

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS MAINE

### 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.*

Maine has not enacted a law specifically criminalizing human trafficking; however, Me. Rev. Stat. Ann. tit. 5, § 4701 (Remedies for human trafficking) provides a civil cause of action to victims of a human trafficking offense. For this chapter, a “trafficked person” is defined as “a victim of a human trafficking offense,” and “human trafficking offense” is defined as,

kidnapping or criminal restraint under Title 17-A, section 301 or 302 when the crime involves restraining a person by destroying, concealing, removing, confiscating or possessing any actual or

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<sup>1</sup> Unless otherwise specified, all references to Maine statutes were taken from Maine Revised Statutes Annotated (LEXIS through Ch. 630 of the 2011 2nd Reg. Sess. of the 125th Leg.) 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.

purported passport or other immigration document or other actual or purported government identification document of the other person or using any scheme, plan or pattern intended to cause that person to believe that if the person does not perform certain labor or services, including prostitution, that the person or another person will suffer serious harm or restraint.

This definition identifies Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) and § 302 (Criminal restraint) as the operable statutes for prosecuting cases of domestic minor sex trafficking.

Me. Rev. Stat. Ann. tit. 17-A, § 302(1)(A) (Criminal restraint) specifically applies when the person restrained is a minor 16 years old or younger. Under Me. Rev. Stat. Ann. tit. 17-A, § 302(1), a person commits criminal restraint in the following circumstances:

A. Knowing the actor has no legal right to do so, the actor intentionally or knowingly takes, retains or entices another person who:

1) Is less than 14 years of age. Violation of this subparagraph is a Class D crime;

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3) Is either 14, 15 or 16 years of age from the custody of the other person's parent, guardian or other lawful custodian, with the intent to hold the other person permanently or for a prolonged period and the actor is at least 18 years of age. Violation of this subparagraph is a Class D crime; or

4) Is in fact less than 8 years of age. Violation of this subparagraph is a Class C crime; or

B. The actor:

1) Knowingly restrains another person. Violation of this subparagraph is a Class D crime; or

2) Knowingly restrains another person who is in fact less than 8 years of age. Violation of this subparagraph is a Class C crime.

For purposes of Me. Rev. Stat. Ann. tit. 17-A, § 302 and § 301 (Kidnapping), Me. Rev. Stat. tit. 17-A, § 301(2) states,

2. "Restrain" means to restrict substantially the movements of another person without the other person's consent or other lawful authority by:

A. Removing the other person from the other person's residence or place of business or from a school;

B. Moving the other person a substantial distance from the vicinity where the other person is found;

C. Confining the other person for a substantial period either in the place where the restriction commences or in a place to which the other person has been moved;

D. Destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document or other actual or purported government identification document of the other person; or

E. Using any scheme, plan or pattern intended to cause the other person to believe that if the person does not perform certain labor or services, including prostitution, that the person or another person will suffer serious harm or restraint.

Class D crimes are punishable by imprisonment up to 1 year in county jail and a possible fine not to exceed \$2,000.<sup>2</sup> Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D).<sup>3</sup> Class C crimes are punishable

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<sup>2</sup> For all classes of crimes discussed in this report, the court may impose a fine greater than the specified amount as long as it "does not exceed twice the pecuniary gain derived from the crime by the defendant." Me. Rev. Stat. Ann. tit. 17-A, § 1301(1-A)(F). Me. Rev. Stat. Ann. tit. 17-A, § 1301(2) defines "pecuniary gain" as,

by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(C), 1301(1-A)(C).

Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) makes it unlawful for a person to, among other things, “restrain[] another person with the intent to: . . . [f]acilitate the commission of another crime by any person or flight thereafter.”<sup>4</sup> Me. Rev. Stat. Ann. tit. 17-A, § 301(1)(A)(5). A conviction for kidnapping is punishable as a Class A crime by imprisonment up to 30 years and a possible fine not to exceed \$50,000, unless “the defendant voluntarily released the victim alive and not suffering from serious bodily injury, in a safe place prior to trial,” which would reduce the punishment to a Class B crime, which is punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 301(3), 1252(2)(A), (B), 1301(1-A)(A), (B).

- 1.1.1 Recommendation: Enact a stand-alone law that criminalizes sex trafficking of any minor under 18 without regard to force, fraud, or coercion (or any other similar requirement) used to commit the trafficking and that includes exploitation through prostitution, pornography, or sexual performance.<sup>5</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.*

Several laws make CSEC distinct crimes.

1. Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution) makes it illegal for a person to knowingly “[p]romote[] prostitution by compelling a person to enter into, engage in, or remain in prostitution,” or to “[p]romote[] prostitution of a person less than 18 years old.” Me. Rev. Stat. Ann. tit. 17-A, § 852(1)(B). “Compelling” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 852(2)6 as:

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the amount of money or the value of property at the time of the commission of the crime derived by the defendant from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed.

<sup>3</sup> Unless otherwise noted, the fines listed in this document reflect the fine structure for natural persons convicted of crimes pursuant to Me. Rev. Stat. tit. 17-A, § 1301(1-A).

<sup>4</sup> Pursuant to Me. Rev. Stat. tit. 17-A, § 301, kidnapping also occurs when

- A. The actor knowingly restrains another person with the intent to:
  - (1) Hold the other person for ransom or reward;
  - (2) Use the other person as a shield or hostage;
  - (3) Inflict bodily injury upon the other person or subject the other person to conduct defined as criminal in chapter 11;
  - (4) Terrorize the other person or a 3rd person;
  - . . . or
  - (6) Interfere with the performance of any governmental or political function; or
- B. The actor knowingly restrains another person:
  - (1) Under circumstances which in fact expose the other person to risk of serious bodily injury; or
  - (2) By secreting and holding the other person in a place where the other person is not likely to be found.

<sup>5</sup> Subsequent recommendations in this report that recommend to amend a law to refer any case of a commercial sex offense against a child to Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) or § 302 (Criminal restraint) are predicated upon the recommendations contained in 1.1 being previously or simultaneously implemented.

<sup>6</sup> Here and elsewhere in this report that Me. Rev. Stat. Ann. tit. 17-A, § 852 is quoted or cited, it has been updated to reflect the amendments added by the passage of Legislative Document 1731. L.D. 1731, 125th Leg. Assemb., Second Reg. Sess. (Me. 2012) (effective August 30, 2012).

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- C. Making material false statements, misstatements or omissions;
- D. Withholding, destroying or confiscating an actual or purported passport or other immigration document or other actual or purported government identification document with the intent to impair a person's freedom of movement;
- E. Requiring prostitution to be performed to retire, repay or service an actual or purported debt; and
- F. Using force or engaging in any scheme, plan or pattern to instill in a person a fear that, if the person does not engage or continue to engage in prostitution, the actor or another person will:
  - (1) Cause physical injury or death to a person;
  - (2) Cause damage to property, other than property of the actor
  - (3) Engage in other conduct constituting a Class A, B or C crime, kidnapping or criminal restraint;
  - (4) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;
  - (5) Expose a secret or publicize an asserted fact, regardless of veracity, tending to subject some person, except the actor, to hatred, contempt or ridicule;
  - (6) Testify or provide information or withhold testimony or information regarding another person's legal claim or defense;
  - (7) Use a position as a public servant to perform some act related to that person's official duties or fail to refuse to perform an official duty in a manner that adversely affect some other person; or
  - (8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.

“Promotes prostitution” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 851(2) as

- A. Causing or aiding another to commit or engage in prostitution, other than as a patron;
- B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution includes, but is not limited to, an offer, made in a public place, to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person making the offer or a 3rd person;
- C. Providing persons for purposes of prostitution;
- D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution;
- E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business;
- F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or
- G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby the person participates or the person is to participate in the proceeds of prostitution.

A conviction of aggravated promotion of prostitution is punishable as a Class B crime by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1252(2)(B), 1301(1-A)(B).

2. Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) makes it unlawful if a person “in return for another's prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age.” A conviction under Me. Rev. Stat. Ann. Tit. 17-A, § 855 is punishable as a Class D crime by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D). However, when a defendant is aware that the minor is under

the age of 18 it is punishable as a Class C crime by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(2)(C), 1301(1-A)(C).

3. Me. Rev. Stat. Ann. tit. 17A, § 554(1)(A) (Endangering the welfare of a child) states, “1. A person is guilty of endangering the welfare of a child if that person: A. Knowingly permits a child under 16 years of age to enter or remain in a house of prostitution.” Pursuant to subsection (3), this crime is a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 554(3), 1252(1)(A), (2)(D), 1301(1-A)(D).
4. Me. Rev. Stat. Ann. tit. 17-A, § 282(1) (Sexual exploitation of minor) states that a person commits a crime if he does any of the following:

- A. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, not that person’s spouse, who is in fact a minor, to engage in sexually explicit conduct. Violation of this paragraph is a Class B crime;
- B. The person violates paragraph A and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime;
- C. The person violates paragraph A and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime;
- D. Being a parent, legal guardian or other person having care or custody of another person who is in fact a minor, that person knowingly or intentionally permits that minor to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed. Violation of this paragraph is a Class B crime;
- E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime; or
- F. The person violates paragraph D and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.

Class B crimes are punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000, while Class A crimes are punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(A), (B), 1301(1-A)(A), (B).

5. Me. Rev. Stat. Ann. tit. 17-A, § 259-A7 (Solicitation of a child to commit a prohibited act) criminalizes the solicitation, in any manner, of minors under the age of 14 by individuals over the age of 16. Me. Rev. Stat. Ann. tit. 17-A, § 259-A states:

A person is guilty of soliciting a child to commit a prohibited act if:

- A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:
  - 1) Is at least 16 years of age;
  - 2) Know or believes that the other person is less than 14 years of age; and
  - 3) Is at least 3 years old than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or

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<sup>7</sup> Here and elsewhere in this report that Me. Rev. Stat. Ann. tit. 17-A, § 259-A is quoted or cited, it has been updated to reflect the amendments added by the passage of Legislative Document 1673. L.D. 1673, 125th Leg. Assemb., Second Reg. Sess. (Me. 2012) (effective April 2, 2012).

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits, directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Knows or believes that the other person is less than 12 years of age; and
- 3) Is at least 3 years older than the age expressed by the other person.

Violation of this subsection is a Class C crime.

“Prohibited act” is defined to include “sexual exploitation of a minor pursuant to section 282.” Me. Rev. Stat. Ann. tit. 17-A, § 259-A(2)(A),(B),(C).

Class D crimes are punishable by imprisonment up to 1 year in county jail and a possible fine not to exceed \$2,000.<sup>8</sup> Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D).<sup>9</sup> Class C crimes are punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(C), 1301(1-A)(C).

Certain sexual offenses also may apply in cases involving the commercial sexual exploitation of a child. These include the following:

1. Me. Rev. Stat. Ann. tit. 17-A, § 254(1)(A) (Sexual abuse of minors) provides that a Class D crime occurs when a person “engages in a sexual act<sup>10</sup> with another person, not the actor’s spouse, who is either 14 or 15 years of age and the actor is at least 5 years older than the other person.” A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D). If the offender is 10 or more years older than the victim, then it is a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 254(1)(A-2), 1252(2)(C), 1301(1-A)(C).
2. A defendant can be convicted under Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault) for engaging in a “sexual act”<sup>11</sup> with a minor under 14 who is not his or her spouse. Me. Rev. Stat. Ann. tit. 17-A, § 253(1)(B). Gross sexual conduct is a Class A crime, punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 253(1)(B), 1252(2)(A), 1301(1-A)(A).

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<sup>8</sup> See *supra* note 2.

<sup>9</sup> Unless otherwise noted, the fines listed in this document reflect the fine structure for natural persons convicted of crimes pursuant to Me. Rev. Stat. tit. 17-A, § 1301(1-A).

<sup>10</sup> Me. Rev. Stat. Ann. tit 17-A, § 251(1)(C) defines “sexual act” for purposes of Chapter 11 (Sexual assaults), which includes Me. Rev. Stat. Ann. tit. 17-A, § 254 (Sexual abuse of minors), § 253 (Gross sexual assault), and § 255-A (Unlawful sexual contact), as the following:

- 1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;
- 2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or
- 3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration.

<sup>11</sup> See *supra* note 10.

3. Me. Rev. Stat. Ann. tit. 17-A, § 255-A (Unlawful sexual contact) makes it illegal if a person “intentionally subjects another person to any sexual contact”<sup>12</sup> when, among other circumstances, the offender is at least 3 years older than the victim who is under the age of 14. Me. Rev. Stat. Ann. tit. 17-A, § 255-A(1)(E). When the victim is 12-14, a violation is a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000; however, when the victim is younger than 12 the violation increases to a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 255-A(1)(E), (E-1), 1252(2)(B), (C), 1301(1-A)(B), (C). The violation increases further when the sexual contact includes penetration. Defendants who engage in sexual contact that includes penetration with a victim 12-14 years old will be guilty of a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000; however, when the victim is under 12 and the act includes penetration, defendants will face a Class A crime punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 255-A(1)(F), (F-1), 1252(2)(A), (B), 1301(1-A)(A), (B).
4. Under Me. Rev. Stat. Ann. tit. 17-A, § 260(1)(C) (Unlawful sexual touching), a person who is at least 5 years older than his victim and intentionally subjects a child under 14 (who is not his spouse) to sexual touching<sup>13</sup> will be guilty of a Class D crime. When found guilty of a Class D crime, defendants face up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D).
5. Under Me. Rev. Stat. Ann. tit. 17-A, § 256(1)(A) (Visual sexual aggression against child),
  1. A person is guilty of visual sexual aggression against a child if:
    - A. For the purpose of arousing or gratifying sexual desire or for the purpose of causing affront or alarm, the actor, having in fact attained 18 years of age, exposes the actor’s genitals to another person or causes the other person to expose that person’s genitals to the actor and the other person, not the actor’s spouse, has not in fact attained 14 years of age. Violation of this paragraph is a Class D crime.

Class D crimes are punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann., tit. 17-A, §§ 1252(2)(D), 1301(1-A)(D). However, when the victim is less than 12 years old, defendants will be guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 256(1)(B), 1252(2)(C), 1301(1-A)(C).

*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.*

Maine’s CSEC laws and prostitution law do not identify commercially sexually exploited minors as trafficking victims. Neither do these laws refer to the operable criminal statutes for human trafficking, Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) and § 302 (Criminal restraint), to clarify that prostituted minors and CSEC victims are victims of trafficking crimes.

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<sup>12</sup> Me. Rev. Stat. Ann. tit 17-A, § 251(1)(D) (Definitions and general provisions) defines “sexual contact” as “any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.”

<sup>13</sup> “Sexual touching” is defined as “any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.” Me. Rev. Stat. Ann. tit. 17-A, § 251(G).

1.3.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution), tit. 17-A, § 855 (Patronizing prostitution of minor), tit. 17-A, § 282 (Sexual exploitation of a minor), and tit. 17-A, § 853-A (Engaging in prostitution) when the person engaged in prostitution is a minor, to identify commercially sexually exploited minors as victims of trafficking.

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.*

Maine has not enacted a racketeering statute.

1.4.1 Recommendation: Enact a racketeering statute that includes CSEC offenses under Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution), tit. 17-A, § 855 (Patronizing prostitution of minor), tit. 17A, § 554(1)(A) (Endangering the welfare of a child), tit. 17-A, § 282(1) (Sexual exploitation of minor) and tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act), and the operable criminal statutes for human trafficking, tit. 17-A, § 301 (Kidnapping) and § 302 (Criminal restraint)—as predicate crimes so the racketeering statute may be used to prosecute trafficking enterprises.

**Legal Components:**

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a victim of domestic minor sex trafficking.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*
- 2.3 *Solicitation of prostitution laws differentiate between buying sex acts with an adult and buying sex acts with a minor under 18.*
- 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
- 2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*
- 2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*
- 2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*
- 2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*
- 2.9 *Buying and possessing child pornography carries penalties as high as similar federal offenses.*
- 2.10 *Convicted buyers of commercial sex acts with minors and child pornography are required to register as sex offenders.*

**Legal Analysis:**

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

The plain language of Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint) and § 301 (Kidnapping) does not appear to apply to buyers of commercial sex with minors.<sup>14</sup>

- 2.1.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint) and § 301 (Kidnapping) to include language that reaches the buyers of commercial sex acts with minors, or enact a standalone human trafficking provision that reaches 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.*

Buying sex with a minor is illegal under Me. Rev. Stat. Ann. tit. 17-A, § 855(1)(A) (Patronizing prostitution of minor), which states that it is illegal when a person “in return for another’s prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age.” This offense is a Class D crime except that subsection (1)(B) enhances the penalty to a Class C crime when the buyer “knows that the person whose prostitution is sought has not yet attained 18 years of age.” A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000, while a Class C crime is punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D).

<sup>14</sup> See discussion of relevant provisions *supra* Section 1.1.

Several sexual offenses could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the purchase of commercial sex acts with a minor.

- 2.2.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) and the applicable sexual offense laws to refer cases of commercial sexual exploitation to Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) or § 302 (Criminal restraint) for prosecution.

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

Solicitation laws make buying sex with a minor a separate crime from that of buying sex with an adult.

Me. Rev. Stat. Ann. tit 17-A, § 853-B(1)(A) (Engaging a prostitute) makes it a Class E crime if a person “engages a prostitute” who is an adult. “Engages a prostitute” is defined for the purpose of this statute in Me. Rev. Stat. Ann. tit. 17-A, § 851(1-A) as “providing or agreeing to provide, either to the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return for a sexual act or sexual contact.” Class E crimes are punishable by up to 6 months in county jail and a possible fine not to exceed \$1,000.<sup>15</sup> Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(E), 1301(1-A)(E).

In contrast, under Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor), the buyer will be guilty of, at a minimum, a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D). When the buyer “knows that the person whose prostitution is sought has not yet attained 18 years of age,” the violation increases to a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(2)(C), 1301(1-A)(C).

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

A conviction under Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) is punishable as a Class D crime by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D). However, when the buyer “knows that the person whose prostitution is sought has not yet attained 18 years of age,” the crime is punishable as a Class C crime by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(2)(C), 1301(1-A)(C).

Buyers face similar or greater penalties under Maine’s sexual offense laws. A violation of Me. Rev. Stat. Ann. tit. 17-A, § 254(1)(A) (Sexual abuse of minors) occurs when a buyer engages in a sexual act<sup>16</sup> with a 14 or 15 year old and is at least 5 years older than the minor. A conviction under this offense is punishable as a Class D crime by up to 1 year in county jail and a possible fine not to exceed \$2,000, unless the offender is over 10 years older than the minor, in which case it is punishable as a Class C crime by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 254(1)(A), (A-2), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D).

When the child is under 14, a buyer who engages in a sexual act with a child can be convicted of violating Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault), punishable as a Class A crime by imprisonment up to 30

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<sup>15</sup> If the defendant has been convicted of Me. Rev. Stat. Ann. tit. 17-A, § 853-B within the prior 2 years, the violation increases to a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 853-B(1)(B), 1252(1)(A), (2)(D), 1301(1-A)(D).

<sup>16</sup> See *supra* note 10.

years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 253(1)(B), 1252(2)(A), 1301(1-A)(A). Similarly, a buyer who has sexual contact with a child between 12 and 14 years of age may be convicted under Me. Rev. Stat. Ann. tit. 17-A, § 255-A (Unlawful sexual contact), punishable as a Class C crime by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 255-A(1)(E), 1252(2)(C), 1301(1-A)(C). When the victim is less than 12 years old, unlawful sexual contact is punishable as a Class B crime by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 255-A(1)(E-1), 1252(2)(B), 1301(1-A)(B). In addition, the crime is punishable as a Class B crime when buyers who engage in sexual contact that includes penetration with a victim 12-14 years old, and, when the victim is under 12, it is punishable as a Class A crime by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 255-A(1)(F-1), 1252(2)(A), 1301(1-A)(A).

A conviction under Me. Rev. Stat. Ann. tit. 17-A, § 260(1)(C) (Unlawful sexual touching)<sup>17</sup> is punishable as a Class D crime by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D). Lastly, a conviction under Me. Rev. Stat. Ann. tit. 17-A, § 256(1)(A) (Visual sexual aggression against child) is punishable as a Class D crime by up to 1 year in county jail and a possible fine not to exceed \$2,000, but where the victim is less than 12 years old, the crime is a Class C punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A §§ 256(1)(A)-(B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>18</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>19</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>20</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>21</sup>

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<sup>17</sup> See *supra* note 13.

<sup>18</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>19</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as,

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

<sup>20</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>21</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both.); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

- 2.4.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) to raise penalties to align with 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.*

Maine does not have a law that criminalizes use of the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor. Although broad enough to potentially apply to use of the Internet to entice or solicit any sexual act from a minor under the age of 14, including solicitation for the purpose of committing sexual exploitation of a minor, Me. Rev. Stat. Ann. tit. 17-A, § 282(1) (Sexual exploitation of minor) and § 259-A (Solicitation of a child to commit a prohibited act) do not specify use of the Internet to accomplish these crimes as a specific criminal action. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 259-A,<sup>22</sup>

A person is guilty of soliciting a child to commit a prohibited act if:

A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Know or believes that the other person is less than 14 years of age; and
- 3) Is at least 3 years old than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits, directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Knows or believes that the other person is less than 12 years of age; and
- 3) Is at least 3 years older than the age expressed by the other person.

Violation of this subsection is a Class C crime.

“Prohibited act” means a sexual act, sexual contact or sexual exploitation of a minor pursuant to section 282. Me. Rev. Stat. Ann. tit. 17-A, § 259-A(2)(A),(B),(C).

Class C crimes are punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(C), 1301(1-A)(C). A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D). If the victim is under 12, the buyer is guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 259-A(1)(B) 1252(2)(C), 1301(1-A)(C). In addition, pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(7-A) (Subject property), buyers may be ordered to forfeit all computers and computer equipment used in connection with a violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-A.

- 2.5.1 Recommendation: Enact a separate law that criminalizes the use of the Internet to lure, entice, recruit or purchase commercial sex acts with a minor.

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<sup>22</sup> Legislative Document 1673 enacted during the Second Regular Session of the 125th Legislative Assembly repealed Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of child by computer to commit a prohibited act) which expressly prohibited use of “a computer knowingly to solicit, entice, persuade or compel another person” under the age of 14 with “the intent to engage in any one of the following prohibited acts with the other person: (1) A sexual act; (2) Sexual contact; or (3) Sexual exploitation of a minor pursuant to section 282.” L.D. 1673 reenacted this provision as Me. Rev. Stat. Ann. tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act), however, as re-enacted, this offense no longer contains an express reference to solicitation of a minor through use of a computer or the Internet. *See supra* note 7.

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

Buyers of sex with minors can be convicted of Me. Rev. Stat. Ann. tit. 17-A, § 855(1)(A) (Patronizing prostitution of minor) without regard to whether they knew that the child was under 18 years old. Subsection (1)(B), however, establishes that knowledge of age results in an enhanced crime classification. Therefore, a defense of age mistake could be asserted to avoid the enhanced crime classification, but not ultimate liability.

Most of the sexual offense laws that apply to buyers, including Me. Rev. Stat. Ann. tit. 17-A, § 253(1) (Gross sexual assault), § 255-A (Unlawful sexual contact), § 256 (Visual sexual aggression against child), § 258 (Sexual misconduct with a child under 14 years of age), and § 260 (Unlawful sexual touching) do not appear to make available a mistake of age defense, as they all depend on whether the victim “has not in fact attained” or “is in fact less than” the applicable age. On the other hand, Me. Rev. Stat. Ann. tit. 17-A, § 254(2) (Sexual abuse of minors) makes a mistake of age defense available for violations of subsection (1)(A)–(A-2) by stating, “It is a defense to a prosecution . . . that the actor reasonably believed the other person is at least 16 years of age.”

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

Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) applies the same penalty for all offenders against any minor under the age of 18. Patronizing prostitution of a minor is a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000, or a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000 if the defendant “knows that the person whose prostitution is sought has not yet attained 18 years of age.” Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D).

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

Buyers convicted of sexual offense crimes may be required to pay fines or make restitution to the victim.

Under Maine’s criminal laws, buyers of sex with minors may be required to pay fines between \$2,000 and \$50,000. A buyer convicted of Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) may be required to pay a fine up to \$2,000 or, if the buyer knows the victim is under 18, the fine may be increased to \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 855(1)(A), (B), 1301(1-A)(D), (C). Sexual offenses carry possible fines of \$2,000 to \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1301(1-A)(A), (D), 254(1)(A), 253(1)(B)-(C), 255-A(1)(F), (F-1).

While it may not be applicable in all cases of buyers, some buyers may fall under Maine’s discretionary restitution provisions. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss. In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The present and future financial capacity of the offender to pay restitution.

Me. Rev. Stat. Ann. tit. 17-A, § 1322(3) states,

“Economic loss” includes economic detriment consisting of environmental clean-up expense, property loss, allowable expense,<sup>23</sup> work loss, replacement services loss and, if injury causes death, dependent’s economic loss and dependent’s replacement services loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment. “Economic loss” includes expenses of an emergency response by any public agency and critical investigation expenses.

However, Me. Rev. Stat. Ann. tit. 17-A, § 1325(2) prohibits the award of restitution, among others,

- B. To a victim who is an accomplice of the offender;
  - C. To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of the collateral compensation may be authorized; and
  - D. When the amount and method of payment of monetary restitution or the performance of service restitution creates an excessive financial hardship on the offender or dependent of the offender. In making this determination, all relevant factors must be considered . . .
- . . . .

If buyers of sex with minors are found guilty of Me. Rev. Stat. Ann. tit. 17-A, § 284 (Possession of sexually explicit material), a prosecutor may request that the court order forfeiture “to the State of any equipment, including computers, that may have facilitated the commission of the offense” if the State can prove “by a preponderance of the evidence that the equipment was used to facilitate the commission of a violation.” Me. Rev. Stat. Ann. tit. 17-A, § 285(1), (3), (4). In addition, any child pornography in the possession of a buyer “that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.” Me. Rev. Stat. Ann. tit. 17-A, § 284(4). Also, pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(7-A)<sup>24</sup> (Subject property), buyers may be ordered to forfeit all computers and computer equipment used in connection with a violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act).

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

Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A) (Possession of sexually explicit material),

- 1. A person is guilty of possession of sexually explicit material if that person:
  - A. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material

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<sup>23</sup> Me. Rev. Stat. Ann. tit. 17-A, § 1322(3)(A) defines “allowable expense” as,

reasonable charges incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, counseling services and other remedial treatment and care, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. The term includes reasonable and customary charges incurred for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless other accommodations are medically required.

<sup>24</sup> Here and elsewhere in this report that Me. Rev. Stat. Ann. tit. 17-A, § 5821 is quoted or cited, it has been updated to reflect the amendments added by the passage of Legislative Document 1673. L.D. 1673, 125th Leg. Assemb., Second Reg. Sess. (Me. 2012) (effective April 2, 2012).

that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

- 1) The other person has not in fact attained 16 years of age; or
- 2) The person knows or has reason to know that the other person has not attained 16 years of age.

....

Possession of sexually explicit material is a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000, but, if the defendant has a prior conviction for “engaging in substantially similar conduct,” the classification is increased to a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Stat. Rev. Ann. tit. 17-A, §§ 284(1)(A), (B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D). In addition, if the sexually exploited minor is under 12, or the defendant believes the person to be under 12, the defendant will be guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000, or a Class B crime if the defendant has a prior conviction, punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(1)(C), (D), 1252(2)(B), (C), 1301(1-A)(B), (C).

In comparison, a federal conviction for possession of child pornography<sup>25</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>26</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>27</sup>

- 2.9.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A) (Possession of sexually explicit material) to raise the age of protected minors to 18 and increase the penalties.

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

Maine’s Sex Offender Registration and Notification Act of 1999, Me. Rev. Stat Ann. title 34-A, requires buyers sentenced for sex offenses and sexually violent offenses to register as sex offenders, unless they fall under the exceptions in Me. Rev. Stat. Ann. tit. 34-A, § 11202-A.<sup>28</sup> Me. Rev. Stat. Ann. tit. 34-A, § 11202. “Sex

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<sup>25</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>26</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>27</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>28</sup> Me. Rev. Stat. Ann. tit. 34-A, § 11202-A(1) (Exceptions) states,

offenses” is defined as “a conviction for one of the following offenses or for an attempt or solicitation of one of the following offenses if the victim was less than 18 years of age at the time of the criminal conduct.” Me. Rev. Stat. Ann. tit. 34-A, § 11203(6). The listed offenses include Me. Rev. Stat. Ann. tit. 17-A, § 255-A (Unlawful sexual contact) (certain provisions), § 256 (Visual sexual aggression against child), § 258 (Sexual misconduct with a child under 14 years of age), § 259 (Solicitation of a child to commit a prohibited act),<sup>29</sup> § 284 (Possession of sexually explicit material), and § 855 (Patronizing prostitution of minor). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6)(B). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6-A) further labels the following offenses as qualifying as a “sex offense”: Me. Rev. Stat. Ann. tit. 17-A, § 253(2)(J)–(L) (Gross sexual assault), § 255-A(1)(C), (G), (Q), (R), (R-1), (R-2), (W), and (X) (Unlawful sexual conduct). “Sexually violent offense” is defined as including, “A conviction for one of the offenses or for an attempt to commit” certain offenses, including Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault) and certain provisions of § 255-A (Unlawful sexual contact). Me. Rev. Stat. Ann. tit. 34-A, § 11203 (7)(A). In addition, Me. Rev. Stat. Ann. tit. 34-A, § 11203(6-B) provides,

For persons convicted and sentenced on or after October 1, 2012, “sex offense” means, in addition to the offenses listed in subsections 6 and 6-A:

- A. A conviction for an offense under Title 17-A, section 259-A or for an attempt or conspiracy to commit an offense under Title 17-A, section 259-A;
- B. A violation in another jurisdiction that includes the essential elements of an offense listed under Title 17-A, section 259-A; or
- C. A conviction for a military, tribal or federal offense requiring registration pursuant to:
  - (1) The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, also known as the Jacob Wetterling Act, Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, as amended; or
  - (2) The Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248.

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1. EXCEPTION. Notwithstanding section 11202, a person is not required to register under this chapter if that person submits to the bureau, in a form to be determined by the bureau, documentation to establish the following:

- . . . .
- B. The person’s convictions do not include more than one Class A sex offense or sexually violent offense or more than one conviction in another jurisdiction for an offense that contains the essential elements of a Class A sex offense or sexually violent offense, whether or not the convictions occurred on the same date;
- C. At the time of the offense, the person had not been previously sentenced in this State as an adult or as a juvenile sentenced as an adult for a sex offense or a sexually violent offense;
- D. At the time of the offense, the person had not been previously sentenced in another jurisdiction as an adult or as a juvenile sentenced as an adult for an offense that contains the essential elements of a sex offense or a sexually violent offense;
- E. Subsequent to the conviction for the sex offense or sexually violent offense, the person has not been convicted of a crime under Title 17 or Title 17-A in this State that is punishable by imprisonment for a term of one year or more; and
- F. Subsequent to the conviction for the sex offense or sexually violent offense, the person has not been convicted under the laws of any other jurisdiction of a crime that is punishable by a term of imprisonment exceeding one year. This paragraph does not include a crime under the laws of another jurisdiction that is classified by the laws of that jurisdiction as a misdemeanor and is punishable by a term of imprisonment of 2 years or less.

<sup>29</sup> Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of child by computer to commit a prohibited act) was repealed by Legislative Document 1673 during the Second Regular Session of the 125th Maine Legislature (2012).

**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.

Traffickers convicted under Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint) and § 301 (Kidnapping) face imprisonment and may be required to pay fines. Criminal restraint is a Class D crime punishable by up to 1 year in county jail and a fine not to exceed \$2,000, unless the person restrained is younger than 8 years old, which makes it a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 302(A), (B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D). Kidnapping is a Class A crime punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000, unless the defendant “voluntarily release[s] the victim alive and not suffering from serious bodily injury, in a safe place prior to trial,” which will reduce the violation to a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 301(3), 1252(2)(A), (B), 1301(1-A)(A), (B).

Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution) could also apply to traffickers.<sup>30</sup> A violation of Me. Rev. Stat. Ann. tit. 17-A, § 852 is a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1252(2)(B), 1301(1-A)(B). A trafficker convicted under Me. Rev. Stat. Ann. tit. 17-A, § 259-A (Solicitation of a child to commit a prohibited act) will be guilty of a Class D crime punishable by Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000 if the minor is, or is believed to be, under 14, or a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000 if the minor is, or is believed to be, under 12. Me. Rev. Stat. Ann. tit. 17-A, §§ 259A(A), (B), 1252(1)(A), (2)(C), (D), 1301(1-A)(C), (D).

Me. Rev. Stat. Ann. tit. 17A, § 554(1)(A) (Endangering the welfare of a child) states, “1. A person is guilty of endangering the welfare of a child if that person: A. Knowingly permits a child under 16 years of age to enter or remain in a house of prostitution.” Pursuant to subsection (3), this crime is a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 554(3), 1252(1)(A), (2)(D), 1301(1-A)(D).

<sup>30</sup> See *supra* Section 1.2 for definition of “promotes prostitution” and “compelling.” See *supra* note 6.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>31</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>32</sup> against a minor.

- 3.1.1 Recommendation: Enact a standalone human trafficking statute that specifically criminalizes sex trafficking of a minor or raise the penalties for Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint) in cases of commercial sexual exploitation of a minor and raise the age of a minor to 18 to parallel the federal human trafficking law and provide consistent penalties for offenders of domestic minor sex trafficking.

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

A trafficker who “[k]nowing or intending that the conduct will be photographed . . . intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, not that person’s spouse, who is in fact a minor, to engage in sexually explicit conduct” will be guilty of sexual exploitation of a minor. Me. Rev. Stat. Ann. tit. 17-A, § 282(1)(A). A violation Me. Rev. Stat. Ann. tit. 17-A, § 282 (Sexual exploitation of a minor) is a Class B crime, except in situations where the trafficker has a prior conviction “for engaging in substantially similar conduct” or where the victim is less than 12 years old, the violation increases to a Class A crime. Me. Rev. Stat. Ann. tit. 17-A, § 282(1)(B), (C).

In addition, a parent-trafficker “or other person having care or custody” of a child who permits the child to engage in “sexually explicit conduct, knowing or intending that the conduct will be photographed” will be guilty of a Class B crime punishable by an imprisonment term of 5-10 years, with a mandatory minimum of 5 years, and a possible fine not to exceed \$20,000, which can increase to a Class A crime punishable by an imprisonment term of 10-30 years, with a mandatory minimum of 10 years, and a fine not to exceed \$50,000 if the defendant has a prior conviction for “substantially similar conduct” or if the child is under 12. Me. Rev. Stat. Ann. tit. 17-A, §§ 282(1)(D), (F), (2), 1252(2)(A), (B), 1301(1-A)(A), (B).

Additionally, a trafficker may be convicted under Me. Rev. Stat. Ann. tit. 17-A, § 283(1)(A) (Dissemination of sexually explicit material) if he

intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any minor who the person knows or has reason to know is a minor engaging in sexually explicit conduct.

A violation is a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000, except if the trafficker has a prior conviction “for engaging in substantially similar conduct” or if the victim is less than 12 years old, the violation increases to a Class B crime punishable by imprisonment up to 10 years and a fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 283(1)(A)-(C), 1252(2)(B), (C), 1301(1-A)(B), (C). In addition, if the defendant both has a prior conviction for “substantially similar conduct” and the child is under 12, the violation increases to a Class A crime punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 283(1)(D), 1252(2)(A), 1301(1-A)(A).

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<sup>31</sup> See *supra* note 18.

<sup>32</sup> See *supra* note 19.

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>33</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>34</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>35</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>36</sup>

3.3 *Using the Internet to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*

Although potentially broad enough to apply to use of the Internet to entice or solicit any sexual act from a minor under the age of 14, including solicitation for the purpose of committing sexual exploitation of a minor, Me. Rev. Stat. Ann. tit. 17-A, § 282(1) (Sexual exploitation of minor) and § 259-A<sup>37</sup> (Solicitation of a child to commit a prohibited act) do not specify use of the Internet. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 259-A,

A person is guilty of soliciting a child to commit a prohibited act if:

A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Know or believes that the other person is less than 14 years of age; and
- 3) Is at least 3 years old than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits, directly or indirectly that person by any means to engage in a prohibited act and the actor:

- 1) Is at least 16 years of age;
- 2) Knows or believes that the other person is less than 12 years of age; and
- 3) Is at least 3 years older than the age expressed by the other person.

Violation of this subsection is a Class C crime.

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<sup>33</sup> See *supra* note 19.

<sup>34</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>35</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>36</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>37</sup> See *supra* note 22, note 7.

A Class D crime is punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(1)(A), (2)(D), 1301(1-A)(D). If the victim is under 12, the trafficker is guilty of a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 259-A(1)(B), 1252(2)(C), 1301(1-A)(C). In addition, pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(7-A) (Subject property), traffickers may be ordered to forfeit all computers and computer equipment used in connection with a violation of Me. Rev. Stat. Ann. tit. 17-A, § 259-A.

3.3.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of a child to commit a prohibited act) to raise the applicable age from 12 to 18 to protect all minors.

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

Traffickers convicted of offenses related to their involvement in domestic minor sex trafficking face a number of financial penalties, including fines, restitution, and forfeiture.

As violators of Class A through Class D crimes, traffickers convicted of Me. Rev. Stat. Ann. tit. 17-A, § 302(B) (Criminal restraint), § 301 (Kidnapping), § 852 (Aggravated promotion of prostitution), § 282 (Sexual exploitation of a minor), or § 259-A (Solicitation of a child to commit a prohibited act) may be required to pay fines ranging from \$2,000-\$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 302(A), 301(3), 852(3), 282, 259-A, 1301(1-A)(A)-(D).

Additionally, a trafficker convicted of any crime under Maine law can be ordered to make restitution to a victim at the court's discretion. Me. Rev. Stat. Ann. tit. 17-A, §§ 1152(2-A), 1324(1). Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss.<sup>38</sup> In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The present and future financial capacity of the offender to pay restitution.

Restitution will not be granted to the following: “A. To a victim without that victim’s consent; B. To a victim who is an accomplice of the offender; C. To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of the collateral compensation may be authorized; and D. When the amount and method of payment of monetary restitution or the performance of service restitution creates an excessive financial hardship on the offender or dependent of the offender” pursuant to the factors set out in the statute. Me. Rev. Stat. Ann. tit. 17-A, § 1325(2).

Several civil, discretionary asset forfeiture<sup>39</sup> provisions also apply to traffickers. Pursuant to Me. Rev. Stat. Ann. tit. 15, § 5821(9) (Subject property), “All assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C [Remedies for human trafficking]” are subject to forfeiture. These assets may be seized upon process or without process where the seizure is incident to a lawful arrest, a search under a valid search warrant or inspection under a valid inspection warrant, where the property has been the subject of a prior

<sup>38</sup> See *supra* Section 2.8 for definition of “economic loss.”

<sup>39</sup> For more information on asset forfeiture and forfeiture procedure, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>

judgment in favor of the state, or where there is probable cause to believe that the property is dangerous or has been used or intended to be used in violation of criminal law. Me. Rev. Stat. §15-5822(6). The property is then deposited in the General Fund. Me. Rev. Stat. §15-5822(4).

In addition, if traffickers are convicted of Me. Rev. Stat. Ann. tit. 17-A, § 282 (Sexual exploitation of minor) or § 283 (Dissemination of sexually explicit material), they shall be subject to mandatory, criminal forfeiture. A prosecutor may request that the court order the forfeiture of “any equipment, including computers, that may have facilitated the commission of the offense,” pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 285(1) (Forfeiture of equipment used to facilitate violations). If a preponderance of the evidence shows that the equipment “was used to facilitate the commission of a violation” of Me. Rev. Stat. Ann. tit. 17-A, § 282 or § 283, the court shall order that the equipment be forfeited to the state and may provide for “the disposition or use of the equipment by any state, county or municipal law enforcement agency that made a substantial contribution to the investigation or prosecution of the case. Any equipment forfeited that is not transferred to an investigating or prosecuting agency must be sold and the proceeds deposited in the General Fund.” Me. Rev. Stat. Ann. tit. 17-A, § 285(4). In addition, any child pornography “that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.” Me. Rev. Stat. Ann. tit. 17-A, § 284(4).

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

Maine’s Sex Offender Registration and Notification Act of 1999, Me. Rev. Stat. Ann. title 34-A, requires traffickers sentenced for sex offenses and sexually violent offenses to register as sex offenders, unless they fall under the exceptions in Me. Rev. Stat. Ann. tit. 34-A, § 11202-A.<sup>40</sup> Traffickers convicted of Me. Rev. Stat. Ann. tit. 17-A, § 302(B) (Criminal restraint) are not required to register as sex offenders pursuant to Me. Rev. Stat. Ann. tit. 34-A, § 11202(1) because the crime is not included within the definition of either “sex offense” or “sexually violent offense.” Me. Rev. Stat. Ann. tit. 34-A, § 11203(6)(B), (7)(A). “Sex offenses” is defined as “a conviction for one of the following offenses or for an attempt or solicitation of one of the following offenses if the victim was less than 18 years of age at the time of the criminal conduct.” The listed offenses include Me. Rev. Stat. Ann. tit. 17-A, § 255-A (Unlawful sexual contact) (certain provisions), § 256 (Visual sexual aggression against child), § 258 (Sexual misconduct with a child under 14 years of age), § 259 (Solicitation of a child to commit a prohibited act), § 284 (Possession of sexually explicit material), § 301(1)(A)(3) (Kidnapping) (unless committed by the parent of the victim), § 852(1)(B) (Aggravated promotion of prostitution of a person less than 18 years old), and § 855 (Patronizing prostitution of minor). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6)(B). Me. Rev. Stat. Ann. tit. 34-A, § 11203(6-A) further labels the following offenses as qualifying as a “sex offense”: Me. Rev. Stat. Ann. tit. 17-A, § 253(2)(J)–(L) (Gross sexual assault), § 255-A(1)(C), (G), (Q), (R), (R-1), (R-2), (W), (X) (Unlawful sexual conduct). “Sexually violent offense” is defined as including “A conviction for one of the offenses or for an attempt to commit” certain offenses, including Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault) and certain provisions of § 255-A (Unlawful sexual contact). Me. Rev. Stat. Ann. tit. 34-A, § 11203 (7)(A).

3.5.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 34-A, § 11203(6)(B), (6-A), or (7)(A) to include Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint) and § 301(1)(A)(5) (Kidnapping) within the definition of “sex offense” or “sexually violent offense.”

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

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<sup>40</sup>See *supra* note 28.

Me. Rev. Stat. Ann. tit. 22, § 4055(1) (Grounds for termination) states, among other things,

The court may order termination of parental rights if:

A. One of the following conditions has been met:

1) Custody has been removed from the parent under:

- a) Section 4035 [Hearing on jeopardy order petition] or 4038 [Mandated review; review on motion];
- b) Title 19-A, section 1502 [Either parent dead or guilty of abandonment, rights devolve on other] or 1653 [Parental rights and responsibilities];
- c) Section 3792 [Repealed] prior to the effective date of this chapter; or
- d) Title 15, section 3314, subsection 1, paragraph C-1 [Disposition]; or

2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX [Adoption]; and

B. Either:

1) The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

2) The court finds, based on clear and convincing evidence, that:

a) Termination is in the best interest of the child; and

b) Either:

- i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;
- ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs

...

Subsection (1-A) states that “[t]he court may presume that the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child’s needs if,” among other things, under (1-A)(B),

(B) The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

...

7) Gross sexual misconduct or gross sexual assault;

8) Sexual abuse of minors;

...

10) Kidnapping;

11) Promotion of prostitution; or

12) A comparable crime in another jurisdiction.

3.5.2 Recommendation: Amend Me. Rev. Stat. Ann. tit. 22, § 4055(1-A)(B) to include Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution), § 282 (Sexual exploitation of minor), and § 302 (Criminal restraint) as crimes that provide grounds for the termination of parental rights.

**Legal Components:**

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

**Legal Analysis:**

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

Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint) and § 301 (Kidnapping), the primary statutes available to prosecute human trafficking, are unlikely to apply to facilitators who assist, enable, or financially benefit from domestic minor sex trafficking.

However, facilitators may be charged under Me. Rev. Stat. Ann. tit. 17-A, § 852(1)(B) (Aggravated promotion of prostitution), which makes it illegal if a person knowingly “[p]romotes prostitution by compelling<sup>41</sup> a person to enter into, engage in, or remain in prostitution,” or who “[p]romotes prostitution of a person less than 18 years old.”

“Promoting prostitution” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 851(2) as,

- A. Causing or aiding another to commit or engage in prostitution, other than as a patron;
- ...
- D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution;
- E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business;
- F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or
- G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby the person participates or the person is to participate in the proceeds of prostitution.

Violation of Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution) is a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1252(2)(B), 1301(1-A)(B).

- 4.1.1 **Recommendation:** Enact a human trafficking law that prohibits benefitting from or assisting and enabling sex trafficking of minors.

<sup>41</sup> See Section 1.2 *supra* for full discussion of Me. Rev. Stat. Ann. tit. 17-A, § 852(1)(B) (Aggravated promotion of prostitution) and definition of “compelling.”

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

The operable statutes for human trafficking offenses, Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint) and § 301 (Kidnapping), do not appear to apply to facilitators who assist, enable, or financially benefit from domestic minor sex trafficking, which means that the provisions of Me. Rev. Stat. Ann. tit. 5, § 4701(1)(C) (Remedies for human trafficking) imposing civil liability on a human trafficking offender would not be applicable to most facilitators. Me. Rev. Stat. Ann. tit. 5, § 4701(2). Similarly, the asset forfeiture provisions applicable to human trafficking offenders under Me. Rev. Stat. Ann. tit. 15, § 5821(9) (Subject property) are likely inapplicable to facilitators.<sup>42</sup>

Instead, limited, but mandatory criminal forfeiture provisions apply to facilitators. Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 285(1) (Forfeiture of equipment used to facilitate violations), a prosecutor may request the court order the forfeiture of “any equipment, including computers, that may have facilitated the commission of” Me. Rev. Stat. Ann. tit. 17-A, § 282 (Sexual exploitation of minor) or § 283 (Dissemination of sexually explicit material) if the State can prove “by a preponderance of the evidence that the equipment was used to facilitate the commission of a violation.” Me. Rev. Stat. Ann. tit. 17-A, § 285(1), (3), (4). Where that is proven, the court ‘shall order the equipment forfeited.’ Me. Rev. Stat. Ann. tit. 17-A, § 285. The court ‘may, upon the written recommendation of the attorney for the State, provide in its order for the disposition or use of the equipment by any state, county or municipal law enforcement agency that made a substantial contribution to the investigation or prosecution of the case. Any equipment forfeited that is not transferred to an investigating or prosecuting agency must be sold and the proceeds deposited in the General Fund.’ Me. Rev. Stat. Ann. tit. 17-A, § 285. In addition, any child pornography in the possession of a facilitator “that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.” Me. Rev. Stat. Ann. tit. 17-A, § 284(4).

Facilitators convicted of Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution) may be required to pay a fine up to \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 852(3), 1301(1-A)(B). Additionally, facilitators convicted of any crime under Maine law may be ordered to make restitution to a victim. Me. Rev. Stat. Ann. tit. 17-A, §§ 1152(2-A), 1324(1). Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss.<sup>43</sup> In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The present and future financial capacity of the offender to pay restitution.<sup>44</sup>

- 4.2.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 5, § 4701(1)(C) (Remedies for human trafficking) to include actions of facilitators of sex trafficking in order to permit asset forfeiture for these crimes.

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<sup>42</sup> Me. Rev. Stat. Ann. tit. 15, § 5821(9) (Subject property) states that “[a]ll assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C [Remedies for human trafficking]” are subject to forfeiture.

<sup>43</sup> See *supra* Section 2.8 for the definition of “economic loss.”

<sup>44</sup> See *infra* Section 5.10 for limitations on access to restitution by domestic minor sex trafficking victims.

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

Maine has no law prohibiting child sex tourism.

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

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

Me. Rev. Stat. Ann. tit 17-A, § 283(1)(A) (Dissemination of sexually explicit material) criminalizes the act of

intentionally or knowingly disseminat[ing] or possess[ing] with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any minor<sup>45</sup> who the person knows or has reason to know is a minor engaging in sexually explicit conduct.

Dissemination of sexually explicit material is a Class C crime, but where the facilitator has a prior conviction for “engaging in substantially similar conduct” or where the victim is less than 12 years old, the violation increases to a Class B crime. Me. Rev. Stat. Ann. tit. 17-A, § 283(1)(B), (C). If the crime involves a child under 12 years of age and the facilitator has a prior conviction for “engaging in substantially similar conduct,” the violation increases further to a Class A crime. Me. Rev. Stat. Ann. tit. 17-A, § 283(1)(D). Class C crimes are punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(C), 1301(1-A)(C). Class B crimes are punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000, while Class A crimes are punishable by imprisonment up to 30 years and a possible fine not to exceed \$50,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 1252(2)(A), (B), 1301(1-A)(A), (B).

Me. Rev. Stat. Ann. tit. 17-A, § 284 (Possession of sexually explicit material) also applies to those who facilitate child pornography by “[i]ntentionally or knowingly” transporting or exhibiting material “the person knows or should know depicts another person engaging in sexually explicit conduct” where the child involved is under 16 years of age or the facilitator “knows or has reason to know that the [child] has not attained 16 years of age.” Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A). Facilitators who violate Me. Rev. Stat. Ann. tit. 17-A, § 284 may be convicted of a Class D crime punishable by up to 1 year in county jail and a possible fine not to exceed \$2,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(1)(A), 1252(1)(A), (2)(D), 1301(1-A)(D). If the facilitator has a prior conviction for “engaging in substantially similar conduct,” or the child is less than 12 years old, the violation will be a Class C crime punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(1)(B), (C), 1252(2)(C), 1301(1-A)(C). If the crime involves a child under 12 and the facilitator has a prior conviction, then the violation increases further to a Class B crime punishable by imprisonment up to 10 years and a possible fine not to exceed \$20,000. Me. Rev. Stat. Ann. tit. 17-A, §§ 284(D), 1252(2)(B), 1301(1-A)(B).

- 4.4.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 284(1)(A) (Possession of sexually explicit material) to raise the age of protected minors to 18.

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<sup>45</sup> “Minor” is defined in Me. Rev. Stat. Ann. tit 17-A, § 281(2) as “a person who has not attained 18 years of age.”

**Legal Components:**

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*
- 5.4 *Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*
- 5.5 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” (or similar term) in the child welfare statutes is broad enough to include a trafficker who has custody or control of a child in order to bring a trafficked child into the protection of child protective services.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

**Legal Analysis:**

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*

The state Victims’ Rights Act defines “victim” in part as “[a] person who is the victim of a crime.” Me. Rev. Stat. Ann. tit. 17-A, § 1171(2). Me. Rev. Stat. Ann. tit. 5, § 4701 (Remedies for human trafficking), which provides a civil cause of action to victims of a human trafficking offense, defines a “trafficked person” as “a victim of a human trafficking offense,” and “human trafficking offense” is defined as

kidnapping or criminal restraint under Title 17-A, section 301 or 302 when the crime involves restraining a person by destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document or other actual or purported government identification document of the other person or using any scheme, plan or pattern intended to cause that person to believe that if the person does not perform certain labor or services, including prostitution, that the person or another person will suffer serious harm or restraint.

For purposes of victim compensation, Me. Rev. Stat. Ann. § 3360-B(1)(A), (B) (Award of compensation; eligibility), victim compensation may be awarded to a person who, among other things,

- A. Suffers personal injury<sup>46</sup> as a direct result of a crime specified in section 3360,<sup>47</sup> committed within the jurisdiction of the State;
- B. Has been sexually assaulted within this State in violation of Title 17-A, chapter 11<sup>48</sup> without regard to whether bodily injury or the threat of bodily injury occurred.

While Me. Rev. Stat. Ann. § 3360 includes many CSEC offenses as well as the kidnapping and unlawful restraint statutes, it fails to include tit. 17-A, § 852 (Aggravated promotion of prostitution) and § 855 (Patronizing prostitution of minor).

For purposes of victim restitution, “victim” is defined as “a person who suffers personal injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime.” Me. Rev. Stat. Ann. § 1322 (Definitions).

- 5.1.1 Recommendation: Amend the definition of “victim” Me. Rev. Stat. Ann. § 3360 (Award of compensation; eligibility) to include all CSEC victims by including victims of acts in violation of Me. Rev. Stat. Ann. tit. 17-A, § 852 (Aggravated promotion of prostitution) and § 855 (Patronizing prostitution of minor).
- 5.1.2 Recommendation: Amend Me. Rev. Stat. Ann. § 1322 (Definitions—Restitution) to expressly include victims of trafficking and CSEC offenses.

5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*

Me. Rev. Stat. Ann. tit. 17-A, § 302(2) (Criminal restraint) expressly provides that “[c]onsent by the person taken, retained or enticed is not a defense to prosecution under subsection 1, paragraph A.” However, Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping), § 852 (Aggravated promotion of prostitution), § 855 (Patronizing prostitution of minor), and § 282 (Sexual exploitation of minor) do not indicate whether consent is available as a defense for the perpetrator of the crime.

A general defense of consent is available to defendants pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 109(1) (Consent), which states in subsection (1) “It is a defense that, when a defendant engages in conduct which would otherwise constitute a crime against the person or property of another, such other consented to the conduct and an element of the crime is negated as a result of such consent.” Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 109(3),

Consent is not a defense within the meaning of this section if:

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<sup>46</sup> “Personal injury” is defined in Me. Rev. Stat. Ann. tit. 5, § 3360(6) as “bodily injury as defined in Title 17-A, section 2, subsection 5 or psychological injury incurred by a victim who has sustained the threat of bodily injury.”

<sup>47</sup> “Crime” is defined in Me. Rev. Stat. Ann. § 3360(3) as including the following: “A. Offenses against the person as described in Title 17-A, chapter 9; B. Sexual assaults as described in Title 17-A, chapter 11; C. Kidnapping and criminal restraint as described in Title 17-A, chapter 13; . . . H. Sexual exploitation of a minor as described in Title 17-A, chapter 12.”

<sup>48</sup> Offenses in this chapter include Me. Rev. Stat. Ann. tit. 17-A, § 254 (Sexual abuse of minors), § 253 (Gross sexual assault), § 255-A (Unlawful sexual contact), and § 259-A (Solicitation of a child to commit a prohibited act).

- A. It is given by a person who is declared by a statute or by a judicial decision to be legally incompetent to authorize the conduct charged to constitute the crime, and such incompetence is manifest or known to the actor;
- B. It is given by a person who, by reason of intoxication, mental illness or defect, or youth, is manifestly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or
- C. It is induced by force, duress or deception.

5.2.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping), § 852 (Aggravated promotion of prostitution), and § 855 (Patronizing prostitution of minor) to clarify that consent of the minor to a commercial sex act is immaterial to the crime of domestic minor sex trafficking and cannot be a defense for the perpetrator.

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

Me. Rev. Stat. Ann. tit. 17-A, § 853-A (Engaging in prostitution) is age-neutral and allows for the arrest and prosecution of a minor for the Class E or D crime of engaging in prostitution. Specifically, Me. Rev. Stat. Ann. tit. 17-A, § 853-A(1)(A) (Engaging in prostitution) states in part, “A person is guilty of engaging in prostitution if: A. The person engages in prostitution as defined in section 851.”<sup>49</sup>

5.3.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 853-A (Engaging in prostitution) to make the law inapplicable to minors under the age of 18, referring such cases instead to the operable human trafficking laws, Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) and § 302 (Criminal restraint).

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.*

Some protective provisions are available to commercially sexually exploited children. For the purposes of the chapter on “Child and Family Services and Child Protection Act,” “[i]f the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036,” including taking a child into protective custody. Me. Rev. Stat. Ann. tit. 22, §§ 4034, 4036(1)(F), (F-1). Law enforcement, the Department of Health and Human Services (the department), or any group of at least 3 persons may bring a child protection petition alleging, among other things, facts that would constitute a basis for the petition and efforts made to prevent removing the child from the home. Me. Rev. Stat. Ann. tit. 22, § 4032(1), (2)(D), (I). If in a preliminary hearing, the charge includes an “aggravating factor,” then “the court may order the department not to commence reunification . . . [and] conduct a hearing on jeopardy and conduct a permanency planning hearing.” Me. Rev. Stat. Ann. tit. 22 § 4034(4).

On a jeopardy order petition, “[a]fter hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to the child’s health or welfare.”<sup>50</sup> Me.

<sup>49</sup> “Prostitution” is defined in Me. Rev. Stat. Ann. tit. 17-A, § 851(1) as “engaging in, or agreeing to engage in, or offering to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person.”

<sup>50</sup> Me. Rev. Stat. Ann. tit. 22, § 4002(6) defines “jeopardy to health or welfare” or “jeopardy” as

- serious abuse or neglect, as evidenced by:
  - A. Serious harm or threat of serious harm;

Rev. Stat. Ann. tit. 22, § 4035(2). Pursuant to Me. Rev. Stat. Ann. tit. 22, § 4035(2-A)(A), a rebuttable presumption arises “[t]hat the person seeking custody or contact with the child would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the person: 1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A<sup>51</sup> in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or 2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.” Me. Rev. Stat. Ann. tit. 22, § 4035(2-A)(B) sets forth a similar rebuttable presumption “if the parent or person allows, encourages or fails to prevent contact between the child and a person” that has been convicted of an offense as set out above. However, Me. Rev. Stat. Ann. tit. 22, § 4035(2-A)(B)(1) does not contain the phrase “or an offense in another

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- B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6;
  - B-1. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;
  - C. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or
  - D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

Me. Rev. Stat. Ann. tit. 22, § 4002(10) defines “serious harm” as

- A. Serious injury;
- B. Serious mental or emotional injury or impairment which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or
- C. Sexual abuse or exploitation.

<sup>51</sup> Me. Rev. Stat. Ann. tit. 19-A, § 1653(6-A)(A) states,

**6-A. CUSTODY AND CONTACT LIMITED; CONVICTIONS FOR SEXUAL OFFENSES.** The award of primary residence and parent-child contact with a person who has been convicted of a child-related sexual offense is governed by this subsection.

- A. For the purposes of this section, “child-related sexual offense” means the following sexual offenses if, at the time of the commission of the offense, the victim was under 18 years of age:
  - 1) Sexual exploitation of a minor, under Title 17-A, section 282;
  - 2) Gross sexual assault, under Title 17-A, section 253;
  - 3) Sexual abuse of a minor, under Title 17-A, section 254;
  - 4) Unlawful sexual contact, under Title 17-A, section 255-A or former section 255;
  - 5) Visual sexual aggression against a child, under Title 17-A, section 256;
  - 6) Sexual misconduct with a child under 14 years of age, under Title 17-A, section 258;
  - 6-A) Solicitation of a child to commit a prohibited act, under Title 17-A, section 259-A; or
  - 7) An offense in another jurisdiction that involves conduct that is substantially similar to that contained in subparagraph (1), (2), (3), (4), (5), (6) or (6-A). . . .

Here and elsewhere in this report that Me. Rev. Stat. Ann. tit. 19-A, § 1653(6-A)(A) is quoted or cited, it has been updated to reflect the amendments added by the passage of Legislative Document 1673. L.D. 1673, 125th Leg. Assemb., Second Reg. Sess. (Me. 2012) (effective April 2, 2012). Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of child by computer to commit a prohibited act) was repealed by Legislative Document 1673 during the Second Regular Session of the 125th Maine Legislature (2012).

jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C.”

Me. Rev. Stat. Ann. tit. 22, § 4035(3) states in part,

If the court determines that the child is in circumstances of jeopardy to the child’s health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036.

Under Me. Rev. Stat. Ann. tit. 22, § 4036(1) (Disposition and principles), a court may, among other things, order removal of the child or the perpetrator from the household, and if the court orders removal of the child, it may grant custody to “a noncustodial parent, other person or the department.” Me. Rev. Stat. Ann. tit. 22, § 4036(1)(F), (F-1). A child taken into the department’s custody will then be cared for “in licensed or approved family foster homes, in other residential child care facilities or in other living arrangements as appropriate to meet the child’s individual needs.” Me. Rev. Stat. Ann. tit. 22, § 4061(1).

Some additional services are available to sexually exploited homeless children and runaways. Me. Rev. Stat. Ann. tit. 22, § 4099-E(1) (Comprehensive program for homeless youth) states,

The department shall establish and support a comprehensive program for homeless youth<sup>52</sup> in the State by contracting with organizations and agencies licensed by the department that provide street outreach, shelter and transitional living services for homeless youth. The department shall by rule establish licensure requirements and shall establish performance-based contracts with organizations and agencies to provide the following programs and services:

1. **STREET AND COMMUNITY OUTREACH AND DROP-IN PROGRAMS.** Youth drop-in centers to provide walk-in access to crisis intervention and ongoing supportive services, including one-to-one case management services on a self-referral basis and street and community outreach programs to locate, contact and provide information, referrals and services to homeless youth, youth at risk of homelessness and runaways. Information, referrals and services provided may include, but are not limited to family reunification services; conflict resolution or mediation counseling; assistance in obtaining temporary emergency shelter; case management aimed at obtaining food, clothing, medical care or mental health counseling; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases, HIV and pregnancy; referrals to other agencies that provide support services to homeless youth, youth at risk of homelessness and runaways; assistance with education, employment and independent living skills; aftercare services; and specialized services for highly vulnerable runaways and homeless youth, including teen parents, sexually exploited youth and youth with mental illness or developmental disabilities.
2. **EMERGENCY SHELTER PROGRAM.** Emergency shelter programs to provide homeless youth and runaways with referrals and walk-in access to short-term residential care on an emergency basis. The program must provide homeless youth and runaways with safe, dignified, voluntary housing, including private shower facilities, beds and at least one meal each day, and assist a runaway with reunification with family or a legal guardian when required or appropriate.

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<sup>52</sup> Pursuant to Me. Rev. Stat. Ann. tit. 22, § 4099-D(1), “homeless youth” is defined as,

a person 21 years of age or younger who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care or who lacks a fixed, regular and adequate nighttime residence. “Homeless youth” does not include a person incarcerated or otherwise detained under federal or state law.

The services provided at emergency shelters may include, but are not limited to, family reunification services or referral to safe, dignified housing; individual, family and group counseling; assistance obtaining clothing; access to medical and dental care and mental health counseling; education and employment services; recreational activities; case management, advocacy and referral services; independent living skills training; and aftercare, follow-up services and transportation; and

3. TRANSITIONAL LIVING PROGRAMS. Transitional living programs to help homeless youth find and maintain safe, dignified housing. The program may also provide rental assistance and related supportive services or may refer youth to other organizations or agencies that provide such services. Services provided may include, but are not limited to, provision of safe, dignified housing; educational assessment and referrals to educational programs; career planning, employment, job skills training and independent living skills training; job placement; budgeting and money management; assistance in securing housing appropriate to needs and income; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases and pregnancy; referral for medical services or chemical dependency treatment; parenting skills; self-sufficiency support services or life skills training; and aftercare and follow-up services.

A child may also be arrested and detained by law enforcement for actions related to being a trafficking victim. If a child is treated as a juvenile within the Juvenile Code, pursuant to Me. Rev. Stat. Ann. tit. 15, § 3501(1) (Interim care), a law enforcement officer may take a child into “interim care” without a court order when

the officer has reasonable grounds to believe that:

- A. The juvenile is abandoned, lost or seriously endangered in his surroundings and that immediate removal is necessary for his protection; or
- B. The juvenile has left the care of his parents, guardian or legal custodian without the consent of such person.

Children taken into interim care may not be “held involuntarily for more than 6 hours.” Me. Rev. Stat. Ann. tit. 15, § 3501(2). Also, they “may not be placed in a jail or other secure detention or correctional facility intended or used to detain adults accused or convicted of crimes or juveniles accused or adjudicated of juvenile crimes;” however, if “no other appropriate placement is available,” a juvenile may be held “in the public sections of a facility described in section 3203-A, subsection 7, paragraph B<sup>53</sup> if there is an adequate staff to supervise the juvenile’s activities at all times or in accordance with section 3203-A, subsection 7-A.” Me. Rev. Stat. Ann. tit. 15, § 3501 (7). Additionally, “[t]o the extent practicable, a juvenile taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest.” Me. Rev. Stat. Ann. tit. 15, § 3501 (7)(C). Instead, the Department of Health and Human Services will specify where the child should be held. Me. Rev. Stat. Ann. tit. 15, § 3501(5)(A).

Children who commit “juvenile crimes,” which would include children who are found in prostitution, a Class D or E crime under Me. Rev. Stat. Ann. tit. 17-A, § 851 or § 853-A (Engaging in prostitution), may be arrested by a law enforcement officer without a warrant. Me. Rev. Stat. Ann. tit. 15, § 3201(1). “Juvenile crimes” are defined as, among other specified conduct, “[c]onduct that, if committed by an adult, would be defined as criminal by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code, including any rule or regulation under a statute . . . .” Me. Rev. Stat. Ann. tit. 15, § 3103(1)(A). Me. Stat. Ann. tit. 15, § 3201(1) (Warrantless arrests) states in part that “[a]rrests without warrants of juveniles for juvenile crimes

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<sup>53</sup> Me. Rev. Stat. Ann. tit. 15, § 3203-A(7)(B) states, “A juvenile may be held in custody or detention in any detention facility approved or operated by the Department of Corrections exclusively for juveniles or a temporary holding resource that provides secure supervision approved by the Department of Corrections, pending the juvenile’s release or hearing in the Juvenile Court.”

defined by section 3103 [Juvenile crimes], subsection 1, paragraphs A, E, F, G and H by law enforcement officers or private person must be made pursuant to the provisions of Title 17-A, sections 15 and 16. . . .”<sup>54</sup> Me. Rev. Stat. Ann. tit 17-A, § 15(1)(B) authorizes a law enforcement officer to “arrest without a warrant . . . [a]ny person who has committed or is committing in the officer’s presence any Class D or Class E crime.” Me. Rev. Stat. Ann. tit. 15, § 3203-A requires a law enforcement officer who arrests a child, and determines that Juvenile Court proceedings should be commenced against the child, to initially determine whether the child should be detained. In all cases, the law enforcement officer must provide notice to a juvenile community corrections officer. Me. Rev. Stat. Ann. tit. 15, § 3203-A. If after arresting a child, the arresting law enforcement officer determines that the Juvenile Court should commence proceedings against the juvenile, “but [that] detention is not necessary, [then] . . . the law enforcement officer shall notify the juvenile community corrections officer within 12 hours following the arrest.” However, even where the arresting officer determines that detention of the child is unnecessary, the juvenile may be sent “to any public or private agency that provides nonsecure services to juveniles” if “the officer is unable to immediately return the juvenile to the custody of the juvenile’s legal custodian or another suitable person” and “with the juvenile’s consent.” Me. Rev. Stat. Ann. tit. 15, § 3203-A(1)(A-1). Additionally, pursuant to Me. Rev. Stat. Ann. tit. 15, § 3203-A(1)(B),

When, in the judgment of a law enforcement officer, a juvenile should be detained prior to the juvenile’s initial appearance in juvenile court, the law enforcement officer shall immediately notify a juvenile community corrections officer.

- 1) Detention under this section must be requested by the law enforcement officer within 2 hours after the juvenile’s arrest or the juvenile must be released.
- 2) After the law enforcement officer notifies the juvenile community corrections officer and requests detention, the juvenile community corrections officer shall order the conditional or unconditional release or shall effect a detention placement within 12 hours following the juvenile’s arrest.

The arresting officer may also determine that the child requires “immediate secure detention,” but only if it is necessary “to prevent a juvenile from imminently inflicting bodily harm on others or the juvenile,” and refer the child “for temporary, emergency detention in a jail or other secure facility intended or primarily used for the detention of adults approved pursuant to subsection 7, paragraph A or a facility approved pursuant to subsection 7, paragraph B, prior to notifying a juvenile community corrections officer.”<sup>55</sup> Me. Rev. Stat. Ann. tit. 15, § 3203-A(1)(B-1). Normally, a child may be detained in this type of secure detention for up to 2 hours.

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<sup>54</sup> Specifically, Me. Stat. Ann. tit. 15, § 3103(1)(A) includes the following as conduct constituting a juvenile crime: “[c]onduct that, if committed by an adult, would be defined as criminal by Title 17-A, the Maine Criminal Code, or by any other criminal statute outside that code, including any rule or regulation under a statute, except for those provisions of Titles 12 and 29-A not specifically included in paragraphs E and F.”

<sup>55</sup> However, Me. Rev. Stat. Ann. tit. 15, § 3203-A(7) requires,

A. A juvenile may be detained in a jail or other secure detention facility intended for use or primarily used for the detention of adults only when the serving facility:

- 1) Contains an area where juveniles are under direct staff observation at all times, in a separate section for juveniles that complies with mandatory sight and sound separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208;
- 2) Provides for no regular contact between the juveniles with the adult detainees or inmates; and
- 3) Has an adequate staff to provide direct observation and supervise the juvenile’s activities at all times during emergency detention.

Juveniles detained in adult-serving facilities may be placed only in the separate juvenile sections that comply with mandatory separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208, unless the juvenile is held in an adult section of a facility under section 3205, subsection 2 or is bound over as an adult and held in an adult section of a facility pursuant to court order.

However, if a juvenile community corrections officer subsequently determines that continued detention is necessary to “prevent the juvenile from imminently inflicting bodily harm on others or the juvenile,” the child may be detained for an additional 4 hours. Subsection (1)(B-1) further states,

Following any temporary emergency detention, the juvenile community corrections officer shall order the conditional or unconditional release of a juvenile or shall effect a detention placement. Except as otherwise provided by law, any detention beyond 6 hours must be in a placement other than a facility intended or primarily used for the detention of adults and must be authorized by a juvenile community corrections officer. It is the responsibility of the law enforcement officer to remain at the facility until the juvenile community corrections officer has released the juvenile or has authorized detention.

However, pursuant to Me. Rev. Stat. Ann. tit. 15, § 3203-A(7-A), “Notwithstanding other provisions of this Part, a juvenile may be held for up to 12 hours in nonsecure custody in a building housing a jail or other secure detention facility intended or primarily used for the detention of adults” pursuant to certain criteria.

In addition to emergency detention pursuant to Me. Rev. Stat. Ann. tit. 15, § 3203-A(1)(B-1), Me. Rev. Stat. Ann. tit. 15, § 3203-A(4)(A) requires that the juvenile community corrections officer “direct the release or detention of a juvenile pending that juvenile’s initial appearance before the court,” after being notified of the arrest of a juvenile pursuant to Me. Rev. Stat. Ann. tit. 15, § 3203-A(1). Under Me. Rev. Stat. Ann. tit. 15, § 3203-A(4)(B)-(D), the juvenile community correction officer or the Juvenile Court may determine that the child can be conditionally or unconditionally released, detained in “the least restrictive residential setting” that is appropriate, or detained in a detention facility.<sup>56</sup> However, “[d]etention may not be ordered when either unconditional or conditional release is appropriate.” Me. Rev. Stat. Ann. tit. 15, § 3203-A(4)(D). Also, Me. Rev. Stat. Ann. Tit. 15, § 3203-A(4)(D) states in part,

If, in the judgment of the juvenile community corrections officer, based on an assessment of risk, or in the judgment of the Juvenile Court, it is not necessary or appropriate to detain a juvenile who satisfies the criteria for detention, the juvenile community corrections officer or the Juvenile Court may order the placement of the juvenile in the juvenile’s home or in an alternative facility or service, such as a group home, emergency shelter, foster placement or attendant care, subject to specific conditions, including supervision by a juvenile community corrections officer or a designated supervisor. Such a placement is considered a conditional release.

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<sup>56</sup> Under Me. Rev. Stat. Ann. tit. 15, § 3203-A(4)(D), a child may only be detained in a detention facility when

there is probable cause to believe the juvenile:

- 1) Has committed an act that would be murder or a Class A, Class B or Class C crime if committed by an adult; [Me. Rev. Stat. Ann. tit. 17-A, § 853-A (Engaging in prostitution) is only a Class D or E crime.]
- 2) Has refused to participate voluntarily in a conditional release placement or is incapacitated to the extent of being incapable of participating in a conditional release placement;
- 3) Has intentionally or knowingly violated a condition imposed as part of conditional release on a pending offense or has committed an offense subsequent to that release that would be a crime if committed by an adult;
- 4) Has committed the juvenile crime that would be escape if the juvenile was an adult;
- 5) Has escaped from a facility to which the juvenile had been committed pursuant to an order of adjudication or is absent without authorization from a prior placement by a juvenile community corrections officer or the Juvenile Court; or
- 6) Has a prior record of failure to appear in court when so ordered or summonsed by a law enforcement officer, juvenile community corrections officer or the court or has stated the intent not to appear.

....

Pursuant to Me. Rev. Stat. Ann. tit. 15, § 3203-A(5) “Upon petition by a juvenile community corrections officer who ordered the detention or an attorney for the State who ordered the detention,” the juvenile court is to review in a detention hearing within 48 hours, and the court must order the juvenile’s release unless a “preponderance of the evidence” suggests that continued detention is essential and “there is probable cause<sup>57</sup> to believe that the juvenile has committed a juvenile crime.” Me. Rev. Stat. Ann. tit. 15, § 3203-A(5).

If the juvenile is accused of having committed a juvenile crime, Me. Rev. Stat. Ann. tit. 15, § 3301 (Preliminary investigation, informal adjustment and petition initiation) provides that the juvenile community corrections officer shall, with some exceptions, investigate and determine whether to pursue further action, which might include requesting that “a petition be filed.” Under Me. Rev. Stat. Ann. tit. 15, § 3314(1) (Disposition),

1. DISPOSITIONAL ALTERNATIVES. When a juvenile has been adjudicated as having committed a juvenile crime, the court shall enter a dispositional order containing one or more of the following alternatives.

A. The court may allow the juvenile to remain in the legal custody of his parents or a guardian under such conditions as the court may impose. . . .

B. The court may require a juvenile to participate in a supervised work or service program. . . .

....

C-1. The court may commit a juvenile to the custody of the Department of Health and Human Services when the court has determined that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile’s home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and that continuation therein would be contrary to the welfare of the juvenile. . . .

....

C-2. The court may commit a juvenile to the custody of a relative or other person when the court determines that this is in the best interest of the juvenile . . . .

....

F. The court may commit the juvenile to a Department of Corrections juvenile correctional facility. . . .

....

H. The court may order the juvenile to serve a period of confinement that may not exceed 30 days, with or without an underlying suspended disposition of commitment to a Department of Corrections juvenile correctional facility, which confinement must be served concurrently with any other period of confinement previously imposed and not fully discharged or imposed on the same date but may be served intermittently as the court may order and must be ordered served in a facility approved or operated by the Department of Corrections exclusively for juveniles. . . .

I. The court order the juvenile unconditionally discharged.

Alternatively, “[t]he court may impose any of the dispositional alternatives provided in subsection 1 and may suspend its disposition and place the juvenile on a specified period of probation . . . .” Me. Rev. Stat. Ann. tit. 15, § 3314 (2). If the court revokes the child’s probation, causing the child to be committed to a juvenile correctional facility pursuant to Me. Rev. Stat. Ann. tit. 15, § 3314(1)(F), or to serve a period of confinement under Me. Rev. Stat. Ann. tit. 15, § 3314(1)(H), the court must determine whether “reasonable efforts have been

<sup>57</sup> Me. Rev. Stat. Ann. tit. 15, § 3203-A(4-A) requires a probable cause determination be made “[e]xcept in a bona fide emergency or other extraordinary circumstance, when a juvenile arrested without a warrant for a juvenile crime or a violation of conditional release is not released from custody or does not receive a detention hearing within 48 hours after arrest, including Saturdays, Sundays and legal holidays . . . .”

made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile." Me. Rev. Stat. Ann. tit. 15, § 3314(2).

Me. Rev. Stat. Ann. tit. 15, § 3313(1) (Criteria for withholding an institutional disposition) prohibits the court from confining a juvenile adjudicated delinquent in a secure institution unless, taking into account the crime and the juvenile's history and character,

it finds that his confinement is necessary for protection of the public because:

- A. There is undue risk that, during the period of a suspended sentence or probation, the juvenile will commit another crime;
- B. The juvenile is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- C. A lesser sentence will depreciate the seriousness of the juvenile's conduct.

The court may consider additional factors under Me. Rev. Stat. Ann. tit. 15, § 3313(2) in deciding not to confine a juvenile in a secure institution.

- 5.4.1 Recommendation: Establish a mandatory response law directing any minor victim of commercial sexual exploitation away from the criminal justice system and into a child protection system.

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

Sexual exploitation is included within the definition of abuse and neglect under Maine's Child and Family Services and Child Protection Act. Me. Rev. Stat. Ann. tit. 22, § 4002(1) (Definitions) defines "abuse or neglect" as "a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these or failure to ensure compliance with [specified] school attendance requirements . . . by a person responsible for the child." This chapter also regularly uses the phrase, "jeopardy to health or welfare," which is defined as "serious abuse or neglect," as indicated by the following:

- A. Serious harm or threat of serious harm;<sup>58</sup>
- B. Deprivation of adequate food, clothing, shelter, supervision or care or education when the child is at least 7 years of age and has not completed grade 6;
- B-1. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;
- C. Abandonment of the child or absence of any person responsible for the child, which creates a threat of serious harm; or
- D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

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<sup>58</sup> "Serious harm" is defined in Me. Rev. Stat. Ann. tit. 22, § 4002(10) as,

- A. Serious injury;
- B. Serious mental or emotional injury or impairment which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or
- C. Sexual abuse or exploitation.

5.5.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 22, § 4002 (Definitions) to define “abuse or neglect” to include Me. Rev. Stat. Ann. tit. 17-A, § 302 (Criminal restraint), § 301 (Kidnapping), § 282 (Sexual exploitation of a minor), § 852 (Aggravated promotion of prostitution), and § 855 (Patronizing prostitution of minor).

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

Within Maine’s Child and Family Services and Child Protection Act, Me. Rev. Stat. Ann. tit. 22, § 4002(5) (Definitions) defines “custodian” as “the person who has legal custody and power over the person of a child.” Additionally, Me. Rev. Stat. Ann. tit. 22, § 4002(9) defines the term “person responsible for the child,” as “a person with responsibility for a child’s health or welfare, whether in the child’s home or another home or a facility which, as a part of its function, provides for care of the child. It includes the child’s custodian.”

5.6.1 Recommendation: Amend the definition of “custodian” to include a person exercising control over a child in order to bring a child controlled by a trafficker within the ambit of 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.*

Pursuant to Me. Rev. Stat. Ann. tit. 5, § 3360-B(1)(A), (B) (Award of compensation; eligibility), victim compensation may be awarded to a person who, among other things,

- A. Suffers personal injury<sup>59</sup> as a direct result of a crime specified in section 3360,<sup>60</sup> committed within the jurisdiction of the State;
- B. Has been sexually assaulted within this State in violation of Title 17-A, chapter 11<sup>61</sup> without regard to whether bodily injury or the threat of bodily injury occurred.

Several requirements in Me. Rev. Stat. Ann. tit. 5, § 3360-C(1) (Requirements and exclusions) could present difficulties for domestic minor sex trafficking victims, such as requiring that the crime be reported to law enforcement “within 5 days of the occurrence or discovery of the crime or of the resultant injury” and that a claim for compensation be filed within 3 years of the crime’s occurrence. However, Me. Rev. Stat. Ann. tit. 5, § 3360-C(3) states that “[t]he board may waive the time requirements of subsection 1 for good cause shown and shall waive the time requirements on behalf of a child or when the claimant is a child and the crime and the claim have been properly reported to law enforcement officers and the board by an adult who becomes aware of the crime and of the compensable injury.” Other ineligibility factors, including, under subsection (2)(A) a claimant’s failure to “fully cooperate with the board or with the reasonable requests of law enforcement officers or prosecution authorities,” or, under subsection (2)(B), the claimant’s violation of “a criminal law that caused

<sup>59</sup> “Personal injury” is defined in Me. Rev. Stat. Ann. tit. 5, § 3360(6) as “bodily injury as defined in Title 17-A, section 2, subsection 5 or psychological injury incurred by a victim who has sustained the threat of bodily injury.”

<sup>60</sup> “Crime” is defined in Me. Rev. Stat. Ann. § 3360(3) as including the following: “A. Offenses against the person as described in Title 17-A, chapter 9; B. Sexual assaults as described in Title 17-A, chapter 11; C. Kidnapping and criminal restraint as described in Title 17-A, chapter 13; . . . H. Sexual exploitation of a minor as described in Title 17-A, chapter 12.”

<sup>61</sup> Offenses in this chapter include Me. Rev. Stat. Ann. tit. 17-A, § 254 (Sexual abuse of minors), § 253 (Gross sexual assault), § 255-A (Unlawful sexual contact), and § 259(1-A) (Solicitation of a child by computer to commit a prohibited act).

or contributed to the injury or death for which compensation is sought,” are not subject to waiver. Me. Rev. Stat. Ann. tit. 5, § 3360-C(2), (3).

5.7.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 5, § 3360-C(3) to provide an exception to the listed ineligibility factors for victims of domestic minor sex trafficking.

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

In both civil and criminal cases in which the defendant is accused of sexual misconduct, reputation or opinion evidence of the victim’s past sexual behavior is not admissible under Me. R. Evid. 412(a) (Past sexual behavior of victim). However, pursuant to Me. R. Evid. 412(b).

In a criminal case in which a person is accused of sexual misconduct toward a victim the only evidence of the alleged victim’s past sexual behavior that may be admitted is the following:

- (1) Evidence, other than reputation or opinion evidence, of sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or
- (2) Evidence, other than reputation or opinion evidence, of sexual behavior with the accused offered by the accused on the issue of whether the alleged victim consented to the sexual behavior with respect to which the accused is charged.
- (3) Evidence the exclusion of which would violate the constitutional rights of the defendant.

In civil cases, “evidence of specific instances of sexual behavior by the individual may only be admitted if the court finds that the probative value of such evidence on a controverted issue outweighs the danger of unfair prejudice, confusion of the issues, misleading the jury and unwarranted harm” to the victim. Me. R. Evid. 412(c).

Additionally, in criminal cases, hearsay statements made by children under the age of sixteen that describe “any incident involving a sexual act or sexual conduct performed with or on the minor or person by another, may not be excluded as evidence” if the court finds that the “mental or physical well-being [of the child under sixteen] will more likely than not be harmed if that person were to testify in open court.” Me. Rev. Stat. Ann. tit. 15, § 1205(1). However, the statement still must be “made under oath, subject to all of the rights of confrontation secured to an accused by the Constitution of Maine or the United States Constitution and the statement has been recorded by any means approved by the court, and is made in the presence of a judge or justice.” Me. Rev. Stat. Ann. tit. 15, § 1205(2).

In addition, Maine’s Victims’ Rights Act affords victims of crimes several additional protections. Records relating to a victim’s address or location generally must be kept confidential. Me. Rev. Stat. Ann. tit. 17-A, § 1176(1). Communications between a victim of sexual assault and sexual assault counselors, and coordinators also are confidential and privileged from disclosure. Me. Rev. Stat. Ann. tit. 17-A, § 1177. Crime victims are to be informed, if practicable, of the details of any plea agreement reached, the time and place of trial and sentencing, and may participate in sentencing and comment on any plea agreement or proposed early termination of probation. Me. Rev. Stat. Ann. tit. 17-A, §§ 1172–1174.

5.8.1 Recommendation: Enact a provision permitting closed circuit television testimony for child victims of commercial sexual exploitation to reduce the trauma of testifying in a prosecution of their perpetrator.

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.*

Maine has a process for reviewing and challenging information in a criminal record. However, this does not appear to be similar to expungement.<sup>62</sup> In fact, while a person may file a Petition for Executive Clemency and request that the Governor grant a pardon for criminal offenses and offenses of juvenile delinquency pursuant to the authority granted in Me. Const. Art. V, Part First, Section 11, a pardoned conviction will still not be expunged from a person's record.<sup>63</sup> Regardless of the grant of a pardon, records of juvenile proceedings may not be inspected except as provided in Me. Rev. Stat. Ann. tit. 15, § 3308 (Court records; inspection) and Me. Rev. Stat. Ann. tit. 16, § 612(3) (Application). Specifically, records of juvenile court proceedings or information from those records may be shared between criminal justice agencies and with certain persons at the child's school or other agencies responsible for the child's health or welfare, and others authorized under Me. Rev. Stat. Ann. tit. 15, § 3308. Me. Rev. Stat. Ann. tit. 15, § 3308(7)(B), (B-1). Also, the following records are not available for inspection without the court's consent or unless they are a part of the record of a hearing open to the public under Me. Rev. Stat. Ann. tit. 15, § 3307 [Publicity and record]: "[p]olice records, juvenile community corrections officers' records and all other reports of social and clinical studies."

Me. Rev. Stat. Ann. tit. 15, § 3308(8)(A) states,

A. A person adjudicated to have committed a juvenile crime may petition the court to seal from public inspection all records pertaining to the juvenile crime and its disposition, and to any prior juvenile records and their dispositions if:

- 1) At least 3 years have passed since the person's discharge from the disposition ordered for that juvenile crime;
- 2) Since the date of disposition, the person has not been adjudicated to have committed a juvenile crime and has not been convicted of committing a crime; and
- 3) There are no current adjudicatory proceedings pending for a juvenile or other crime.

Where the petition to seal a juvenile's records is granted, the petitioner may "respond to inquiries from other than the courts and criminal justice agencies about that person's juvenile crimes, the records of which have been sealed, as if the juvenile crimes had never occurred, without being subject to any sanctions." Me. Rev. Stat. Ann. tit. 15, § 3308(8)(D).

If a juvenile is adjudicated as an adult, his or her nonconviction data<sup>64</sup> can only be released in the following situations: a criminal justice agency requests the information, the disclosure is authorized by statute, court order,

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<sup>62</sup> See *Criminal Record Challenge Process*, MAINE STATE BUREAU OF IDENTIFICATION, <http://www.maine.gov/dps/Sbi/challenge.html> (last visited Aug. 17, 2011).

<sup>63</sup> *Id.*

<sup>64</sup> Me. Rev. Stat. Ann. tit. 16, § 611(9) (Definitions) states,

"Nonconviction data" means criminal history record information of the following types:

- A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;
- B. Information disclosing that the police have elected not to refer a matter to a prosecutor;
- C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;
- D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;
- E. A dismissal;
- F. An acquittal, excepting an acquittal by reason of mental disease or defect; and
- G. Information disclosing that a person has been granted a full and free pardon or amnesty.

or executive order, or the information is requested for statistical research purposes and is kept confidential. Me. Rev. Stat. Ann. tit. 16, § 613. “Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers” also has access to a juvenile’s nonconviction data but all information will be kept confidential, secure, and limited to the purpose for which it is to be used. Me. Rev. Stat. Ann. Tit. 16, § 613(3).

*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.*

Me. Rev. Stat. Ann. tit. 5, § 4701(2) authorizes victims of human trafficking offenses to “bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief. A prevailing plaintiff is entitled to an award of attorney’s fees and costs.”

Additionally, victims of any crime under Maine law may be entitled to restitution. Me. Rev. Stat. Ann. tit. 17-A, §§ 1152(2-A), 1324(1). Me. Rev. Stat. Ann. tit. 17-A, § 1323(1) (Mandatory consideration of restitution) states that “[t]he court shall, whenever practicable, inquire of a prosecutor, law enforcement officer or victim with respect to the extent of the victim’s financial loss, and shall order restitution when appropriate.” Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 1325(1) (Criteria for restitution),

Restitution may be authorized, in whole or in part, as compensation for economic loss.<sup>65</sup> In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The present and future financial capacity of the offender to pay restitution.

However, Me. Rev. Stat. Ann. tit. 17-A, § 1330-B (Restitution for benefit of victim) states,

When compensation is awarded from the Victims’ Compensation Fund pursuant to Title 5, chapter 316-A, the amount of any restitution ordered to be paid to or for the benefit of the victim and collected as part of a sentence imposed must be paid by the agency collecting the restitution in an amount not to exceed the amount of the payments from the fund, directly to the fund if, when added to the payments from the fund, the restitution exceeds the victim’s actual loss.

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

The civil cause of action available to victims of human trafficking offenses under Me. Rev. Stat. Ann. tit. 5, § 4701 (Remedies for human trafficking) is subject to a 10-year statute of limitations that begins on the date the trafficking victim “was freed from the trafficking situation.” Me. Rev. Stat. Ann. tit. 5, § 4701(3). The statute of limitation also tolls while the plaintiff is a minor and “during the pendency of any criminal proceedings against the trafficked person.” Me. Rev. Stat. Ann. tit. 5, § 4701(3)(B), (D). In addition, the defendant cannot raise a statute of limitations defense if the victim’s reason for not filing the claim was because of “1) Conduct by the defendant inducing the plaintiff to delay the filing of the action or preventing the plaintiff from filing the action; or 2) Threats made by the defendant that caused duress to the plaintiff.” Me. Rev. Stat. Ann. tit. 5, § 4701(3)(C).

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<sup>65</sup> See *supra* Section 2.8 for definition of “economic loss.”

Pursuant to Me. Rev. Stat. Ann. tit. 17-A, § 8(1),

a prosecution for murder or criminal homicide in the first or 2nd degree, or, if the victim had not attained the age of 16 years at the time of the crime, a prosecution for: incest; unlawful sexual contact; sexual abuse of a minor; rape or gross sexual assault, formerly denominated as gross sexual misconduct, may be commenced at any time.

Prosecutions for Class A, B, or C crimes<sup>66</sup> must be commenced within 6 years after commission of the crime. Me. Rev. Stat. Ann. tit. 17-A, § 8(2)(A). Prosecutions for Class D or E crimes<sup>67</sup> must be commenced within 3 years after commission of the crime. Me. Rev. Stat. Ann. tit 17-A, § 8(2)(B).

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<sup>66</sup> Class A-C crimes include the following: criminal restraint of a victim under 8, kidnapping, aggravated promotion of prostitution, patronizing prostitution of someone that defendant knows is a minor, visual sexual aggression against child under 12, solicitation of child under 12 by computer to commit a prohibited act, dissemination of sexually explicit material, possession of sexually explicit material depicting child under 12, and sexual exploitation of a minor.

<sup>67</sup> Class D or E crimes include the following: criminal restraint of a victim at least 8 years old, patronizing prostitution of someone defendant does not know is a minor, sexual abuse of minors over 16, unlawful sexual touching, visual sexual aggression against child between 12 and 14, solicitation of child between 12 and 14 by computer to commit a prohibited act, and possession of sexually explicit material depicting child between 12 and 16.

**Legal Components:**

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*
- 6.4 *Using a law enforcement decoy posing as a minor to investigate buying or selling of commercial sex acts is not a defense to soliciting, purchasing, or selling sex with a minor.*
- 6.5 *Using the Internet to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*

**Legal Analysis:**

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

Law enforcement officers in Maine must complete a “basic training course at the Maine Criminal Justice Academy approved by the board” within their first year of employment. Me. Rev. Stat. Ann. tit. 25, § 2804-C(1). While Me. Rev. Stat. Ann. tit. 25, § 2804-C (Basic law enforcement training; core curriculum requirements) does not impose any training requirements regarding human trafficking or domestic minor sex trafficking, the statute does mandate training on other issues, such as homelessness and mental illness. Me. Rev. Stat. Ann. tit. 25, § 2804-C(2-B), (2-D). Although it is not statutorily mandated, the Maine Criminal Justice Academy’s current basic training curriculum includes training on both child abuse and domestic violence,<sup>68</sup> and training documents regarding human trafficking have already been prepared for use by the Maine Criminal Justice Academy.<sup>69</sup>

- 6.1.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 25, § 2804-C (Basic law enforcement training; core curriculum requirements) to require that law enforcement officers complete training on domestic minor sex trafficking.

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

Single party consent to audio recording and interception of oral communications is permitted in Maine. “Interception” in general is forbidden by Me. Rev. Stat. Ann. tit. 15, § 710 (Offenses). However, Me. Rev. Stat. Ann. tit. 15, § 709(4) (Definitions) defines the term “intercept” as “to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than: A. The sender or receiver of that communication; B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or C. A person given prior authority by the sender or receiver.” Because recording the contents of a conversation by one of the parties to the conversation is not considered an actual “interception,” single party consent to audio-taping does not appear to be forbidden. Therefore, in an investigation by law enforcement, the consent of the officer as a party to the communication is

<sup>68</sup> See *Curriculum*, MAINE CRIMINAL JUSTICE ACADEMY, <http://www.maine.gov/dps/mcja/training/preservice/curriculum.htm> (last visited Nov. 21, 2012).

<sup>69</sup> See JOHN B. ROGERS, MAINE CRIMINAL JUSTICE ACADEMY, HUMAN TRAFFICKING LESSON PLAN (2010), available at <http://www.maine.gov/dps/mcja/training/mandatory/documents/HumanTraffickingLessonPlanfor2010MandatoryTraining3-1-2010.doc>

sufficient to remove the intercepted communication from the restrictions contained in Me. Rev. Stat. Ann. tit. 15, § 710 (Offenses).

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

Me. Rev. Stat. Ann. tit. 15, § 709(4) (Definitions) defines the term “intercept” as “to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than: A. The sender or receiver of that communication; B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or C. A person given prior authority by the sender or receiver.” Therefore, in an investigation by law enforcement, the consent of the officer as a party to the communication is sufficient to remove the intercepted communication from the restrictions contained in Me. Rev. Stat. Ann. tit. 15, § 710 (Offenses).

However, Me. Rev. Stat. Ann. tit. 15, § 713 (Evidence) states,

The contents of an interception are not admissible in court, except that the contents of an interception of any oral or wire communication that has been legally obtained under the laws of another jurisdiction in which the interception occurred or that has been legally obtained pursuant to section 712, subsection 2 or 3 [interception of communications within a Department of Correction (DOC) facility or a county jail by an investigative officer or DOC staff] is admissible in the courts of this State, subject to the Maine Rules of Evidence.

- 6.3.1 Recommendation: Maine should enact a law authorizing wiretapping by law enforcement in investigations related to Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping), § 302 (Criminal restraint), § 852 (Aggravated promotion of prostitution), § 855 (Patronizing prostitution of minor), and § 282(1) (Sexual exploitation of minor).

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

No statute seems to explicitly permit the use of a decoy by law enforcement. In fact, certain crimes specify that a crime is only committed when the victim “has not in fact attained” or “is in fact less than” a certain age. Me. Rev. Stat. Ann. tit. 17-A, § 253 (Gross sexual assault), § 255-A (Unlawful sexual contact), § 256 (Visual sexual aggression against child), § 260 (Unlawful sexual touching), § 282 (Sexual exploitation of a minor), § 302(1)(A)(4) (Criminal restraint). Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) applies only when the victim “has not in fact attained 18 years of age” or when the actor “knows that the person whose prostitution is sought has not yet attained 18 years of age.” This language does not seem to allow for using a decoy.

Using a decoy by law enforcement does seem to be available in investigations of Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of a child to commit a prohibited act), which makes it illegal when a person “with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and . . . Knows or believes that the other person is less than 14 years of age.” Me. Rev. Stat. Ann. tit. 17-A, § 259-A(1). “A prohibited act” includes “A. A sexual act; B. Sexual contact; or C. Sexual exploitation of a minor pursuant to section 282.” Me. Rev. Stat. Ann. tit. 17-A, § 259-A(2)(A),(B),(C).<sup>70</sup>

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<sup>70</sup> See *supra* note 7.

6.4.1 Recommendation: Amend Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping), § 302 (Criminal restraint), § 852 (Aggravated promotion of prostitution), § 855 (Patronizing prostitution of minor), § 282(1) (Sexual exploitation of minor), and § 259 (Solicitation of a child to commit a prohibited act) to expressly provide that the use of a decoy by law enforcement in the investigation of Me. Rev. Stat. Ann. tit. 17-A, § 855 (Patronizing prostitution of minor) or §852 (Aggravated promotion of prostitution) is not a defense to the purchase of sex with a minor.

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

Me. Rev. Stat. Ann. tit. 17-A, § 259-A(1)(A)(2)<sup>71</sup> (Solicitation of a child to commit a prohibited act) makes it illegal when a person “with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and . . . knows or believes that the other person is less than 14 years of age.” Me. Rev. Stat. Ann. tit. 17-A, § 259-A(1)(A). While the solicitation may be “by any means,” and the standard of “knows or believes that the other person is less than 14 years of age” appears to open the possibility of law enforcement using the Internet to pose as a minor in investigating this offense,<sup>72</sup> the lack of an express reference to use of the Internet fails to clearly permit such use.

6.5.1 Recommendation: Amend Maine’s CSEC laws to expressly permit use of the Internet to investigate these crimes.

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

Maine does not mandate the reporting of rescued domestic minor sex trafficking victims; however, pursuant to Maine’s Missing Children Act, Me. Rev. Stat. Ann. tit. 25, § 2154 (Missing child reports), law enforcement agencies that receive notification of a missing child<sup>73</sup> are required to immediately do the following:

- A. Inform all on-duty law enforcement officers of the missing child report;
- B. Communicate the report to every other law enforcement agency having jurisdiction in the county in which the report was filed;
- C. Enter or cause the report to be entered for inclusion in the State Police and National Crime Information Center computer files on missing children; and
- D. Submit information in the missing child report to the clearinghouse.

Additional requirements apply when a missing child is considered a victim or possible victim of Me. Rev. Stat. Ann. tit. 17-A, § 301 (Kidnapping) or § 302 (Criminal restraint). In such cases, law enforcement shall also inform the child’s school (if in state), the “municipality in which the child’s birth records are kept,” and the Vital Records Unit of the Division of Data Research and Vital Statistics in the Department of Health and Human Services that the agency has received a missing child report. Me. Rev. Stat. Ann. tit. 24, § 2154-A(1).

<sup>71</sup> See *supra* note 22, note 7.

<sup>72</sup> In *State v. Webster*, 955 A.2d 240, 241 (Me. 2008), a person associated with the South Portland Police Department did in fact communicate with the defendant “through various means on the Internet” as part of an investigation, which ultimately resulted in the defendant’s arrest, prosecution, and conviction under Me. Rev. Stat. Ann. tit. 17-A, § 259 (Solicitation of child by computer to commit a prohibited act) and an attempted violation of § 253 (Gross sexual assault). The holding dismissed an entrapment defense by stating, “[W]e find that there was sufficient evidence for the jury to conclude that government action did not induce Webster to commit the crimes of which he was convicted and/or that Webster was predisposed to commit the crimes.” *Id.* at 244.

<sup>73</sup> “Missing child” is defined in Me. Rev. Stat. Ann. tit. 25, § 2153(5) as “an individual: A. Who is under 18 years of age; B. Whose temporary or permanent residence is in or is believed to be in this State; C. Whose location is not determined; and D. Who has been reported as missing to a law enforcement agency.”

Pursuant to Me. Rev. Stat. Ann. tit. 25, § 2155(3) (Missing Children Information Clearinghouse), Maine has established the Missing Children Information Clearinghouse (Clearinghouse), and the Director has the duty to

- A. Establish a system of intrastate communication of information related to missing children who are determined missing by their parents, guardians, legal custodians or by a law enforcement agency;
- B. Provide a centralized file for the exchange of information on missing children within the State;
- C. Interface with the National Crime Information Center, or its successor, for the exchange of information; and
- D. Collect, process, maintain and disseminate information on missing children and strive to maintain or disseminate accurate and complete information.

Me. Rev. Stat. Ann. tit. 25, § 2156(1) (Location of child) states, “The parent, guardian or legal custodian who is responsible for notifying the clearinghouse or a law enforcement agency about a missing child shall immediately notify the clearinghouse or the agency of any child whose location has been determined.” Subsection (2) requires “[i]nformation received about a missing child pursuant to section 2154 that has been included in the clearinghouse must be purged from the data base by the appropriate law enforcement agency immediately upon location of the child.”

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