

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

ANALYSIS AND RECOMMENDATIONS NEW JERSEY

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 Analysis¹:

- 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.*

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) requires some form of force, threat of force, or coercion² with no specific provisions related to minors, stating,

¹ Unless otherwise specified, all references to New Jersey statutes were taken from the New Jersey Annotated Statutes (LEXIS through 2011 2d Ann. Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-173, approved 8/16/12). This report includes legislation enacted before August 1, 2012.

² Although New Jersey's trafficking law could be read as not requiring force, fraud, or coercion if the victim was a minor, the Attorney General and the state anti-trafficking task force have interpreted the statute to require force, fraud, or coercion for sex trafficking. Linda Rinaldi, N.J. Deputy Attorney Gen., *A Plan to End Human Trafficking in New Jersey*, NEW JERSEY STATE LEAGUE OF MUNICIPALITIES (Mar. 2006),

<http://www.njslom.org/featart0306.html> ("Sexual exploitation is the recruitment, harboring, transportation, provision

- a. A person commits the crime of human trafficking if he:
- (1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another to engage in sexual activity³ as defined in paragraph (2) of subsection a. of N.J.S. 2C:34-1 [Prostitution and related offenses] or to provide labor services:
 - (a) by threats of serious bodily harm or physical restraint against the person or any other person;
 - (b) by means of any scheme, plan or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint;
 - (c) by committing a violation of N.J.S.2C:13-5 [Criminal coercion] against the person; or
 - (d) by destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document as defined in section 1 of P.L. 1997, c. 1 (C. 2C:21-31[Unauthorized practice of immigration law; penalties]), or other document issued by a governmental agency to any person which could be used as a means of verifying the person's identity or age or any other personal identifying information; or
 - (e) by means of the abuse or threatened abuse of the law or legal process
 - (2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection.

A conviction under N.J. Stat. Ann. § 2C:13-8 is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine up to \$200,000.⁴ N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1), 2C:43-3(a)(1). If, however, the trafficker is convicted under N.J. Stat. Ann. § 2C:13-8(a)(2), the trafficker shall be sentenced to imprisonment for 20 years to life, and shall not be eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d).

or obtaining of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud or coercion.”); N.J. Human Trafficking Task Force, *Terminology and Statutes*, OFFICE OF THE ATTORNEY GENERAL, <http://www.nj.gov/oag/dcj/humantrafficking/terminology.html> (last visited July 16, 2012) (defining human trafficking as “[t]he use of force, fraud or coercion to bring a person into conditions of extreme exploitation”).

³ Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(2), “‘Sexual activity’ includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.”

⁴ Under N.J. Stat. Ann. § 2C:43-3(e),

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

...

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term “gain” means the amount of money or the value of property derived by the offender and “loss” means the amount of value separated from the victim or the amount of any payment owed to the victim and avoided or evaded and includes any reasonable and necessary expense incurred by the owner in recovering or replacing lost, stolen or damaged property, or recovering any payment avoided or evaded, and, with respect to property of a research facility, includes the cost of repeating an interrupted or invalidated experiment or loss of profits. The term “victim” shall mean a person who suffers a personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the victim. . . .

- 1.1.1 Recommendation: Eliminate the requirement to prove a form of force, fraud or coercion in sex trafficking of a child cases or enact a separate sex trafficking of a child statute that does not require proof of force, fraud or coercion.⁵

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

The following laws criminalize CSEC in New Jersey:

1. N.J. Stat. Ann. § 2C:34-1(b)(3), (4) (Prostitution and related offenses) states,

A person commits an offense if:

...

(3) The actor knowingly promotes prostitution⁶ of a child under 18 whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable;

(4) The actor knowingly promotes prostitution of the actor's child, ward, or any other person for whose care the actor is responsible;

A conviction under either of these subsections is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000.⁷ N.J. Stat. Ann. §§ 2C:34-1(c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2).

2. Also, under N. J. Stat. Ann. § 2C:34-1(b),

A person commits an offense if:

...

(7) The actor knowingly engages in prostitution⁸ with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity⁹ with a

⁵ Subsequent recommendations in this report are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

⁶ Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(4), “promoting prostitution” is defined as,

- (a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;
- (b) Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;
- (c) Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;
- (d) Soliciting a person to patronize a prostitute;
- (e) Procuring a prostitute for a patron;
- (f) Transporting a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
- (g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

⁷ Under N.J. Stat. Ann. § 2C:43-3, “A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both”

⁸ Under N.J. Stat. Ann. § 2C:34-1(a)(1), “prostitution” is defined as “sexual activity with another person in exchange for something of economic value, or the offer or acceptance of an offer to engage in sexual activity in exchange for something of economic value.”

child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.

A conviction under this section is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

3. N.J. Stat. Ann. § 2C:24-4(b)(3), (4) (Endangering welfare of children) states,

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act¹⁰ or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

Generally, a conviction under N.J. Stat. Ann. § 2C:24-4(b)(3), (4) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(b)(3), (4), 2C:43-6(a)(2), 2C:43-3(a)(2). However, when the person permitting the child to engage in the prohibited act for film or reproduction is the parent or legal guardian, a conviction is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:24-4(b)(3), 2C:43-6(a)(1), 2C:43-3(a)(1).

Sexual offense laws that may apply in cases of commercial sexual exploitation of a child include the following:

1. Pursuant to N.J. Stat. Ann. § 2C:14-2(a)(1) (Sexual assault),

An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration¹¹ with another person under any one of the following circumstances:

⁹ Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(2), “‘Sexual activity’ includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.”

¹⁰ Pursuant to N.J. Stat. Ann. § 2C:24-4(b)(1), “prohibited sexual act” is defined as

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus;
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1.

¹¹ Pursuant to N.J. Stat. Ann. § 2C:14-1(c) (Definitions), “sexual penetration” is defined as “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or

(1) The victim is less than 13 years old;

A conviction for aggravated sexual assault is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:14-2(a), 2C:43-6(a)(1), 2C:43-3(a)(1).

Additionally, pursuant to N.J. Stat. Ann. § 2C:14-2(b), (c),

b. An actor is guilty of sexual assault if he commits an act of sexual contact¹² with a victim who is less than 13 years old and the actor is at least four years older than the victim.

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

...

(4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

A conviction for sexual assault is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:14-2(b), (c), 2C:43-6(a)(2), 2C:43-3(a)(2).¹³

2. Pursuant to N.J. Stat. Ann. § 2C:14-3(b) (Aggravated criminal sexual contact; criminal sexual contact), “An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c.(1) through (4).”

A conviction of criminal sexual conduct is punishable as a fourth degree crime by imprisonment not to exceed 18 months and a possible fine not to exceed \$10,000. N.J. Stat. Ann. §§ 2C:14-3(b), 2C:43-6(a)(4), 2C:43-3(b)(2).¹⁴

4. N.J. Stat. Ann. § 2C:24-4(a) (Endangering welfare of children) states,

vagina either by the actor or upon the actor’s instruction. The depth of insertion shall not be relevant as to the question of commission of the crime.”

¹² Pursuant to N.J. Stat. Ann. § 2C:14-1(d), “sexual contact” is defined as

an intentional touching by the victim or actor, either directly or through clothing, of the victim’s or actor’s intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present.

¹³ Pursuant to N.J. Stat. Ann. § 2C:14-6 (Sentencing),

If a person is convicted of a second or subsequent offense under sections 2C:14-2 [Sexual assault] or 2C:14-3 a. [Aggravated criminal sexual contact; criminal sexual contact], the sentence imposed under those sections for the second or subsequent offense shall, unless the person is sentenced pursuant to the provisions of 2C:43-7 [Sentence of imprisonment for crime; extended terms], include a fixed minimum sentence of not less than 5 years during which the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purpose of this section an offense is considered a second or subsequent offense, if the actor has at any time been convicted under sections 2C:14-2 or 2C:14-3 a. or under any similar statute of the United States, this state, or any other state for an offense that is substantially equivalent to sections 2C:14-2 or 2C:14-3a.

¹⁴ See *supra* note 13 for enhanced sentencing provisions for convictions under N.J. Stat. Ann. § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact).

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child¹⁵ who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S. 9:6-1 [Abuse, abandonment, cruelty and neglect of child], R.S. 9:6-3 [Cruelty and neglect of children] and P.L. 1974, c. 119, § 1 (C. 9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

When the defendant has legal or assumed care over the child, a conviction is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(a), 2C:43-6(a)(2), 2C:43-3(a)(2). A conviction for any other person is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:24-4(a), 2C:43-6(a)(3), 2C: 43-3(b)(1).

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.

N.J. Stat. Ann. § 2C:34-1(e) (Prostitution and related offenses) refers to New Jersey’s human trafficking law by creating an affirmative defense to prosecutions under the section for human trafficking victims. N.J. Stat. Ann. § 2C:34:1(e) states, “It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) [Human trafficking].” However, the law does not specify that a child under 18 involved in prostitution is a victim of human trafficking, since New Jersey still requires force, fraud, or coercion for children to be considered human trafficking victims. New Jersey’s other CSEC offenses do not refer to the human trafficking law to identify victims of those offenses as victims of trafficking.

1.3.1 Recommendation: Specifically refer to N.J. Stat. Ann. § 2C:13-8 (Human trafficking) in the CSEC and prostitution laws to ensure that CSEC victims and minors engaged in prostitution are properly identified as human trafficking victims.

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

Under N.J. Stat. Ann. § 2C:41-2 (Prohibited Activities),

- a. It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which he has participated as a principal within the meaning of N.J.S. 2C:2-6 to use or invest, directly or indirectly, any part of the income, or the proceeds of the income, in acquisition of any interest in, or the establishment or operation of any enterprise which is engaged in or the activities of which affect trade or commerce. . . .
- b. It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in or activities of which affect trade or commerce.
- c. It shall be unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

¹⁵ For the purposes of N.J. Stat. Ann. § 2C:24-4, “child” is defined as “any person under 16 years of age.” N.J. Stat. Ann. § 2C:24-4(b)(1).

d. It shall be unlawful for any person to conspire as defined by N.J.S. 2C:5-2, to violate any of the provisions of this section.

Pursuant to N.J. Stat. Ann. § 2C:41-1(a) (Definitions), “racketeering activity” includes promoting prostitution, obscenity, endangering welfare of children under § 2C:24-4(b)(3), (4) and human trafficking under § 2C:13-8. N.J. Stat. Ann. § 2C:41-1(d), (e), (z). Under N.J. Stat. Ann. § 2C:41-1(d),

“Pattern of racketeering activity” requires:

- (1) Engaging in at least two incidents of racketeering conduct one of which shall have occurred after the effective date of this act and the last of which shall have occurred within 10 years (excluding any period of imprisonment) after a prior incident of racketeering activity; and
- (2) A showing that the incidents of racketeering activity embrace criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

Pursuant to N.J. Stat. Ann. § 2C:41-3(a), “Any person who violates any provision of N.J.S.2C:41-2 in connection with a pattern of racketeering activity which involves a crime of violence, a crime of the first degree [which includes human trafficking,] or the use of firearms shall be guilty of a crime of the first degree. All other violations of N.J.S.2C:41-2 shall be crimes of the second degree.”

A first degree crime is punishable by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:43-6(a)(1), 2C:43-3(a)(1). A second degree crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2).

If convicted of racketeering under N.J. Stat. Ann. §2C:41-2, a second degree crime, a defendant is subject to a fine of up to \$150,000, as well as a potential restitution order. N.J. Stat. Ann. §§ 2C: 41-3(a), 2C: 43-3(a)(2). If convicted of racketeering involving human trafficking, a first degree crime, a defendant is subject to a possible fine not to exceed \$200,000 and a possible sentence to pay restitution to the victim. N.J. Stat. Ann. §§ 2C:13-8(b), 2C:41-3(a), 2C:43-3(a)(1). Additionally, a defendant shall forfeit “[a]ny interest including money or anything of value he has acquired or maintained” through racketeering activity and may face civil penalties including restitution and civil monetary penalties. N.J. Stat. Ann. §§ 2C:41-3(b), 2C:41-4.

Where the alleged enterprise is a criminal gang, a defendant may also be charged with crime gang activity for committing, attempting to commit, or conspiring to commit certain crimes including N.J. Stat. Ann. § 2C:13-8 (Human trafficking) or § 2C:34-1 (Prostitution and related offenses) as part of a criminal street gang, defined as “three or more persons associated in fact.”¹⁶ N.J. Stat. Ann. § 2C:33-29(a). Pursuant to N.J. Stat. Ann. 2C:33-29(b) (Crime of gang criminality; “criminal street gang” defined; grading of offense),

¹⁶ Pursuant to N.J. Stat. Ann. § 2C:33-29(a),

Individuals are associated in fact if: (1) two of the following seven criteria that indicate criminal street gang membership apply: (a) self-proclamation; (b) witness testimony or official statement; (c) written or electronic correspondence; (d) paraphernalia or photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia of street gang activity; and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed or conspired or attempted to commit, within the preceding five years from the date of the present offense, excluding any period of imprisonment, one or more offenses on separate occasions of robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, tampering with witnesses and informants or a violation of chapter 11, section 3, 4, 5, 6, or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes.

Grading. Gang criminality is a crime of one degree higher than the most serious underlying crime referred to in subsection a. of this section, except that where the underlying crime is a crime of the first degree, gang criminality is a first degree crime and the defendant, upon conviction, and notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, shall be sentenced to an ordinary term of imprisonment between 15 and 30 years. A sentence imposed upon conviction of the crime of gang criminality shall be ordered to be served consecutively to the sentence imposed upon conviction of any underlying offense referred to in subsection a. of this section.

This means that a defendant who violates N.J. Stat. Ann. § 2C:13-8 (Human trafficking), a first degree crime, as part of a criminal street gang may be punished by “an ordinary term of imprisonment between 15 and 30 years.” N.J. Stat. Ann. § 2C:33-29(b). If a defendant knowingly promotes child prostitution in violation of N.J. Stat. Ann. § 2C:34-1(b)(3), (4), a second degree crime, as part of a criminal gang, a violation may be punished as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:33-29(b), 2C:34-1(b)(3), (4), 2C:43-6(a)(1), 2C:43-3(a)(1).

1.4.1 Recommendation: Amend the definition of “racketeering activity” N.J. Stat. Ann. § 2C:41-1 to specifically include all CSEC offenses by adding the minor specific offenses under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) to the list of predicate acts.

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.*

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) is unlikely to apply to buyers. N.J. Stat. Ann. § 2C:13-8 requires the person to use specified forms of force, fraud, or coercion in committing the crime. This requirement makes it unlikely that N.J. Stat. Ann. § 2C:13-8 would be apply to buyers.

- 2.1.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-8(1) (Human trafficking) to make the statute clearly apply to buyers of commercial sex acts induced through trafficking.

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

N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) specifically makes it a crime to buy sex with a child. Pursuant to N.J. Stat. Ann. § 2C:34-1(b)(7),

A person commits an offense if:

. . . .

(7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. . . .

A conviction under this section is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

Several sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a child.¹⁷ These statutes, however, do not specifically criminalize the commercial sexual exploitation of a child and do not refer to N.J. Stat. Ann. § 2C:13-8 (Human trafficking).

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

New Jersey's solicitation laws differentiate between buying sex with adults and children. Under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), a first conviction for engaging in prostitution pursuant to subsection (b)(1) is punishable as a disorderly persons offense by imprisonment up to 6 months, a temporary loss of driver's license and a possible fine not to exceed \$1,000, with heightened penalties for second and subsequent convictions. N.J. Stat. Ann. §§ 2C:34-1(c)(4), 2C:43-8, 2C:43-3(c). In contrast, under N.J. Stat. Ann. § 2C:34-1(b)(7), a conviction for buying sex with an individual under 18 or soliciting an individual under 18 is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

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

A conviction for buying sex with a child under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a child but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of N.J. Stat. Ann. § 2C:13-8(a)(1) (Human trafficking).¹⁸

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)¹⁹ 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 offense²⁰ against a minor. 18 U.S.C. § 3559(e)(1). To the extent

¹⁷ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

¹⁸ See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

¹⁹ 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.).

²⁰ 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).

buyers can be prosecuted under other federal CSEC laws,²¹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²²

2.4.1 Recommendation: Amend N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) to set the penalty for soliciting a child under 18 as a crime of the first degree, consistent with N.J. Stat. Ann. § 2C:13-8(a)(1) (Human trafficking).

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.*

Pursuant to N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions),

A person commits a crime of the second degree if he attempts, via electronic²³ or any other means, to lure or entice a child²⁴ or one who he reasonably believes to be a child into a motor vehicle, structure²⁵ or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

A conviction under N.J. Stat. Ann. § 2C:13-6(a) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-6(a), 2C:43-6(a)(2), 2C:43-3(a)(2).²⁶

²¹ 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

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

²³ N.J. Stat. Ann. § 2C: 13-6(b) states, “‘Electronic means’ includes, but is not limited to, the Internet.”

²⁴ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), a “child” is “a person less than 18 years old.”

²⁵ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

²⁶ Additional penalties may be imposed for second or subsequent convictions. Under N.J. Stat. Ann. § 2C:13-6,

d. A person convicted of a second or subsequent offense under this section shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6 [Sentence of imprisonment for crime; ordinary terms; mandatory terms], the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7 [Sentence of imprisonment for crime; extended terms], a mandatory minimum term of one-third to one-half of the sentence imposed, or three years, whichever is greater, during which time the defendant shall not be eligible for parole. If the person is sentenced pursuant to N.J.S.2C:43-7, the court shall impose a minimum term of one-third to one-half of the sentence imposed, or five years, whichever is greater. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section.

.....

e. A person convicted of an offense under this section who has previously been convicted of a violation of N.J.S.2C:14-2 [Sexual assault], subsection a. of N.J.S.2C:14-3 [Aggravated criminal sexual contact; criminal sexual contact] or N.J.S.2C:24-4 [Endangering welfare of children] shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory

Additionally, under N.J. Stat. Ann. § 2C:13-6(f), “The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.”

2.5.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions) to specifically include luring and enticing a child for the purpose of violating N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) or § 2C:13-8(a)(1) (Human trafficking).

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

New Jersey does not allow a buyer of commercial sex to assert a mistake of age defense for the crime of prostitution. N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) states, in part, “It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.”

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

The penalty for buying sex with a child does not change based on the age of the victim. A conviction for buying sex with a child under 18 years of age under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-6(a)(3), 2C:43-3(b)(1).

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

Buyers of commercial sex with children are subject to fines, restitution, and asset forfeiture. Under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses), a third degree crime, a buyer may face a fine up to \$15,000, a sentence to pay restitution, or both. N.J. Stat. Ann. §§ 2C:34-1(c)(2), 2C:43-3(b)(1). For a violation of N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions) a buyer may face a fine up to \$150,000 and a sentence to pay restitution to the victim, or both. N.J. Stat. Ann. §§ 2C:13-6(a), 2C:43-3(a)(2).

Additionally, buyers face mandatory asset forfeiture²⁷ pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture), including

(2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purposes of committing offenses against the State.

(3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.

minimum term of five years, during which time the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.

....

²⁷ For additional information on forfeiture statutes and procedure, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHIStateAssetForfeitureLawsChart.pdf>.

(4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

Property subject to forfeiture “may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when (1) The article is prima facie contraband; or, (2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.” N.J. Stat. Ann. §2C:64-1(b). With the exception of *prima facie* contraband, forfeiture proceedings are civil in nature. N. J. Stat. An.. §2C: 64-3. Disposal of forfeited property is governed by N.J. Stat. Ann. §2C: 64-6, which states, in part,

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforcement agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

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

Possessing pornography of a child under 16 is a crime, pursuant to N.J. Stat. Ann. § 2C:24-4(b)(5)(b) (Endangering welfare of children), which states,

Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child²⁸ engaging in a prohibited sexual act²⁹ or in the simulation of such an act, including on the Internet, is guilty of a crime of the fourth degree.

Possessing child pornography is punishable as a fourth degree crime by imprisonment not to exceed 18 months and a possible fine up to \$10,000. N.J. Stat. Ann. §§ 2C:24-4(5)(b), 2C:43-6(a)(4), 2C:43-3(b)(2).

²⁸ For the purposes of N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of children), a “child” is “any person under 16 years of age.” N.J. Stat. Ann. § 2C:24-4(b)(1).

²⁹ Pursuant to N.J. Stat. Ann. § 2C:24-4(b)(1), a “prohibited sexual act” is defined to include

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus;
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1 [Definitions].

In comparison, a federal conviction for possession of child pornography³⁰ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³¹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³²

2.9.1 Recommendation: Raise the age of “child” in N.J. Stat. Ann. § 2C:24-4(b)(1) to any individual under the age of 18 in order to provide protections for all children and be consistent with New Jersey’s other CSEC laws related to soliciting a child for sex.

2.9.2 Recommendation: Raise the penalties for violating N.J. Stat. Ann. § 2C:24-4(b)(5)(b) to be consistent with federal penalties.

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

Those convicted of buying sex with a child under N.J. Stat. Ann. § 2C:34-1(a)(7) (Prostitution and related offenses) are not required to register as convicted sex offenders under the sex offender registration laws. N.J. Stat. Ann. § 2C:7-2. However, other crimes applicable to buyers require registration. Pursuant to N.J. Stat. Ann. § 2C:7-2(a), (b) (Registration of sex offenders; definition; requirements; penalties),

a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

. . . .

b. For the purposes of this act a sex offense shall include the following:

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact . . . or an attempt to commit any of these crimes if the court found that the offender’s conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; . . . ; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3 b. if the victim is a minor; . . . or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date [Oct. 31, 1994] of this act or the offender is serving a sentence of incarceration, probation, parole or other form

³⁰ 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).

³¹ 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).

³² 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).

of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date [Oct. 31, 1994] of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

- 2.10.1 Recommendation: Amend N.J. Stat. Ann. § 2C:7-2(b) (Registration of sex offenders; definition; requirements; penalties) to include N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) and § 2C:13-8 (Human trafficking) as sex offenses for which a person convicted or pleading guilty to the crime would be required to register if the victim is a child.

Legal Components:

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

Legal Analysis:

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

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1), 2C:43-3(a)(1). If, however, the trafficker is convicted under N.J. Stat. Ann. § 2C:13-8(a)(2), the trafficker shall be sentenced to imprisonment for 20 years to life, and shall not be eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d).

Under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), promoting the prostitution of a child under 18 is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:34-1(b)(3)–(4), (c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³³ 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 offense³⁴ against a minor.

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

N.J. Stat. Ann. § 2C:24-4(3), (4) (Endangering welfare of children) states, in part,

(3) A person commits a crime of the second degree if he causes or permits a child³⁵ to engage in a prohibited sexual act³⁶ or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

³³ See *supra* note 19.

³⁴ See *supra* note 20 for the definition of “federal sex offense.”

³⁵ See *supra* note 15.

³⁶ See *supra* note 10.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

A second degree crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2). A first degree crime is punishable by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:43-6(a)(1), 2C:43-3(a)(1).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense³⁷ against a minor. Additionally, a federal conviction for distribution of child pornography³⁸ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁰

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.*

Pursuant to N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions),

A person commits a crime of the second degree if he attempts, via electronic⁴¹ or any other means, to lure or entice a child⁴² or one who he reasonably believes to be a child into a motor vehicle, structure⁴³ or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

³⁷ See *supra* note 20 for the definition of “federal sex offense.”

³⁸ 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).

³⁹ 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).

⁴⁰ 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).

⁴¹ See *supra* note 23.

⁴² Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “child” is “a person less than 18 years old.”

⁴³ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

A conviction under N.J. Stat. Ann. § 2C:13-6(a) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2).⁴⁴ Additionally, under N.J. Stat. Ann. § 2C:13-6(f), “The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.”

3.3.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions) to specifically include luring and enticing a child for the purpose of violating N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) or § 2C:13-8(a)(1) (Human trafficking).

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

Traffickers are subject to various fines, restitution, and asset forfeiture. Traffickers convicted of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), a first degree crime, may receive a possible fine not to exceed \$200,000 and shall be subject to mandatory restitution orders. N.J. Stat. Ann. §§ 2C:13-8(b), (e), 2C:43-3(a)(1). Pursuant to N.J. Stat. Ann. § 2C:13-8(e),

In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be sentenced to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim’s labor or services; or
- (2) the value of the victim's labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L. 1963, c. 150 (C. 34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L. 1966, c. 113 (C. 34:11-56a et seq.), the Seasonal Farm Labor Act, P.L. 1945, c. 71 (C. 34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. § 201 et seq. or any other applicable federal law.

Traffickers convicted of promoting prostitution of a child under 18 under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), a second degree crime, may receive a possible fine not to exceed \$150,000 and a possible sentence to pay restitution. N.J. Stat. Ann. §§ 2C:34-1(c)(1), 2C:43-3.

Traffickers are also subject to mandatory asset forfeiture. Pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture),

Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

-
- (2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.
 - (3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.
 - (4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

⁴⁴ See *supra* note 26 for additional penalties that may be imposed for second or subsequent convictions pursuant to N.J. Stat. Ann. § 2C:13-6.

Property subject to forfeiture “may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when (1) The article is prima facie contraband; or, (2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.” N.J. Stat. Ann. §2C:64-1(b). Forfeiture proceedings are civil in nature (with the exception of prima facie contraband). Disposal of forfeited property is governed by N.J. Stat. Ann. §2C: 64-6, which states, in part,

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforcement agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

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

Pursuant to N.J. Stat. Ann. § 2C:7-2(a), (b) (Registration of sex offenders; definition; requirements; penalties),

a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

....

b. For the purposes of this act a sex offense shall include the following:

...

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for . . . endangering the welfare of a child pursuant to paragraph (3) or (4) or subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3 b. if the victim is a minor; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of N.J.S.2C:34-1, or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date [Oct. 31, 1994] of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date [Oct. 31, 1994] of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

3.5.1 Recommendation: Amend N.J. Stat. Ann. § 2C:7-2(b) (Registration of sex offenders; definition; requirements; penalties) to include N.J. Stat. Ann. § 2C:13-8 (Human trafficking) as a sex offense for which a person convicted or pleading guilty to the crime would be required to register if the victim is a child.

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.*

New Jersey's laws for terminating parental rights do not include convictions of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1(b) (Prostitution and related offenses) (when a child is prostituted), or § 2C:24-4 (Endangering welfare of children). N.J. Stat. Ann. § 30:4C-15(f).

N.J. Stat. Ann. § 30:4C-15(f) (Petition to terminate parental rights, conditions) allows for termination when the parent is criminally convicted of

murder, aggravated manslaughter or manslaughter of another child of the parent; to have aided or abetted, attempted, conspired, or solicited to commit such murder, aggravated manslaughter or manslaughter of the child or another child of the parent; or to have committed, or attempted to commit, an assault that resulted, or could have resulted, in the significant bodily injury to the child or another child of the parent; or the parent has committed a similarly serious act which resulted, or could have resulted, in the death or significant bodily injury to the child or another child of the parent.

Parental rights may also be terminated wherever, pursuant to N.J. Stat. Ann. § 30:4C-15(a), "it appears that a court wherein a complaint has been proffered as provided in chapter 6 of Title 9 of the Revised Statutes, has entered a conviction against the parent or parents, guardian, or person having custody and control of any child because of abuse, abandonment, neglect of or cruelty to such child." Pursuant to N.J. Stat. Ann. § 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes),

Abuse of a child shall consist in any of the following acts: . . . (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; . . . (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child . . .

- 3.6.1 Recommendation: Amend N.J. Stat. Ann. § 30:4C-15 (Petition to terminate parental rights, conditions) to include N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1(b) (Prostitution and related offenses) (when the victim is a child), and § 2C:24-4 (Endangering welfare of children) as offenses for which a parent can lose parental rights.

Legal Components:

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

Legal Analysis:

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

N.J. Stat. Ann. § 2C:13-8(a)(2) (Human trafficking) includes a facilitator who “receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection.” Pursuant to N.J. Stat. Ann. § 2C:13-8(d), for a conviction under this section,

the term of imprisonment imposed for a crime of the first degree under paragraph (2) of subsection a. shall be either a term of 20 years during which the actor shall not be eligible for parole, or a specific term between 20 years and life imprisonment, of which the actor shall serve 20 years before being eligible for parole.

As a first degree crime, a conviction is also punishable by a possible fine not to exceed \$200,000. N.J. Stat. Ann. § 2C:43-3(a)(1).

Additionally, a facilitator could be in violation of N.J. Stat. Ann. § 2C:34-1(b)(3) (Prostitution and related offenses) for promoting prostitution of a child. Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(4), “promoting prostitution” is defined as

- (a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;
- ...
- (f) Transporting a person into or within this State with purpose to promote that person’s engaging in prostitution, or procuring or paying for transportation with that purpose; or
- (g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

A conviction under this section is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:34-1(b)(3), (c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2).

- 4.1.1 **Recommendation:** Amend N.J. Stat. Ann. § 2C:13-8 (Human trafficking) to remove the language that limits application of the human trafficking law to facilitators who are “an organizer, supervisor, financier or manager.”

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 are subject to fines, asset forfeiture, and restitution. As a first degree crime, a conviction under N.J. Stat. Ann. § 2C:13-8(a)(2) (Human trafficking) carries a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:13-8(a)(2), 2C:43-3(a)(1). Additionally, for a conviction of promoting prostitution of a child under N.J. Stat. Ann. § 2C:34-1(b)(3) (Prostitution and related offenses), a facilitator could receive a possible fine not to exceed \$150,000 and a possible sentence to pay restitution. N.J. Stat. Ann. §§ 2C:34-1(b)(3), (c)(1), 2C:43-3(a)(2).

Persons convicted of trafficking shall also pay restitution pursuant to N.J. Stat. Ann. § 2C:13-8(e), which states,

In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be sentenced to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim's labor or services; or
- (2) the value of the victim's labor or services as determined by the "New Jersey Prevailing Wage Act," P.L. 1963, c. 150 (C. 34:11-56.25 et seq.), the "New Jersey State Wage and Hour Law," P.L. 1966, c. 113 (C. 34:11-56a et seq.), the Seasonal Farm Labor Act, P.L. 1945, c. 71 (C. 34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the "Fair Labor Standards Act of 1938," 29 U.S.C. § 201 et seq. or any other applicable federal law.

Facilitators may be subject to asset forfeiture. Pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture),

Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

....

- (2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.
- (3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.
- (4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

Property subject to forfeiture "may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when (1) The article is prima facie contraband; or, (2) The property subject to seizure poses an immediate threat to the public health, safety or welfare." N.J. Stat. Ann. §2C:64-1(b). Disposal of forfeited property is governed by N.J. Stat. Ann. §2C: 64-6, which states, in part,

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforcement agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for

law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

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

There is no specific provision in the New Jersey code prohibiting child sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

N.J. Stat. Ann. § 2C:24-4(b)(5)(a) (Endangering welfare of children) includes the crime of selling pornography of children under 16. N.J. Stat. Ann. § 2C:24-4(b)(5)(a) specifically states,

Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

The crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(b)(5)(a), 2C:43-6(a)(2), 2C:43-3(a)(2).

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.*

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.*

New Jersey has a broad definition of “victim” within its statutes, which could include domestic minor sex trafficking victims. For the purpose of the Criminal Injuries Compensation Act of 1971,⁴⁵ N.J. Stat. Ann. § 52:4B-2 (Definitions) defines “victim” as “a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in [N.J. Stat. Ann. § 52:4B-11].”

The offenses listed in N.J. Stat. Ann. § 52:4B-11 include human trafficking; lewd, indecent, or obscene acts; indecent acts with children; sexual assault and aggravated sexual assault; and criminal sexual contact and aggravated criminal sexual contact. N.J. Stat. Ann. § 52:4B-11(b).

For the purpose of other victim services, “victim” is defined in N.J. Stat. Ann. § 52:4B-39(a) (Definitions) as “a person who suffers personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person.”

⁴⁵ N.J. Stat. Ann. §§ 52:4B-1 to 4B-25.1.

- 5.1.1 Recommendation: Amend the offenses listed in N.J. Stat. Ann. § 52:4B-11 to expressly include the CSEC offenses under N.J. Stat. Ann. § 2C:34-1(b)(3), (4) (Prostitution and related offenses) and N.J. Stat. Ann. § 2C:24-4(b)(3), (4) (Endangering welfare of children).
- 5.1.2 Recommendation: Amend the definition of “victim” in N.J. Stat. Ann. § 52:4B-39(a) (Definitions) to expressly include domestic minor sex trafficking and CSEC victims.

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

The statutory language of New Jersey’s CSEC laws do not expressly prohibit a defense based upon consent.

However, N.J. Stat. Ann. § 2C:2-10 (Consent) states,

a. In general. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

....

c. Ineffective consent. Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if:

- (1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or
- (2) 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 of harmfulness of the conduct charged to constitute an offense; or
- (3) It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

- 5.2.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1 (Prostitution and related offenses) (when the victim is a child), and § 2C:24-4 (Endangering welfare of children) to expressly prohibit a defense based upon the consent of the victim.

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

While neither N.J. Stat. Ann. § 2C:34-1(b)(1) (Prostitution and related offenses) nor § 2C:34-1.1 (Loitering for the purpose of engaging in prostitution) specifically makes children immune from prosecution for prostitution-related offenses, N.J. Stat. Ann. § 2C:34-1(e) provides an affirmative defense to prostitution charges for human trafficking victims and minors under 18, stating, “It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to [N.J. Stat. Ann. § 2C:13-8] or the defendant was under the age of 18.”

- 5.3.1 Recommendation: Amend N.J. Stat. Ann. § 2C:34-1(b)(1) (Prostitution and related offenses) and § 2C:34-1.1 (Loitering for the purpose of engaging in prostitution) to specify that the offenses of engaging in prostitution and loitering for the purpose of prostitution are inapplicable to children under 18.

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.*

A child engaging in “an act which if committed by an adult would constitute prostitution in violation of

N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking,” constitutes a juvenile-family crisis⁴⁶ under N.J. Stat. Ann. § 2A:4A-22(g), potentially allowing the child to be referred to a juvenile family crisis intervention unit.

Under N.J. Stat. Ann. § 2A:4A-31 (Taking into custody),

- a. A juvenile may be taken into custody:
 - (1) Pursuant to an order or warrant of any court having jurisdiction; or
 - (2) For delinquency, when there has been no process issued by a court, by a law enforcement officer, pursuant to the laws of arrest and the Rules of Court.
- b. Except where delinquent conduct is alleged, a juvenile may be taken into short-term custody by a law enforcement officer without order of the court when:
 - (1) The officer has reasonable grounds to believe that the health and safety of the juvenile is seriously in danger and taking into immediate custody is necessary for his protection;
 - (2) The officer has reasonable grounds to believe the juvenile has left the home and care of his parents or guardian without the consent of such persons; or
 -
- c. The taking of a juvenile into custody shall not be construed as an arrest, but shall be deemed a measure to protect the health, morals and well being of the juvenile.

After taking the child into short-term custody, the child may not be detained in a juvenile facility or jail. N.J. Stat. Ann. § 2A:4A-32(a). Pursuant to N.J. Stat. Ann. § 2A:4A-32(b), (c) (Short-term custody),

- b. An officer taking a juvenile into short-term custody shall inform the juvenile of the reason for custody and shall where possible transport, or arrange to have the juvenile transported to his home. The officer releasing a juvenile from such custody shall inform the juvenile’s parents or guardian and the juvenile-family crisis intervention unit⁴⁷ of the reason for taking the juvenile into custody and may, if he believes further services are needed, inform the juvenile and his parents of the nature and location of appropriate services.
- c. A law enforcement officer taking a juvenile into short-term custody may transport the juvenile to the home of a relative of the juvenile or to the home of another responsible adult or make arrangement for such transportation where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in custody of the adult until such time as the juvenile-family crisis intervention unit can bring about the child’s return home or an alternative living arrangement or out of home placement. A law enforcement officer placing a juvenile with a relative or responsible adult shall immediately notify the juvenile-family crisis intervention unit of this fact and the reason for taking the juvenile into custody.

⁴⁶ N.J. Stat. Ann. § 2A:4A-22(g)(5) defines “[j]uvenile family crisis” to include “behavior, conduct or a condition of a juvenile, parent or guardian or other family member which presents or results in . . . an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.”

⁴⁷ Pursuant to N.J. Stat. Ann. § 2A:4A-76 (Juvenile-family crisis intervention units established),

There shall be established in each county one or more juvenile-family crisis intervention units. Each unit shall operate either as a part of the court intake service, or where provided for by the county, through any other appropriate office or private service pursuant to an agreement with the Administrative Office of the Courts, provided that all such units shall be subject to the Rules of Court. In any county where a crisis intervention service system, designed to attend and stabilize juvenile and family problems on a county-wide basis, is in operation as of the effective date of this act, such service shall satisfy all the provisions of this act, and may continue in its present form and under its present procedures, provided that it is operating in substantial compliance with the specific requirements and goals set forth in this act.

The law enforcement officer must immediately refer the child to the juvenile-family crisis intervention unit in certain circumstances. Pursuant to N.J. Stat. Ann. § 2A:4A-80 (Law enforcement referral),

A law enforcement officer taking a juvenile into short-term custody pursuant to section 12 of P.L. 1982, c. 77 [C. 2A:4A-31] shall immediately notify the juvenile-family crisis intervention unit and shall promptly bring the juvenile to the unit or place designated by the unit when:

a. The officer has reason to believe that it is not in the best interests of the juvenile or the family for the officer to return the juvenile to his home;

....

d. The juvenile has run away from a placement and the juvenile refuses to return home or the juvenile, through his past behavior, has demonstrated an inability to remain at home;

e. The law enforcement officer is unable, by all reasonable efforts to identify or locate a parent, relative or other such appropriate person;

f. The juvenile requires immediate emergency services, such as medical or psychiatric care; or

g. No identification can be obtained from the juvenile.

In addition to law enforcement referrals, a juvenile may be referred to the juvenile-family crisis unit under N.J. Stat. Ann. § 2A:4A-81(a) (Other referrals), which states,

The juvenile-family crisis intervention unit shall also receive referrals on a continuous basis in situations where a juvenile-family crisis exists and there has been either:

(1) A request by a parent or juvenile for intervention; or

(2) A referral by a public or private agency, educational institution, or any other organization serving children, which has contact with the juvenile or family, and has reasonable cause to believe that a family crisis exists.

Pursuant to N.J. Stat. Ann. § 2A:4A-78 (Intervention unit response), “A crisis intervention response shall consist of immediate interviews with the parents and juvenile involved by one or more crisis intervention workers. Where the juvenile is not in the home, or in the custody of the police, the intervention workers shall attempt to interview the juvenile wherever the juvenile may be found. The juvenile and family shall be advised of the purpose of the unit and of the emphasis upon the voluntary exhaustion of community services prior to court involvement. The unit shall make all reasonable efforts to keep the family intact consistent with the physical safety and mental well-being of the juvenile by obtaining, where possible, written agreement of the family to accept recommendations which may include, but are not limited to, referral to appropriate services and agencies.” “When, in the judgment of the crisis intervention unit, a juvenile-family crisis continues to exist despite the provision of crisis intervention services and the exhaustion of appropriate community services, court intake services shall, by filing a petition, refer the case to the court.” N.J. Stat. § 2A:4A-83 (Juvenile-family crisis referral to the court; continuing crisis). The court will hold a hearing on the juvenile-family crisis if the crisis is not stabilized.⁴⁸ N.J. Stat. Ann. § 2A:4A-86.

Under N.J. Stat. Ann. § 2A:4A-87 (Juvenile-family crisis referral to courts; out of home placement),

When, despite provision of crisis intervention services and the exhaustion of all alternative services, there is a refusal on the part of the juvenile to stay in or return to the home or a refusal

⁴⁸ Pursuant to N.J. Stat. Ann. § 2A:4A-82 (Juvenile-family crisis stabilized), “When the juvenile-family crisis has been stabilized and the juvenile is residing in the home, the crisis intervention unit shall arrange a second interview session with the family as soon as practicable and preferably the day following the initial intervention, for the purpose of monitoring the family situation. The crisis intervention unit may, in appropriate cases, continue to work with the family on a short-term basis in order to stabilize the family situation.”

on the part of the parents to allow the juvenile to stay in or return home, or the physical safety of the juvenile is threatened, or the juvenile is in need of immediate care such that it is necessary to make an out of home placement of the juvenile, court intake services shall:

- a. Arrange, when agreed to by the parent or guardian and juvenile, alternate living arrangement for the juvenile with a relative, neighbor, or other suitable family setting. It shall not be necessary for a court hearing to approve the living arrangement and the arrangement may continue as long as there is agreement; or
- b. Arrange, when no alternate living arrangement can be agreed to and when all possible resources for alternate living arrangements as set forth in subsection a. of this section have been exhausted, temporary out of home placement prior to the placement hearing. Court intake services shall immediately file a petition for out of home placement which shall include documentation of the attempts made to provide alternate living arrangements including, but not limited to, the names of persons contacted, their responses and the lack of agreement by the juvenile or the juvenile's parents if the persons contacted are willing to take the juvenile with the court. The crisis intervention unit shall inform the juvenile and parent or guardian that an out of home placement determination may be made by the court where an alternate living arrangement cannot be agreed to.

And, under N.J. Stat. Ann. § 2A:4A-46(b) (Disposition of juvenile-family crisis),

No juvenile involved in a juvenile-family crisis shall be committed to or placed in any institution or facility established for the care of delinquent children or in any facility, other than an institution for persons with intellectual disabilities, a mental hospital or facility for the care of persons addicted to controlled dangerous substances, which physically restricts such juvenile committed to or placed in it.

However, availability of the juvenile-family crisis intervention process may not preclude a child victim from being classified as delinquent⁴⁹ for committing prostitution-related offenses. Pursuant to N.J. Stat. Ann. § 2A:4A-23 (Definition of delinquency),

As used in this act, "delinquency" means the commission of an act by a juvenile which if committed by an adult would constitute:

- a. A crime;
- b. A disorderly persons offense or petty disorderly persons offense; or
- c. A violation of any other penal statute, ordinance or regulation.

....

If arrested for a delinquent act, a juvenile charged with delinquency shall be released to any person or agency enumerated in the section, such as the juvenile's parent or guardian, provided there is assurance that the person or agency accepts responsibility to ensure the juvenile is brought before the court and there is not a need for detention.⁵⁰ N.J. Stat. Ann. § 2A:4A-34(a), (d). A juvenile cannot be "placed in detention without the permission

⁴⁹ N.J. Stat. Ann. § 2C:34-1(e) provides an affirmative defense to prostitution charges for human trafficking victims and minors under 18, stating, "It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to [N.J. Stat. Ann. § 2C:13-8] or the defendant was under the age of 18." However, since "'delinquency' means the commission of an act by a juvenile which if committed by an adult would constitute . . . [a] crime," it remains possible for a juvenile to be considered delinquent for a prostitution-related offense and the affirmative defense would not be available in delinquency proceedings.

⁵⁰ N.J. Stat. Ann. § 2A:4A-34(d) states that the judge or intake officer must consider the following placement alternatives before deciding whether detention is necessary:

of a judge or the court intake service.” N.J. Stat. Ann. § 2A:4A-34(b). The court will hold a hearing to determine if detention is necessary. N.J. Stat. Ann. § 2A:4A-38(a). Pursuant to N.J. Stat. Ann. § 2A:4A-34(c), a juvenile may be detained prior to disposition, except as otherwise provided, only if:

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service or the juvenile is subject to a current warrant for failure to appear at court proceedings which is active at the time of arrest; or

...

(3) With respect to a juvenile charged with an offense which, if committed by an adult, would constitute a crime of the fourth degree other than those enumerated in paragraph (2) of this subsection, or a disorderly persons or petty disorderly persons offense, and with respect to a juvenile charged with an offense enumerated in subsection c. when the criteria for detention are not met, the juvenile may be temporarily placed in a shelter or other non-secure placement if a parent or guardian cannot be located or will not accept custody of the juvenile. Police and court intake personnel shall make all reasonable efforts to locate a parent or guardian to accept custody of the juvenile prior to requesting or approving the juvenile’s placement in a shelter or other non-secure placement. If, after the initial detention hearing, continued placement is necessary, the juvenile shall be returned to a shelter or other non-secure placement.

A juvenile 11 years old or younger may not be placed in detention “unless he is charged with an offense which, if committed by an adult, would be a crime of the first or second degree or arson.” N.J. Stat. Ann. § 2A:4A-34(f).

When a complaint is filed against a juvenile N.J. Stat. Ann. § 2A:4A-71(2)(b) requires that the complaint be reviewed by court intake services to determine whether it “should be dismissed, diverted, or referred for court action.” It also states that

Court intake services shall consider the following factors in determining whether to recommend diversion:

...

(11) Any information relevant to the offense in any case where the juvenile is charged with an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.⁵¹

If a child is alleged to be delinquent, a dispositional hearing must occur under N.J. Stat. Ann. § 2A:4A-41 (Dispositional hearing). Prior to this hearing a predispositional evaluation may be conducted under N.J. Stat.

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- (1) Release to parents;
 - (2) Release on juvenile’s promise to appear at next hearing;
 - (3) Release to parents, guardian or custodian upon written assurance to secure the juvenile’s presence at the next hearing;
 - (4) Release into care of a custodian or public or private agency reasonably capable of assisting the juvenile to appear at the next hearing;
 - (5) Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile at the next hearing;
 - (6) Release with required participation in a home detention program;
 - (7) Placement in a shelter care facility; or
 - (8) Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.

⁵¹ See also N.J. Stat. Ann. 2A:4A-74, listing prostitution and trafficking as relevant factors to be considered when the juvenile is diverted to a court intake services conference.

Ann. § 2A:4A-42 (Predispositional evaluation). “In any case where the juvenile is charged with an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking, the predisposition report may include any information relevant to the commission of the act.” N.J. Stat. Ann. § 2A:4A-42(2)(h). Pursuant to N.J. Stat. Ann. § 2A:4A-43(b) (Disposition of delinquency cases), if a juvenile is adjudicated delinquent he may be incarcerated or sentenced to one of many dispositions, including release to the supervision of a parent or guardian or relative, placement with a state agency, placement on probation, or placement with a nonresidential work program.

CSEC victims may also be temporarily removed from their place of residence under N.J. Stat. Ann. § 9:6-8.27(a) (Temporary removal with consent), which states, in part,

A police officer or an agency or institution or individual may temporarily remove a child from the place where he is residing with the consent of his parent or other person legally responsible for his care,⁵² if, there is reasonable cause to suspect that the child’s life or health is in imminent danger. . . .

Alternatively, a court may hold a hearing to determine whether to remove the child for reasons of abuse or neglect.⁵³ N.J. Stat. Ann. § 9:6-8.28(a). The court may also place an abused or neglected child “in the custody of a relative or other suitable person or the division for the placement of a child after a finding that the division has made reasonable efforts to prevent placement” or that such reasonable efforts were not required. N.J. Stat. Ann. § 9:6-8.54(a).⁵⁴

⁵² See *infra* Section 5.6.

⁵³ See *infra* Section 5.5.

⁵⁴ Although not codified, New Jersey Office of the Attorney General issued Law Enforcement Directive No. 2012-2 (Investigation of Human Trafficking). Pursuant to the General Policy of the Directive, “[a]ll law enforcement agencies and officers shall be required: . . . to protect the immediate safety and security of human trafficking victims; and to respect and safeguard the rights of these victims.” The Directive outlines special responsibilities of law enforcement agencies in both investigating prostitution offenses and when interacting with possible victims of human trafficking. The Directive subsection IV(C) (Special responsibilities: when interacting with possible victims) states, in relevant part:

1. All law enforcement officers shall take appropriate actions as are necessary to protect the immediate safety and security of persons who may be the victims of human trafficking.
2. If a person reports to a law enforcement officer that he or she is a victim of human trafficking, or relates to a law enforcement officer facts that, if true, would make the person a victim of human trafficking, the law enforcement officer . . . shall treat the person making the report . . . as a human trafficking victim . . . notwithstanding that the person may have committed an offense (*e.g.* prostitution) . . .
3. . . .[A] law enforcement officer . . . shall notify the County Prosecutor’s Human Trafficking Liaison as soon as practicable after receiving the report or information from the possible human trafficking victim so that the County Prosecutor’s Office can arrange for any appropriate referrals for victim services.
4. . . .[T]he Division of Criminal Justice, working in conjunction with the County Prosecutors, and in consultation with the Commissioner of the Department of Health and Senior Services, the Commissioner of the Department of Children and Families, the Superintendent of State Police, and representatives of providers of services to victims of human trafficking and sexually exploited minors, shall develop standards and protocols for providing information and services to these persons. Such standards and protocols shall include coordination of efforts with appropriate federal authorities pursuant to the “Trafficking Victims Protection reauthorization Act of 2003,” 22 U.S.C. Sec. 7101 *et seq.*

See <http://www.nj.gov/oag/newsreleases12/AG-Human-Trafficking-Directive.pdf>.

- 5.4.1 Recommendation: Establish a mandatory response law requiring that child victims of sex trafficking not be considered delinquent and be referred to a protective system that includes specialized services and housing.

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

New Jersey does not expressly identify commercial sexual exploitation as a type of abuse or neglect. Pursuant to N.J. Stat. Ann. § 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes),

Abuse of a child shall consist in any of the following acts: . . . (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property

. . . .

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21[Definitions]), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

Additionally, pursuant to N.J. Stat. Ann. § 9:6-8.9(c) ("Abused child" defined), an "abused child" is "a child under the age of 18 years whose parent, guardian, or other person having his custody and control . . . [c]ommits or allows to be committed an act of sexual abuse against the child."

Under N.J. Stat. Ann. § 9:6-8.84(2) (Definitions relative to child abuse, neglect),⁵⁵

"Sexual abuse" means contacts or actions between a child and a parent or caretaker for the purpose of sexual stimulation of either that person or another person. Sexual abuse includes:

- a. the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct;
- b. sexual conduct including molestation, prostitution, other forms of sexual exploitation of children, or incest; or
- c. sexual penetration⁵⁶ and sexual contact⁵⁷ as defined in N.J.S.2C:14-1 [Definitions] and a prohibited sexual act⁵⁸ as defined in N.J.S.2C:24-4 [Endangering welfare of children].

⁵⁵ The text of N.J. Stat. Ann § 9:6-8.84 included here and elsewhere in this report includes amendments made by the passage of Assembly Bill 3101 passed during the 2012 Assembly of the 215th New Jersey Legislature. 2012 NJ Laws Ch. 16. (NJ 2012) (effective June 29, 2012).

⁵⁶ See *supra* note 11.

⁵⁷ See *supra* note 12.

⁵⁸ See *supra* note 10.

5.5.1 Recommendation: Expand the definitions of abuse to expressly include when a child is victimized through N.J. Stat. Ann. § 2C:13-8 (Human trafficking).

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.*

For the purpose of protective child welfare laws, N.J. Stat. Ann. § 9:6-2 (“Parent” and “custodian” defined) defines “the person having care, custody and control of any child” as including,

any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed, and shall include . . . a person who legally or voluntarily assumes the care, custody, maintenance or support of the child.

This definition is potentially broad enough to encompass a trafficker for the purpose of child welfare intervention.

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

Crime victims’ compensation is only allowed for certain crimes, but most crimes related to domestic minor sex trafficking are included. Under the Criminal Injuries Compensation Act of 1971, the Victims of Crime Compensation Agency may order payment for victims⁵⁹ who suffer personal injury or death resulting from the commission or attempt to commit specified offenses, including violations of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:14-2 (Sexual assault), § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact), or any other lewd, indecent, or obscene acts with children. N.J. Stat. Ann. § 52:4B-11. The Agency may make an order for compensation even if the buyer has not been prosecuted or convicted. N.J. Stat. Ann. § 52:4B-10. Applications shall be made within two years of the date of injury or death (unless good cause is found for delay) and reported to authorities “within three months after its occurrence or reasonable discovery.” N.J. Stat. Ann. § 52:4B-18. Furthermore, pursuant to N.J. Stat. Ann. § 52:4B-18,

No compensation shall be awarded if:

- a. . . . the victim did not cooperate with the reasonable requests of law enforcement authorities unless the victim demonstrates a compelling health or safety reason for not cooperating; or
-
- c. The victim was guilty of a violation of . . . subtitle 2 of Title 2C [Specific Offenses] of the New Jersey Statutes, which caused or contributed to his injuries; or
-
- f. The victim has been convicted of a crime and is still incarcerated; or
-
-

Additionally, New Jersey has a “Sex Crime Victim Treatment Fund,” which is only applicable to crimes that fall within the sexual assault chapter, such as sexual assault and lewdness, but not human trafficking. N.J. Stat. Ann. § 52:4B-43.2.

5.7.1 Recommendation: Provide exceptions to the listed ineligibility criteria for child sex trafficking victims to ensure that domestic minor sex trafficking victims may receive compensation.

⁵⁹ Pursuant to N.J. Stat. Ann. § 52:4B-2 (Definitions), a “victim” is defined as “a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in [N.J. Stat. Ann. § 52:4B-11].”

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

The only CSEC victims eligible for the protections of New Jersey’s “rape shield” law are victims of N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of a child). However, many CSEC victims are ineligible, including victims of N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses) and § 2C:13-8 (Human trafficking). N.J. Stat. Ann. § 2C:14-7(a). Pursuant to N.J. Stat. Ann. § 2C:14-7 (Victim’s previous sexual conduct; manner of dress),

- a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of a child in violation of N.J.S. 2C:24-4 or the fourth degree crime of lewdness in violation of subsection b. of N.J.S. 2C:14-4, evidence of the victim’s previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. . . .
- b. In the absence of clear and convincing proof to the contrary, evidence of the victim’s sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.
- c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.
- d. Evidence of the victim’s previous sexual conduct with the defendant shall be considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.
- e. Evidence of the manner in which the victim was dressed at the time an offense was committed shall not be admitted unless such evidence is determined by the court to be relevant and admissible in the interest of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury or at such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination. A statement by the court of its findings shall also be included in the record.
- f. For the purposes of this section, “sexual conduct” shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and life style.

Similarly, the law prevents the disclosure of the identity of some child victims, but only for victims of certain sexual offense crimes including N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of children), but not N.J. Stat. Ann. § 2C:13-8 (Human trafficking) or § 2C:34-1 (Prostitution and related offenses). N.J. Stat. Ann. § 2A:82-46(a).

Similarly, New Jersey’s law allowing a minor to testify via closed circuit television does not include CSEC offenses as qualifying offenses. N.J. Stat. Ann. § 2A:84A-32.4(a). Only prosecutions for “aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, or child abuse, or any action alleging abused or neglected children” can occur via closed circuit television under this statute. N.J. Stat. Ann. § 2A:84A-32.4(a). An order for such testimony of a witness 16 years of age or younger may be made when “there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify in open court.” N.J. Stat. Ann. § 2A:84A-32.4(b).

- 5.8.1 Recommendation: Amend N.J. Stat. Ann. § 2A:84A-32.4 (Prosecutions or actions for sexual assault, criminal sexual conduct, or child abuse or neglect; closed circuit testimony by minor) and § 2C:14-7 (Victim’s previous sexual conduct; manner of dress) to cover child victims of N.J. Stat. Ann. § 2C:13-8 (Human trafficking) and § 2C:34-1 (Prostitution and related offenses) to provide them greater protections when prosecuting trafficking cases.

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.*

Juvenile records may be sealed under N.J. Stat. Ann. § 2A:4A-62 (Sealing of records), which states in part,

- a. On motion of a person who has been the subject of a complaint filed under this act or on its own motion, the court may vacate its order and findings and order the nondisclosure of social, medical, psychological, legal and other records of the court and probation services, and records of law enforcement agencies if it finds:
 - (1) Two years have elapsed since the final discharge of the person from legal custody or supervision, or two years have elapsed after the entry of any other court order not involving custody or supervision; and
 - (2) He has not been convicted of a crime, or a disorderly persons offense or adjudged delinquent, during the two years prior to the filing of the motion, and no proceeding or complaint is pending seeking such conviction or adjudication.
-
- e. Any adjudication of delinquency or conviction of a crime subsequent to sealing shall have the effect of nullifying the sealing order.
- f. Expungement of juvenile records shall be governed by the applicable provisions of chapter 52 of Title 2C of the New Jersey Statutes [Expungement].

A juvenile charged with prostitution or loitering for the purpose of prostitution can have their records expunged because these offenses are both disorderly persons offenses. N.J. Stat. Ann. §§ 2C:52-4.1(a)(2), 2C:52-3, 2C:34-1(c)(4), 2C:34-1.1(b). However, if the juvenile is convicted twice of engaging in prostitution, the minor can be guilty of a fourth degree crime, resulting in possible barriers to expungement. N.J. Stat. Ann. § 2C:34-1(c)(4). In such situations, the juvenile record is only eligible for expungement on the same grounds as adult offenders. N.J. Stat. Ann. § 2C:52-4.1(a)(1). These requirements mandate 10 years without conviction of a subsequent crime before the juvenile is eligible for expungement. N.J. Stat. Ann. § 2C:52-2(a).

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.*

Offenders convicted under N.J. Stat. Ann. § 2C:13-8 (Human trafficking) must pay restitution to the victim. Specifically, under N.J. Stat. Ann. § 2C:13-8(e),

- The court shall award to the victim restitution which is the greater of:
- (1) the gross income or value to the defendant of the victim’s labor or services; or
 - (2) the value of the victim’s labor or services as determined by the “New Jersey Prevailing Wage Act,” the “New Jersey State Wage and Hour Law,” “the Seasonal Farm Labor Act,” the laws concerning the regulation of child labor...or any other applicable State law, and the “Fair Labor Standards Act of 1938”

Similarly, other offenders may be ordered to pay restitution because the court is allowed to order the perpetrator to pay the victim restitution for any degree of crime. N.J. Stat. Ann. § 2C:43-3. However, except in state tax cases, “[t]he restitution ordered paid to the victim shall not exceed the victim’s loss.” N.J. Stat. Ann. § 2C:43-3.

Although no civil remedies are specifically outlined for human trafficking victims, minors could bring a civil case under an action for sexual abuse. N.J. Stat. Ann. § 2A:61B-1. For purposes of this action, “sexual abuse” is defined in N.J. Stat. Ann. § 2A:61B-1(a)(1) as

an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis within the household who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

Victims of a racketeering offense may bring a civil case. N.J. Stat. Ann. §2C:41-4(c) states, “Any person damaged in his business or property by reason of a violation of N.J.S. 2C:41-2 may sue therefor in any appropriate court and shall recover threefold any damages he sustains and the cost of the suit, including a reasonable attorney's fee, costs of investigation and litigation.” However, as this statute only provides for damages sustained to businesses or property, it is likely not useful to victims of human trafficking.

5.10.1 Recommendation: Amend CSEC laws to ensure that restitution is mandatory.

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.*

Most prosecutions in New Jersey are subject to a 5-year statute of limitations pursuant to N.J. Stat. Ann. § 2C:1-6(b)(1) (Time limitations). Prosecutions for sexual assault and aggravated sexual assault under N.J. Stat. Ann. § 2C:14-2 (Sexual assault) have no limitation and may be brought at any time. N.J. Stat. Ann. § 2C:1-6(a)(1). An extension is also available to victims of N.J. Stat. Ann. § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact) and § 2C:24-4 (Endangering welfare of children) pursuant to N.J. Stat. Ann. § 2C:1-6(b)(4), which states,

A prosecution for an offense set forth in N.J.S.2C:14-3 or N.J.S.2C:24-4, when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim’s attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later.

A civil action brought under N.J. Stat. Ann. § 2A:61B-1 (Definitions; accrual of actions; proceedings) for sexual abuse must “be brought within two years after reasonable discovery.” N.J. Stat. Ann. § 2A:61B-1(b).

5.11.1 Recommendation: Amend N.J. Stat. Ann. § 2C:1-6(a)(1) (Time limitations) to include § 2C:13-8 (Human trafficking) and § 2C:34-1 (Prostitution and related offenses) when a child is involved, in order to allow prosecutions for these offenses to be brought at any time.

Legal Components:

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

Legal Analysis:

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

While New Jersey law mandates training in many specific topics, it does not require training specifically focused on human trafficking. However, New Jersey does require training on “substances which could be used to facilitate sexual assault,” training on tracing missing persons, and training on technology used in the commission of sex offenses, all of which could include topics related to domestic minor sex trafficking. N.J. Stat. Ann. §§52:17B-4.5(a), 52:17B-9.8, 52:17B-77.11.

Although not codified, New Jersey Office of the Attorney General issued Law Enforcement Directive No. 2012-2 (Investigation of human trafficking)⁶⁰ provides for training on human trafficking issues. “The Division of Criminal Justice shall within ninety days of the effective date of this Directive⁶¹ develop human trafficking training programs for law enforcement officers and prosecutors.” Human trafficking liaisons, which shall include “at least one detective/investigator and at least one assistant prosecutor” to serve at every County Prosecutor’s offices, shall receive training. Additionally, the “chief executive of every State, county and local law enforcement agency shall identify those sworn officers who would benefit from receiving training on human trafficking based upon their duty assignment and shall, within sixty days of the effective date of this Directive provide . . . a list of those officers to be trained.” These officers should complete the training “within ninety days of the training program being made available.” Furthermore, “the training programs shall include instruction on the appropriate handling of possible human trafficking victims who may have committed an offense, including instruction on the affirmative defense to the offenses of prostitution. . . The training programs shall also include information concerning referrals for medical treatment, counseling and advocacy services, and housing/shelter.”

In addition to this training, under the Directive, the Director of the Division of Criminal Justice shall “develop and disseminate to all law enforcement agencies investigation standards and protocols to be used by law enforcement agencies and officers when investigating a possible human trafficking violation.” The standards shall include:

- 1. A detailed description of specific circumstances that are relevant to a possible violation of N.J.S.A. 2C:13-8, which specified relevant circumstances must be investigated to the extent feasible;
- 2. Guidelines on the specific questions to be posed during an investigation so as to obtain evidence or information concerning the relevant circumstances specified in the investigation standards and protocols . . .

⁶⁰ See *supra* note 54.

⁶¹ Law Enforcement Directive No. 2012-2 (Investigation of Human Trafficking) was executed on July 12, 2012.

3. A detailed description of the methods of investigation to be used to ensure the integrity and effectiveness of the investigative process. Those investigative methods shall, among other things, specifically address the fear and intimidation that often silences victims of human trafficking.

6.1.1 Recommendation: Enact a law that mandates training on domestic minor sex trafficking for law enforcement.

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

New Jersey allows for single party consent to audio-taping. The following actions are lawful pursuant to N.J. Stat. Ann. § 2A:156A-4(b)–(d),

b. Any investigative or law enforcement officer to intercept a wire, electronic or oral communication, where such officer is a party to the communication or where another officer who is a party to the communication requests or requires him to make such interception;

c. Any person acting at the direction of an investigative or law enforcement officer to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; provided, however, that no such interception shall be made without the prior approval of the Attorney General or his designee or a county prosecutor or his designee;

d. A person not acting under color of law to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception unless such communication is intercepted or used for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act. . . .

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

New Jersey only allows wiretapping for domestic minor sex trafficking cases that fall within N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of children) or racketeering offenses under N.J. Stat. Ann. § 2C:41-2 (Prohibited activities). N.J. Stat. Ann. § 2A:156A-8.

Pursuant to N.J. Stat. Ann. § 2A:156A-8 (Authorization for application for order to intercept communications),

The Attorney General, county prosecutor or a person designated to act for such an official and to perform his duties in and during his actual absence or disability, may authorize, in writing, an ex parte application to a judge designated to receive the same for an order authorizing the interception of a wire, or electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation when such interception may provide evidence of the commission of the offense of . . . endangering the welfare of a child pursuant to N.J.S. 2C:24-4, . . . racketeering or a violation of subsection g. of N.J.S. 2C:5-2, . . . or any conspiracy to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the foregoing offenses.

6.3.1 Recommendation: Amend N.J. Stat. Ann. § 2A:156A-8 (Authorization for application for order to intercept communications) to add the crimes of N.J. Stat. Ann. § 2C:13-8 (Human trafficking) and § 2C:34-1 (Prostitution and related offenses) (when the victim is a child) as crimes for which wiretapping may be authorized.

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.*

While no law expressly allows for the use of a decoy in investigations of prostitution or sex trafficking, N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions) appears to permit the use of a decoy, by making it a crime to attempt to lure a person the offender “reasonably believes to be a child.” N.J. Stat. Ann. § 2C:13-6(a) states,

A person commits a crime of the second degree if he attempts, via electronic⁶² or any other means, to lure or entice a child⁶³ or one who he reasonably believes to be a child into a motor vehicle, structure⁶⁴ or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

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

While no law expressly allows for investigation using the Internet, law enforcement can likely use electronic means for investigation under N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions).⁶⁵

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

Law enforcement must report missing and recovered minors in New Jersey. Under N.J. Stat. Ann. § 52:17B-9.8 (Powers, duties of unit), the Department of Law and Public Safety shall,

- a. Coordinate, file and investigate all missing persons cases in this State, and cooperate with local law enforcement officials and federal law enforcement officials in the creation of a centralized office on missing persons in this State;
.....
- c. Collect and maintain data on missing persons and unidentified bodies in this State and throughout the United States;
- d. Coordinate efforts with other states and with the federal government in the investigation of cases involving missing persons or unidentified bodies;
.....

Additionally, pursuant to N.J. Stat. Ann. § 52:17B-217 (Actions relative to high risk missing person or child), if the missing person is a child,

- b. The lead law enforcement agency shall promptly notify all law enforcement agencies within the State and, if deemed appropriate, law enforcement agencies in adjacent states or jurisdictions of the information that may aid in the prompt location and safe return of the high risk missing person.
- c. Local law enforcement agencies that receive notification from the lead law enforcement agency pursuant to subsection b. of this section shall forward that information immediately to their officers and members.
- d. The lead law enforcement agency shall, as expeditiously as possible, prepare and disseminate a photographic information bulletin utilizing the Missing Child Alert System, or any successor law enforcement notification system the State may employ.

⁶² See *supra* note 23.

⁶³ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), a “child” is “a person less than 18 years old.”

⁶⁴ Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

⁶⁵ See *supra* Section 6.4 for the relevant provisions of N.J. Stat. Ann. § 2C:13-6(a).

e. The lead law enforcement agency shall, as appropriate, enter all collected information relating to the missing person case to applicable federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases, as follows:

(1) a missing person report, and relevant information, in a high risk missing person case shall be entered in the National Crime Information Center database immediately, but in no case no more than two hours after the determination that the missing person is a high risk missing person;

(2) a missing person report, and relevant information, in a case not involving a high risk missing person shall be entered within 24 hours of the initial filing of the missing person report;

...

(6) the State Police shall, when deemed appropriate and likely to facilitate a resolution to a particular missing person report, activate the Amber Alert program for the State.

f. If, after the dissemination of a photographic information bulletin utilizing the Missing Child Alert System information, the missing person is found, the lead law enforcement agency shall promptly disseminate an additional bulletin on the Missing Child Alert System indicating that the person was found.

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