

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## ANALYSIS AND RECOMMENDATIONS MISSOURI

### 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.*

Missouri specifically prohibits sex trafficking of minors in Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child—penalty). Mo. Rev. Stat. § 566.212(1) states,

1. A person commits the crime of sexual trafficking of a child if the individual knowingly:
  - (1) Recruits, entices, harbors, transports, provides, or obtains by any means, including but not limited to, through the use of force, abduction, coercion,<sup>2</sup> fraud, deception, blackmail, or causing or

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<sup>1</sup> Unless otherwise specified, all references to Missouri statutes were taken from Missouri Revised Statutes (LEXIS through 96th Gen. Assemb., 2d Reg. Sess., 2012). All federal statutes were taken from United States Code (LEXIS through PL 112-173, approved 8/16/12). The statutory hierarchy used in Missouri Revised Statutes uses numbered subsections followed by numbers in parentheses for further subsections. For clarity, this report will place the numbered provision pincite in parentheses in citations to distinguish it from the statute number. This report includes legislation enacted before August 1, 2012.

threatening to cause financial harm, a person under the age of eighteen to participate in a commercial sex act,<sup>3</sup> a sexual performance,<sup>4</sup> or the production of explicit sexual material as defined in section 573.010 [Definitions],<sup>5</sup> or benefits, financially or by receiving anything of value, from participation in such activities; or

(2) Causes a person under the age of eighteen to engage in a commercial sex act, a sexual performance, or the production of explicit sexual material as defined in section 573.010.

A conviction under this statute is punishable as a felony by imprisonment for 10 years to life and a fine not to exceed \$250,000. Mo. Rev. Stat. § 566.212(3). If “force, abduction, or coercion” was used in the commission of the crime, the sentence is enhanced to “life imprisonment without eligibility for probation or parole” for the first 25 years. Mo. Rev. Stat. § 566.212(3).

Mo. Rev. Stat. § 566.213 (Sexual trafficking of a child under age twelve—affirmative defense not allowed, when—penalty) mostly mirrors the criminal provisions of Mo. Rev. Stat. § 566.212, except that it only applies to child victims under 12. A conviction under this statute is punishable as a felony by “life imprisonment without eligibility for probation or parole” until 25 years have been served. Mo. Rev. Stat. § 566.213(3).

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.*

In addition to the state trafficking law, Missouri criminalizes commercial sexual exploitation of children in the following offenses:

1. Mo. Rev. Stat. § 567.050(1)(2) (Promoting prostitution in the first degree) provides that “[a] person commits the crime of promoting prostitution in the first degree if he knowingly . . . [p]romotes prostitution of a person less than sixteen years old.” Mo. Rev. Stat. § 567.010(1) (Definitions) states,

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<sup>2</sup> Mo. Rev. Stat. § 566.200(4) (Definitions) defines “coercion” as

- (a) Threats of serious harm to or physical restraint against any person;
- (b) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (c) The abuse or threatened abuse of the legal process.

<sup>3</sup> Mo. Rev. Stat. § 566.200(5) (Definitions) defines “commercial sex act” as “any sex act on account of which anything of value is given to, promised, or received by any person.”

<sup>4</sup> Mo. Rev. Stat. § 566.200(15) (Definitions) defines “sexual performance” as “any play, motion picture, still picture, film, videotape, video recording, dance, or exhibition which includes sexual conduct or nudity, performed before an audience of one or more, whether in person or online or through other forms of telecommunication.”

<sup>5</sup> Mo. Rev. Stat. § 573.010(4) defines “explicit sexual material” as “any pictorial or three-dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition.” Mo. Rev. Stat. § 573.010(9) defines “material” as

anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects.

[A] person promotes prostitution if, acting other than as a prostitute or a patron of a prostitute, he knowingly

- (a) Causes or aids a person to commit or engage in prostitution;<sup>6</sup> or
- (b) Procures or solicits patrons for prostitution; or
- (c) Provides persons or premises for prostitution purposes; or
- (d) Operates or assists in the operation of a house of prostitution or a prostitution enterprise; or
- (e) Accepts or receives or agrees to accept or receive something of value<sup>7</sup> pursuant to an agreement or understanding with any person whereby he participates or is to participate in proceeds of prostitution activity; or
- (f) Engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

A conviction under Mo. Rev. Stat. § 567.050 is punishable as a Class B felony by imprisonment for 5–15 years.<sup>8</sup> Mo. Rev. Stat. §§ 567.050(3), 558.011(1)(2).

2. Mo. Rev. Stat. § 567.030(1) (Patronizing prostitution—penalty) states that it is a crime if a person “patronizes prostitution.” Mo. Rev. Stat. § 567.010(3) (Definitions) states that

a person patronizes prostitution if

- (a) Pursuant to a prior understanding, he gives something of value to another person as compensation for that person or a third person having engaged in sexual conduct<sup>9</sup> with him or with another; or
- (b) He gives or agrees to give something of value to another person on an understanding that in return therefor that person or a third person will engage in sexual conduct with him or with another; or
- (c) He solicits or requests another person to engage in sexual conduct with him or with another, or to secure a third person to engage in sexual conduct with him or with another, in return for something of value.

When the victim is 15–17 years old, a conviction is punishable as a Class A misdemeanor by imprisonment up to 1 year. Mo. Rev. Stat. §§ 567.030(3), 558.011(1)(5). When the victim is 14 or younger, a conviction is punishable as a Class D felony by imprisonment up to 4 years.<sup>10</sup> Mo. Rev. Stat. §§ 567.030(4), 558.011(1)(4).

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<sup>6</sup> Pursuant to Mo. Rev. Stat. § 567.010(2), “[A] person commits prostitution if he engages or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by the person or by a third person.”

<sup>7</sup> Mo. Rev. Stat. § 567.010(5) defines “something of value” as “any money or property, or any token, object or article exchangeable for money or property.”

<sup>8</sup> Pursuant to Mo. Rev. Stat. § 558.011(1), “The authorized terms of imprisonment, including both prison and conditional release terms, are” as set out in that section. Therefore, when this report uses the term “imprisonment,” unless otherwise specified, it includes time in prison and conditional release.

<sup>9</sup> Mo. Rev. Stat. § 567.010(4) states,

“Sexual conduct” occurs when there is

- (a) ‘Sexual intercourse’ which means any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results; or
- (b) ‘Deviate sexual intercourse’ which means any sexual act involving the genitals of one person and the mouth, hand, tongue or anus of another person; or
- (c) ‘Sexual contact’ which means any touching, manual or otherwise, of the anus or genitals of one person by another, done for the purpose of arousing or gratifying sexual desire of either party.

<sup>10</sup> Mo. Rev. Stat. § 558.011(2) states,

3. Mo. Rev. Stat. § 566.103(1) (Crime of promoting online sexual solicitation, violation, penalty) states,

A person or entity commits the offense of promoting online sexual solicitation if such person or entity knowingly permits<sup>11</sup> a web-based classified service<sup>12</sup> owned or operated by such person or entity to be used by individuals to post advertisements promoting prostitution,<sup>13</sup> enticing a child to engage in sexual conduct, or promoting sexual trafficking of a child after receiving notice under this section.

A conviction under this statute is punishable as a felony by a fine of \$5,000 “per day that the advertisement remains posted on the web-based classified service after seventy-two hours of when notice has been provided pursuant to this section.” Mo. Rev. Stat. § 566.103(6).

4. Mo. Rev. Stat. § 568.080(1) (Child used in sexual performance, penalties) makes it a crime when a person “knowing the character and content thereof . . . employs, authorizes, or induces a child less than seventeen years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in such sexual performance.” A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years.<sup>14</sup> Mo. Rev. Stat. §§ 568.080(2), 558.011(1)(3). However, if in the course of committing the crime, serious emotional injury is inflicted on the child, a conviction is punishable as a Class B felony by imprisonment for 5–15 years. Mo. Rev. Stat. §§ 568.080(2), 558.011(1)(2).
5. Mo. Rev. Stat. § 573.023(1) (Sexual exploitation of a minor, penalties) makes it a crime when a person “knowingly or recklessly photographs, films, videotapes, produces or otherwise creates obscene material<sup>15</sup>

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In cases of class C and D felonies, the court shall have discretion to imprison for a special term not to exceed one year in the county jail or other authorized penal institution, and the place of confinement shall be fixed by the court. If the court imposes a sentence of imprisonment for a term longer than one year upon a person convicted of a class C or D felony, it shall commit the person to the custody of the department of corrections for a term of years not less than two years and not exceeding the maximum authorized terms [otherwise] provided.

In addition, a person convicted of a class C or D felony may be required to pay a fine not to exceed \$5,000 or “double the amount of the offender’s gain from the commission of the crime. An individual offender may be fined not more than twenty thousand dollars under this provision.” Mo. Rev. Stat. § 560.011(1).

<sup>11</sup> Pursuant to Mo. Rev. Stat. § 566.103(4), “It shall be prima facie evidence that a person or entity acts knowingly if an advertisement is not removed from the web-based classified service within seventy-two hours of that person or entity being notified that an advertisement has been posted on that service which is prohibited under this section.”

<sup>12</sup> Mo. Rev. Stat. § 566.103(2) defines “web-based classified service” as “a person or entity in whose name a specific URL or Internet domain name is registered which has advertisements for goods and services or personal advertisement.”

<sup>13</sup> Pursuant to Mo. Rev. Stat. § 566.103(3),

An advertisement may be deemed to promote prostitution, entice a child to engage in sexual conduct, or promote sexual trafficking of a child, if the content of such advertisement would be interpreted by a reasonable person as offering to exchange sexual conduct for goods or services in violation of chapter 567, as seeking a child for the purpose of sexual conduct or commercial sex act, or as offering a child as a participant in sexual conduct or a commercial sex act in violation of 566.151 [Enticement of a child], 566.212 [Sexual trafficking of a child], or 566.213 [Sexual trafficking of a child under age twelve].

<sup>14</sup> See *supra* note 10.

<sup>15</sup> Mo. Rev. Stat. § 573.010(12) (Definitions) defines “obscene” by stating,

[A]ny material or performance is obscene if, taken as a whole:

with a minor<sup>16</sup> or child pornography.”<sup>17</sup> A conviction under this statute is punishable as “a class B felony unless the minor is a child,<sup>18</sup> in which case it is a class A felony.” Mo. Rev. Stat. § 573.023(2). A Class B felony is punishable by imprisonment for 5–15 years, and a Class A felony is punishable by imprisonment for 10–30 years or life. Mo. Rev. Stat. § 558.011(1)(1)–(2).

6. Mo. Rev. Stat. § 568.090(1) (Promoting sexual performance by a child, penalties) makes it a crime when a person “knowing the character and content thereof . . . promotes a sexual performance by a child less than seventeen years of age or produces, directs, or promotes any performance which includes sexual conduct by a child less than seventeen years of age.” A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years.<sup>19</sup> Mo. Rev. Stat. §§ 568.090(2), 558.011(1)(3).

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- (a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and
  - (b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and
  - (c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value.”

*See supra* note 5 for the definition of “material.”

<sup>16</sup> Mo. Rev. Stat. § 573.010(10) (Definitions) defines “minor” as “any person under the age of eighteen.”

<sup>17</sup> Mo. Rev. Stat. § 573.010(2) (Definitions) defines “child pornography” as the following:

- (a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance, as these terms are defined in section 556.061 [Code definitions], and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor under the age of eighteen; or
- (b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:
  - a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
  - b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
  - c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct.

Mo. Rev. Stat. § 556.061(29) defines “sexual conduct” as “acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification.” Mo. Rev. Stat. § 556.061(30) defines “sexual contact” as “any touching of the genitals or anus of any person, or the breast of any female person, or any such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person.” Mo. Rev. Stat. § 556.061(31) defines “sexual performance” as “any performance, or part thereof, which includes sexual conduct by a child who is less than seventeen years of age.”

Mo. Rev. Stat. § 573.010(7) defines “identifiable minor” as someone

- a. (i) Who was a minor at the time the visual depiction was created, adapted, or modified; or (ii) Whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
- b. Who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; . . .

Mo. Rev. Stat. § 573.010(7)(b) states that “proof of the actual identity of the identifiable minor” is not required.

<sup>18</sup> Mo. Rev. Stat. § 573.010(1) (Definitions) defines “child” as “any person under the age of fourteen.”

<sup>19</sup> *See supra* note 10.

7. Mo. Rev. Stat. § 568.060(2)<sup>20</sup> (Abuse of a child, penalty) states,

(2) A person commits the offense of abuse or neglect of a child if such person knowingly causes a child who is less than eighteen years of age:

- (1) To suffer physical or mental injury as a result of abuse or neglect; or
- (2) To be placed in a situation in which the child may suffer physical or mental injury as the result of abuse or neglect.

Pursuant to Mo. Rev. Stat. § 568.060(1), “[a]buse” is defined as “the infliction of physical, sexual, or mental injury against a child by any person eighteen years of age or older. . . .” A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years,<sup>21</sup> unless “the person has previously been found guilty of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct or the injury inflicted on the child is a serious emotional injury or a serious physical injury,” in which case the conviction is punishable as a Class B felony by imprisonment for 5–15 years. However, the violation is punishable as a class A felony if

- (1) The injury is a serious emotional injury or a serious physical injury;
- (2) The child is less than fourteen years of age; and
- (3) The injury is the result of sexual abuse as defined under section 566.100 or sexual exploitation of a minor as defined under section 573.023.

A Class A felony is punishable by imprisonment for 10–30 years or life. Mo. Rev. Stat. §§ 568.060(3)(1)–(2), 558.011(1)(1)–(3).

The following sexual offenses may apply to crimes involving sexual exploitation of children but do not specifically reference a commercial component:

1. Mo. Rev. Stat. § 566.151(1) (Enticement of a child, penalties) states,

A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.

A conviction under this statute is punishable as a felony by imprisonment for 5–30 years without eligibility for “parole, probation, conditional release, or suspended imposition or execution of sentence for” 5 years. Mo. Rev. Stat. § 566.151(3).

2. Mo. Rev. Stat. § 566.032(1) (Statutory rape and attempt to commit, first degree, penalties) makes it a crime for a person to have “sexual intercourse<sup>22</sup> with another person who is less than fourteen years old.” A violation or attempted violation of Mo. Rev. Stat. § 566.032 is punishable as a felony by imprisonment for 5 years to life, unless “in the course thereof the actor . . . subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age in which case

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<sup>20</sup> The text of Mo. Rev. Stat. § 568.060 included here and elsewhere in this report reflects passage of Senate Bill 628, 96th Gen. Assemb., Reg. Sess. (Mo. 2012) (effective August 28, 2012).

<sup>21</sup> See *supra* note 10.

<sup>22</sup> Mo. Rev. Stat. § 566.010(4) defines “sexual intercourse” as “any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.”

the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.” Mo. Rev. Stat. § 566.032(2).

3. Mo. Rev. Stat. § 566.034(1) (Statutory rape, second degree, penalty) states that statutory rape occurs when a person “twenty-one years of age or older . . . has sexual intercourse<sup>23</sup> with another person who is less than seventeen years of age.” A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years.<sup>24</sup> Mo. Rev. Stat. §§ 566.034(2), 558.011(1)(3).
4. Mo. Rev. Stat. § 566.083<sup>25</sup> (Sexual misconduct involving a child, penalty—applicability of section—affirmative defense not allowed, when) provides,

1. A person commits the crime of sexual misconduct involving a child if such person:

- (2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child;
- (3) Knowingly coerces or induces a child less than fifteen years of age to expose the child’s genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.<sup>26</sup>
- (4) Knowingly coerces or induces a child who is known by such person to be less than fifteen years of age to expose the breasts of a female child through the Internet or other electronic means for the purpose of arousing or gratifying the sexual desire of any person, including the child.

A conviction under this section is punishable as a Class D felony by imprisonment up to 4 years, “unless the actor has previously pleaded guilty to or been found guilty of an offense pursuant to this chapter, in which case it is a class C felony,” which is punishable by imprisonment up to 7 years.<sup>27</sup> Mo. Rev. Stat. §§ 566.083(4), 558.011(1)(4), (1)(3).

5. Mo. Rev. Stat. § 566.153(1) (Age misrepresentation, crime of—penalty) states,

A person commits the crime of age misrepresentation with intent to solicit a minor when he or she knowingly misrepresents his or her age with the intent to use the Internet to engage in criminal sexual conduct<sup>28</sup> involving a minor.

A conviction under this statute is punishable as a Class D felony by imprisonment up to 4 years.<sup>29</sup> Mo. Rev. Stat. §§ 566.153(2), 558.011(1)(4).

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<sup>23</sup> See *supra* note 22 for the definition of “sexual intercourse.”

<sup>24</sup> See *supra* note 10.

<sup>25</sup> Mo. Rev. Stat. § 566.083.1(1) was declared unconstitutional by the Missouri Supreme Court in *State v. Beine*, 162 S.W.3d 483 (Mo. 2005). The other subsections of 566.083.1 listed here remain in force. The text of Mo. Rev. Stat. § 566.083 included here and elsewhere in this report reflects passage of Senate Bill 628, 96th Gen. Assemb., Reg. Sess. (Mo. 2012) (effective August 28, 2012).

<sup>26</sup> Pursuant to Mo. Rev. Stat. § 566.083(2), (3), “2. The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means. 3. It is not an affirmative defense to prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.”

<sup>27</sup> See *supra* note 10.

<sup>28</sup> Mo. Rev. Stat. § 566.010(2) defines “sexual conduct” as “sexual intercourse, deviate sexual intercourse or sexual contact.” See *supra* note 9, for the definitions of sexual intercourse, deviate sexual intercourse, and sexual contact.

<sup>29</sup> See *supra* note 10.

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.*

Mo. Rev. Stat. § 566.103 (Crime of promoting online sexual solicitation, violation, penalty) refers to the human trafficking statute in defining the types of advertisements prohibited. Mo. Rev. Stat. § 566.103(3) provides,

An advertisement may be deemed to promote prostitution, entice a child to engage in sexual conduct, or promote sexual trafficking of a child, if the content of such advertisement would be interpreted by a reasonable person as offering to exchange sexual conduct for goods or services in violation of chapter 567 [Prostitution], as seeking a child for the purpose of sexual conduct or commercial sex act, or as offering a child as a participant in sexual conduct or commercial sex act in violation of section 566.151 [Enticement of a child], 566.212 [Sexual trafficking of a child], or 566.213 [Sexual trafficking of a child under age twelve].

However, Missouri’s other CSEC laws do not refer to Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) or § 566.213 (Sexual trafficking of a child under age twelve). Similarly, Mo. Rev. Stat. § 567.020 (Prostitution) does not refer to Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) or § 566.213 (Sexual trafficking of a child under age twelve) when the offense involves a minor under 18 engaged in prostitution.

- 1.3.1 Recommendation: Amend the state CSEC laws and § 567.020 (Prostitution) when a minor is prostituted to include specific references to Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child—penalty) and § 566.213 (Sexual trafficking of a child under age twelve—affirmative defense not allowed, when—penalty) to ensure identification of commercially sexually exploited minors as trafficking victims.

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

Missouri has not enacted a racketeering statute. Missouri has criminal gang statutes that might be applicable to some trafficking enterprises. Pursuant to Mo. Rev. Stat. 578.421(1)(Definitions), a “criminal street gang” is defined as,

any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subdivision (2) of this section [“Pattern of criminal street gang activity”], which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

Under Mo. Rev. Stat. 578.421(2), the only crimes that can be part of a pattern of criminal street gang activity are

- (a) Assault with a deadly weapon or by means of force likely to cause serious physical injury, as provided in sections 565.050 and 565.060;
- (b) Robbery, arson and those offenses under chapter 569 which are related to robbery and arson;
- (c) Murder or manslaughter, as provided in sections 565.020 to 565.024;
- (d) Any violation of the provisions of chapter 195 which involves the distribution, delivery or manufacture of a substance prohibited by chapter 195;
- (e) Unlawful use of a weapon which is a felony pursuant to section 571.030;
- (f) Tampering with witnesses and victims, as provided in section 575.270.

However, it is possible that some CSEC and trafficking crimes may be punished indirectly if they are undertaken for the benefit of a gang that engages in the crimes enumerated under Mo. Rev. Stat. 578.421(2). Pursuant to Mo. Rev. Stat. §§ 578.423,

[a]ny person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal street gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by gang members shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in a state correctional facility for one, two, or three years. For any person between the ages of fourteen and seventeen who is alleged to have violated the provisions of sections 578.421 to 578.437 the prosecuting attorney or circuit attorney may move for dismissal of a petition and transfer to a court of general jurisdiction.

In addition, enhanced penalties may be applied to convictions for crimes committed “for the benefit of, at the direction of, or in association with, any criminal street gang . . . .” Mo. Rev. Stat. 578.425. For misdemeanors, the offender “shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in a state correctional facility for one, two, or three years.” Mo. Rev. Stat. 578.425(1). For felony convictions, the judge has discretion to add an additional “one, two, or three years” to the sentence of “two, three, or four years” if the violation was committed near a school. Mo. Rev. Stat. 578.425(2).

- 1.4.1 Recommendation: Enact a racketeering statute that includes CSEC and trafficking offenses as predicate crimes that may be used to prosecute trafficking enterprises. Alternatively, amend the definition of “pattern of criminal street gang activity” to include Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child—penalty), § 566.213 (Sexual trafficking of a child under age twelve—affirmative defense not allowed, when—penalty), § 567.050(1)(2) (Promoting prostitution in the first degree), § 567.030(1) (Patronizing prostitution—penalty), § 566.103(1) (Crime of promoting online sexual solicitation, violation, penalty), § 568.080(1) (Child used in sexual performance, penalties), § 573.023(1) (Sexual exploitation of a minor, penalties), § 568.090(1) (Promoting sexual performance by a child, penalties) and § 568.060(2) (Abuse of a child, penalty) when the offense involves sexual exploitation of a minor.

***Legal Components:***

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

- 2.1 *The state sex trafficking law can be applied to the buyers of commercial sex acts with a victim of domestic minor sex trafficking.<sup>30</sup>*

Mo. Rev. Stat. § 566.212(1)(2) (Sexual trafficking of a child) and § 566.213(1)(2) (Sexual trafficking of a child under age twelve) provide that a person commits the crime of sex trafficking a minor when he knowingly “[c]auses a person under the age of eighteen [or 12 for purposes of Mo. Rev. Stat. § 566.213] to engage in a commercial sex act, a sexual performance, or the production of explicit sexual material as defined in section 573.010.” Also, the phrase, “obtains by any means,” in Mo. Rev. Stat. § 566.212(1) and § 566.213(1) might apply to buyers of sex with victims of domestic minor sex trafficking. Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),<sup>31</sup> have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”<sup>32</sup> a person under 18 to engage in commercial sex.<sup>33</sup> It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in Missouri’s trafficking statute may be similarly applied, and could, therefore, implicate buyers under Mo. Rev. Stat. § 566.212(1) and § 566.213(1).

- 2.1.1 Recommendation: Amend Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve) to expressly criminalize the act of purchasing sex acts with minors.

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<sup>30</sup> See *supra* Section 1.1 for a full description of the provisions of Mo. Rev. Stat. § 566.212 and § 566.213.

<sup>31</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>32</sup> 18 U.S.C. 1591(a).

<sup>33</sup> See, e.g., Indictment at 1, *United States v. Oflyng*, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*<sup>34</sup>

Buyers of sex with minors may be prosecuted under Mo. Rev. Stat. § 567.030 (Patronizing prostitution), a CSEC law by virtue of its enhanced penalties for buying sex with a minor under 18.

A conviction under this statute when the minor is 15–17 is punishable as a Class A misdemeanor by imprisonment up to 1 year. Mo. Rev. Stat. §§ 567.030(3), 558.011(1)(5). A conviction when the minor is under 15 is punishable as a Class D felony by imprisonment up to 4 years.<sup>35</sup> Mo. Rev. Stat. §§ 567.030(4), 558.011(1)(4).

Missouri’s other CSEC laws do not expressly include the crime of buying sex with a minor, but they may be used to prosecute a buyer of sex acts with a minor. Mo. Rev. Stat. § 566.151(1) (Enticement of a child) states,

A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.

A conviction under this statute is punishable as a felony by imprisonment for 5–30 years. Mo. Rev. Stat. § 566.151(3).

The following sex offenses could also apply to some buyers of sex acts with a minor: Mo. Rev. Stat. § 566.032 (Statutory rape and attempt to commit, first degree), § 566.034 (Statutory rape, second degree), § 566.083<sup>36</sup> (Sexual misconduct involving a child), and § 566.153 (Age misrepresentation).

- 2.2.1 Recommendation: Amend Mo. Rev. Stat. § 566.151(1) (Enticement of a child) to expressly include the purchase of sex with minors as prohibited conduct and to raise the age of protected minors to all those under 18.

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

Mo. Rev. Stat. § 567.030 (Patronizing prostitution), as the term, “patronizing prostitution,” is defined in Mo. Rev. Stat. § 567.010(3) (Definitions),<sup>37</sup> prohibits the solicitation of prostitution. Mo. Rev. Stat. § 567.030 distinguishes between buying sex with an adult and buying sex with a minor by providing a penalty enhancement for patronizing prostitution with a minor, and a further enhancement when the minor is under 15. Mo. Rev. Stat. § 567.030(3), (4). If the individual who is being patronized is 18 or older, a conviction under Mo. Rev. Stat. § 567.030 is punishable as a Class B misdemeanor. When the individual who is being patronized is 15–17, a conviction under Mo. Rev. Stat. § 567.030(3) is punishable as a class A misdemeanor. If the individual who is being patronized is 14 or younger, a conviction under Mo. Rev. Stat. § 567.030(4) is punishable as a Class D felony.

2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*<sup>38</sup>

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<sup>34</sup> See *supra* Section 1.2 for a full description of the relevant provisions in this section.

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

<sup>36</sup> See *supra* note 25.

<sup>37</sup> See *supra* Section 1.2 for the definition of “patronizing prostitution.”

<sup>38</sup> See *supra* Sections 1.1 and 1.2 for full descriptions of the relevant provisions in this section.

If the statute is applicable to a buyer, a conviction under Mo. Rev. Stat. § 566.212(1)(2) (Sexual trafficking of a child) is punishable as a felony by imprisonment for 10 years to life and a fine up to \$250,000. If the trafficking was “effected by force, abduction, or coercion,” the conviction is punishable by “life imprisonment without eligibility for probation or parole until the defendant has served” 25 years. Mo. Rev. Stat. § 566.212(3). Also, if it is applicable to a buyer, a conviction under Mo. Rev. Stat. § 566.213 (Sexual trafficking of a child under age twelve) is punishable as a felony by “life imprisonment without eligibility for probation or parole until the defendant has served” 25 years. Mo. Rev. Stat. § 566.213(3).

A conviction under Mo. Rev. Stat. § 566.151(1) (Enticement of a child) is punishable as a felony by imprisonment for 5–30 years with no eligibility “for parole, probation, conditional release, or suspended imposition or execution of sentence” for 5 years. Mo. Rev. Stat. § 566.151(3).

A conviction under Mo. Rev. Stat. § 567.030(1) (Patronizing prostitution), when the minor is 15–17, is punishable as a Class A misdemeanor by imprisonment up to 1 year. Mo. Rev. Stat. §§ 567.030(3), 558.011(1)(5). When the minor patronized is under 15, a conviction is punishable as a Class D felony by imprisonment up to 4 years.<sup>39</sup> Mo. Rev. Stat. §§ 567.030(4), 558.011(1)(4).

Convictions under the various sexual offenses for which a buyer of commercial sex acts with a minor could be prosecuted range from being punishable by imprisonment for 4–7 years. A conviction under Mo. Rev. Stat. § 566.083<sup>40</sup> (Sexual misconduct involving a child) is generally punishable as a Class D felony by imprisonment up to 4 years.<sup>41</sup> Mo. Rev. Stat. §§ 566.083(4), 558.011(1)(4). Convictions under Mo. Rev. Stat. § 566.034 (Statutory rape, second degree) are punishable as Class C felonies by imprisonment up to 7 years.<sup>42</sup> Mo. Rev. Stat. §§ 566.032(2), 566.034(2), 558.011(1)(3).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>43</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>44</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>45</sup>

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<sup>39</sup> See *supra* note 10.

<sup>40</sup> See *supra* note 25.

<sup>41</sup> See *supra* note 10.

<sup>42</sup> See *supra* note 10.

<sup>43</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>44</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); (Coercion and enticement); 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>45</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine); 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine); 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine); 2422(a) (conviction punishable by a fine, imprisonment up to 20 years,

2.5 *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.*

Mo. Rev. Stat. § 566.151(1) (Enticement of a child) is potentially applicable to buyers who use the Internet for the purpose of purchasing sex acts with minors. Mo. Rev. Stat. § 566.151(1) states,

A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.<sup>46</sup>

A conviction under this statute is punishable as a felony by imprisonment for 5–30 years without eligibility “for parole, probation, conditional release, or suspended imposition or execution of sentence” for 5 years. Mo. Rev. Stat. § 566.151(3).

Mo. Rev. Stat. § 566.153 (Age misrepresentation) could also have limited application to buyers who directly contact a minor online. Mo. Rev. Stat. § 566.153(1) states,

A person commits the crime of age misrepresentation with intent to solicit a minor when he or she knowingly misrepresents his or her age with the intent to use the Internet to engage in criminal sexual conduct<sup>47</sup> involving a minor.

A conviction under this statute is punishable as a Class D felony by imprisonment up to 4 years.<sup>48</sup> Mo. Rev. Stat. §§ 566.153(2), 558.011(1)(4).

- 2.5.1 Recommendation: Amend Mo. Rev. Stat. § 566.151 (Enticement of a child) raise the age of a minor victim to under 18 and to apply a heightened penalty when the Internet is used to purchase sex acts with minors.

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

Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve) provide that “[i]t shall not be a defense that the defendant believed that the person was” over the specified age. Mo. Rev. Stat. §§ 566.212(2), 566.213(2). Mo. Rev. Stat. § 567.030(2) (Patronizing prostitution) also states that “[i]t shall not be an affirmative defense that the defendant believed that the person he or she patronized for prostitution was eighteen years of age or older.”

In general, Mo. Rev. Stat. § 566.020(2) (Mistake as to incapacity or age—consent not a defense, when) states, “Whenever in this chapter [Sexual offenses] the criminality of conduct depends upon a child being thirteen years of age or younger, it is no defense that the defendant believed the child to be older.” However, Mo. Rev. Stat. § 566.020(3) states, “Whenever in this chapter the criminality of conduct depends upon a child being under

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

<sup>46</sup> *See supra* note 28 for the definition of “sexual conduct.”

<sup>47</sup> *See supra* note 28 for the definition of “sexual conduct.”

<sup>48</sup> *See supra* note 10.

seventeen years of age, it is an affirmative defense that the defendant reasonably believed that the child was seventeen years of age or older.”

2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*<sup>49</sup>

If applicable to buyers, Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) provides a serious penalty for trafficking of all minors under 18 by imprisonment for 10 years to life and a fine up to \$250,000. Mo. Rev. Stat. § 566.212(3). Mo. Rev. Stat. § 566.213 (Sexual trafficking of a child under age twelve) provides an enhanced penalty for sex trafficking of a child under 12 years of age of “life imprisonment without eligibility for probation or parole” for 25 years. Mo. Rev. Stat. § 566.213(3).

However, many of Missouri’s CSEC provisions that are potentially applicable to buyers of sex with minors limit or eliminate penalties for buying sex with older minors. Mo. Rev. Stat. § 566.151(1) (Enticement of a child) applies only when the minor victim is under 15. Mo. Rev. Stat. § 567.030 (Patronizing prostitution) applies to violations against all minors under 18 but staggers the penalties according to age, making patronizing prostitution a Class A misdemeanor when the minor is 15–17 and a Class D felony when the minor is under 15. Mo. Rev. Stat. § 567.030(3), (4).

- 2.7.1 Recommendation: To ensure the penalties imposed for buying sex acts with minors are sufficient to protect all minors, amend Mo. Rev. Stat. § 566.151(1) (Enticement of a child) and § 567.030 (Patronizing prostitution) to provide substantial base penalties that apply to all minors under 18.

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 of sex with minors convicted in Missouri face financial penalties including fines, restitution, forfeiture, and civil actions by victims. If applicable to buyers, a conviction under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) carries a maximum fine of \$250,000. Mo. Rev. Stat. § 566.212(3).

Pursuant to Mo. Rev. Stat. § 560.011(1)(1) (Fines for felonies), a buyer convicted of a Class C or D felony may be required to pay a fine up to \$5,000.

A buyer convicted of a Class A misdemeanor may be required to pay a fine up to \$1,000. Mo. Rev. Stat. § 560.016(1)(1). Mo. Rev. Stat. § 560.026(1) (Imposition of fines) further states,

In determining the amount and the method of payment of a fine, the court shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual. The court shall not sentence an offender to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense.

Additionally, Mo. Rev. Stat. § 560.026(3) states,

The court shall not sentence an individual to pay a fine in addition to any other sentence authorized by section 557.011 [Authorized dispositions], unless

- (1) He has derived a pecuniary gain from the offense; or

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<sup>49</sup> See *supra* Sections 1.1 and 1.2 for full descriptions of the relevant provisions in this section.

(2) The court is of the opinion that a fine is uniquely adapted to deterrence of the type of offense involved or to the correction of the defendant.

If applicable to buyers, persons convicted under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve) must pay restitution under Mo. Rev. Stat. § 566.218 (Restitution required for certain offenders), which provides that

a court sentencing a defendant convicted of violating the provisions of section . . . 566.212, or 566.213 shall order the defendant to pay restitution to the victim of the offense regardless of whether the defendant is sentenced to a term of imprisonment or probation. The minimum restitution ordered by the court shall be in the amount determined by the court necessary to compensate the victim for the value of the victim's labor and/or for the mental and physical rehabilitation of the victim and any child of the victim.

Furthermore, Mo. Rev. Stat. § 566.223(7) (Federal Trafficking Victims Protection Act of 2000 to apply, when) permits the attorney general to

bring a civil action, in the circuit court in which the victim of trafficking was found, to recover from any person or entity that benefits, financially or by receiving anything of value, from violations of section . . . 566.212 , or 566.213 , a civil penalty of not more than fifty thousand dollars for each violation . . . and injunctive and other equitable relief as the court may, in its discretion, order. The first priority of any money or property collected under such an action shall be to pay restitution to the victims of trafficking on whose behalf the civil action was brought.

Buyers may also be subject to discretionary civil asset forfeiture under Mo. Rev. Stat. § 513.607(1) (Property subject to forfeiture), which states that “[a]ll property of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture.” Mo. Rev. Stat. § 513.605(3) (Definitions) defines “criminal activity” as

the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

- . . .
- (c) Chapter 566, relating to sexual offenses;
- (d) Chapter 568, relating to offenses against the family;
- . . .
- (g) Chapter 567, relating to prostitution;
- (h) Chapter 573, relating to pornography and related offenses;
- . . . .

Seizure of forfeitable property is governed by Mo. Rev. Stat. § 513.607(6), which states “Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized.” Disposition of forfeited property is governed by Mo. Rev. Stat. §§ 513.620 – 513.623. Mo. Rev. Stat. §513.623 states “The clear proceeds of any sale or disposition after satisfaction of the interest of any innocent party and after payment of the reasonable costs . . . be distributed pursuant to section 7 of article IX of the Constitution of the state of Missouri.”

In addition, buyers may be required to pay civil damages for crimes involving pornography. Pursuant to Mo. Rev. Stat. § 537.047(1) (Civil action for damages authorized, sexual and pornographic offenses involving a minor—statute of limitations),

Any person who, while a child<sup>50</sup> or minor<sup>51</sup> as defined by section 573.010, was a victim of a violation of sections 573.023 [Sexual exploitation of a minor], . . . or 573.037 [Possession of child pornography], and who suffers physical or psychological injury or illness as a result of such violation, shall be entitled to bring a civil action to recover the actual damages sustained as a result of the violation, and shall also be entitled to recover the costs of the civil action and reasonable fees for attorneys and expert witnesses. A psychological injury or illness as described under this section need not be accompanied by physical injury or illness.

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

Mo. Rev. Stat. § 573.037(1) (Possession of child pornography) states,

A person commits the crime of possession of child pornography<sup>52</sup> if such person knowingly or recklessly possesses any child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen.

A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years<sup>53</sup> “unless the person possesses more than twenty still images of child pornography, possesses one motion picture, film, videotape, videotape production, or other moving image of child pornography. . . in which case it is a class B felony,” which is punishable by imprisonment for 5–15 years. Mo. Rev. Stat. §§ 573.037(2), 558.011(1)(3), (1)(2).

In comparison, a federal conviction for possession of child pornography<sup>54</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>55</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>56</sup>

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<sup>50</sup> “Child” is defined in Mo. Rev. Stat. § 573.010(1) as “any person under the age of fourteen.”

<sup>51</sup> “Minor” is defined in Mo. Rev. Stat. § 573.010(10) as “any person under the age of eighteen.”

<sup>52</sup> See *supra* note 17 for the definition of “child pornography.”

<sup>53</sup> See *supra* note 10.

<sup>54</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>55</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>56</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

Buyers convicted of certain offenses are required to register as sex offenders. Mo. Rev. Stat. § 589.400 (Registration of certain offenders with chief law officers of county of residence) provides that it applies to

(1) Any person who, since July 1, 1979,<sup>57</sup> has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, attempting to commit, or conspiring to commit a felony offense of chapter 566 [Sexual offenses], including sexual trafficking of a child and sexual trafficking of a child under the age of twelve, or any offense of chapter 566, where the victim is a minor unless such person is exempted from registering under subsection 8 [exemption for certain minor offenders] of this section; or

(2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, attempting to commit, or conspiring to commit one or more of the following offenses: . . . , possession of child pornography . . .

....

Any person to whom the section applies must “within three days of conviction, release from incarceration, or placement upon probation, register with the chief law enforcement official of the county or city not within a county in which such person resides unless such person has already registered in that county for the same offense.” Mo. Rev. Stat. § 589.400(2).

- 2.10.1 Recommendation: Amend Mo. Rev. Stat. § 589.400(1) to add convictions under Mo. Rev. Stat. § 567.030 (Patronizing prostitution), when the victim is under 18 as an offense for which registration as a sexual offender is required.

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<sup>57</sup> Missouri’s Megan’s Law, Mo. Rev. Stat. §§ 589.400–425 (relating to the registration requirements of sex offenders), became effective January 1, 1995. 1994 Mo. Laws 1131. Therefore, any non-violent sex offenders who pled or were found guilty of a registrable sex offense prior to January 1, 1995 are not subject to the registration requirements provided under Megan’s Law. *Doe v. Phillips*, 194 S.W. 3d, 833, 837 (Mo. 2006) (holding that Megan’s Law “violates Missouri’s constitutional prohibition of laws ‘retrospective in . . . operation’”).

**Legal Components:**

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

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**Legal Analysis:**

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.<sup>58</sup>

A conviction under Mo. Rev. Stat. § 566.212(1) (Sexual trafficking of a child) is punishable as a felony by imprisonment for 10 years to life and a fine up to \$250,000. If the trafficking was “effected by force, abduction, or coercion,” the conviction is punishable by “life imprisonment without eligibility for probation or parole until” 25 years have been served. Mo. Rev. Stat. § 566.212(3). A conviction under Mo. Rev. Stat. § 566.213 (Sexual trafficking of a child under age twelve) is also punishable as a felony by “life imprisonment without eligibility for probation or parole until” 25 years have been served. Mo. Rev. Stat. § 566.213(3).

Traffickers may be convicted under several CSEC statutes with varying penalties. A conviction under Mo. Rev. Stat. § 567.050 (Promoting prostitution in the first degree) is punishable as a Class B felony by imprisonment for 5–15 years. Mo. Rev. Stat. §§ 567.050(3), 558.011(1)(2). A conviction under Mo. Rev. Stat. § 573.023 (Sexual exploitation of a minor), where the minor is 14–17, is punishable as a Class B felony by imprisonment for 5–15 years and, where the minor is under 14, the penalty is enhanced to a Class A felony punishable by imprisonment for 10–30 years or life. Mo. Rev. Stat. §§ 573.023(2), 558.011(1)(2), (1)(1). A conviction under Mo. Rev. Stat. § 568.090 (Promoting sexual performance by a child) is punishable as a Class C felony by imprisonment up to 7 years.<sup>59</sup> Mo. Rev. Stat. §§ 568.090(2), 558.011(1)(3). A conviction under Mo. Rev. Stat. § 568.080 (Child used in sexual performance) is punishable as a Class C felony by imprisonment up to 7 years,<sup>60</sup> “unless in the course thereof the person inflicts serious emotional injury on the child, in which case the crime is a class B felony,” which is punishable by imprisonment for 5–15 years. Mo. Rev. Stat. §§ 568.080(2), 558.011(1)(3), (1)(2). A conviction under Mo. Rev. Stat. § 568.060(2)<sup>61</sup> (Abuse of a child, penalty) is punishable as a Class C felony by imprisonment up to 7 years,<sup>62</sup> unless “the person has previously been found guilty of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct or the injury inflicted on the child is a serious emotional injury or a serious physical injury,” in

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<sup>58</sup> See *supra* Sections 1.1 and 1.2 for more detailed descriptions of the relevant Missouri statutes in this section.

<sup>59</sup> See *supra* note 10.

<sup>60</sup> See *supra* note 10.

<sup>61</sup> See *supra* note 20.

<sup>62</sup> See *supra* note 10.

which case the conviction is punishable as a Class B felony by imprisonment for 5–15 years. However, the violation is punishable as a class A felony if

- (1) The injury is a serious emotional injury or a serious physical injury;
- (2) The child is less than fourteen years of age; and
- (3) The injury is the result of sexual abuse as defined under section 566.100 or sexual exploitation of a minor as defined under section 573.023.

A class A felony is punishable by imprisonment for 10–30 years or life. Mo. Rev. Stat. §§ 568.060(3)(1)–(2), 558.011(1)(1)–(3).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>63</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>64</sup> against a minor.

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

Several statutes criminalize the creation and distribution of child pornography by a trafficker. Mo. Rev. Stat. § 573.023(1) (Sexual exploitation of a minor) states that it is a crime when a person “knowingly or recklessly photographs, films, videotapes, produces or otherwise creates obscene material<sup>65</sup> with a minor or child pornography.”<sup>66</sup> A conviction under this statute is punishable as a Class B felony by imprisonment for 5–15 years if the child involved is 14–17, and a conviction is punishable as a Class A felony by imprisonment for 10–30 years to life if the child is under 14. Mo. Rev. Stat. §§ 573.023(2), 558.011(1)(2), (1)(1). In addition, pursuant to Mo. Rev. Stat. § 568.060(6) (Abuse of a child, penalty), the offense of abuse of a child “is a class A felony, without eligibility for probation or parole until the defendant has served not less than fifteen years of such sentence, if:

- (1) The injury is a serious emotional injury or a serious physical injury;
- (2) The child is less than fourteen years of age; and
- (3) The injury is the result of . . . sexual exploitation of a minor as defined under section 573.023.

Mo. Rev. Stat. § 568.090(1) (Promoting sexual performance by a child) makes it a crime for a person who “knowing the character and content thereof, . . . promotes a sexual performance by a child less than seventeen years of age or produces, directs, or promotes any performance which includes sexual conduct<sup>67</sup> by a child less than seventeen years of age.” A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years.<sup>68</sup> Mo. Rev. Stat. §§ 568.090(2), 558.011(1)(3).

Mo. Rev. Stat. § 573.025(1) (Promoting child pornography in the first degree) makes it a class B felony when a person “possesses with the intent to promote or promotes child pornography<sup>69</sup> of a child less than fourteen years

<sup>63</sup> See *supra* note 31.

<sup>64</sup> See *supra* note 43.

<sup>65</sup> See *supra* note 15 for the definition of “obscene material.”

<sup>66</sup> See *supra* note 17 for the definition of “child pornography.”

<sup>67</sup> See *supra* note 28 for the definition of “sexual conduct.”

<sup>68</sup> See *supra* note 10.

<sup>69</sup> See *supra* note 17 for the definition of “child pornography.”

of age or obscene material<sup>70</sup> portraying what appears to be a child less than fourteen years of age,” and a class A felony if “the person knowingly promotes such material to a minor.” Mo. Rev. Stat. § 573.025(2) states in part, “No person who pleads guilty to or is found guilty of, or is convicted of, promoting child pornography in the first degree shall be eligible for probation, parole, or conditional release for a period of three calendar years.”<sup>71</sup>

Mo. Rev. Stat. § 573.035(1) (Promoting child pornography in the second degree) makes it a Class C felony when a person “possesses with the intent to promote or promotes child pornography<sup>72</sup> of a minor under the age of eighteen or obscene material,<sup>73</sup> portraying what appears to be a minor under the age of eighteen,” and a Class B felony if “the person knowingly promotes such material to a minor.” Mo. Rev. Stat. § 573.035(2) states in part, “No person who is found guilty of, pleads guilty to, or is convicted of promoting child pornography in the second degree shall be eligible for probation.”

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>74</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>75</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>76</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>77</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.*

There are no laws in Missouri that specifically make it a crime to use the Internet to recruit minors for commercial sex acts. However, Mo. Rev. Stat. § 566.153(1) (Age misrepresentation, crime of—penalty) provides that “[a] person commits the crime of age misrepresentation with intent to solicit a minor when he or she knowingly misrepresents his or her age with the intent to use the Internet to engage in criminal sexual

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<sup>70</sup> See *supra* note 15 for the definition of “obscene material.”

<sup>71</sup> Mo. Rev. Stat. § 573.025(3) provides, “Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.”

<sup>72</sup> See *supra* note 17 for the definition of “child pornography.”

<sup>73</sup> See *supra* note 15 for the definition of “obscene material.”

<sup>74</sup> See *supra* note 43.

<sup>75</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>76</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>77</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).

conduct<sup>78</sup> involving a minor.” A conviction under this statute is punishable as a Class D felony by imprisonment up to 4 years.<sup>79</sup> Mo. Rev. Stat. §§ 566.153(2), 558.011(1)(4).

Mo. Rev. Stat. § 566.151(1) (Enticement of a child, penalties) states,

A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.

A conviction under this statute is punishable as a felony by imprisonment for 5–30 years without eligibility for “parole, probation, conditional release, or suspended imposition or execution of sentence for” 5 years. Mo. Rev. Stat. § 566.151(3).

3.3.1 Recommendation: Amend Mo. Rev Stat. 566.151(1) (Enticement of a child, penalties) to raise the age of a minor victim to under 18 and to prohibit use of the Internet by traffickers to lure, entice or solicit minors to engage in commercial sex acts and provide a heightened penalty in such cases.

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

Convicted traffickers face financial penalties including fines, restitution, forfeiture and civil damages to victims.

A trafficker faces a fine up to \$250,000 for a conviction under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child). Mo. Rev. Stat. § 566.212(3). In addition, under Mo. Rev. Stat. § 560.011(1)(1) (Fines for felonies), a trafficker who is convicted of a Class C or D felony may be required to pay a fine up to \$5,000 or up to “double the amount of the offender’s gain<sup>80</sup> from the commission of the crime. An individual offender may be fined not more than twenty thousand dollars under this provision.”

Mo. Rev. Stat. § 560.026(1) (Imposition of fines) further provides,

In determining the amount and the method of payment of a fine, the court shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual. The court shall not sentence an offender to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense.

Additionally, Mo. Rev. Stat. § 560.026(3) states,

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<sup>78</sup> Mo. Rev. Stat. § 566.010(2) defines “sexual conduct” as “sexual intercourse, deviate sexual intercourse or sexual contact.” See *supra* note 9 for the definitions of sexual intercourse, deviate sexual intercourse, and sexual contact.

<sup>79</sup> See *supra* note 10.

<sup>80</sup> Mo. Rev. Stat. §§ 560.011(2) (Fines for felonies) states,

As used in this section the term ‘gain’ means the amount of money or the value of property derived from the commission of the crime. The amount of money or 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 shall be deducted from the fine. When the court imposes a fine based on gain the court shall make a finding as to the amount of the offender’s gain from the crime. If the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon the issue.

The court shall not sentence an individual to pay a fine in addition to any other sentence authorized by section 557.011 [Authorized dispositions], unless

- (1) He has derived a pecuniary gain from the offense; or
- (2) The court is of the opinion that a fine is uniquely adapted to deterrence of the type of offense involved or to the correction of the defendant.

A trafficker convicted of sex trafficking of a child must pay restitution under Mo. Rev. Stat. § 566.218 (Restitution required for certain offenders), which states,

[A] court sentencing a defendant convicted of violating the provisions of section . . . 566.212 [Sexual trafficking of a child], or 566.213 [Sexual trafficking of a child under age twelve] shall order the defendant to pay restitution to the victim of the offense regardless of whether the defendant is sentenced to a term of imprisonment or probation. The minimum restitution ordered by the court shall be in the amount determined by the court necessary to compensate the victim for the value of the victim's labor and/or for the mental and physical rehabilitation of the victim and any child of the victim.

Furthermore, Mo. Rev. Stat. § 566.223(7) (Federal Trafficking Victims Protection Act of 2000 to apply, when) permits the attorney general to

bring a civil action, in the circuit court in which the victim of trafficking was found, to recover from any person or entity that benefits, financially or by receiving anything of value, from violations of section . . . 566.212 or 566.213 , a civil penalty of not more than fifty thousand dollars for each violation . . . and injunctive and other equitable relief as the court may, in its discretion, order. The first priority of any money or property collected under such an action shall be to pay restitution to the victims of trafficking on whose behalf the civil action was brought.

Traffickers are also subject to discretionary civil asset forfeiture<sup>81</sup> under Mo. Rev. Stat. § 513.607(1) (Property subject to forfeiture), which makes “[a]ll property of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity . . . subject to civil forfeiture.” Mo. Rev. Stat. § 513.605(3) (Definitions) defines “criminal activity” as

the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

- . . . .
- (c) Chapter 566, relating to sexual offenses [includes Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child)];
- (d) Chapter 568, relating to offenses against the family;
- . . . .
- (g) Chapter 567, relating to prostitution;
- (h) Chapter 573, relating to pornography and related offenses;
- . . . .

Seizure of forfeitable property is governed by Mo. Rev. Stat. § 513.607(6), which states, “Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not

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<sup>81</sup> For additional information on asset forfeiture and procedure, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>.

seized.” Disposition of forfeited property is governed by Mo. Rev. Stat. §§ 513.620 – 513.623. Mo. Rev. Stat. §513.623 states “The clear proceeds of any sale or disposition after satisfaction of the interest of any innocent party and after payment of the reasonable costs . . . be distributed pursuant to section 7 of article IX of the Constitution of the state of Missouri.”

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

Traffickers convicted of a number of sexual offenses are required to register as sex offenders. Mo. Rev. Stat. § 589.400 (Registration of certain offenders with chief law officers of county of residence) provides that it applies to

- (1) Any person who, since July 1, 1979,<sup>82</sup> has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, attempting to commit, or conspiring to commit a felony offense of chapter 566, including sexual trafficking of a child and sexual trafficking of a child under the age of twelve, or any offense of chapter 566 where the victim is a minor, unless such person is exempted from registering under subsection 8 [exemption for certain minor offenders] of this section; or
- (2) Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty or nolo contendere to committing, attempting to commit, or conspiring to commit one or more of the following offenses: kidnapping when the victim was a child and the defendant was not a parent or guardian of the child; abuse of a child under section 568.060, when such abuse is sexual in nature; . . . promoting prostitution in the first degree; promoting prostitution in the second degree; promoting prostitution in the third degree; sexual exploitation of a minor; promoting child pornography in the first degree; promoting child pornography in the second degree; possession of child pornography; furnishing pornographic material to minors; . . . promoting pornography for minors or obscenity in the second degree; incest; use of a child in a sexual performance; or promoting sexual performance by a child; . . .  
. . . .

Any person to whom the section applies must “within three days of conviction, release from incarceration, or placement upon probation, register with the chief law enforcement official of the county or city not within a county in which such person resides unless such person has already registered in that county for the same offense.” Mo. Rev. Stat. § 589.400(2).

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<sup>82</sup> See *supra* note 57.

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.*

A violation of Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) or § 566.213 (Sexual trafficking of a child under age twelve), as well as any other violation of Chapter 566 (Sexual offenses), constitutes grounds for terminating a trafficker’s parental rights under Mo. Rev. Stat. § 211.447 (Petition to terminate parental rights filed, when—juvenile court may terminate parental rights, when—investigation to be made—grounds for termination). Mo. Rev. Stat. § 211.447(5)(4) provides,

The juvenile officer or the division may file a petition to terminate the parental rights of the child’s parent when it appears that one or more of the following grounds for termination exist: . . . . The parent has been found guilty or pled guilty to a felony violation of chapter 566 5.1[Sexual offenses], when the child<sup>83</sup> or any child in the family was a victim . . . .

Mo. Rev. Stat. § 211.447(5)(6) clarifies, however, that the court shall evaluate as a factor in considering whether to terminate the parent-child relationship “[t]he conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights.”

- 3.6.1 Recommendation: Amend Mo. Rev. Stat. § 211.447 to provide express grounds for termination of parental rights when the parent has been convicted of trafficking any child under Mo. Rev. Stat. § 566.212 or § 566.213.

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<sup>83</sup> Pursuant to Mo. Rev. Stat. § 211.447(5)(4), “As used in this subdivision, a ‘child’ means any person who was under eighteen years of age at the time of the crime and who resided with such parent or was related within the third degree of consanguinity or affinity to such parent.”

**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.*

Facilitators may be prosecuted under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) or § 566.213 (Sexual trafficking of a child under age twelve), which makes it a crime when a person “knowingly . . . benefits, financially or by receiving anything of value, from participation in [trafficking] activities.” Mo. Rev. Stat. §§ 566.212(1), 566.213(1). A conviction under Mo. Rev. Stat. § 566.212 is punishable as a felony by imprisonment for 10 years to life and a fine up to \$250,000. If “force, abduction, or coercion” was used, the penalty is enhanced to “life imprisonment without eligibility for probation or parole” for 25 years. Mo. Rev. Stat. § 566.212(3). A conviction under Mo. Rev. Stat. § 566.213 is punishable as a felony by “life imprisonment without eligibility for probation or parole” for 25 years. Mo. Rev. Stat. § 566.213(3).

Facilitators who permit sex traffickers to use their online service to recruit minors or promote child sex trafficking face substantial financial penalties under Mo. Rev. Stat. § 566.103 (Crime of promoting online sexual solicitation, violation, penalty).<sup>84</sup> A conviction is punishable as a felony by a fine of \$5,000 “per day that the advertisement remains posted on the web-based classified service after seventy-two hours of when notice has been provided.” Mo. Rev. Stat. § 566.103(6).

Facilitators may be prosecuted under Mo. Rev. Stat. § 568.090 (Sexual misconduct, first degree, penalties).<sup>85</sup> A conviction under this statute is punishable as a class C felony by imprisonment up to 7 years.<sup>86</sup> Mo. Rev. Stat. §§ 568.090(2), 568.011(1)(3).

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

Facilitators convicted in Missouri face financial penalties including fines, restitution, forfeiture, and civil damages to trafficking victims.

Facilitators face a fine up to \$250,000 for convictions under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child). Mo. Rev. Stat. § 566.212(3). Facilitators also face potential fines of \$5,000 per day for failing to remove certain materials pursuant to Mo. Rev. Stat. § 566.103(1) (Crime of promoting online sexual solicitation). Mo. Rev. Stat. § 566.103(6). In addition, under Mo. Rev. Stat. § 560.011(1)(1) (Fines for

<sup>84</sup> See *supra* Section 1.2 for a detailed discussion of this statute.

<sup>85</sup> See *supra* Section 1.2 for a detailed discussion of this statute.

<sup>86</sup> See *supra* note 10.

felonies), a trafficker who is convicted of a Class C or D felony may be required to pay a fine up to \$5,000 or up to “double the amount of the offender’s gain<sup>87</sup> from the commission of the crime. An individual offender may be fined not more than twenty thousand dollars under this provision.”

Facilitators convicted of certain crimes must pay restitution to trafficking victims under Mo. Rev. Stat. § 566.218 (Restitution required for certain offenders), which states,

[A] court sentencing a defendant convicted of violating the provisions of section . . . 566.212 [Sexual trafficking of a child], or 566.213 [Sexual trafficking of a child under age twelve] shall order the defendant to pay restitution to the victim of the offense regardless of whether the defendant is sentenced to a term of imprisonment or probation. The minimum restitution ordered by the court shall be in the amount determined by the court necessary to compensate the victim for the value of the victim’s labor and/or for the mental and physical rehabilitation of the victim and any child of the victim.

Facilitators are also subject to discretionary civil asset forfeiture under Mo. Rev. Stat. § 513.607(1) (Property subject to forfeiture), which provides in part, “All property of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture.” Mo. Rev. Stat. § 513.605(3) (Definitions) defines “criminal activity” as

the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

...

(c) Chapter 566, relating to sexual offenses;

(d) Chapter 568, relating to offenses against the family;

...

(g) Chapter 567, relating to prostitution;

(h) Chapter 573, relating to pornography and related offenses;

....

Seizure of forfeitable property is governed by Mo. Rev. Stat. § 513.607(6), which states, “Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized.” Disposition of forfeited property is governed by Mo. Rev. Stat. §§ 513.620 – 513.623. Mo. Rev. Stat. § 513.623 states “The clear proceeds of any sale or disposition after satisfaction of the interest of any innocent party and after payment of the reasonable costs . . . be distributed pursuant to section 7 of article IX of the Constitution of the state of Missouri.”

A travel agency that facilitates child sex tourism could have its business assets frozen for a violation of Mo. Rev. Stat. § 567.089 (Offering travel for purpose of prostitution prohibited—penalties).<sup>88</sup> Mo. Rev. Stat. § 567.089(2) states that if an agency violates this section, “[T]he secretary of state shall revoke the articles of incorporation of the travel agency or charter tour operator. The secretary of state, as part of a proceeding brought under this section, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.”

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

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<sup>87</sup> See *supra* note 80 for the definition of “gain.”

<sup>88</sup> See *infra* Section 4.3 for discussion of substantive provisions.

Missouri has a series of laws that criminalize the promotion and sale of sex tourism, though the laws are not child-specific. In light of the broad definition of “prostitution” in Chapter 567 (Prostitution),<sup>89</sup> which does not distinguish between acts by adults and acts by minors, facilitators of child sex tourism could be prosecuted under Missouri’s sex tourism laws.

Mo. Rev. Stat. § 567.085(1) (Promoting travel for prostitution—penalty) criminalizes the conduct of a person who “knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in prostitution as defined by section 567.010 [Chapter definitions].”<sup>90</sup> A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years.<sup>91</sup> Mo. Rev. Stat. §§ 567.085(2), 558.011(1)(3).

Mo. Rev. Stat. § 567.087(1) (Prohibitions on travel agencies or tour operators—rebuttable presumption, advertisements) states,

No travel agency or charter tour operator shall:

- (1) Promote travel for prostitution under section 567.085;
- (2) Sell, advertise, or otherwise offer to sell travel services or facilitate travel:
  - (a) For the purpose of engaging in a commercial sex act as defined in section 566.200;<sup>92</sup>
  - (b) That consists of tourism packages or activities using and offering any sexual contact as defined in section 566.010,<sup>93</sup> as enticement for tourism; or
  - (c) That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services.

Mo. Rev. Stat. § 567.087(2) further provides, “There shall be a rebuttable presumption that any travel agency or charter tour operator using advertisements that include the term ‘sex tours’ or ‘sex travel’ or include depictions of human genitalia is in violation of this section.”

Mo. Rev. Stat. § 567.089 (Offering travel for purpose of prostitution prohibited—penalties) states,

1. No travel agency or charter tour operator shall engage in selling, advertising, or otherwise offering to sell travel services, tourism packages, or activities that solicit, encourage, or facilitate travel for the purpose of engaging in prostitution.
2. Upon violation of this section by a travel agency or charter tour operator, the secretary of state shall revoke the articles of incorporation of the travel agency or charter tour operator. The secretary of state, as part of a proceeding brought under this section, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.

- 4.3.1 Recommendation: Amend Mo. Rev. Stat. § 567.085 (Promoting travel for prostitution—penalty), § 567.087 (Prohibitions on travel agencies or tour operators), and § 567.089 (Offering travel for purpose of prostitution prohibited—penalties) to provide a penalty enhancement for violations involving the sale or promotion of child sex tourism.

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

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<sup>89</sup> See *supra* note 6.

<sup>90</sup> See *supra* note 6.

<sup>91</sup> See *supra* note 10.

<sup>92</sup> See *supra* note 3 for the definition of “commercial sex act.”

<sup>93</sup> See *supra* note 17 for the definition of “sexual contact.”

Several laws in Missouri make it illegal to promote or sell child pornography. Mo. Rev. Stat. § 568.090(1) (Promoting sexual performance by a child) makes it a crime when a person “knowing the character and content thereof . . . promotes a sexual performance by a child less than seventeen years of age or produces, directs, or promotes any performance which includes sexual conduct by a child less than seventeen years of age.” A conviction under this statute is punishable as a Class C felony by imprisonment up to 7 years.<sup>94</sup> Mo. Rev. Stat. §§ 568.090(2), 558.011(1)(3).

Mo. Rev. Stat. § 573.025(1) (Promoting child pornography in the first degree) makes it a crime when a person “possesses with the intent to promote<sup>95</sup> or promotes child pornography<sup>96</sup> of a child less than fourteen years of age or obscene material<sup>97</sup> portraying what appears to be a child less than fourteen years of age.” A conviction under this statute is punishable as a Class B felony, “unless the person knowingly promotes such material to a minor, in which case it is a class A felony.” Mo. Rev. Stat. § 573.025(2) further provides that “[n]o person who pleads guilty to or is found guilty of, or is convicted of, promoting child pornography in the first degree shall be eligible for probation, parole, or conditional release for a period of three calendar years.”<sup>98</sup> Mo. Rev. Stat. § 573.035(1) (Promoting child pornography in the second degree) makes it illegal if a person “possesses with the intent to promote or promotes child pornography<sup>99</sup> of a minor under the age of eighteen or obscene material<sup>100</sup> portraying what appears to be a minor under the age of eighteen.” A conviction under this statute is punishable as a class C felony, with no eligibility for probation. Mo. Rev. Stat. § 573.035(2).

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<sup>94</sup> See *supra* note 10.

<sup>95</sup> Mo. Rev. Stat. § 573.010(15) defines “promote” as “to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer.”

<sup>96</sup> See *supra* note 17 for the definition of “child pornography.”

<sup>97</sup> See *supra* note 15 for the definition of “obscene material.”

<sup>98</sup> See *supra* note 71.

<sup>99</sup> See *supra* note 17 for the definition of “child pornography.”

<sup>100</sup> See *supra* note 15 for the definition of “obscene material.”

**Legal Components:**

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

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**Legal Analysis:**

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

Mo. Rev. Stat. § 566.223(1) (Federal Trafficking Victims Protection Act of 2000 to apply, when) provides that victims of trafficking violations in Mo. Rev. Stat. §§ 566.200–566.221 “shall be afforded the rights and protections provided in the federal Trafficking Victims Protection Act of 2000, Public Law 106-386, as amended.”

For the purposes of Chapter 595 (Victims of crimes, compensation and services), a “victim” is defined as “a person who suffers personal physical injury<sup>101</sup> or death as a direct result of a crime, as defined in subdivision (5) of this subsection.” Mo. Rev. Stat. § 595.010(1)(28) (Definitions). “Crime” is defined in Mo. Rev. Stat. § 595.010(1)(5) in pertinent part as

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<sup>101</sup> “Personal physical injury” is defined in Mo. Rev. Stat. § 595.010(1)(23) as “actual bodily harm only with respect to the victim. Personal physical injury may include mental or nervous shock resulting from the specific incident upon which the claim is based.”

an act committed in this state which, if committed by a mentally competent, criminally responsible person who had no legal exemption or defense, would constitute a crime; provided that, such act involves the application of force or violence or the threat of force or violence by the offender upon the victim . . . .

Even if the personal physical injury requirement is satisfied, victims under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve) may not be eligible for compensation under this chapter if there is no proof of force or violence.

However, “victim” is defined more broadly for the purposes of victim’s and witness’s rights in Mo. Rev. Stat. § 595.200(6) as “a natural person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime.” “Crime” is also more broadly defined in Mo. Rev. Stat. § 595.200(1) as “an act which would constitute a violation of any criminal statute including any act which may result in an adjudication of delinquency.” Consequently, minor victims may be eligible to receive victim services despite being potentially ineligible for victim compensation.

5.1.1 Recommendation: Amend the definition of crime in Mo. Rev. Stat. § 595.010(1)(5) to specifically include violations of Mo. Rev. Stat. § 566.212 and § 566.213 regardless of whether force or violence were involved in the commission of these offenses and violations of Missouri’s CSEC laws to clarify that all child victims of sex trafficking qualify as victims under this statute.

5.1.2 Recommendation: Amend the definition of victim in Mo. Rev. Stat. § 595.200(6) and § 595.200(1) to expressly include victims of CSEC and trafficking under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child—penalty), § 566.213 (Sexual trafficking of a child under age twelve—affirmative defense not allowed, when—penalty), § 567.050(1)(2) (Promoting prostitution in the first degree), § 567.030(1) (Patronizing prostitution—penalty), § 566.103(1) (Crime of promoting online sexual solicitation, violation, penalty), § 568.080(1) (Child used in sexual performance, penalties), § 573.023(1) (Sexual exploitation of a minor, penalties), and § 568.090(1) (Promoting sexual performance by a child, penalties).

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.*

Mo. Rev. Stat. § 566.020(4) (Mistake as to incapacity or age—consent not a defense, when) provides that “[c]onsent is not an affirmative defense to any offense under chapter 566 if the alleged victim is less than twelve years of age.” Chapter 566 offenses include all sexual offenses, non-prostitution CSEC offenses, and sex trafficking offenses. However, Mo. Rev. Stat. § 568.100(2) (Factors to consider in establishing age of child participating in sexual performances) states, “When it becomes necessary for the purposes of section 568.060 [Abuse of a child], 568.080 [Child used in sexual performance] or 568.090 [Promoting sexual performance by a child] to determine whether a child who participated in the sexual conduct consented to the conduct, the term ‘consent’ shall have the meaning given it in section 556.061 [Code definitions].”<sup>102</sup>

<sup>102</sup> Mo. Rev. Stat. § 556.061(5) (Code definitions) provides that

- consent or lack of consent may be expressed or implied. Assent does not constitute consent if:
- (a) It is given by a person who lacks the mental capacity to authorize the conduct charged to constitute the offense and such mental incapacity is manifest or known to the actor; or
  - (b) It is given by a person who by reason of youth, mental disease or defect, or intoxication, is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve) do not make lack of consent an element of the crime, but also do not explicitly forbid the use of the defense of consent.

5.2.1 Recommendation: Amend Mo. Rev. Stat. § 566.020(4) to eliminate consent as an affirmative defense in Chapter 566 commercial sex offenses committed against minors between the ages of 12–17.

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

Mo. Rev. Stat. § 567.020 (Prostitution) does not distinguish between minors and adults in setting out the conduct that constitutes commission of the offense. However, although not specific to minors, Mo. Rev. Stat. § 566.223(2) (Federal Trafficking Victims Protection Act of 2000 to apply, when) states,

It is an affirmative defense for the offense of prostitution under section 567.020 [Prostitution] that the defendant engaged in the conduct charged to constitute an offense because he or she was coerced to do so by the use of, or threatened use of, unlawful physical force upon himself or herself or a third person, which force or threatened force a person of reasonable firmness in his or her situation would have been unable to resist.

5.3.1 Recommendation: Amend Mo. Rev. Stat. § 567.020 to make minors under the age of 18 immune from prosecution for this offense or amend Mo. Rev. Stat. § 566.223(2) to include a victim's status as a minor under the age of 18 as an affirmative defense to prostitution.

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.*

In Missouri, a victim of sex trafficking may be identified through use of the procedures in Mo. Rev. Stat. § 566.223 (Federal Trafficking Victims Protection Act of 2000 to apply, when), which states in part,

3. The department of public safety is authorized to establish procedures for identifying victims of trafficking under sections 566.200 to 566.223. The department may establish training programs as well as standard protocols for appropriate agencies to educate officials and employees on state statutes and federal laws regulating human trafficking and with the identification and assistance of victims of human trafficking. Such agencies may include but not be limited to state employees and contractors, including the children's division of the department of social services, juvenile courts, state law enforcement agencies, health care professionals, and runaway and homeless youth shelter administrators.

4. As soon as possible after a first encounter with a person who reasonably appears to a law enforcement agency to be a victim of trafficking as defined in section 566.200 [Definitions], that agency or office shall notify the department of social services and, where applicable, juvenile justice authorities, that the person may be a victim of trafficking, in order that such agencies may determine whether the person may be eligible for state or federal services, programs, or assistance.

5. The department of social services may coordinate with relevant state, federal, and local agencies to evaluate appropriate services for victims of trafficking. State agencies may implement programs and enter into contracts with nonprofit agencies, domestic and sexual violence shelters, and other nongovernment organizations to provide services to confirmed victims of trafficking, insofar as funds are available for that purpose. Such services may include, but are not limited to, case management,

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

emergency temporary housing, health care, mental health counseling, alcohol and drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training, and placement assistance.

Another point of entry into protective services for a child victim of sexual exploitation is through Mo. Rev. Stat. § 210.125 (Protective custody of child), which provides that

1. A police officer, law enforcement official, or a physician who has reasonable cause to suspect that a child is suffering from illness or injury or is in danger of personal harm by reason of his surroundings and that a case of child abuse or neglect exists, may request that the juvenile officer take the child into protective custody under chapter 211 [Juvenile courts].
2. A police officer, law enforcement official, or a physician who has reasonable cause to believe that a child is in imminent danger of suffering serious physical harm or a threat to life as a result of abuse or neglect, and such person has reasonable cause to believe the harm or threat to life may occur before a juvenile court could issue a temporary protective custody order or before a juvenile officer could take the child into protective custody, the police officer . . . may take or retain temporary protective custody<sup>103</sup> of the child without the consent of the child's parents, guardian or others legally responsible for his care.

The juvenile shall be immediately notified of the protective custody and the juvenile officer may either return the child to parental care or may initiate a Chapter 211 (Juvenile courts) protective proceeding. Mo. Rev. Stat. § 210.125(3).

Mo. Rev. Stat. § 211.131 (Taking child into custody) states,

When any child<sup>104</sup> found violating any law or ordinance or whose behavior, environment or associations are injurious to his welfare or to the welfare of others or who is without proper care, custody or support is taken into custody, the taking into custody is not considered an arrest.

Alternatively, a commercially sexually exploited child not identified as a trafficking victim might access a protective response through child protective services through a report of abuse or neglect. Mo. Rev. Stat. § 210.115(1) (Reports of abuse, neglect, and under age eighteen deaths) states,

When any physician, medical examiner, coroner, dentist, chiropractor, optometrist, podiatrist, resident, intern, nurse, hospital or clinic personnel that are engaged in the examination, care, treatment or research of persons, and any other health practitioner, psychologist, mental health professional, social worker, day care center worker or other child-care worker, juvenile officer, probation or parole officer, jail or detention center personnel, teacher, principal or other school official, minister as provided by section 352.400, peace officer or law enforcement official, or other person with responsibility for the care of children has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately report or cause a report to be made to the division in accordance with the provisions of sections 210.109 to 210.183. As used in this section, the

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<sup>103</sup> Mo. Rev. Stat. § 210.125(5) defines “temporary protective custody” as “temporary placement within a hospital or medical facility or emergency foster care facility or such other suitable custody placement as the court may direct; provided, however, that an abused or neglected child may not be detained in temporary custody in a secure detention facility.” Temporary protective custody may not exceed 24 hours without authorization by the juvenile court. Mo. Rev. Stat. § 210.125(4).

<sup>104</sup> Mo. Rev. Stat. § 211.021(1)(2) defines “child” as “any person under seventeen years of age and . . . any person over seventeen but not yet eighteen years of age alleged to have committed a status offense.”

term “abuse” is not limited to abuse inflicted by a person responsible for the child’s care, custody and control as specified in section 210.110,<sup>105</sup> but shall also include abuse inflicted by any other person.

Under Mo. Rev. Stat. § 210.115(4) other people are to report cases of suspected abuse or neglect by filing a report “if such person has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect.”

Mo. Rev. Stat. § 210.145(3) (Telephone hotline for reports on child abuse) provides,

Upon receipt of a report, the division shall determine if the report merits investigation, including reports which if true would constitute a suspected violation of any of the following: . . . or other crimes under chapter 566, if the victim is a child less than eighteen years of age and the perpetrator is twenty-one years of age or older, section 567.050 [Promoting prostitution in the first degree], if the victim is a child less than eighteen years of age, section . . . 568.060 [Abuse of a child], 568.080 [Child used in sexual performance], or 568.090 [Promoting sexual performance by a child], section 573.025 [Promoting child pornography in the first degree], 573.035 [Promoting child pornography in the second degree], 573.037 [Possession of child pornography] . . . or an attempt to commit any such crimes. . . . The local division staff shall determine, through the use of protocols developed by the division, whether an investigation or the family assessment and services approach should be used to respond to the allegation. The protocols developed by the division shall give priority to ensuring the well-being and safety of the child.

Pursuant to Mo. Rev. Stat. § 211.032(1) (Child abuse and neglect hearings),

[W]hen a child or person seventeen years of age, alleged to be in need of care and treatment pursuant to subdivision (1) of subsection 1 of section 211.031,<sup>106</sup> is taken into custody, the juvenile or family court shall notify the parties of the right to have a protective custody hearing.

The hearing must be held within 3 days and an adjudication hearing must be held within 60 days of the child being taken into custody. Mo. Rev. Stat. § 211.032(2)–(4). If the court determines that there is “sufficient cause” to continue custody, it must hold a dispositional hearing within 90 days of the child being taken into custody, and “conduct review hearings regarding the reunification efforts made by the division every ninety to one hundred twenty days for the first year the child is in the custody of the division.” Mo. Rev. Stat. § 211.032(4). Mo. Rev. Stat. § 211.181(1) (Order for disposition or treatment of child) provides that when a child is found by the court to be a child in need of care and treatment pursuant to Mo. Rev. Stat. § 211.031(1)(1), the

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<sup>105</sup> See *infra* Section 5.5 for the definition of “abuse.”

<sup>106</sup> Mo. Rev. Stat. § 211.031(1)(1) states that a child is alleged to be in need of care and treatment if

- (a) The parents, or other persons legally responsible for the care and support of the child or person seventeen years of age, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his or her well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child or person seventeen years of age shall not be construed as neglect when the treatment is recognized or permitted pursuant to the laws of this state;
- (b) The child or person seventeen years of age is otherwise without proper care, custody or support; or
- (c) The child or person seventeen years of age was living in a room, building or other structure at the time such dwelling was found by a court of competent jurisdiction to be a public nuisance pursuant to section 195.130;
- (d) The child or person seventeen years of age is a child in need of mental health services and the parent, guardian or custodian is unable to afford or access appropriate mental health treatment or care for the child.

court may, among other things, “[p]lace the child or person seventeen years of age under supervision in his own home or in the custody of a relative or other suitable person,” “[c]ommit the child or person seventeen years of age to the custody of” certain persons or institutions, order medical treatment or evaluation, or “[p]lace the child or person seventeen years of age in a family home.”

If a child is detained pending disposition rather than returned to the parents, Mo. Rev. Stat. § 211.151(1) (Places of detention—photographing and fingerprinting, restrictions) provides that the juvenile court may order placement in “(1) A juvenile detention facility provided by the county; (2) A shelter care facility, subject to the supervision of the court; (3) A suitable place of detention maintained by an association having for one of its objects the care and protection of children; (4) Such other suitable custody as the court may direct.” Mo. Rev. Stat. § 211.151(2) states that “[a] child shall not be detained in a jail or other adult detention facility pending disposition of a case.”<sup>107</sup>

If a child determined to be in need of care or treatment due to habitual truancy, runaway or other status offenses pursuant to Mo. Rev. Stat. § 211.031(1)(2)<sup>108</sup> is taken into custody, he may not be held in secure detention<sup>109</sup> for more than 24 hours, “the court finds pursuant to a probable cause hearing held within that twenty-four-hour period, that the child has violated the conditions of a valid court order and” meets other requirements set out in the section. Mo. Rev. Stat. § 211.063(1).<sup>110</sup> After a hearing, the court may order custody of the child based on the same options listed above that apply to children taken pursuant to Mo. Rev. Stat. § 211.031(1)(1), except that a child taken into custody pursuant to Mo. Rev. Stat. § 211.031(1)(2) may be committed to the department of social services. Mo. Rev. Stat. § 211.181(2).

Mo. Rev. Stat. § 211.038(1) (Children not to be reunited with parents or placed in a home) could prevent return of a child to the custody of a trafficker parent. Under Mo. Rev. Stat. § 211.038(1),

A child under the jurisdiction of the juvenile court shall not be reunited with a parent or placed in a home in which the parent or any person residing in the home has been found guilty of, or pled guilty to, any of the following offenses when a child was the victim:

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<sup>107</sup> “The term ‘jail or other adult detention facility’ does not include a juvenile detention facility.” Mo. Rev. Stat. § 211.151(4)(1).

<sup>108</sup> Mo. Rev. Stat. § 211.031(1)(2) states that a child may be in need of care and treatment if

- (a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or
- (b) The child disobeys the reasonable and lawful directions of his or her parents or other custodian and is beyond their control; or
- (c) The child is habitually absent from his or her home without sufficient cause, permission, or justification; or
- (d) The behavior or associations of the child are otherwise injurious to his or her welfare or to the welfare of others; or
- (e) The child is charged with an offense not classified as criminal, or with an offense applicable only to children . . .

<sup>109</sup> “Secure detention” is defined in Mo. Rev. Stat. § 211.063(2)(1) as “any public or private residential facility used for the temporary placement of any child if such facility includes construction fixtures designed to physically restrict the movements and activities of children held in the lawful custody of such facility.”

<sup>110</sup> However, Mo. Rev. Stat. § 211.063(3) provides that this section does not apply to a child taken into custody pursuant to Mo. Rev. Stat. § 211.031(1)(3), which includes “any child who is alleged to have violated a state law or municipal ordinance.”

- (1) A felony violation of section . . . 566.064 [Statutory sodomy, second degree], . . . 566.083 [Sexual misconduct involving a child], . . . 566.100 [Sexual abuse], . . . 566.151 [Enticement of a child], . . . 566.212 [Sexual trafficking of a child] . . . ;
- ...
- (3) A violation of subdivision (2) of subsection 1 of section 568.060 [Abuse of a child];
- ...
- (5) A violation of section 568.080 [Child used in sexual performance];
- (6) A violation of section 568.090 [Promoting sexual performance by a child]; or
- .....<sup>111</sup>

Once connected with the child protective services system, trafficking victims may have access to specialized services through a state technical assistance team. Mo. Rev. Stat. § 660.520(1) (State technical assistance team for child sexual abuse cases) provides that a special team in the department of social services is created to assist, train teams, develop protocols, and be involved in, upon request, the “investigation and prosecution of child abuse, child neglect, child sexual abuse, child exploitation, child pornography, [and] child fatality cases.” Pursuant to Mo. Rev. Stat. § 660.520(3),

Each county may develop a multidisciplinary team for the purpose of determining the appropriate investigative and therapeutic action . . . . The multidisciplinary team may include, but is not limited to, a prosecutor, or his or her representative, an investigator from the children’s division, a physician, a representative from a mental health care services agency and a representative of the police agency of primary jurisdiction.

Mo. Rev. Stat. § 21.771<sup>112</sup> provides for the creation of the Joint Committee on Child Abuse and Neglect and directs the committee to

- (1) Make a continuing study and analysis of the state child abuse and neglect reporting and investigation system;
- (2) Devise a plan for improving the structured decision making regarding the removal of a child from a home;
- (3) Determine the additional personnel and resources necessary to adequately protect the children of this state and improve their welfare and the welfare of families;
- (4) Address the need for additional foster care homes and to improve the quality of care provided to abused and neglected children in the custody of the state;
- (5) Determine from its study and analysis the need for changes in statutory law; and
- (6) Make any other recommendation to the general assembly necessary to provide adequate protections for the children of our state.

The Committee is tasked with submitting an annual report to the general assembly and providing “any recommendations which the committee may have for legislative action as well as any recommendations for administrative or procedural changes in the internal management or organization of state or local government agencies and departments.” Mo. Rev. Stat. § 21.771(7). “The provisions of this section shall expire on January 15, 2018.” Mo. Rev. Stat. § 21.771(8).

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<sup>111</sup> Mo. Rev. Stat. § 211.038(2) also provides, “For all other violations of offenses in chapters 566 and 568, not specifically listed in subsection 1 of this section or for a violation of an offense committed in another state when a child is the victim that would be a violation of chapter 566 or 568, if committed in Missouri, the juvenile court may exercise its discretion regarding the placement of a child under the jurisdiction of the juvenile court in a home in which a parent or any person residing in the home has been found guilty of, or pled guilty to, any such offense.”

<sup>112</sup> The text of Mo. Rev. Stat. § 21.771 included here and elsewhere in this report reflects passage of Senate Bill 628, 96th Gen. Assemb., Reg. Sess. (Mo. 2012) (effective August 28, 2012).

However, commercially sexually exploited minors who are not identified as abused or as trafficking victims may be taken into custody and detained<sup>113</sup> for prostitution-related offenses. Pursuant to Mo. Rev. Stat. § 211.131(1) (Taking child into custody, effect—notice to parents—jurisdiction attaches, when), “any child found violating any law or ordinance” may be taken into custody, and pursuant to Mo. Rev. Stat. § 211.151 (Places of detention—photographing and fingerprinting, restrictions),

1. Pending disposition of a case, the juvenile court may order in writing the detention of a child in one of the following places:
  - (1) A juvenile detention facility provided by the county;
  - (2) A shelter care facility, subject to the supervision of the court;
  - (3) A suitable place of detention maintained by an association having for one of its objects the care and protection of children;
  - (4) Such other suitable custody as the court may direct.
2. A child shall not be detained in a jail or other adult detention facility pending disposition of a case.

5.4.1 Recommendation: Amend Mo. Rev. Stat. § 566.223 (Federal Trafficking Victims Protection Act of 2000 to apply, when) to mandate specialized services and housing for all trafficking victims under 18 and prohibit a punitive response.

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

Mo. Rev. Stat. § 210.110(1) (Definitions) defines “abuse” in part as “any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for the child’s care, custody, and control.” Mo. Rev. Stat. § 210.110(12) defines “neglect” as “failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for the child’s well-being.”

5.6.1 Recommendation: Amend Mo. Rev. Stat. § 210.110(1) to expressly include within the definition of abuse violations of Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve).

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<sup>113</sup> Pursuant to Mo. Rev. Stat. § 211.061 (Arrested child taken before juvenile court--transfer of prosecution to juvenile court--limitations on detention of juvenile--detention hearing, notice.),

3. When the juvenile court is informed that a child is in detention it shall examine the reasons therefor and shall immediately:
  - (1) Order the child released; or
  - (2) Order the child continued in detention until a detention hearing is held. An order to continue the child in detention shall only be entered upon the filing of a petition or motion to modify and a determination by the court that probable cause exists to believe that the child has committed acts specified in the petition or motion that bring the child within the jurisdiction of the court under subdivision (2) or (3) of subsection 1 of section 211.031.
4. A juvenile shall not remain in detention for a period greater than twenty-four hours unless the court orders a detention hearing. If such hearing is not held within three days, excluding Saturdays, Sundays and legal holidays, the juvenile shall be released from detention unless the court for good cause orders the hearing continued. The detention hearing shall be held within the judicial circuit at a date, time and place convenient to the court. Notice of the date, time and place of a detention hearing, and of the right to counsel, shall be given to the juvenile and his or her custodian in person, by telephone, or by such other expeditious method as is available.

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

The definition of a person “responsible for the care, custody and control” of a child is broad enough to bring a trafficker who has custody or control over the minor into child protective services. Mo. Rev. Stat. § 210.110(16) (Definitions) defines “those responsible for the care, custody, and control of the child” as

those included but not limited to the parents or guardian of a child, other members of the child’s household, or those exercising supervision over a child for any part of a twenty-four-hour day. Those responsible for the care, custody and control shall also include any adult who, based on relationship to the parents of the child, members of the child’s household or the family, has access to the child.

Also, Mo. Rev. Stat. § 210.115(1) (Reports of abuse, neglect, and under age eighteen deaths) outlines mandatory reporting requirements for suspected abuse or neglect of a child and states, “As used in this section, the term ‘abuse’ is not limited to abuse inflicted by a person responsible for the child’s care, custody and control as specified in section 210.110, but shall also include abuse inflicted by any other person.” Under Mo. Rev. Stat. § 660.525 (Treatment for child sexual abuse victims provided by family services, when),

The division of family services may provide treatment services for child sexual abuse victims in instances where the perpetrator is not listed in section 210.110 [Definitions], as a person responsible for the care, custody and control of the child, if treatment funds are available and such treatment services are requested by the family of the child.

- 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.*

To the extent a prostituted child meets the definition of “victim,”<sup>114</sup> certain provisions of Chapter 595 (Victims of crimes, compensation and services) may impede a domestic minor sex trafficking victim’s access to victim compensation and services.

First, Mo. Rev. Stat. § 595.030(2) (Compensation) states,

No compensation shall be paid unless the department of public safety finds that a crime was committed, that such crime directly resulted in personal physical injury<sup>115</sup> to, or the death of, the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the department of public safety finds that the report to the police was delayed for good cause. If the victim is under eighteen years of age such report may be made by the victim’s parent, guardian or custodian; by a physician, a nurse, or hospital emergency room personnel; by the division of family services personnel; or by any other member of the victim’s family. . . .

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<sup>114</sup> See *supra* Section 5.1.

<sup>115</sup> Mo. Rev. Stat. § 595.010(1)(23) defines “personal physical injury” as “actual bodily harm only with respect to the victim. Personal physical injury may include mental or nervous shock resulting from the specific incident upon which the claim is based.”

In addition to the narrow timeframe for reporting the crime, Mo. Rev. Stat. § 595.025(2) (Claims, filing and hearing) requires that “[a] claim shall be filed not later than two years after the occurrence of the crime or the discovery of the crime upon which it is based.”

Second, cooperation with law enforcement is required, unless good cause is shown. Mo. Rev. Stat. § 595.015(6) (Compensation claims) states, “The claimant, victim or dependent shall cooperate with law enforcement officials in the apprehension and prosecution of the offender in order to be eligible, or the department has found that the failure to cooperate was for good cause.”

Third, compensation may be limited or eliminated if the department determines that the injury arose from the consent of the victim. Mo. Rev. Stat. § 595.035(3) (Award standards to be established) states, “In determining the amount of compensation payable, the department of public safety shall determine whether, because of the victim’s consent, provocation, incitement or negligence, the victim contributed to the infliction of the victim’s injury or death, and shall reduce the amount of the compensation or deny the claim altogether.”

5.7.1 Recommendation: Amend Mo. Rev. Stat. § 595.035 (Award standards to be established) to specifically exempt trafficked minors from filing requirements and ineligibility factors.

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

Mo. Rev. Stat. § 566.223(1) (Federal Trafficking Victims Protection Act of 2000 to apply, when) states,

Any individual who is alleging that a violation of sections 566.200 to 566.221 [including sexual trafficking of a child and sexual trafficking of a child under 12] has occurred against his or her person shall be afforded the rights and protections provided in the federal Trafficking Victims Protection Act of 2000, Public Law 106-386, as amended.<sup>116</sup>

Mo. Rev. Stat. § 491.710 (Hearings involving child witnesses) promotes speedy proceedings in cases involving a child victim witness, stating,

In all criminal cases and juvenile court hearings under chapter 211, involving a child victim or witness, as defined in section 491.678<sup>117</sup> or 491.696,<sup>118</sup> the court shall give docket priority. The court and the prosecuting or circuit attorney shall take appropriate action to insure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

Mo. Rev. Stat. § 491.015 (Prosecuting witness in certain cases not to be interrogated as to prior sexual conduct) seeks to protect sexual offense victim witnesses from cross-examination regarding prior sexual conduct. Mo. Rev. Stat. § 491.015(1), (2) states,

1. In prosecutions under chapter 566 [Sexual offenses], or prosecutions related to sexual conduct under chapter 568 [Offenses against the family], opinion and reputation evidence of the complaining witness’

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<sup>116</sup> See *supra* note 31.

<sup>117</sup> Mo. Rev. Stat. § 491.678 (Child defined) defines “child” as “a person under seventeen years of age who is the alleged victim in any criminal prosecution under chapter 565 [Offenses against the person], 566 [Sexual offenses] or 568 [Offenses against the family].”

<sup>118</sup> Mo. Rev. Stat. § 491.696 (Child defined) defines “child” as “a person seventeen years of age or under who is the alleged victim of sexual abuse, physical abuse, or neglect as such terms are defined in section 210.110.”

prior sexual conduct is inadmissible; evidence of specific instances of the complaining witness' prior sexual conduct or the absence of such instances or conduct is inadmissible, except where such specific instances are:

- (1) Evidence of the sexual conduct of the complaining witness with the defendant to prove consent where consent is a defense to the alleged crime and the evidence is reasonably contemporaneous with the date of the alleged crime; or
  - (2) Evidence of specific instances of sexual activity showing alternative source or origin of semen, pregnancy or disease;
  - (3) Evidence of immediate surrounding circumstances of the alleged crime; or
  - (4) Evidence relating to the previous chastity of the complaining witness in cases, where, by statute, previously chaste character is required to be proved by the prosecution.
2. Evidence of the sexual conduct of the complaining witness offered under this section is admissible to the extent that the court finds the evidence relevant to a material fact or issue.

Mo. Rev. Stat. § 491.075(1)<sup>119</sup> (Statement of child under fourteen admissible, when) states,

A statement made by a child under the age of fourteen or a vulnerable person relating to an offense under chapter 565 [Offenses against the person], 566 [Sexual offenses], 568 [Offenses against the family] or 573 [Pornography and related offenses], performed by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted if:

- (1) The court finds, in a hearing conducted outside the presence of the jury that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
- (2) (a) The child or vulnerable person testifies at the proceedings; or  
(b) The child or vulnerable person is unavailable as a witness; or  
(c) The child or vulnerable person is otherwise physically available as a witness but the court finds that the significant emotional or psychological trauma which would result from testifying in the personal presence of the defendant makes the child or vulnerable person unavailable as a witness at the time of the criminal proceeding.

In addition, such a statement when the child is a victim of the above offenses “is sufficient corroboration of a statement, admission or confession regardless of whether or not the child or vulnerable person is available to testify regarding the offense.” Mo. Rev. Stat. § 491.075(2).

Protection of a child witness from additional trauma in the trial process is provided pursuant to Mo. Rev. Stat. § 491.680 (Court may order video recording of alleged child victim), which states,

1. In any criminal prosecution under the provisions of chapter 565 [Offenses against the person], 566 or 568 involving an alleged child victim, upon the motion of the prosecuting attorney, the court may order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at preliminary hearings and at trial.
2. If the court finds, at a hearing, that significant emotional or psychological trauma to the child which would result from testifying in the personal presence of the defendant exists, which makes the child unavailable as a witness at the time of the preliminary hearing or trial, the court shall order that an in-camera videotaped deposition of the testimony of the alleged child victim be made for use as substantive evidence at the preliminary hearings and at trial. Such recording shall be retained by the prosecuting attorney and shall be admissible in lieu of the child's personal appearance and testimony at

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<sup>119</sup> The text of Mo. Rev. Stat. § 491.075 included here and elsewhere in this report reflects passage of Senate Bill 628, 96th Gen. Assemb., Reg. Sess. (Mo. 2012) (effective August 28, 2012).

preliminary hearings and at trial, conflicting provisions of section 544.270 notwithstanding. A transcript of such testimony shall be made as soon as possible after the completion of such deposition and shall be provided to the defendant together with all other discoverable materials.

3. Upon a finding of trauma as provided for in subsection 2 of this statute, the court may also exclude the defendant from the videotape deposition proceedings in which the child is to testify. Where any such order of exclusion is entered, the child shall not be excused as a witness until the defendant has had a reasonable opportunity to review the videotape deposition in private with his counsel and to consult with his counsel; and until his counsel has been afforded the opportunity to cross-examine the child following such review and consultation.

. . . .<sup>120</sup>

Mo. Rev. Stat. § 491.685(1) (Defendant may be excluded from child victim deposition proceedings, when) also provides, “On motion of the prosecuting attorney, the court may exclude the defendant from any or all deposition proceedings at which the child is to testify,” so long as the defendant is able to review the videotape with his attorney and his attorney has the opportunity to cross-examine the child after that review. Pursuant to Mo. Rev. Stat. § 491.685(2), “The court may also order, on motion of the prosecuting attorney, during all predeposition procedures, recesses, and post-deposition matters that the child be sequestered from the view and presence of the defendant.”

Pursuant to Mo. Rev. Stat. § 492.304(1) (Visual and aural recordings of child under fourteen admissible, when), “In addition to the admissibility of a statement under the provisions of section 492.303, the visual and aural recording of a verbal or nonverbal statement of a child when under the age of fourteen who is alleged to be a victim of an offense under the provisions of chapter 565 [Offenses against the person], 566 [Sexual offenses] or 568 [Offenses against the family], is admissible into evidence if” the requirements of the statute are met.

However, pursuant to Mo. Rev. Stat. § 492.304(2), (3),

If the child does not testify at the proceeding, the visual and aural recording of a verbal or nonverbal statement of the child shall not be admissible under this section unless the recording qualifies for admission under section 491.075. . . . If the visual and aural recording of a verbal or nonverbal<sup>121</sup> statement of a child is admissible under this section and the child testifies at the proceeding, it shall be admissible in addition to the testimony of the child at the proceeding whether or not it repeats or duplicates the child’s testimony.

Pursuant to Mo. Rev. Stat. § 595.209(1)(1)–(6), (11) (Rights of victims and witnesses), victims of dangerous felonies<sup>122</sup> or attempts to commit dangerous felonies are entitled to certain rights, upon written request,

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<sup>120</sup> However, Mo. Rev. Stat. § 491.690 (Provisions of sections 491.675 to 491.693 not to apply where defendant has waived right to counsel—exceptions) states that “[w]here a defendant has waived the right to counsel and elected to represent himself, the provisions of sections 491.675 to 491.693 shall not apply, except in the discretion of the court, under such rules, procedures and restrictions as the court may, in the interests of justice, impose.”

<sup>121</sup> Mo. Rev. Stat. § 492.304.2 states, “As used in this section, a nonverbal statement shall be defined as any demonstration of the child by his or her actions, facial expressions, demonstrations with a doll or other visual aid whether or not this demonstration is accompanied by words.”

<sup>122</sup> Mo. Rev. Stat. § 556.061(8) (Code definitions) defines “dangerous felony” as

the felonies of . . . attempted forcible rape if physical injury results, attempted forcible sodomy if physical injury results, forcible rape, forcible sodomy, kidnapping, . . . statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the

including the right to be informed about the crime, the filing of charges, trial dates, all other hearing dates, the status of the case, availability of victim compensation, availability of restitution, any release or escape of the offender from confinement, and the availability of videotape statements in lieu of court appearance. Such victims also have “the right to reasonable protection from the defendant or any person acting on behalf of the defendant from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts.” Mo. Rev. Stat. § 595.209(1)(9).

Lastly, Mo. Rev. Stat. § 210.160(1) (Guardian ad litem) requires a guardian ad litem to be appointed to represent the interests of an abused or neglected child subject to the proceedings as set out in the statute. In addition, “The court may designate volunteer advocates, who may or may not be attorneys licensed to practice law, to assist in the performance of the guardian ad litem duties for the court.” Mo. Rev. Stat. § 210.160(5).

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.*

Mo. Rev. Stat. § 211.151(3) (Places of detention—photographing and fingerprinting, restrictions) provides in part,

A child taken into custody as a victim of abuse or neglect or as a status offender pursuant to subdivision (1)<sup>123</sup> or (2)<sup>124</sup> of subsection 1 of section 211.031 or for an offense that would be considered a misdemeanor if committed by an adult may be fingerprinted or photographed with the consent of the juvenile judge. Records of a child who has been fingerprinted and photographed after being taken into custody shall be closed records . . . .

These records may be expunged pursuant to Mo. Rev. Stat. §§ 610.122 [Arrest record expunged, requirements] to 610.126 [Expungement does not deem arrest invalid—department of revenue may retain records necessary for administrative actions on driver's license—power to close or expunge record, limitation] except “[i]f a petition has not been filed within thirty days of the date that the child was taken into custody; and if a petition for the child has not been filed within one year of the date the child was taken into custody.”

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.*

Mandatory restitution is provided to trafficking victims under Mo. Rev. Stat. § 566.218 (Restitution required for certain offenders), which provides,

[A] court sentencing a defendant convicted of violating the provisions of section . . . 566.212 [Sexual trafficking of a child], or 566.213 [Sexual trafficking of a child under age twelve] shall order the defendant to pay restitution to the victim of the offense regardless of whether the defendant is sentenced to a term of imprisonment or probation. The minimum restitution ordered by the court shall be in the amount determined by the court necessary to compensate the victim for the value of the victim's labor and/or for the mental and physical rehabilitation of the victim and any child of the victim.

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time of the commission of the act giving rise to the offense, and, abuse of a child pursuant to subdivision (2) of subsection 3 of section 568.060 [Abuse of child], child kidnapping, and parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty days under section 565.153.

<sup>123</sup> See *supra* note 106.

<sup>124</sup> See *supra* note 108.

In addition to restitution, trafficking victims may pursue a civil action against traffickers and facilitators. Mo. Rev. Stat. § 566.223(6) (Federal Trafficking Victims Protection Act of 2000 to apply, when) provides that “[a] victim of trafficking may bring a civil action against a person or persons who plead guilty to or are found guilty of a violation of section . . . 566.212, or 566.213, to recover the actual damages sustained by the victim, court costs, including reasonable attorney’s fees, and punitive damages, when determined to be appropriate by the court.” Furthermore, Mo. Rev. Stat. § 566.223(7) permits the attorney general to

bring a civil action, in the circuit court in which the victim of trafficking was found, to recover from any person or entity that benefits, financially or by receiving anything of value, from violations of section . . . 566.212 , or 566.213, a civil penalty of not more than fifty thousand dollars for each violation . . . and injunctive and other equitable relief as the court may, in its discretion, order. The first priority of any money or property collected under such an action shall be to pay restitution to the victims of trafficking on whose behalf the civil action was brought.

Victims of select pornography statutes may also bring a civil suit for damages. Pursuant to Mo. Rev. Stat. § 537.047(1) (Civil action for damages authorized, sexual and pornographic offenses involving a minor—statute of limitations),

Any person who, while a child<sup>125</sup> or minor<sup>126</sup> as defined by section 573.010, was a victim of a violation of sections 573.023 [Sexual exploitation of a minor], 573.025 [Promoting child pornography in the first degree], 573.035 [Promoting child pornography in the second degree], or 573.037 [Possession of child pornography], and who suffers physical or psychological injury or illness as a result of such violation, shall be entitled to bring a civil action to recover the actual damages sustained as a result of the violation, and shall also be entitled to recover the costs of the civil action and reasonable fees for attorneys and expert witnesses. A psychological injury or illness as described under this section need not be accompanied by physical injury or illness.

*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.*

Mo. Rev. Stat. § 566.223(6) (Federal Trafficking Victims Protection Act of 2000 to apply, when) states in relevant part that “a civil action against a person or persons who plead guilty to or are found guilty to” the listed trafficking offenses “shall be filed within ten years after of: (1) The final order in the related criminal case; (2) The victim’s emancipation from the defendant; or (3) The victim’s eighteenth birthday.”

Mo. Rev. Stat. § 556.037 (Time limitations for prosecutions for sexual offenses involving a person under eighteen) states that

Notwithstanding the provisions of section 556.036 [Time limitations], prosecutions for unlawful sexual offenses involving a person eighteen years of age or under must be commenced within thirty years after the victim reaches the age of eighteen unless the prosecutions are for forcible rape, attempted forcible rape, forcible sodomy, kidnapping, or attempted forcible sodomy in which case such prosecutions may be commenced at any time.

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<sup>125</sup> “Child” is defined in Mo. Rev. Stat. § 573.010(1) as “any person under the age of fourteen.”

<sup>126</sup> “Minor” is defined in Mo. Rev. Stat. § 573.010(10) as “any person under the age of eighteen.”

The time for minor victims of sex offenses to bring civil actions for injuries resulting from their victimization is extended under Mo. Rev. Stat. § 537.046(2) (Childhood sexual abuse, injury or illness defined—action for damages may be brought, when), which provides,

Any action to recover damages from injury or illness caused by childhood sexual abuse in an action brought pursuant to this section shall be commenced within ten years of the plaintiff attaining the age of twenty-one or within three years of the date the plaintiff discovers, or reasonably should have discovered, that the injury or illness was caused by childhood sexual abuse,<sup>127</sup> whichever later occurs.<sup>128</sup>

Similarly, Mo. Rev. Stat. § 537.047(2) (Civil action for damages authorized, sexual and pornographic offenses involving a minor—statute of limitations) states that a cause of action<sup>129</sup> “shall be commenced within ten years of the plaintiff attaining the age of twenty-one, or within three years of the date the plaintiff discovers that the injury or illness was caused by the violation of an offense enumerated in subsection 1 of this section, whichever later occurs.” Additionally, Mo. Rev. Stat. § 537.047(3) states, “A cause of action under this section may arise only if the violation that caused the injury occurs on or after August 28, 2007.”

Pursuant to Mo. Rev. Stat. § 516.110(3) (What action shall be commenced within ten years), the statute of limitations for civil “[a]ctions for relief, not herein otherwise provided for” is ten years, and Mo. Rev. Stat. § 516.140 (What actions within two years) requires that actions for “assault, battery, false imprisonment,” among other listed actions, “shall be brought within two years after the cause accrued.”

- 5.11.1 Recommendation: Amend Mo. Rev. Stat. § 556.037 (Time limitations for prosecutions for sexual offenses involving a person under eighteen) to eliminate the statute of limitations for prosecuting offenses under Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve).

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<sup>127</sup> Mo. Rev. Stat. § 537.046(1)(1) defines “childhood sexual abuse” as “any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030 [Forcible rape and attempted forcible rape], . . . 566.060 [Forcible sodomy], . . . 566.100 [Sexual abuse] . . . .”

<sup>128</sup> Although Mo. Rev. Stat. § 537.046(3) further states that “[t]his section shall apply to any action commenced on or after August 28, 2004, including any action which would have been barred by the application of the statute of limitation applicable prior to that date,” the United States District Court for the Western District of Missouri has determined that this language “clearly contravenes the constitutional prohibition against retrospective laws.” *Walker v. Barrett*, No. 08-3426, 2010 U.S. Dist. LEXIS 93865, at \*7–8 (W.D. Mo. Sept. 9, 2010) (quoting *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338 (Mo. 1993), *aff’d*, 650 F.3d 1198 (8th Cir. 2011)).

<sup>129</sup> Mo. Rev. Stat. § 537.047(1) establishes that the applicable causes of action include when the child or minor was a victim of violations of “sections 573.023 [Sexual exploitation of a minor], 573.025 [Promoting child pornography in the first degree], 573.035 [Promoting child pornography in the second degree], or 573.037 [Possession of child pornography], and who suffers physical or psychological injury or illness as a result of such violation.” The statute further clarifies that “psychological injury or illness . . . need not be accompanied by physical injury or illness.”

**Legal Components:**

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

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

Mo. Rev. Stat. § 566.223(3) (Federal Trafficking Victims Protection Act of 2000 to apply, when) authorizes, but does not require, training programs for law enforcement on human trafficking. Mo. Rev. Stat. § 566.223(3) states,

The department of public safety is authorized to establish procedures for identifying victims of trafficking under sections 566.200 to 566.223. The department may establish training programs as well as standard protocols for appropriate agencies to educate officials and employees on state statutes and federal laws regulating human trafficking and with the identification and assistance of victims of human trafficking. Such agencies may include but not be limited to state employees and contractors, including the children’s division of the department of social services, juvenile courts, state law enforcement agencies, health care professionals, and runaway and homeless youth shelter administrators.

- 6.1.1 Recommendation: Amend Mo. Rev. Stat. § 566.223(3) to make training on minor sex trafficking statutes mandatory for law enforcement.

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

Mo. Rev. Stat. § 542.402 (Penalty for illegal wiretapping, permitted activities) specifically provides an exception for law enforcement officers and their agents wearing a listening device in undercover operations. Mo. Rev. Stat. § 542.402(1)(2) states that, “except as otherwise specifically provided in sections 542.400 to 542.422,” a person is guilty of a class D felony if he

[k]nowingly uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when such device transmits communications by radio or interferes with the transmission of such communication; provided, however, that nothing in sections 542.400 to 542.422 shall be construed to prohibit the use by law enforcement officers of body microphones and transmitters in undercover investigations for the acquisition of evidence and the protection of law enforcement officers and others working under their direction in such investigations.

In addition, Mo. Rev. Stat. § 542.402(2)(2) and (3) permit single party consent to audio-taping. Mo. Rev. Stat. § 542.402(2)(2) provides that it is not unlawful “[f]or a person acting under law to intercept a wire or oral communication, where such person is a party to the communication or where one of the parties to the

communication has given prior consent to such interception.” Mo. Rev. Stat. § 542.402(2)(3) provides that it is not unlawful

[f]or a person not acting under law to intercept a wire communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act.

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

The exception in Mo. Rev. Stat. § 542.404 (Application for an order—authorization by attorney general—approval by judge, probable cause required) to the prohibition on wiretapping in Mo. Rev. Stat. § 542.402 (Penalty for illegal wiretapping, permitted activities) does not apply to investigations of minor sex trafficking. Mo. Rev. Stat. § 542.404(1) provides that authorization for interception may be granted

in conformity with sections 542.400 to 542.422, . . . if there is probable cause to believe that the interception may provide evidence of a felony which involves the manufacture or distribution of a controlled substance . . . or the felony of murder, arson, or kidnapping, or a terrorist threat . . . or any conspiracy to commit any of the foregoing.

- 6.3.1 Recommendation: Amend Mo. Rev. Stat. § 542.404 to include investigations of suspected violations of Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve) within the exception to the prohibition on wiretapping in Mo. Rev. Stat. § 542.402 (Penalty for illegal wiretapping, permitted activities).

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

Use of a decoy is specifically permitted within the text of two Missouri statutes relating to sex crimes against children. Mo. Rev. Stat. § 566.151(2) (Enticement of a child) and § 566.083(3)<sup>130</sup> (Sexual misconduct involving a child) provide that “[i]t is not an affirmative defense to [a] prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.”

- 6.4.1 Recommendation: Amend Mo. Rev. Stat. § 566.212 (Sexual trafficking of a child) and § 566.213 (Sexual trafficking of a child under age twelve) to prohibit a defense that the “minor victim” was actually a law enforcement officer acting as a decoy.

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

Pursuant to Mo. Rev. Stat. § 566.083(2)<sup>131</sup> (Sexual misconduct involving a child), “The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means,” and subsection (3) states that “[i]t is not an affirmative defense to prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.” In addition, Mo. Rev. Stat. § 566.151(1) (Enticement of a child) states that

[a] person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through

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<sup>130</sup> See *supra* note 25.

<sup>131</sup> See *supra* note 25.

communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.

This statute also applies regardless of whether the “victim” was actually a law enforcement officer acting as a minor. Mo. Rev. Stat. § 566.151(2).

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

Mo. Rev. Stat. § 43.402 (Missing persons unit established, duties) states,

The superintendent of the patrol [Missouri state highway patrol] shall organize a missing persons unit within the patrol, which unit shall be the central repository for this state for information regarding missing persons. The head of this missing person unit shall, with the approval of the superintendent of the patrol, establish the services deemed necessary to aid in the location of missing persons including, but not limited to, the following:

- (1) Collecting and disseminating information regarding missing persons in order to assist in locating such persons;
- (2) Establishing a system of interstate and intrastate communication of information relating to children determined to be missing by the parent, guardian, or legal custodian of the child, or by a law enforcement agency;
- (3) Providing a centralized file for the exchange of information on missing children with appropriate private or federal agencies which serve as national coordinators of missing children incidents;
- (4) Assisting in the investigation of reports of missing persons by a uniformed or commissioned member of the patrol.

Mo. Rev. Stat. § 43.403 (Responsibilities of other agencies) states, “The director of the department of social services, the director of the department of mental health, school districts, and juvenile courts, shall establish appropriate procedures to ensure that all possible instances of missing children are reported to the appropriate law enforcement agency or the highway patrol as required by sections 43.400 [Definitions] to 43.409 [Registrar and school to be notified when missing child is located].” Mo. Rev. Stat. § 43.404 (Parent or guardian may report missing child) states that “[a]ny parent, guardian, or legal custodian may submit a missing child report to the patrol on any child whose whereabouts are unknown,” but the parent shall subsequently notify the agency “when the location of the child reported missing has been determined.” Mo. Rev. Stat. § 43.404.

In cases where a missing child is believed to have been abducted,<sup>132</sup> Mo Rev. Stat. § 210.1012(1) (Amber alert system created) establishes “a statewide program called the ‘Amber Alert System’ . . . to aid in the identification and location of an abducted child.” However, Mo Rev. Stat. § 210.1012(6) states that “[p]articipation in an Amber alert system is entirely at the option of local law enforcement agencies and federally licensed radio and television broadcasters.”

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<sup>132</sup> Mo Rev. Stat. § 210.1012(2) defines “abducted child” as “a child whose whereabouts are unknown and who is one of the following:

- (1) Less than eighteen years of age and reasonably believed to be the victim of the crime of kidnapping as defined by section 565.110, as determined by local law enforcement;
- (2) Reasonably believed to be the victim of the crime of child kidnapping as defined by section 565.115, as determined by local law enforcement; or
- (3) Less than eighteen years of age and at least fourteen years of age and who, if under the age of fourteen, would otherwise be reasonably believed to be a victim of child kidnapping as defined by section 565.115, as determined by local law enforcement.

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