtain civil remedies for criminal offenses under Fla. Stat. Ann. § 772.104 (Civil cause of action).

Fla. Stat. Ann. § 772.104(2) provides,

[A]ny person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 [Prohibited activities]<sup>143</sup> due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of \$ 200 and reasonable attorney’s fees and court costs in the trial and appellate courts.

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<sup>143</sup> Fla. Stat. Ann. § 772.103 (Prohibited activities) provides,

It is unlawful for any person:

- (1) Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity 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) Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- (4) To conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

However, Fla. Stat. Ann. § 772.104(3) prohibits an award of punitive damages.

Another remedy is provided in Fla. Stat. Ann. § 796.09(1) (Coercion; civil cause of action; evidence; defenses; attorney's fees), which states,

- (1) A person has a cause of action for compensatory and punitive damages against:
  - (a) A person who coerced that person into prostitution;
  - (b) A person who coerces that person to remain in prostitution; or
  - (c) A person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.<sup>144</sup>

In any civil action for damages, Fla. Stat. Ann. § 796.09(5) prohibits defenses asserting that the plaintiff was paid for the prostitution, that the plaintiff committed prostitution before knowing the defendant, or that the plaintiff did not attempt to leave or stop associating with the defendant.

Furthermore, "[e]vidence of convictions for prostitution or prostitution-related offenses are inadmissible in a proceeding brought under this section for purposes of attacking the plaintiff's credibility." Fla. Stat. Ann. § 796.09(6).

Under Fla. Stat. Ann. § 796.09(4), victims and witnesses are protected from self-incrimination for the evidence or testimony they produce in the course of litigation. The victims and witnesses will face criminal prosecution only in the event that they perjure themselves during the proceeding.

A specific remedy is provided in Fla. Stat. Ann. § 847.01357 (Exploited children's civil remedy) for certain victims of exploitation through child pornography. This provision states,

- (1) Any person who, while under the age of 18, was a victim of a sexual abuse crime listed in chapter 794 [Sexual Battery], chapter 800 [Lewdness; indecent exposure], chapter 827 [Abuse of children], or chapter 847 [Obscenity], where any portion of such abuse was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such images or movies, may bring an action in an appropriate state court against the producer, promoter, or possessor of such images or movies, regardless of whether the victim is now an adult. In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney's fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$ 150,000.<sup>145</sup>

Pursuant to Fla. Stat. Ann. § 847.01357(5), the Attorney General's office may pursue the lawsuit on behalf of the victim at the victim's request and all damages awarded will go to the victim. An action under Fla. Stat. Ann. § 847.01357 (Exploited children's civil remedy), must be filed within 3 years "of: (a) The conclusion of a

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<sup>144</sup> According to Fla. Stat. Ann. § 796.09(2), "prostitution" has the same meaning as in Fla. Stat. Ann. § 796.07(1)(a) (Prohibiting prostitution, etc.; evidence; penalties; definitions), which states, "Prostitution' means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses." Pursuant to Fla. Stat. Ann. § 796.09(3), "[c]oercion" is defined as

[A]ny practice of domination, restraint, or inducement for the purpose of or with the reasonably foreseeable effect of causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution, and includes, but is not limited to:

- .....
- (o) Exploitation of human needs for food, shelter, safety, or affection.

<sup>145</sup> Fla. Stat. Ann. § 847.01357(4) states, "It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in any image of child pornography."

related criminal case; (b) The notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of pornographic images; or (c) In the case of a victim younger than 18, within 3 years after the person reaches the age of 18.” Fla. Stat. Ann. § 847.01357(2).

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)<sup>146</sup> provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim<sup>147</sup> for . . .” loss or damage caused or related to the trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution. . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Additionally, where a human trafficking victim is also a victim of a racketeering crime, the victim may seek injunctive relief. Fla. Stat. Ann. § 895.05(6) (Civil remedies) vests any aggrieved person with standing to seek “injunctive relief from threatened loss or damage in other civil cases,” under subsection (1) and grants the circuit court authority to enjoin a defendant’s racketeering violations without a “showing of special or irreparable damage.”

*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.*

Pursuant to Fla. Stat. Ann. § 775.15 (Time limitations; general time limitations; exceptions), prosecutions under Fla. Stat. Ann. § 787.06(3)(h) (Human trafficking),<sup>148</sup> a life felony involving a trafficking victim under 15 years of age, may be commenced at any time, but prosecutions under Fla. Stat. Ann. § 787.06(3)(g), a first degree felony involving a trafficking victim between 15 and 17 years of age must be commenced within 4 years after commission of the offense. Fla. Stat. Ann. § 775.15 (Time limitations; general time limitations; exceptions) allows for a criminal prosecution to be commenced as follows:

- (1) A prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time. If the death penalty is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.
- (2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:
  - (a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.
  - (b) A prosecution for any other felony must be commenced within 3 years after it is committed.
  - (c) A prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed.
  - (d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

. . . .

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<sup>146</sup> See discussion of relevant provisions *supra* Section 2.8.

<sup>147</sup> See *supra* note 51.

<sup>148</sup> See *supra* note 2.



(13)(a) If the victim of a violation of s. 794.011 [Sexual battery], . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], . . . or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties] is under the age of 18, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier. . . .

(b) If the offense is a first degree felony violation of s. 794.011 [Sexual battery] and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(c) If the offense is a violation of s. 794.011 [Sexual battery] and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2010.

(16)(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence . . . .”

For civil remedies pursued under Fla. Stat. Ann. § 847.01357 (Exploited children’s civil remedy), Fla. Stat. Ann. § 847.01357(2) provides,

Notwithstanding any other provisions of law, any action commenced under this section must be filed within 3 years after the later of:

- (a) The conclusion of a related criminal case;
- (b) The notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of pornographic images; or
- (c) In the case of a victim younger than 18, within 3 years after the person reaches the age of 18.

Fla. Stat. Ann. § 95.11(3)(o) (Limitations other than for the recovery of real property), states that there is a four year limitation on asserting “[a]n action for assault, battery, . . . false imprisonment, or any other intentional tort, except as provided in subsections (4), (5), and (7)” or “[a]ny action not specifically provided for in these statutes.” Specifically, subsection 7 establishes the tolling procedure for abuse based intentional torts, stating, “An action founded on alleged abuse, as defined in s. 39.01 [Definitions],<sup>149</sup> . . . or s. 984.03 [Definitions],<sup>150</sup> . . . may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.” Fla. Stat. Ann. § 95.11(7). However, for victims of Fla. Stat. Ann. § 794.011 (Sexual battery), Fla. Stat. Ann. § 95.11(9) states, “An action related to an act constituting a violation of s. 794.011 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.”

Fla. Stat. Ann. § 95.051 (When limitations tolled) provides circumstances when the statute of limitations may be tolled. For example, when the person entitled to sue is a minor or incapacitated and lacks the aid of the parent or guardian to sue, the statute is tolled for a maximum of seven years from the occurrence giving rise to the suit. Fla. Stat. Ann. § 95.051(i).

<sup>149</sup> See *supra* Section 5.5 for the definition of “abuse.”

<sup>150</sup> See *supra* Section 5.5 for the definition of “abuse.”

- 5.11.1 Recommendation: Amend Fla. Stat. Ann. § 775.15 (Time limitations; general time limitations; exceptions) to permit prosecution of offenses committed under Fla. Stat. Ann. § 787.06(3)(g) (Human trafficking) to be commenced at any time.

***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 audio-taping 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.*
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***Legal Analysis:***

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

Pursuant to Fla. Stat. Ann. § 787.06(5) (Human Trafficking),<sup>151</sup> “[t]he Criminal Justice Standards and Training Commission shall establish standards for basic and advanced training programs for law enforcement officers in the subjects of investigating and preventing human trafficking crimes.” Also, “[a]fter January 1, 2007, every basic skills course required for law enforcement officers to obtain initial certification must include training on human trafficking crime prevention and investigation.” Fla. Stat. Ann. § 787.06(5). In addition, pursuant to Fla. Stat. Ann. § 943.041 (Crimes against children criminal profiling program) the legislature created a program within the law enforcement department to “perform investigative, intelligence, research, and training activities related to crimes against children.”

Additionally, pursuant to Fla. Stat. Ann. § 409.1678(3),<sup>152</sup>

The local circuit administrator may, to the extent that funds are available, in conjunction with local law enforcement officials, contract with an appropriate not-for-profit agency having experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Circuits may work cooperatively to provide such training, and such training may be provided on a regional basis. The department shall assist circuits in obtaining any available funds for the purposes of conducting law enforcement training from the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice.

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

Under Fla. Stat. Ann. § 934.03(1)(a) (Interception and disclosure of wire, oral, or electronic communications prohibited) it is a crime to “[i]ntentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication,” unless the chapter provides an exception.

However, Fla. Stat. Ann. § 934.03(2)(c) states,

It is lawful under ss. 934.03–934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic

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<sup>151</sup> See *supra* note 2.

<sup>152</sup> See *supra* note 123.

communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.<sup>153</sup>

Under (2)(d), “It is lawful under ss. 934.03–934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.”

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

Fla. Stat. Ann. § 934.03(1) (Interception and disclosure of wire, oral or, electronic communications prohibited) prohibits wiretaps performed by private parties acting outside of a police investigation unless, pursuant to subsection (2)(d), both parties consent.

Exceptions are located in Fla. Stat. Ann. § 934.07(1) (Authorization for interception of wire, oral, or electronic communications).<sup>154</sup> Pursuant to Fla. Stat. Ann. § 934.07(1)(a), certain specified persons “may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with ss. 934.03–934.09 an order authorizing or approving the interception of, wire, oral, or electronic communications” by law enforcement for the purpose of investigating the commission of certain crimes, including “any violation of s. 787.06 [Human trafficking] . . . any violation of chapter 895 [Offenses concerning racketeering and illegal debts]; any violation of chapter 896 [Offenses related to financial transactions]; any violation of chapter 815 [Computer-related crimes]; any violation of chapter 847 [Obscenity]; any violation of s. 827.071 [Sexual performance by a child; penalties]; . . . or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes specifically enumerated in this paragraph.”

### 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.*

Under Fla. Stat. Ann. § 796.07(2) (Prohibiting prostitution, etc.; evidence; penalties; definitions), it is unlawful to, among other things, “offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act,” “[t]o solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation,” or “[t]o purchase the services of any person engaged in prostitution.” Fla. Stat. Ann.

§ 796.07(3)(b) states, “Notwithstanding any other provision of law, a police officer may testify as an offended party in an action regarding charges filed pursuant to this section.” Additionally, Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), states, “The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.” To the extent decoys use the Internet to investigate suspected offenders, use of a decoy is permissible in investigating many potential offenses under subsection (3), which criminalizes use of the following:

[A] computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to . . . [s]educe, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827.

Fla. Stat. Ann. § 847.0135(3)(a). Additionally, subsection (4) (Travelling to meet a minor) uses the phrase “another person believed by the person to be a child,” indicating that decoys can be used. Similarly, under Fla.

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<sup>153</sup> The Florida Supreme Court has held, however, that “insofar as [Fla. Stat. Ann. § 934.03] authorizes the warrantless interception of a private conversation *conducted in the home*, it is unconstitutional and unenforceable.” State v. Sarmiento, 397 So. 2d 643, 645 (Fla. 1981).

<sup>154</sup> See *supra* note 153.

Stat. Ann. § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) the offender need only transmit material to a person “known by the defendant to be a minor” meaning that “the defendant had actual knowledge or believed that the recipient of the communication was a minor.” Fla. Stat. Ann. § 847.0138(1)(a). A decoy may also be used to obtain a conviction under Fla. Stat. Ann. § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age).<sup>155</sup>

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

Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), criminalizes buying, selling, receiving, exchanging or disseminating a “minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purposes of facilitating . . . or soliciting sexual conduct of or with any minor . . . .” The statute specifies that an undercover law enforcement officer involved in the detection and investigation of an offense of this statute is not a defense to a charge under this law. Additionally, subsections (3) and (4) use the phrase “another person believed by the person to be a child,” indicating that decoys can be used.

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

Under Fla. Stat. Ann. § 39.0141 (Missing children; report required),

Whenever the whereabouts of a child involved with the department become unknown, the department, the community-based care provider, or the sheriff’s office providing investigative services for the department shall make reasonable efforts, as defined by rule, to locate the child. If, pursuant to criteria established by rule, the child is determined to be missing, the department, the community-based care provider, or the sheriff’s office shall file a report that the child is missing in accordance with s. 937.021 [Missing child and missing adult reports].

Fla. Stat. Ann. § 937.025(5) (Missing children; student records; reporting requirements; penalties) requires any “employee of the state or a local governmental agency, a person who is employed under a contract with the state or a local governmental agency, or an employee of a public or private school within the state” to “promptly report to the local law enforcement agency and the Department of Law Enforcement any information received or possessed that could assist in . . .” finding the missing child, determining the identity of the person who has the missing child, or ascertaining “whether a missing child is in danger of physical injury or death.” Fla. Stat. Ann. § 937.025(5).

Under Fla. Stat. Ann. § 937.021(1) (Missing child and missing adult reports) law enforcement agencies are directed to adopt policies and procedures to be used to promptly investigate missing children reports. Specifically, Fla. Stat. Ann. § 937.021(1) states,

(1) Law enforcement agencies in this state shall adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults. The policies must ensure that cases involving missing children and adults are investigated promptly using appropriate resources. The policies must include:

- (a) Requirements for accepting missing child and missing adult reports;
- (b) Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and

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<sup>155</sup> See *Hudson v. Florida*, 745 So. 2d 997 (Fla. Dist. Ct. App. 1999) (denying motion to dismiss charge of attempting to commit a lewd and lascivious act even though the victim was actually an adult police officer posing as a 14 year old boy).

(c) Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the Florida Crime Information Center and the National Crime Information Center. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

Pursuant to Fla. Stat. Ann. § 937.021(4)(a)–(b), once a missing child report has been filed, within two hours all on-duty police officers will be notified and the report will be transmitted to “the Florida Crime Information Center and the National Crime Information Center databases.”

Fla. Stat. Ann. § 937.022 (Missing Endangered Persons Information Clearinghouse) creates a central repository for information regarding missing endangered persons.

Under Fla. Stat. Ann. § 937.023(1) (Department of education to compile list of missing Florida school children; forms; notification) the Department of Education must identify and locate missing Florida children who are enrolled in the public school districts.<sup>156</sup> “Missing Florida school child” is defined as “a child 18 years of age or younger whose whereabouts are unknown.” Fla. Stat. Ann. § 937.023(1).

Florida also has several mechanisms in place to help find missing children. Pursuant to Fla. Stat. Ann. § 937.025(1),

[U]pon notification by the Department of Law Enforcement that a child is listed or reported as a missing child, the school in which the [missing] child is currently enrolled, or was previously enrolled, shall flag the student records in such a manner that whenever a copy of or information concerning the records of the missing child is requested, the person authorized to provide such copy or information is alerted to the fact that the child has been listed or reported as missing.

Furthermore, Fla. Stat. Ann. § 937.024 (Birth records of missing children; registrars’ duties) directs the Office of Vital Statistics to collect a list of missing children from law enforcement each month, distill from that information a list of those children born in Florida, and flag the birth certificates of missing children. If a copy of a flagged birth certificate is requested, a supervisor shall be notified immediately and information regarding the person requesting the birth certificate shall be collected. Fla. Stat. Ann. § 937.024.

Under Fla. Stat. Ann. § 847.002 (Child pornography prosecutions), any law enforcement officer who “recovers images or movies of child pornography” must provide the images or movies to and request information from the law enforcement agency representative with the Child Victim Identification Program. Additionally, subsection (3) states, “In every filed case involving an identified victim of child pornography . . . the prosecuting agency

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<sup>156</sup> Pursuant to Fla. Stat. Ann. § 937.023(1), the school must do the following:

- (a) Collect each month a list of missing Florida school children as provided by the Florida Crime Information Center. The list shall be designed to include such information as the department deems necessary for the identification of the missing school child.
- (b) Compile from the information collected pursuant to paragraph (a) a list of missing Florida school children, which list shall be distributed monthly to all public school districts admitting children to kindergarten through grade 12. The list shall include the names of all such missing children, together with such other information as the department deems necessary. Each school district shall distribute this information to the public schools in the district by whatever manner it deems appropriate.
- (c) Notify the appropriate local, state, or federal law enforcement authority as soon as any additional information is obtained or contact is made with respect to a missing Florida school child.

shall enter [certain] information into the Victims in Child Pornography Tracking Repeat Exploitation database maintained by the Office of the Attorney General.”

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