

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

ANALYSIS AND RECOMMENDATIONS UTAH

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.*

Utah Code Ann. § 76-5-308(1) (Human trafficking) makes human trafficking for forced sexual exploitation a crime but requires the offender to use “force, fraud, or coercion” in the commission of the crime. Utah Code Ann. § 76-5-308(1) (Human trafficking) states,

An actor commits human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, or obtains a person through the use of force, fraud, or coercion by means of:

- (a) threatening serious harm to, or physical restraint against, that person or a third person;
- (b) destroying, concealing, removing, confiscating, or possessing any passport, immigration document, or other government identification document;

¹ Unless otherwise specified, all references to Utah statutes were taken from Utah Code Annotated (LEXIS through 2011 3d Spec. 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.

- (c) abusing or threatening abuse of the law or legal process against the person or a third person;
- (d) using a condition of a person being a debtor due to a pledge of the debtor’s personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or
- (e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint, or would be threatened with abuse of legal process.

Utah Code Ann. § 76-5-308(2)(b) further expounds by stating that “[h]uman trafficking for forced sexual exploitation includes all forms of forced commercial sexual activity, including forced sexually explicit performance, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs, and forced exotic dancing or display.” Pursuant to Utah Code Ann. § 76-5-309(1) (Human trafficking and human smuggling—Penalties), “Human trafficking for forced labor and human trafficking for forced sexual exploitation are each a second degree felony, except under Section 76-5-310.”

Utah Code Ann. § 76-5-310(1), which establishes the crime of aggravated human trafficking for forced sexual exploitation and enhances the penalty for trafficking under certain circumstances, states,

An actor commits aggravated human trafficking for forced labor or forced sexual exploitation or aggravated human smuggling if, in the course of committing a human trafficking or human smuggling offense under Section 76-5-309, the offense:

- (a) results in the death of the trafficked or smuggled person;
- (b) results in serious bodily injury of the trafficked or smuggled person;
- (c) involves:
 - (i) rape under Section 76-5-402;
 - (ii) rape of a child under Section 76-5-402.1;
 - (iii) object rape under Section 76-5-402.2;
 - (iv) object rape of a child under Section 76-5-402.3;
 - (v) forcible sodomy under Section 76-5-403;
 - (vi) sodomy on a child under Section 76-5-403.1;
 - (vii) aggravated sexual abuse of a child under Section 76-5-404.1; or
 - (viii) aggravated sexual assault under 76-5-405;
- (d) involves more than ten victims in a single episode of human trafficking or human smuggling; or
- (e) involves a victim who is held against the victim’s will for longer than 180 consecutive days.

Utah Code Ann. § 76-5-310(2) (Aggravated human trafficking and aggravated human smuggling—Penalties) further provides, “An actor commits aggravated human trafficking for forced labor or forced sexual exploitation if the offense involves a victim who is younger than 18 years of age at the time of the commission of the offense of trafficking.” A conviction under Utah Code Ann. § 76-5-310 is punishable as a first degree felony by 5 years to life imprisonment and a possible fine not to exceed \$10,000.² Utah Code Ann. §§ 76-5-310(4)(a), 76-3-

² Utah Code Ann. § 76-3-301(2) (Fines of persons) provides, “This section does not apply to a corporation, association, partnership, government, or governmental instrumentality.” Utah Code Ann. § 76-3-302 (Fines of corporations, associations, partnerships, or government instrumentalities) provides,

A corporation, association, partnership, or governmental instrumentality shall pay a fine for an offense defined in this code for which no special corporate fine is specified. The fine shall not exceed:

- (1) \$20,000 for a felony conviction;
- (2) \$10,000 for a class A misdemeanor conviction;

203(1), 76-3-301(1)(a). In contrast, a conviction under Utah Code Ann. § 76-5-308 (Human trafficking), applicable when the victim trafficked for forced sexual exploitation is an adult, is punishable as a second degree felony by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5-309(1), 76-3-203(2), 76-3-301(1)(a).

- 1.1.1 Recommendation: Amend Utah Code Ann. § 76-5-310(2) (Aggravated human trafficking and aggravated human smuggling—Penalties) by eliminating the requirement to prove force, fraud, or coercion in the sex trafficking of minors.³

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

Utah has several statutes specifically criminalizing CSEC, including the following:

1. Under Utah Code Ann. § 76-10-1306(1)(b) (Aggravated exploitation of prostitution), a person who commits the act of exploiting prostitution⁴ will be guilty of aggravated exploitation if “the person procured, transported, or persuaded or with whom he shares the proceeds of prostitution is under eighteen years of age.” A conviction under Utah Code Ann. § 76-10-1306(1)(b) is punishable as a second degree felony by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-10-1306(2), 76-3-203(2), 76-3-301(1)(a).
2. Utah Code Ann. § 76-5-404.1(4)(i) (Sexual abuse of a child—Aggravated sexual abuse of a child) states the following:

(4) A person commits aggravated sexual abuse of a child when in conjunction with the offense [of sexual abuse under Utah Code Ann. § 76-5-404.1(2)⁵] any of the following circumstances have been charged and admitted or found true in the action for the offense:

(3) \$5,000 for a class B misdemeanor conviction; and

(4) \$1,000 for a class C misdemeanor conviction or for an infraction conviction.

³ Subsequent recommendations in this report referring to the human state trafficking laws are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

⁴ Utah Code Ann. § 76-10-1305(1) (Exploiting Prostitution) states,

(1) A person is guilty of exploiting prostitution if he:

(a) procures an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

(b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(c) transports a person into or within this state with a purpose to promote that person’s engaging in prostitution or procuring or paying for transportation with that purpose;

(d) not being a child or legal dependent of a prostitute, shares the proceeds of prostitution with a prostitute pursuant to their understanding that he is to share therein; or

(e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a house of prostitution or a prostitution business.

⁵ Utah Code Ann. § 76-5-404.1(2) provides,

A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause

....

(i) the accused encouraged, aided, allowed, or benefited from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person.

Utah Code Ann. § 76-5-404.1(4) applies only where the victim is under the age of 14. Utah Code Ann. § 76-5-404.1(1). A conviction under Utah Code Ann. § 76-5-404.1(4) is punishable as a first degree felony by 15 years to life imprisonment, unless the defendant “caused serious bodily injury” during the commission of the crime or has a prior conviction for a “grievous sexual offense,” in which case a conviction is punishable by life imprisonment without the possibility of parole. Utah Code Ann. § 76-5-404.1(5). However, offenders who have not been previously convicted of a “grievous sexual offense,” even those who have “caused serious bodily injury” during the commission of aggravated sexual abuse of a child, are eligible to receive lesser sentences⁶ if the court determines that it “is in the interests of justice” and states those reasons on the record. Utah Code Ann. § 76-5-404.1(6). The defendant is also subject to a possible fine not to exceed \$10,000. Utah Code Ann. § 76-3-301(1)(a).

3. Utah Code Ann. § 76-5b-201 (Sexual exploitation of a minor—Offenses) criminalizes a variety of conduct related to the sexual exploitation of a minor through child pornography. Specifically, Utah Code Ann. § 76-5b-201(1) provides the following:

- (1) A person is guilty of sexual exploitation of a minor:
 - (a) when the person:
 - (i) knowingly produces, possesses, or possesses with intent to distribute child pornography;⁷ or
 - (ii) intentionally distributes or views child pornography; or
 - (b) if the person is a minor’s parent or legal guardian and knowingly consents to or permits the minor to be sexually exploited as described in Subsection (1)(a).

substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

⁶ Utah Code Ann. § 76-5-404.1(6) specifically provides,

(6) If, when imposing a sentence under Subsection (5)(a) [aggravated sexual abuse of a child] or (b) [aggravated sexual abuse of a child causing serious bodily injury], a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

- (a) for purposes of Subsection (5)(b), 15 years and which may be for life;
- (b) for purposes of Subsection (5)(a) or (b);
 - (i) ten years and which may be for life; or
 - (ii) six years and which may be for life.

⁷ Utah Code Ann. § 76-5b-103(1) (Definitions) defines “child pornography” as

any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

- (a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (b) the visual depiction is of a minor engaging in sexually explicit conduct; or
- (c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

A conviction under this statute is punishable as a second degree felony by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5b-201(2), 76-3-203(2), 76-3-301(1)(a).

Several other laws, while non-commercial in nature, may also apply in cases of commercial sexual exploitation of a child.

1. Utah Code Ann. § 76-5-401.1 (2) (Sexual abuse of a minor) states,

(2) A person commits sexual abuse of a minor if the person is seven years or more older than the minor and, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

Pursuant to subsection (1), “minor” means “a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.” A conviction under this statute is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Utah Code Ann. §§ 76-5-401.1(3), 76-3-204(1), 76-3-301(1)(c).

2. Utah Code Ann. § 76-5-404.1(4) (Sexual abuse of a child—Aggravated sexual abuse of a child) states the following:

A person commits aggravated sexual abuse of a child when in conjunction with the offense [of sexual abuse under Utah Code Ann. § 76-5-404.1(2)⁸] any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnaping;

...

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

(e) the accused, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense;

(f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;

(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;

....

Utah Code Ann. § 76-5-404.1(4) applies only where the victim is under the age of 14. Utah Code Ann. § 76-5-404.1(1). A conviction under Utah Code Ann. § 76-5-404.1(4) is punishable as a first degree felony⁹

⁸ See *supra* note 5.

by 15 years to life imprisonment, unless the defendant “caused serious bodily injury” during the commission of the crime or has a prior conviction for a “grievous sexual offense,” in which case a conviction is punishable by life imprisonment without the possibility of parole. Utah Code Ann. § 76-5-404.1(5). However, offenders who have not been previously convicted of a “grievous sexual offense,” even those who have “caused serious bodily injury” during the commission of aggravated sexual abuse of a child, are eligible to receive lesser sentences¹⁰ if the court determines that it “is in the interests of justice.” Utah Code Ann. § 76-5-404.1(6). Additionally, the court may order the defendant to pay a fine not to exceed \$10,000. Utah Code Ann. § 76-3-301(1)(a).

3. Utah Code Ann. § 76-5-401.2(2) (Unlawful sexual conduct with a 16 or 17 year old) states,

A person commits unlawful sexual conduct with a minor [who is 16 or 17 years old] if, under circumstances not amounting to [rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or any attempt to commit one of these offenses], an actor who is ten or more years older than the minor at the time of the sexual conduct:

- (a) has sexual intercourse with the minor;
- (b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant;
- (c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant; or

....

A conviction under Utah Code Ann. § 76-5-401.2(2)(a)–(c) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Utah Code Ann. §§ 76-5-401.2(4), 76-3-203(3), 76-3-301(1)(b), (c), 76-3-204(1).

4. Pursuant to Utah Code Ann. § 76-5-402.1(1), (2) (Rape of a child), any person who engages in “sexual intercourse with a child under the age of 14” is guilty of a first degree felony.¹¹ A conviction under this statute is punishable by 25 years to life imprisonment. Utah Code Ann. § 76-5-402.1(2)(a). However, if the “trier of fact finds that . . . during the commission of the rape of a child, the defendant

⁹ Pursuant to Utah Code Ann. § 76-3-406 (Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted),

Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, Commitment and Treatment of Mentally Ill Persons, except as provided in Section 76-5-406.5, probation shall not be granted, the execution or imposition of sentence shall not be suspended, the court shall not enter a judgment for a lower category of offense, and hospitalization shall not be ordered, the effect of which would in any way shorten the prison sentence for any person who commits a capital felony or a first degree felony involving:

...

(6) Section 76-5-402.1, rape of a child;

...

(8) Section 76-5-402.3, object rape of a child;

...

(10) Section 76-5-403.1, sodomy on a child;

...

(12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;

....

¹⁰ See *supra* note 6.

¹¹ See *supra* note 9.

caused serious bodily injury to another or . . . was previously convicted of a grievous sexual offense,” the punishment is enhanced to life imprisonment without the possibility of parole. Utah Code Ann. § 76-5-402.1(2)(b). The defendant is also subject to a possible fine not to exceed \$10,000. Utah Code Ann. § 76-3-301(1)(a).

5. Utah Code Ann. § 76-5-402.3(1)(Object rape of a child—Penalty) states,

A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.

A conviction under this statute is punishable as a first degree felony by imprisonment for 25 years to life imprisonment.¹² Utah Code Ann. § 76-5-402.3(2). However, if the “trier of fact finds that . . . during the commission of the object rape of a child, the defendant caused serious bodily injury to another or . . . was previously convicted of a grievous sexual offense,” the punishment is enhanced to life imprisonment without the possibility of parole. Utah Code Ann. § 76-5-402.3(2). The defendant is also subject to a possible fine not to exceed \$10,000. Utah Code Ann. § 76-3-301(1)(a).

6. Utah Code Ann. § 76-9-702.5(1) (Lewdness involving a child) states,

(1) A person is guilty of lewdness involving a child if the person under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following to, or in the presence of a child who under 14 years of age:

(a) performs an act of sexual intercourse or sodomy;

. . .

(d) under circumstances not amounting to sexual exploitation of a child under Section 76-5b-201 causes a child under the age of 14 to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or

(e) performs any other act of lewdness.

A conviction under this statute is punishable as a Class A misdemeanor by 1 year imprisonment and a possible fine not to exceed \$2,500. Utah Code Ann. §§ 76-9-702.5(2), 76-3-204(1), 76-3-301(1)(c). However, if the defendant is a “a sex offender as defined in [Utah Code Ann. § 77-27-21.7 (Sex offender restrictions)¹³]; or has been previously convicted of a violation of this section[Utah Code Ann. § 76-9-702.5(1)],” it is a third degree felony punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Utah Code Ann. §§ 76-9-702.5(2), 76-3-203(3), 76-3-301(1)(b).

7. Utah Code Ann. § 76-5-401(1), (2) (Unlawful sexual activity with a minor—Elements—Penalties—Evidence of age raised by defendant) makes it unlawful for a defendant to engage in any “unlawful sexual activity with a minor,” who is 14–15 years of age

if under circumstances not amounting to [rape, object rape, forcible sodomy, or aggravated sexual assault], the actor:

(a) has sexual intercourse with the minor;

¹² See *supra* note 9.

¹³ See *infra* Section 2.10.

- (b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or
- (c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

A conviction under this statute is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Utah Code Ann. §§ 76-5-401(3), 76-3-203(3), 76-3-301(1)(b). However, if “the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred,” a conviction is punishable as a Class B misdemeanor punishable by imprisonment up to 6 months and a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-5-401(3), 76-3-204(2), 76-3-301(1)(d).

8. Utah Code Ann. § 76-4-401(2) (Enticing a minor—Elements—Penalties) states,

- (a) A person commits enticement of a minor when the person knowingly uses or attempts to use the Internet or text messaging to solicit, seduce, or entice a minor or other person that the actor believes to be a minor to engage in sexual activity which is a violation of state criminal law.
- (b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:
 - (i) initiate contact with a minor or a person the actor believes to be a minor; and
 - (ii) subsequently [initiates contact with a minor or a person the actor believes to be a minor], by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

Penalties for convictions under Utah Code Ann. § 76-4-401(2) are staggered according to the crime the defendant intended to commit. Utah Code Ann. § 76-4-401(4). Generally, a conviction is a felony one degree lower than the felony intended to be committed (e.g., a defendant who enticed a minor with the intent to commit a second degree felony will be convicted of a third degree felony, etc.). Utah Code Ann. § 76-4-401(4). However, in instances where the defendant has the intent to commit a first degree felony and also has a prior conviction under this statute, the defendant will be guilty of a first degree felony punishable by 3 years to life imprisonment. Utah Code Ann. § 76-4-401(4)(a)(ii).

1.3 *Commercial sexual exploitation of children (CSEC) or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

None of Utah’s CSEC statutes refer to Utah Code Ann. § 76-5-308 (Human trafficking) or Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties). Similarly, Utah Code Ann. § 76-10-1302(1) (Prostitution) does not refer to the human trafficking law when the person charged is a minor.

- 1.3.1 Recommendation: Amend Utah Code Ann. § 76-10-1306(1)(b) (Aggravated exploitation of prostitution), § 76-5-404.1(4)(i) (Sexual abuse of a child—Aggravated sexual abuse of a child), § 76-5b-201 (Sexual exploitation of a minor—Offenses) and § 76-10-1302(1) (Prostitution), when the person engaged in prostitution is a minor, to refer to Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to ensure that minor victims of CSEC crimes and minors engaged in prostitution are properly identified as victims of human trafficking.

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

Utah's Pattern of Unlawful Activity Act,¹⁴ is codified at Utah Code Ann. § 76-10-1601 et. seq. Pursuant to Utah Code Ann. § 76-10-1603 (Unlawful acts),

(1) It is unlawful for any person who has received any proceeds derived, whether directly or indirectly, from a pattern of unlawful activity in which the person has participated as a principal, to use or invest, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or the establishment or operation of, any enterprise.

(2) It is unlawful for any person through a pattern of unlawful activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.

(3) It is unlawful for any person employed by or associated with any enterprise to conduct or participate, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity.

(4) It is unlawful for any person to conspire to violate any provision of Subsection (1), (2), or (3).

For purposes of the Pattern of Unlawful Activity Act, Utah Code Ann. § 76-10-1602(2)¹⁵ defines a "pattern of unlawful activity" as

[E]ngaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

"Unlawful activity," is defined in Utah Code Ann. § 76-10-1602(4), as "to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by" certain listed crimes, "or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony." The listed crimes include violations of Utah Code Ann. § 76-5b-201 (Sexual exploitation of a minor—Offenses), § 76-5-308 (Human trafficking), § 76-5-309 (Human smuggling), § 76-5-310 (Aggravated Human Trafficking), § 76-10-1302 (Prostitution), § 76-10-1304 (Aiding prostitution), § 76-10-1305 (Exploiting prostitution), and § 76-10-1306 (Aggravated exploitation of prostitution). Utah Code Ann. § 76-10-1602(4)(n), (4)(o), (4)(bbbb)—(dddd).

¹⁴ For additional information on racketeering statutes, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHI-WhitePaperFederalStateRacketeeringGangCrimeLaws.pdf>.

¹⁵ The text of Utah Code Ann. 76-10-1602(4) included here and elsewhere in this report includes amendments made by the passage of H.B. 97, Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012).

A conviction under Utah Code Ann. § 76-10-1603 is a second degree felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000 or any other amount not exceeding twice the proceeds the trafficker obtained from the commission of the crime. Additionally, a conviction subjects the offender to asset forfeiture. Pursuant to Utah Code Ann. § 76-10-1603.5(1), traffickers convicted under Utah Code Ann. § 76-10-1603, a section of Utah’s Pattern of Unlawful Activity Act,¹⁶ “shall forfeit”

- (a) any interest acquired or maintained in violation of any provision of Section 76-10-1603;
- (b) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of in violation of Section 76-10-1603; and
- (c) any property constituting or derived from the net proceeds which the person obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or from any act or conduct constituting the pattern of unlawful activity proven as part of the violation of any provision of Section 76-10-1603.

Finally, where the alleged enterprise is also a criminal street gang, additional penalties may apply. Utah Code Ann. § 76-3-203.1 (Offenses committed in concert with two or more persons or in relation to a criminal street gang—Notice—Enhanced penalties), which provides for enhanced penalties in the commission of certain offenses outlined in Utah Code Ann. § 76-3-203.1(5), including the following:

- (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- (f) sexual exploitation of a minor as defined in Section 76-5b-201;
- ...
- (g) pornographic and harmful materials and performance offenses under Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;
- (r) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;
- ...
- (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- ...
- (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;
-

Utah Code Ann. § 76-3-203.1 provides in part,

(2) A person who commits any offense listed in Subsection (5) is subject to an enhanced penalty for the offense as provided in Subsection (4) if the trier of fact finds beyond a reasonable doubt that the person acted:

- (a) in concert with two or more persons;¹⁷

¹⁷ Utah Code Ann. § 76-3-203.1(1)(b), (c) (Offenses committed in concert with two or more persons or in relation to a criminal street gang—Notice—Enhanced penalties) states,

- (b) “In concert with two or more persons” means:
 - (i) the defendant was aided or encouraged by at least two other persons in committing the offense and was aware of this aid or encouragement; and
 - (ii) each of the other persons:
 - (A) was physically present; or

(b) for the benefit of, at the direction of, or in association with any criminal street gang¹⁸ as defined in Section 76-9-802; or

(c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.

....

(6) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Pursuant to Utah Code Ann. § 76-3-203.1(4) enhanced penalties will be classified one level higher than the original penalty, unless the original penalty was classified as a first degree felony.

1.4.1 Recommendation: Amend Utah Code Ann. § 76-10-1602(4) to include Utah Code Ann. § 76-5-404.1(4)(i) (Sexual abuse of a child—Aggravated sexual abuse of a child) within the definition of “unlawful activity.”

(B) participated as a party to any offense listed in Subsection (5).

(c) “In concert with two or more persons” means, regarding intent:

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor’s actions would cause the minor to be a party if the minor were an adult.

¹⁸ Utah Code Ann. § 76-9-802(1) (Definitions) defines “criminal street gang” as

an organization, association in fact, or group of three or more persons, whether operated formally or informally:

(a) that is currently in operation;

(b) that has as one of its primary activities the commission of one or more predicate gang crimes;

(c) that has, as a group, an identifying name or identifying sign or symbol, or both; and

(d) whose members, acting individually or in concert with other members, engage in or have engaged in a pattern of criminal gang activity.

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.*
-

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.*

Utah Code Ann. § 76-5-308¹⁹ (Human trafficking) might apply to buyers of sex with victims of domestic minor sex trafficking through the term “obtain.” Federal prosecutors, under the Trafficking Victims Protection Act (TVPA),²⁰ have applied the crime of human trafficking to attempted buyers of commercial sex with minors by charging that the buyers attempted to “obtain”²¹ a person under 18 to engage in commercial sex.²² It is unsettled whether the courts will uphold this interpretation of the TVPA. It is arguable, therefore, that the term “obtain” in Utah’s trafficking statute may be similarly applied, and could, therefore, implicate buyers under Utah Code Ann. § 76-5-308. Even if applied, however, the placement of the word “obtain” in Utah Code Ann. § 76-5-308, requires the buyer to use force, fraud, or coercion in committing the crime. This requirement makes it less likely that Utah Code Ann. § 76-5-308 would be applicable against buyers.

- 2.1.1 **Recommendation:** Amend Utah Code Ann. § 76-5-308 (Human trafficking) and § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to include unambiguous language to make buyers subject to prosecution for trafficking.

¹⁹ See *supra* Section 1.1 for a discussion of relevant provisions.

²⁰ 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.).

²¹ 18 U.S.C. § 1591(a).

²² See, e.g., Indictment at 1, *United States v. Oflyng*, No. 09-00084-01-CR-W-SOW (W.D. Mo. Mar. 10, 2009); see also News Release, U.S. Department of Justice, Office of the United States Attorney for the Western District of Missouri, Human Trafficking Rescue Project, Operation Guardian Angel, Final Defendant Pleads Guilty to Sex Trafficking of a Child, (Dec. 18, 2009), <http://www.justice.gov/usao/mow/news2009/mikoloyck.ple.htm>.

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

In the absence of any law making it a crime to purchase commercial sex acts with a minor specifically, Utah Code Ann. § 76-10-1303 (Patronizing a prostitute) or § 76-10-1313 (Sexual solicitation—Penalty) could be used to prosecute a buyer of commercial sex with a minor, although neither specifically targets the purchase of sex with minors. Utah Code Ann. § 76-10-1303(1) makes it a crime when a person “pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity,” or “enters or remains in a house of prostitution for the purpose of engaging in sexual activity.” Similarly, Utah Code Ann. § 76-10-1313(1) makes it a crime when a person

- (a) offers or agrees to commit any sexual activity with another person for a fee;
- (b) pays or offers or agrees to pay a fee to another person to commit any sexual activity; or
- (c) with intent to engage in sexual activity for a fee or to pay another person to commit any sexual activity for a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any of the following acts:
 - (i) exposure of a person’s genitals, the buttocks, the anus, the pubic area, or the female breast below the top of the areola;
 - (ii) masturbation;
 - (iii) touching of a person’s genitals, the buttocks, the anus, the pubic area, or the female breast; or
 - (iv) any act of lewdness.

Convictions under Utah Code Ann. § 76-10-1303(1) or § 76-10-1313(1) are Class B misdemeanors punishable by imprisonment up to 6 months and a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-10-1303(2), 76-10-1313(3)(a), 76-3-204(2), 76-3-301(1)(d). Additionally, convictions under Utah Code Ann. § 76-10-1313(1) (Sexual solicitation—Penalty) are Class A misdemeanors if the defendant has either a prior conviction under this section or under a local ordinance that is in compliance with this section.²³ Utah Code Ann. §§ 76-10-1313(3)(b), 76-3-301(1)(c). Class A misdemeanors are punishable by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Utah Code Ann. § 76-3-204(1).

Several sexual offenses also may be used to prosecute certain buyers of commercial sex acts with a minor.²⁴

- 2.2.1 Recommendation: Enact a law making it a crime to purchase commercial sex acts with a minor under 18.

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

Utah solicitation laws, Utah Code Ann. § 76-10-1303(1) (Patronizing a prostitute) and § 76-10-1313 (Sexual solicitation—Penalty), do not differentiate between the buying of sex with an adult and the buying of sex with a minor.

- 2.3.1 Recommendation: Amend Utah Code Ann. § 76-10-1303(1) (Patronizing a prostitute) and § 76-10-1313 (Sexual solicitation—Penalty) to provide heightened penalties in cases of soliciting or

²³ Utah Code Ann. § 76-10-1307 (Local ordinance consistent with code provisions) states, “An ordinance adopted by a local authority governing prostitution or aiding prostitution shall be consistent with the provisions of this part which govern those matters.”

²⁴ See *supra* Section 1.2 for a full description of sexual offense laws that may be used to prosecute certain buyers.

purchasing sex with a minor to align with the penalties under Utah Code Ann. § 76-5-310(2) (Aggravated human trafficking and aggravated human smuggling—Penalties).

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

In the absence of an applicable human trafficking or CSEC crime, buyers are likely to be prosecuted under Utah Code Ann. § 76-10-1303(1) (Patronizing a prostitute) or § 76-10-1313(1) (Sexual solicitation). Both are Class B misdemeanors punishable by imprisonment up to 6 months and a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-10-1303(2), 76-10-1313(3)(a), 76-3-204(2), 76-3-301(1)(d). Additionally, convictions under Utah Code Ann. § 76-10-1313(1) (Sexual solicitation—Penalty) are punishable as Class A misdemeanors if the defendant has either a prior conviction under this section or under a local ordinance that is in compliance with this section.²⁵ Utah Code Ann. §§ 76-10-1313(3)(b), 76-3-301(1)(c). Class A misdemeanors are punishable by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Utah Code Ann. § 76-3-204(1).

Several sexual offenses may be used to prosecute certain buyers of commercial sex acts with a minor.²⁶

Buyers may also be subject to enhanced penalties under certain circumstances. According to Utah’s habitual violent offender²⁷ statute, buyers who have two prior violent felony convictions are subject to an enhanced penalty a conviction for a third violent felony. Utah Code Ann. § 76-3-203.5(2) (Habitual violent offender—Definition—Procedure—Penalty) states,

- (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:
- (a) third degree felony is as if the conviction were for a first degree felony;
 - (b) second degree felony is as if the conviction were for a first degree felony; or
 - (c) first degree felony remains the penalty for a first degree penalty except:
 - (i) the convicted person is not eligible for probation; and
 - (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

Pursuant to Utah Code Ann. § 76-3-203.5(1)(c)(i), a “violent felony” is defined as

- (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:
- ...
 - (Q) rape of a child, Section 76-5-402.1;
 - (R) object rape, Section 76-5-402.2;
 - (S) object rape of a child, Section 76-5-402.3;
 - ...
 - (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
 - ...
 - (Y) sexual exploitation of a minor, Section 76-5b-201;

²⁵ See *supra* note 23.

²⁶ See *supra* Section 1.2 for a full description of sexual offense penalties.

²⁷ “Habitual violent offender” is defined as “a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.” Utah Code Ann. § 76-3-203.5(b).

....

Furthermore, Utah Code Ann. § 76-3-407(2) (Repeat and habitual sex offenders—Additional prison term for prior felony convictions) states that defendants who are being charged with a sexual offense²⁸ and have a previous conviction for a sexual offense²⁹ may be subject to the maximum penalty plus an additional 5 year penalty for “each conviction of the defendant for a prior sexual offense that arose from a separate criminal episode.” This additional term is “in addition to, and consecutive to, any other prison term served by the defendant.” Utah Code Ann. § 76-3-407(3).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense³⁰ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,³¹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.³²

²⁸ Utah Code Ann. § 76-3-407(1)(b) defines “sexual offense” as

- (i) an offense that is a felony of the second or third degree, or an attempted offense, which attempt is a felony of the second or third degree, described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (ii) sexual exploitation of a minor, Section 76-5b-201;
- (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
- (iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii); or
- (v) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (iv).

²⁹ Utah Code Ann. § 76-3-407(1)(a) defines “prior sexual offense” as

- (i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (ii) sexual exploitation of a minor, Section 76-5b-201;
- (iii) a felony offense of enticing a minor over the Internet, Section 76-4-401;
- (iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through (iii); or
- (v) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (iv).

³⁰ 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).

³¹ 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).

³² 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

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.*

Although Utah Code Ann. § 76-4-401(2) (Enticing a minor—Elements—Penalties) is not explicitly commercial in nature, it states that

- (a) A person commits enticement of a minor when the person knowingly uses or attempts to use the Internet or text messaging to solicit, seduce, lure, or entice a minor or another person that the actor believes to be a minor to engage in any sexual activity which is a violation of state criminal law.
- (b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:
 - (i) initiate contact with a minor or a person the actor believes to be a minor; and
 - (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

Penalties for convictions under Utah Code Ann. § 76-4-401(2) are staggered according to the crime the defendant intended to commit. Utah Code Ann. § 76-4-401(4). Generally, a conviction is punishable as a felony one degree lower than the felony intended to be committed. Utah Code Ann. § 76-4-401(4). However, in instances where the defendant has the intent to commit a first degree felony and also has a prior conviction under this statute, the defendant will be guilty of a first degree felony punishable by 3 years to life imprisonment. Utah Code Ann. § 76-4-401(4)(a)(ii).

- 2.5.1 Recommendation: Amend Utah Code Ann. § 76-4-401(2) (Enticing a minor—Elements—Penalties) to make it a distinct crime to use the Internet to commit or attempt to commit CSEC and trafficking offenses and provide heightened penalties in such cases.

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

In the absence of a human trafficking or CSEC offense criminalizing the purchase of commercial sex acts with a minor, Utah Code Ann. § 76-10-1303(1) (Patronizing a prostitute) and § 76-10-1313 (Sexual solicitation—Penalty) are the most applicable offenses to apply to a buyer of sex with a minor. These offenses apply regardless of the age of the person solicited, making a mistake of age defense inapplicable in these crimes.

In contrast, Utah Code Ann. § 76-2-304.5(1) (Mistake as to victim’s age not a defense) expressly prohibits a defendant from asserting a defense that he “mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim’s true age” for certain sexual offenses, including Utah Code Ann. § 76-5-301.1 (Child kidnapping), § 76-5-402.1 (Rape of a child), § 76-5-402.3 (Object rape of a child), § 76-5-403.1 (Sodomy on a child), § 76-5-404.1 (Sexual abuse of a child), or § 76-5-404.1(4) (Aggravated sexual abuse of a child). Additionally, Utah Code Ann. § 76-5b-302, states that “[i]t is not a defense to an offense described in this chapter [Utah Code Ann. § 76-5b-201 (Sexual exploitation of minor—Offenses)] that the accused did not know the age of the victim.”

both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

2.6.1 Recommendation: Amend Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to prohibit the use of a mistake of age defense by buyers of commercial sex with minors.

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

Since none of Utah’s CSEC laws include the crime of purchasing sex with minors, buyers would most likely be prosecuted under Utah Code Ann. § 76-10-1303 (Patronizing a prostitute) or § 76-10-1313 (Sexual solicitation—Penalty), which do not provide a distinction between purchasing commercial sex acts from a minor and purchasing commercial sex acts from an adult.

2.7.1 Recommendation: Amend Utah Code Ann. § 76-10-1303 (Patronizing a prostitute) and § 76-10-1313 (Sexual solicitation—Penalty) to provide a heightened penalty for purchasing commercial sex acts from any minor under 18 years of age or, alternatively, enact a stand-alone law which makes it a crime to purchase commercial sex from any minor and imposes sufficient penalties to protect all minors under 18.

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

In the absence of an applicable human trafficking or CSEC crime, buyers are likely to be prosecuted under Utah Code Ann. § 76-10-1303(1) (Patronizing a prostitute) or § 76-10-1313(1) (Sexual solicitation). Both are Class B misdemeanors subject to a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-10-1303(2), 76-10-1313(3)(a), 76-3-204(2), 76-3-301(1)(d). Additionally, convictions under Utah Code Ann. § 76-10-1313(1) (Sexual solicitation—Penalty) are punishable as Class A misdemeanors if the defendant has either a prior conviction under this section or under a local ordinance that is in compliance with this section.³³ Utah Code Ann. §§ 76-10-1313(3)(b), 76-3-301(1)(c). Class A misdemeanors are subject to a possible fine not to exceed \$2,500. Utah Code Ann. § 76-3-204(1).

Certain sexual offenses may apply to prosecute buyers in situations of commercial sexual exploitation. Buyers convicted under Utah Code Ann. § 76-5-404.1(2) (Sexual abuse of a child—Aggravated sexual abuse of a child) may be required to pay a fine not to exceed \$10,000. Utah Code Ann. §§ 76-5-404.1(2), (3), 76-3-301(1)(a).

Following any criminal action, the court has the discretion to order the buyer to make restitution to the victim pursuant to Utah Code Ann. § 77-38a-301 (Restitution—Convicted defendant may be required to pay), which authorizes the court to order “a convicted defendant to make restitution.” To the extent that a buyer causes a victim to suffer pecuniary damages,³⁴ restitution is mandatory. Utah Code Ann. § 77-38a-302(1) (Restitution criteria), states in part, “When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make

³³ See *supra* note 23.

³⁴ Pursuant to Utah Code Ann. § 77-38a-102(6), a victim’s pecuniary damages include

all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant’s criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

restitution to victims³⁵ of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition.”

- 2.8.1 Recommendation: Amend Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to include a forfeiture provision under which the assets of buyers may be seized and forfeited upon conviction.

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

Utah Code Ann. § 76-5b-201(1)(a) (Sexual exploitation of a minor—Offenses) makes it a crime for a person to “knowingly . . . possess[] . . . child pornography; or [to] intentionally . . . view[] child pornography”³⁶ A conviction under Utah Code Ann. § 76-5b-201(1) is a second degree felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5b-201(2), 76-3-203(2), 76-3-301(1)(a).

In comparison, a federal conviction for possession of child pornography³⁷ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁸ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁹

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

Under Utah law, sex and kidnap offenders are required to register. Utah Code Ann. §§ 77-41-105 (Registration of offenders—Offender responsibilities), 77-41-102(11)⁴⁰ (Definitions). Utah Code Ann. § 77-41-102(16)(a) defines “sex offender” in part as

³⁵ “Victim” is defined as “any person whom the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities” and it “may not include a codefendant or accomplice.” Utah Code Ann. § 77-38a-102(14).

³⁶ See *supra* note 7.

³⁷ 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).

³⁸ 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).

³⁹ 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).

⁴⁰ Pursuant to Utah Code Ann. § 77-41-102(11), “‘Offender’ means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (16).” The text of Utah Code § 77-41-102 included here and elsewhere in this report reflects passage of H.B. 13, H.B. 17, and H.B. 18, 2012 Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012). The provisions of these 3 bills are merged pursuant to Sections 3 and 4 of H.B. 13, which added Chapter 41 to Title 77 of the Utah Code.

[A]ny person

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

....

(iii) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

(iv) Section 76-5-401.1, sexual abuse of a minor;

(v) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

....

(vii) Section 76-5-402.1, rape of a child;

... (ix) Section 76-5-402.3, object rape of a child;

....

(xi) Section 76-5-403.1, sodomy on a child;

....

(xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

....

(xv) Section 76-5-412, custodial sexual relations, when the person in custody is younger than 18 years of age, if the offense is committed on or after May 10, 2011;

(xvi) Section 76-5b-201, sexual exploitation of a minor;

....

(xxi) Section 76-9-702.5, lewdness involving a child;

....

(xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or

(xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (16)(a);

Utah Code Ann. § 77-41-102(9)⁴¹ (Definitions) defines “[k]idnap offender” in part as

[A]ny person other than a natural parent of the victim who:

(a) has been convicted in this state of a violation of:

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

(v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iv);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a)

Under Utah Code Ann. § 77-41-105(3)(a)⁴² (Registration of offenders—Offender responsibilities), offenders must register for “the duration of the[ir] sentence and for 10 years after termination of [their] sentence.” However, pursuant to § 77-41-105(3)(c)(i), (ii), “An offender convicted as an adult of any of the offenses listed in Section 77-41-106 shall, for the offender’s lifetime, register every year during the month of the offender’s birth, during the month that is the sixth month after the offender’s birth month, and also within three business days of every change of the offender’s primary residence, any secondary residences, place of employment,

⁴¹ See *supra* note 40.

⁴² The text of Utah Code Ann. § 77-41-105 included here and elsewhere in this report reflects passage of H.B. 17, 2012 Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012).

vehicle information, or educational information required to be submitted under Subsection (8). . . This registration requirement is not subject to exemptions and may not be terminated or altered during the offender's lifetime.”

Utah Code Ann. § 77-41-106⁴³ (Registerable offenses) lists the offenses for which offenders must register for their lifetime, including

- (1) any offense listed in Subsection 77-41-102(9) or (16) [Definitions of “kidnap offender” and “ sex offender”] if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (16) or has previously been required to register as a sex offender for an offense committed as a juvenile;
- (2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:
 - (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;

 - (c) Section 76-5-402.1, rape of a child;

 - (e) Section 76-5-402.3, object rape of a child;
 - (f) Section 76-5-403.1, sodomy on a child;
 - (g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or
 - (h) Section 76-5-405, aggravated sexual assault;
- (3) Section 76-4-401, a felony violation of enticing a minor over the Internet;
- (4) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;
- (5) Section 76-5-403, forcible sodomy;
- (6) Section 76-5-404.1, sexual abuse of a child;
- (7) Section 76-5b-201, sexual exploitation of a minor; or
- (8) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

However, pursuant to Utah Code Ann. § 77-41-112⁴⁴ (Removal from registry—Requirements—Procedure) some offenders can be removed from the Sex Offender and Kidnap Offender Registry five years after the completion of their sentence, provided they were convicted under Utah Code Ann. § 76-5-301 (Kidnapping), § 76-5-304 (Unlawful detention), or Utah Code Ann. § 76-5-401 (Unlawful sexual activity with a minor) and were no more than 10 years older than the victim at the time of the offense, or they were convicted under Utah Code Ann. § 76-5-401.2 (Unlawful sexual conduct with a 16 or 17 year old) and were not more than 10 years older than the victim at the time of the offense.

- 2.10.1 Recommendation: Amend Utah Code Ann. § 77-41-102(16) or (9) (Definitions) to include § 76-10-1303 (Patronizing a prostitute) and § 76-10-1313 (Sexual solicitation) as offenses for which a convicted offender is required to register as a sex offender when the victim is a minor under 18.
- 2.10.2 Recommendation: Amend Utah Code Ann. § 77-41-106 to include § 76-5-308 (Human trafficking), § 76-5-310 (Aggravated human trafficking), § 76-5-401.2(2) (Unlawful sexual conduct with a 16 or 17 year old), § 76-9-702.5(1) (Lewdness involving a child), and § 76-5-401(1) (Unlawful sexual activity with a minor), so that individuals convicted under those statutes are subject to lifetime registration.

⁴³ The text of Utah Code Ann. § 77-41-106 included here and elsewhere in this report reflects passage of H.B. 17, 2012 Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012).

⁴⁴ The text of Utah Code Ann. § 77-41-112 included here and elsewhere in this report reflects passage of H.B. 13 and H.B. 18, 2012 Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012). The provisions of these bills are merged pursuant to Sections 3 and 4 of H.B. 13, which added Chapter 41 to Title 77 of the Utah Code.

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.*⁴⁵

A trafficker may be prosecuted under Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties), a first degree felony punishable by 5 years to life imprisonment and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5-310(4)(a), 76-3-203(1), 76-3-301(1)(a). A trafficker may also be prosecuted under Utah Code Ann. § 76-10-1306 (Aggravated exploitation of prostitution), a second degree felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-3-201(2), 76-3-301(1)(a). Traffickers prosecuted under Utah Code Ann. § 76-5b-201(1)(a) (Sexual exploitation of a minor—Offenses), a second degree felony, are subject to imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5b-201(2), 76-3-203(2), 76-5-301(1)(a).

Additionally, to the extent that a trafficker can be found to have “cause[d] a child to take indecent liberties” with another person, a trafficker may be prosecuted under Utah Code Ann. § 76-5-404.1(4)(i) (Sexual abuse of a child—Aggravated sexual abuse of a child), which states that

[a] person commits aggravated sexual abuse of a child when in conjunction with the offense [of sexual abuse under Utah Code Ann. § 76-5-404.1(2)]⁴⁶ . . . any of the following circumstances have been charged and admitted or found true in the action for the offense:

. . . .

- (i) the accused encouraged, aided, allowed, or benefited from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person.

A conviction under Utah Code Ann. § 76-5-404.1(4) is a first degree felony punishable by 15 years to life imprisonment, unless the defendant “caused serious bodily injury” during the commission of the crime or has a prior conviction for a “grievous sexual offense,” in which case a conviction is punishable by life imprisonment without the possibility of parole. Utah Code Ann. § 76-5-404.1(5). However, offenders who have not been previously convicted of a “grievous sexual offense,” even those who have “caused serious bodily injury” during the commission of aggravated sexual abuse of a child, are eligible to receive

⁴⁵ See discussion the statutory text of relevant provisions listed in this section *supra* Sections 1.1 and 1.2.

⁴⁶ See *supra* note 5.

lesser sentences⁴⁷ if the court determines that it “is in the interests of justice” and states why on the record. Utah Code Ann. § 76-5-404.1(6). The defendant is also subject to a possible fine not to exceed \$10,000. Utah Code Ann. § 76-3-301(1)(a).

Utah Code Ann. § 76-5-302(1)(b)(vi) (Aggravated kidnapping) makes it a first degree felony for a trafficker to, among other things, “in the course of committing unlawful detention or kidnapping, . . . act[] with [the] intent . . . to commit a sexual offense as described in [Utah Code Ann. § 76-5-404.1(4) (Sexual abuse of a child—Aggravated sexual abuse of a child)].” Both kidnapping under Utah Code Ann. § 76-5-301(1) and unlawful detention under Utah Code Ann. § 76-5-304(1)⁴⁸ must be committed “intentionally or knowingly, without authority of law, and against the will of the victim.” A conviction under Utah Code Ann. § 76-5-302(1) is punishable by 15 years to life imprisonment and a possible fine not to exceed \$10,000, unless the trafficker “caused serious bodily injury” in the commission of the offense or has a prior conviction for a “grievous sexual offense,” in which case the trafficker may receive life imprisonment without the possibility of parole. Utah Code Ann. §§ 76-5-302(3), 76-3-203(1), 76-3-301(1)(a). However, in instances where a convicted defendant caused “serious bodily injury,” or has no prior sex offense convictions, the court may imprison the defendant for a lesser term (either 10 years to life imprisonment or 6 years to life imprisonment) if “the interests of justice” so require and the court states the reasons why on the record. Utah Code Ann. § 76-5-302(4).

A trafficker also may face penalties under Utah Code Ann. § 76-10-1304(1)⁴⁹ (Aiding prostitution) which states:

- (1) A person is guilty of aiding prostitution if the person:
 - (a) (i) solicits a person to patronize a prostitute;
 - (ii) procures or attempts to procure a prostitute for a patron; or
 - (iii) leases or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or
 - (iv) provides any service or commits any act that enables another person to commit a violation of this Subsection (1)(a) or facilitates another person's ability to commit any violation of this Subsection (1)(a); or
 - (b) solicits, receives, or agrees to receive any benefit for committing any of the acts prohibited by Subsection (1)(a).

A first conviction under Utah Code Ann. § 76-10-1304(1) is punishable as a Class B misdemeanor by imprisonment for up to 6 months and a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-10-1304(2), 76-3-204(2), 76-3-301(1)(d). “However, a person who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a Class A misdemeanor,” punishable by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Utah Code Ann. §§ 76-10-1304(2), 76-3-204(1), 76-3-301(1)(c).

Lastly, traffickers may face prosecution under Utah Code Ann. § 76-10-1903(1) (Money laundering), which states,

A person commits the offense of money laundering who:

⁴⁷ See *supra* note 6.

⁴⁸ The text of Utah Code Ann. § 76-5-304 included here and elsewhere in this report includes amendments made by the passage of House Bill 159, 2012 Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012) (creating the offense of “unlawful detention of a minor”).

⁴⁹ The text of Utah Code Ann. § 76-10-1304 included here and elsewhere in this report includes amendments made by the passage of House Bill 276, 2012 Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012).

- (a) transports, receives, or acquires the property which is in fact proceeds of the specified unlawful activity, knowing that the property involved represents the proceeds of some form of unlawful activity;
- (b) makes proceeds of unlawful activity available to another by transaction, transportation, or other means, knowing that the proceeds are intended to be used for the purpose of continuing or furthering the commission of specified unlawful activity;
- (c) conducts a transaction knowing the property involved in the transaction represents the proceeds of some form of unlawful activity with the intent:
 - (i) to promote the unlawful activity;
 - (ii) to conceal or disguise the nature, location, source, ownership, or control of the property; or
 - (iii) to avoid a transaction reporting requirement under this chapter or under federal law; or
- (d) knowingly accepts or receives property which is represented to be proceeds of unlawful activity.

“Specified unlawful activity” includes “any unlawful activity defined as an unlawful activity in Section 76-10-1602,”⁵⁰ which includes violations of Utah Code Ann. § 76-5b-201 (Sexual exploitation of a minor—Offenses), § 76-5-308 (Human trafficking), § 76-5-309 (Human smuggling), § 76-5-310 (Aggravated Human Trafficking), § 76-10-1304 (Aiding prostitution), § 76-10-1305 (Exploiting prostitution), and § 76-10-1306 (Aggravated exploitation of prostitution). Utah Code Ann. §§ 76-10-1902(12), 76-10-1602(4) (n), (4)(o), (4)(ccc)–(eee). A conviction under Utah Code Ann. § 76-10-1903(1)(a), (b), or (c) is punishable as a second degree felony by imprisonment for 1–15 years and a possible fine not to exceed \$10,000, while a conviction under Utah Code Ann. § 76-10-1903(1)(d) (Knowingly accepting or receiving property) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Utah Code Ann. §§ 76-10-1904, 76-3-203(2), (3), 76-3-301(1)(a), (b).

Traffickers may also be subject to enhanced penalties for repeat offenses under certain circumstances. According to Utah’s habitual violent offender statute, buyers who have two prior violent felony convictions are subject to an enhanced penalty a conviction for a third violent felony.⁵¹ Utah Code Ann. § 76-3-203.5(2) (Habitual violent offender—Definition—Procedure—Penalty) states,

- (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:
 - (a) third degree felony is as if the conviction were for a first degree felony;
 - (b) second degree felony is as if the conviction were for a first degree felony; or
 - (c) first degree felony remains the penalty for a first degree penalty except:
 - (i) the convicted person is not eligible for probation; and
 - (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁵² 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. §§

⁵⁰ See *supra* note 15.

⁵¹ Utah Code Ann. § 76-3-203.5(c)(i) defines a “violent felony” as “any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony: . . . (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1; . . . (Y) sexual exploitation of a minor, Section 76-5b-201; . . . (LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a); . . .”

⁵² See *supra* note 20.

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 offense⁵³ against a minor.

- 3.1.1 Recommendation: Refer cases under Utah Code Ann. § 76-5b-201 (Sexual exploitation of a minor—Offenses), § 76-10-1304 (Aiding prostitution), § 76-10-1305 (Exploiting prostitution), and § 76-10-1306 (Aggravated Exploitation of Prostitution) to Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to ensure traffickers are prosecuted consistently.

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

Utah Code Ann. § 76-5b-201(1) (Sexual exploitation of a minor—Offenses) makes it a crime if a person “knowingly produces . . . or possesses with intent to distribute child pornography. . . [or] intentionally distributes child pornography.”⁵⁴ A conviction under this statute is punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5b-201(2), 76-3-203(2), 76-3-301(1)(a).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense⁵⁵ against a minor. Additionally, a federal conviction for distribution of child pornography⁵⁶ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵⁷ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁸

- 3.2.1 Recommendation: Amend Utah Code Ann. § 76-5b-201 to raise the penalties to a level closer to the federal pornography statutes.

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.*

⁵³ See *supra* note 30 for the definition of “federal sex offense.”

⁵⁴ See *supra* note 7.

⁵⁵ See *supra* note 30 for the definition of “federal sex offense.”

⁵⁶ 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).

⁵⁷ 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).

⁵⁸ 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).

Although Utah Code Ann. § 76-4-401(2) (Enticing a minor—Elements—Penalties) is not expressly commercial in nature, it states,

- (a) A person commits enticement of a minor when the person knowingly uses or attempts to use the Internet or text messaging to solicit, seduce, lure, or entice a minor or another person that the actor believes to be a minor to engage in any sexual activity which is a violation of state criminal law.
- (b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:
 - (i) initiate contact with a minor or a person the actor believes to be a minor; and
 - (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

Penalties for convictions under Utah Code Ann. § 76-4-401(2) are determined by the crime the defendant intended to commit. Utah Code Ann. § 76-4-401(4). Generally, a conviction is a felony one degree lower than the felony intended to be committed (e.g., a defendant who enticed a minor with the intent to commit a second degree felony will be convicted of a third degree felony, etc.). Utah Code Ann. § 76-4-401(4). However, in instances where the defendant has the intent to commit a first degree felony and also has a prior conviction under this statute, the defendant will be guilty of a first degree felony punishable by imprisonment for 3 years to life. Utah Code Ann. § 76-4-401(4).

- 3.3.1 Recommendation: Enact a law that makes it a distinct crime to use the Internet to commit, or attempt to commit, CSEC and trafficking offenses.

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

Convicted traffickers are subject to fines up to \$10,000. Specifically, traffickers convicted under Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties), § 76-10-1306 (Aggravated exploitation of prostitution), § 76-5b-201 (Sexual exploitation of a minor—Offenses), § 76-5-404.1(4) (Sexual abuse of a child—Aggravated sexual abuse of a child), § 76-5-302 (Aggravated kidnapping), § 76-10-1603(1) (Unlawful acts), or § 76-10-1903(1)(a)–(c) (Money laundering) are subject to a possible fine not to exceed \$10,000.⁵⁹ Utah Code Ann. § 76-3-301(a).

A trafficker convicted under Utah Code Ann. § 76-10-1903(1)(d) (Money laundering), a third degree felony, is subject to a possible fine not to exceed \$5,000. Utah Code Ann. §§ 76-10-1904(2), 76-3-301(1)(b). A trafficker convicted under Utah Code Ann. § 76-10-1304(1) (Aiding prostitution), a Class B misdemeanor, is subject to a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-10-1304(2), 76-3-301(1)(d).

In addition to possible fines, a court may order traffickers to pay restitution. Utah Code Ann. § 77-38a-301 (Restitution—Convicted defendant may be required to pay), authorizes the court to order “a convicted defendant to make restitution.” Convicted defendants, including traffickers, whose criminal activity results in pecuniary damages are subject to mandatory restitution. Utah Code Ann. § 77-38a-302(1) (Restitution criteria), states in part,

⁵⁹ These statutes are either first or second degree felonies and, pursuant to Utah Code Ann. § 76-3-301(a), are subject to a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5-310(4)(a), 76-10-1306(2), 76-5b-201(2), 76-5-404.1(5), 76-5-302(3), 76-10-1603.5(1), 76-10-1904(1).

When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims⁶⁰ of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition.

In determining restitution, the court shall determine “court-ordered restitution,”⁶¹ and “complete restitution”⁶² using the criteria provided in subsection (5). Utah Code Ann. § 77-38a-302(1), (2).

Pursuant to Utah Code Ann. § 77-38a-302(5)(b),

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

- (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;
- (ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
- (iii) the cost of necessary physical and occupational therapy and rehabilitation;
- (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;

....

In determining court-ordered restitution, pursuant to Utah Code Ann. § 77-38a-302(5)(c), the court must consider the factors listed above in Utah Code Ann. § 77-38a-302(5)(b), as well as the following factors:

- (i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;
- (ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and
- (iv) other circumstances which the court determines may make restitution inappropriate.

If a trafficker disobeys an order to make restitution, and the “victim . . . elects to pursue collection of the order by civil process, the victim shall be entitled to recover collection and attorney’s fees.” Utah Code Ann. § 77-38a-401(3).

In addition, any property that is part of the “net proceeds”⁶³ of a trafficker’s conviction under Utah Code Ann. § 76-10-1903 (Money laundering), may also be seized and forfeited. Utah Code Ann. § 76-10-1908(1)(a)(ii).

⁶⁰ “Victim” is defined as “any person whom the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities” and it “may not include a codefendant or accomplice.” Utah Code Ann. § 77-38a-102(14).

⁶¹ Utah Code Ann. § 77-38a-302(2)(b) defines “court-ordered restitution” as “the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.”

⁶² Utah Code Ann. § 77-38a-302(2)(a) defines “complete restitution” as the “restitution necessary to compensate a victim for all losses caused by the defendant.”

⁶³ For purposes of Utah Code Ann. § 76-10-1908, “net proceeds” is defined as “property acquired as a result of the violation minus the direct costs of acquiring the property.”

- 3.4.1 Recommendation: Amend Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to include a forfeiture provision under which the assets of traffickers may be seized and forfeited upon conviction.

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

Under Utah law, sex and kidnap offenders are required to register. Utah Code Ann. §§ 77-41-105 (Registration of offenders—Offender responsibilities), 77-41-102(11) (Definitions).⁶⁴ Utah Code Ann. § 77-41-102(16) (Sex and kidnap offender registry—Definitions) defines “sex offender” in part as

[A]ny person:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

...

(iv) Section 76-5-401.1, sexual abuse of a minor;

...

(xiii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

...

(xvi) Section 76-5b-201, sexual exploitation of a minor;

...

(xxi) Section 76-9-702.5, lewdness involving a child;

...

(xxiii) Section 76-10-1306, aggravated exploitation of prostitution; or

(xxiv) attempting, soliciting, or conspiring to commit any felony offense listed in Subsection (16)(a);

....

Traffickers convicted of certain trafficking crimes are also required to register as a “kidnap offender.” Utah Code Ann. § 77-41-105(1).⁶⁵ Utah Code Ann. § 77-41-102(9) (Sex and kidnap offender registry—Definitions) defines “kidnap offender” in part as

[A]ny person other than the natural parent of the child who:

(a) has been convicted in this state of a violation of:

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-302, aggravated kidnapping;

(iv) Section 76-5-310, aggravated human trafficking, on or after May 10, 2011; or

(v) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iv);

....

Under Utah Code Ann. § 77-41-105(3)(a) (Registration of offenders—Offender responsibilities),⁶⁶ offenders must register for “the duration of the[ir] sentence and for 10 years after termination of [their] sentence.”

⁶⁴ See *supra* note 40.

⁶⁵ See *supra* note 42.

⁶⁶ See *supra* note 42.

However, pursuant to § 77-41-105(3)(c)(i), offenders convicted of offenses listed in Utah Code Ann. § 77-41-106⁶⁷ must register for their entire lives, including

- (1) any offense listed in Subsection 77-41-102(9) or (16) [Definitions of “kidnap offender” and “sex offender”] if, at the time of the conviction, the offender has previously been convicted of an offense listed in Subsection 77-41-102(9) or (16) or has previously been required to register as a sex offender for an offense committed as a juvenile;
- (2) a conviction for any of the following offenses, including attempting, soliciting, or conspiring to commit any felony of:
 - (a) Section 76-5-301.1, child kidnapping, except if the offender is a natural parent of the victim;
.....
 - (c) Section 76-5-402.1, rape of a child;
.....
 - (e) Section 76-5-402.3, object rape of a child;
 - (f) Section 76-5-403.1, sodomy on a child;
 - (g) Subsection 76-5-404.1(4), aggravated sexual abuse of a child; or
 - (h) Section 76-5-405, aggravated sexual assault;
- (3) Section 76-4-401, a felony violation of enticing a minor over the Internet;
- (4) Section 76-5-302, aggravated kidnapping, except if the offender is a natural parent of the victim;
- (5) Section 76-5-403, forcible sodomy;
- (6) Section 76-5-404.1, sexual abuse of a child;
- (7) Section 76-5b-201, sexual exploitation of a minor; or
- (8) Section 76-10-1306, aggravated exploitation of prostitution, on or after May 10, 2011.

However, pursuant to Utah Code Ann. § 77-41-112 (Removal from registry—Requirements—Procedure),⁶⁸ some offenders can be removed from the Sex Offender and Kidnap Offender Registry five years after the completion of their sentence, provided they were convicted under Utah Code Ann. § 76-5-301 (Kidnapping), § 76-5-304 (Unlawful detention), or Utah Code Ann. § 76-5-401 (unlawful sexual activity with a minor) and were not more than 10 years older than the victim at the time of the offense, or they were convicted under Utah Code Ann. § 76-5-401.2 (unlawful sexual conduct with a 16 or 17 year old) and were not more than 10 years older than the victim at the time of the offense.

3.5.1 Recommendation: Amend Utah Code Ann. § 77-41-102(9), (16) (Definitions) to include Utah Code Ann. § 76-10-1304 (Aiding prostitution) in instances when the victim is a minor under 18.

3.5.2 Recommendation: Amend Utah Code Ann. § 77-41-106 (Registerable offenses) to include Utah Code Ann. § 76-5-308 (Human trafficking), § 76-5-310 (Aggravated human trafficking), § 76-5-401.2(2) (Unlawful sexual conduct with a 16 or 17 year old), § 76-9-702.5(1) (Lewdness involving a child), and § 76-5-401(1) (Unlawful sexual activity with a minor), so that individuals convicted under those statutes are subject to lifetime registration.

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.*

Although Utah’s statutes relating to the termination of parental rights do not expressly mandate termination of parental rights for convictions under Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated

⁶⁷ See *supra* note 43.

⁶⁸ See *supra* note 44.

human smuggling—Penalties),⁶⁹ Utah Code Ann. § 78A-6-507 (Grounds for termination of parental rights—Findings regarding reasonable efforts) and Utah Code Ann. § 62A-4a-203.5 (Mandatory petition for termination of parental rights) provide other grounds that may be used to petition for termination of parental rights of a convicted trafficker.

Utah Code Ann. § 78A-6-507(1)(b), (c) provides that the court may terminate parental rights if it finds “that the parent has neglected or abused the child” or “that the parent is unfit or incompetent.” For purposes of Utah’s Juvenile Court Act of 1996, commercial sexual exploitation is expressly identified as a type of abuse. Specifically, Utah Code Ann. § 78A-6-105(1) (Definitions) defines “abuse” as “(i) nonaccidental harm of a child; (ii) threatened harm of a child; (iii) sexual exploitation; or (iv) sexual abuse.” Utah Code Ann. § 78A-6-105(40) defines “sexual exploitation” as

knowingly:

- (a) employing, using, persuading, inducing, enticing, or coercing any child to:
 - (i) pose in the nude for the purpose of sexual arousal of any person; or
 - (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way sexual or simulated sexual conduct;
- (b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:
 - (i) in the nude, for the purpose of sexual arousal of any person; or
 - (ii) engaging in sexual or simulated sexual conduct; or
- (c) engaging in any conduct that would constitute an offense under Section 76-5b-201, Sexual Exploitation of a Minor, regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

Additionally, Utah Code Ann. § 78A-6-508(2) (Evidence of grounds for termination) lists circumstances that a court must examine in order to determine whether a parent is unfit or neglected a child, including, “conduct toward a child of a physically, emotionally, or sexually cruel or abusive in nature” and “whether the parent is incarcerated as a result of conviction of a felony, and the sentence is of such length that the child will be deprived of a normal home for more than one year.” Utah Code Ann. § 78A-6-508(2)(b),(2)(e). Furthermore, Utah Code Ann. § 78A-6-508(6)(a) provides that “sexual abuse, sexual exploitation, injury, or death of a sibling of the child, or of any child, due to known or substantiated abuse or neglect by the parent or parents” is “prima facie evidence of unfitness.”

3.6.1 Recommendation: Amend Utah Code Ann. § 78A-6-507 (Grounds for termination of parental rights—Findings regarding reasonable efforts) to provide that a conviction under Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) is a reasonable ground for terminating parental rights.

3.6.2 Recommendation: Amend Utah Code Ann. § 62A-4a-203.5(2)(b) (Mandatory petition for termination of parental rights) to require the Division of Child and Family Services to file a petition

⁶⁹ Utah Code Ann. § 62A-4a-203.5(2)(b) (Mandatory petition for termination of parental rights) requires the Division of Child and Family Services to file a petition seeking the termination of parental rights when a child’s parent has, among other things,

- (ii) committed manslaughter of another child of that parent;
- (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse homicide, or manslaughter against another child of that parent; or
- (iv) committed a felony assault or abuse that has resulted in serious physical injury to another child of that parent, or to the other parent of that child.

for termination of parental rights when a parent has been convicted under Utah Code Ann. §76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties).

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.⁷⁰*

Utah Code Ann. § 76-5-308 (Human trafficking) does not expressly apply to facilitators. However, Utah Code § 76-5-309(4) (Human trafficking and human smuggling—Penalties) makes it a crime if a person “benefits financially or materially by receiving anything of value from knowing participation in: (a) human trafficking” A conviction for financially benefitting from human trafficking is a second degree felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5-309(4)(a), 76-3-203(2), 76-3-301(1)(a).

Also, under Utah Code Ann. § 76-10-1306 (Aggravated exploitation of prostitution) a facilitator who commits the act of exploiting prostitution⁷¹ will be guilty of aggravated exploitation if “the person procured transported, or persuaded . . . is under eighteen years of age.” Aggravated exploitation of prostitution⁷² is a second degree felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-10-1306(2), 76-3-201(2), 76-3-301(1)(a).

A facilitator also may face penalties under Utah Code Ann. § 76-10-1304(1)⁷³ (Aiding prostitution) which states:

- (1) A person is guilty of aiding prostitution if the person:
 - (a) (i) solicits a person to patronize a prostitute;
 - (ii) procures or attempts to procure a prostitute for a patron; or
 - (iii) leases or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or

⁷⁰ See *supra* Sections 1.1, 1.2 for a discussion of the relevant statutory provisions discussed in this section.

⁷¹ See *supra* note 4.

⁷² Utah Code Ann. § 76-10-1306(1) (Aggravated exploitation of prostitution) states,

- (1) A person is guilty of aggravated exploitation if:
 - (a) in committing an act of exploiting prostitution, as defined in Section 76-10-1305, he uses any force, threat, or fear against any person; or
 - (b) the person procured, transported, or persuaded or with whom he shares the proceeds of prostitution is under eighteen years of age or is the wife of the actor.

⁷³ See *supra* note 49.

- (iv) provides any service or commits any act that enables another person to commit a violation of this Subsection (1)(a) or facilitates another person's ability to commit any violation of this Subsection (1)(a); or
- (b) solicits, receives, or agrees to receive any benefit for committing any of the acts prohibited by Subsection (1)(a).

Lastly, facilitators may face prosecution under Utah Code Ann. § 76-10-1903(1) (Money laundering), which states,

- (1) A person commits the offense of money laundering who:
 - (a) transports, receives, or acquires the property which is in fact proceeds of the specified unlawful activity, knowing that the property involved represents the proceeds of some form of unlawful activity;
 - (b) makes proceeds of unlawful activity available to another by transaction, transportation, or other means, knowing that the proceeds are intended to be used for the purpose of continuing or furthering the commission of specified unlawful activity;
 - (c) conducts a transaction knowing the property involved in the transaction represents the proceeds of some form of unlawful activity with the intent:
 - (i) to promote the unlawful activity;
 - (ii) to conceal or disguise the nature, location, source, ownership, or control of the property; or
 - (iii) to avoid a transaction reporting requirement under this chapter or under federal law; or
 - (d) knowingly accepts or receives property which is represented to be proceeds of unlawful activity.⁷⁴

A conviction under Utah Code Ann. § 76-10-1903(1)(a), (b), or (c) is a second degree felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000, while a conviction under Utah Code Ann. § 76-10-1903(1)(d) (knowingly accepting or receiving property) is a third degree felony punishable by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Utah Code Ann. §§ 76-10-1904, 76-3-203(2), (3), 76-3-301(1)(a), (b).

- 4.1.1 Recommendation: Amend Utah Code Ann. § 76-5-308 (Human trafficking) to include the crime of “knowingly benefitting from or aiding in the commission of a crime of human trafficking” in order to prosecute facilitators of all forms of human trafficking.

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

Convicted facilitators are subject to fines ranging from \$1,000 to \$10,000. Specifically, facilitators convicted under Utah Code Ann. § 76-5-309(4)(a) (Human trafficking and human smuggling—Penalties), § 76-10-1306 (Aggravated exploitation of prostitution), § 76-5b-201 (Sexual exploitation of a minor—Offenses), or § 76-10-1903(1)(a)–(c) (Money laundering) are subject to a possible fine not to exceed \$10,000.⁷⁵ Utah Code Ann. § 76-3-301(a).

⁷⁴ “Specified unlawful activity” includes “any unlawful activity defined as an unlawful activity in Section 76-10-1602,” which includes violations of Utah Code Ann. § 76-5b-201 (Sexual exploitation of a minor—Offenses), § 76-10-1304 (Aiding prostitution), § 76-10-1305 (Exploiting prostitution), and § 76-10-1306 (Aggravated exploitation of prostitution). Utah Code Ann. § 76-10-1902(12).

⁷⁵ These statutes are either first or second degree felonies and, pursuant to Utah Code Ann. § 76-3-301(a), are subject to a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-10-1306(2), 76-5b-201(2), 76-10-1603.5(1), 76-10-1904(1).

Facilitators convicted under Utah Code Ann. § 76-10-1304(1)⁷⁶ (Aiding prostitution) are guilty of a Class B misdemeanor, which is punishable by imprisonment for up to 6 months and a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-10-1304(2), 76-3-204(2), 76-3-301(1)(d). “However, a person who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a Class A misdemeanor,” punishable by imprisonment up to 1 year and a possible fine not to exceed \$2,500. Utah Code Ann. §§ 76-10-1304(2), 76-3-204(1), 76-3-301(1)(c).

A facilitator convicted under Utah Code Ann. § 76-10-1903(1)(d) (Money laundering), a third degree felony, is subject to a possible fine not to exceed \$5,000. Utah Code Ann. §§ 76-10-1904(2); 76-3-301(1)(b). A facilitator convicted under Utah Code Ann. § 76-10-1304(1) (Aiding prostitution), a Class B misdemeanor, is subject to a possible fine not to exceed \$1,000. Utah Code Ann. §§ 76-10-1304(2), 76-3-301(1)(d).

In addition to possible fines, a court may order facilitators to pay restitution. Utah Code Ann. § 77-38a-301 (Restitution—Convicted defendant may be required to pay) authorizes the court to order “a convicted defendant to make restitution.” Convicted defendants, including facilitators, whose criminal activity results in pecuniary damages are subject to mandatory restitution. Utah Code Ann. § 77-38a-302(1) (Restitution criteria), states in part, “When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims⁷⁷ of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition.” In determining restitution, the court shall determine “court-ordered restitution,”⁷⁸ and “complete restitution”⁷⁹ using the criteria provided in subsection (5). Utah Code Ann. § 77-38a-302(1), (2).

Pursuant to Utah Code Ann. § 77-38a-302(5)(b),

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

- (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;
- (ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
- (iii) the cost of necessary physical and occupational therapy and rehabilitation;
- (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim as a result of the offense if the offense resulted in bodily injury to a victim;

....

In determining court-ordered restitution, pursuant to Utah Code Ann. § 77-38a-302(5)(c), the court must consider the factors listed above in Utah Code Ann. § 77-38a-302(5)(b), as well as the following factors:

⁷⁶ See *supra* note 49.

⁷⁷ “Victim” is defined as “any person whom the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities” and it “may not include a codefendant or accomplice.” Utah Code Ann. § 77-38a-102(14).

⁷⁸ Utah Code Ann. § 77-38a-302(2)(b) defines “court-ordered restitution” as “the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.”

⁷⁹ Utah Code Ann. § 77-38a-302(2)(a) defines “complete restitution” as the “restitution necessary to compensate a victim for all losses caused by the defendant.”

- (i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;
- (ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and
- (iv) other circumstances which the court determines may make restitution inappropriate.

If a facilitator disobeys an order to make restitution, and the “victim . . . elects to pursue collection of the order by civil process, the victim shall be entitled to recover collection and attorney’s fees.” Utah Code Ann. § 77-38a-401(3).

In addition, any property that is a “net proceeds”⁸⁰ of a facilitator’s conviction under Utah Code Ann. § 76-10-1903 (Money laundering), may also be seized and forfeited. Utah Code Ann. § 76-10-1908(1)(a)(ii).

- 4.2.1 Recommendation: Amend Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to include a forfeiture provision under which the assets of facilitators of trafficking may be seized and forfeited.

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

There is no specific provision in Utah law criminalizing the promotion or selling of child sex tourism.

- 4.3.1 Recommendation: Enact a law that prohibits the 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 occurring in Utah.

4.4 *Promoting and selling child pornography is illegal.*

Utah Code Ann. § 76-5b-201(1) (Sexual exploitation of a minor—Offenses) states, “A person is guilty of sexual exploitation of a minor: (a) when the person: (i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or (ii) intentionally distributes or views child pornography.”⁸¹ A conviction under this statute is a second degree felony punishable by imprisonment for 1–15 years and a possible fine not to exceed \$10,000. Utah Code Ann. §§ 76-5b-201(2), 76-3-203(2), 76-3-301(1)(a).

⁸⁰ See *supra* note 63.

⁸¹ See *supra* note 7.

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.*

A commercially sexually exploited child may be considered a “victim” under Utah laws. Utah Code Ann. § 77-37-2(3) (Definitions) defines a “victim,” for purposes of Utah’s Crime Victims’ Bill of Rights,⁸² as “a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.”

Additionally, Utah Code Ann. § 77-38-2(9)(a) (Definitions) defines “victim of a crime,” for purposes of the Rights of Crime Victims Act⁸³ and the Utah Constitution, in part as

any natural person against whom the charged crime or conduct is alleged to have been perpetrated or attempted by the defendant or minor personally or as a party to the offense or conduct or, in the discretion of the court, against whom a related crime or act is alleged to have been perpetrated or attempted, unless the natural person is the accused or appears to be accountable or otherwise criminally responsible for or criminally involved in the crime or conduct or a crime or act arising from the same conduct, criminal episode, or plan as the crime is defined under the laws of this state.

⁸² Utah Code Ann. § 77-37-1 et seq.

⁸³ Utah Code Ann. § 77-38-1 et seq.

For purposes of receiving reparation awards, a “victim” is defined as including “a person who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct⁸⁴ or of the production of pornography in violation of [Sexual exploitation of a minor—Offenses] if the person is a minor,” but not “a person who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule.” Utah Code Ann. § 63M-7-502(35)(a), (b).⁸⁵

Lastly, the Crime Victims Restitution Act, defines “victim” as “any person whom the court determines has suffered pecuniary damages⁸⁶ as a result of the defendant’s criminal activities.” Utah Code Ann. § 77-38a-102(14)(a). The definition does not include “a codefendant or accomplice.” Utah Code Ann. § 77-38a-102(14)(b).

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

Neither Utah Code Ann. § 76-05-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) nor § 76-10-1306(1)(b) (Aggravated exploitation of prostitution) expressly provide that the consent of a minor to a commercial sex act is immaterial to the crime. While not directly related to the victim’s consent for Utah Code Ann. § 76-5-309 (Human trafficking and human smuggling—Penalties) and § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties), it is a defense under Utah Code Ann. § 76-5-305(2) (Defenses), that the defendant “was acting under the reasonable belief that the custodian, guardian, legal guardian, custodial parent, or person acting in loco parentis to the victim would, if present, have consented to the actor’s conduct.”

In contrast, Utah Code Ann. § 76-5b-102(c) (Legislative determinations—Purpose of this chapter) expresses, as part of the Utah Legislature’s determination and purpose of Utah’s Sexual Exploitation Act,⁸⁷ that “a minor cannot intelligently and knowingly consent to sexual exploitation.”

- 5.2.1 Recommendation: Amend Utah Code Ann. § 76-5-305 (Defenses), to clarify that consent is not a defense to Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) if the victim is a minor. Amend Utah Code Ann. § 76-10-1306(1)(b) (Aggravated exploitation of prostitution) to clearly prohibit the use of the defense of consent when the victim is a minor under 18 years of age.

⁸⁴ Utah Code Ann. § 63M-7-502(10) defines “criminally injurious conduct”

conduct that:

- (i) is or would be subject to prosecution in this state under Section 76-1-201 [Jurisdiction of offenses];
- (ii) occurs or is attempted;
- (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct possessed the capacity to commit the conduct; and
- (v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person [including human trafficking under § 76-5-308], or as any offense chargeable as driving under the influence of alcohol or drugs.

⁸⁵ The text of Utah Code Ann. § 63M-7-502 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 104, Gen. Leg. Sess. (Utah 2012) (effective May 8, 2012).

⁸⁶ See *supra* note 34.

⁸⁷ Utah Code Ann. § 76-5b-201 et seq.

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

Utah Code Ann. § 76-10-1302(1) (Prostitution) is age-neutral, stating that

[a] person is guilty of prostitution when:

- (a) he engages in any sexual activity⁸⁸ with another in exchange for a fee,
- (b) he is an inmate⁸⁹ of a house of prostitution,⁹⁰ or
- (c) he loiters in or within view of any public place for the purpose of engaging in sexual activity in exchange for a fee.

5.3.1 Recommendation: Amend Utah Code Ann. § 76-10-1302 (Prostitution) to make minors under 18 immune from prosecution and to refer cases involving prostituted minors to Utah Code Ann. § 76-05-310 (Aggravated human trafficking and aggravated human smuggling—Penalties).

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.*

Utah provides some protective provisions to commercially sexually exploited children. While there is no mandated child protection response for commercially sexually exploited children that would prevent them from being detained in juvenile detention facilities, Utah laws do allow child protective services and law enforcement to immediately remove children from abusive situations that commercially sexually exploited children may be experiencing.

Under the Juvenile Court Act of 1996, Utah Code Ann. § 78A-6-106(2) (Search warrants and subpoenas—Authority to issue—Protective custody—Expedited hearing) states,

A peace officer or child welfare worker may not enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody unless:

- (a) there exist exigent circumstances sufficient to relieve the peace officer or child welfare worker of the requirement to obtain a warrant;
- (b) the peace officer or child welfare worker obtains a search warrant under Subsection (3);
- (c) the peace officer or child welfare worker obtains a court order after the parent or guardian of the child is given notice and an opportunity to be heard; or
- (d) the peace officer or child welfare worker obtains the consent of the child's parent or guardian.

Under the Utah Human Services Code, Child and Family Services Chapter, Utah Code Ann. § 62A-4a-202.1(1)⁹¹ (Entering home of a child—Taking a child into protective custody—Caseworker accompanied by peace officer—Preventive services—Shelter facility or emergency placement) states,

⁸⁸ For purposes of this statute, "sexual activity" is defined as "acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant." Utah Code Ann. § 76-10-1301(4).

⁸⁹ For purposes of this statute, "inmate" is defined as "a person who engages in prostitution in or through the agency of a house of prostitution." Utah Code Ann. § 76-10-1301(2).

⁹⁰ For purposes of this statute, "house of prostitution" is defined as "a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another." Utah Code Ann. § 76-10-1301(1).

⁹¹ The text of Utah Code Ann. § 62A-4a-202.1 included here and elsewhere in this report includes amendments made by the passage of House Bills 237, Gen. Leg. Sess. (Utah 2012) (House Bill 237 effective May 8, 2012).

- (1) A peace officer or child welfare worker may not:
 - (a) enter the home of a child who is not under the jurisdiction of the court, remove a child from the child's home or school, or take a child into protective custody⁹² unless authorized under Subsection 78A-6-106(2)[Search warrants and subpoenas—Authority to issue—Protective custody—Expedited hearing]; or
 - (b) remove a child from the child's home or take a child into custody under this section solely on the basis of educational neglect, truancy, or failure to comply with a court order to attend school.

A child taken into custody under Utah Code Ann. § 62A-4a-202.1 “may not be placed or kept in a secure detention facility pending court proceedings unless the child is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.” Utah Code Ann. § 62A-4a-202.1(4)(a). Additionally, unless the child requires physical restriction, a child who is removed from the custody of a parent or guardian must be “given temporary care in: (i) a shelter facility;⁹³ or (ii) an emergency placement in accordance with Section 62A-4a-209 [Emergency placement].” Utah Code Ann. § 62A-4a-202.1(4)(b). In determining where to place a child under Utah Code Ann. § 62A-4a-202.1(4)(b), “a noncustodial parent, relative, or friend, in accordance with Section 62A-4a-209 [Emergency Placement]” will receive priority. Utah Code Ann. § 62A-4a-202.1(4)(c).

After taking a child into protective custody under Utah Code Ann. § 62A-4a-202.1, § 78A-6-106, or § 78A-6-302 (Court-ordered protective custody of a child following petition filing—Grounds) the Division of Child and Family Services (“DCFS”) must “immediately initiate an investigation of the: (a) circumstances of the child; and (b) grounds upon which the decision to place the child into protective custody was made.” Utah Code Ann. § 62A-4a-202.3(1). If appropriate, in any case involving sexual abuse, the DCFS must provide the child a medical examination within 24 hours of taking the child into custody. Utah Code Ann. § 62A-4a-202.3(2)(g).

The court is required to hold a shelter hearing within 72 hours of, among other things, the division taking a child into protective custody or removing a child or “emergency place under [Utah Code Ann. § 62A-4a-202.1(4)].” Utah Code Ann. § 78A-6-306(1)(a)–(c) (Shelter hearing). At the shelter hearing, the DCFS must tell the court, among other things, why the child “was removed from the parent’s or guardian’s custody . . . [and] the need, if any, for continued shelter.” Utah Code Ann. § 78A-6-306(6)(a), (c). After the shelter hearing, pursuant to Utah Code Ann. § 78A-6-306(9)(a), the court must release the child from protective custody unless the court finds by a preponderance of the evidence any of the following:

- (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical health or safety of the child and the child’s physical health or safety may not be protected without removing the child from the custody of the child’s parent;
- (ii) (A) the child is suffering emotional damage; and
(B) there are no reasonable means available by which the child’s emotional health may be protected without removing the child from the custody of the child’s parent;
- (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child’s parents;
- (iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:
 - (A) parent;

⁹² Utah Code Ann. § 62A-4a-101(20) defines “protective custody” as “the shelter of a child by the [Division of Child and Family Services] from the time the child is removed from the child’s home until the earlier of: (a) the shelter hearing; or (b) the child’s return home.”

⁹³ “Shelter care” is defined as “the temporary care of a minor in a nonsecure facility.” Utah Code Ann. § 62A-4a-101(26).

- (B) member of the parent’s household; or
- (C) person known to the parent;

...
(xiii) the child’s welfare is substantially endangered.

Utah Code Ann. § 78A-6-306(12) provides that “[i]n cases where actual sexual abuse, sexual exploitation, . . . [or] severe abuse . . . are involved, neither the [DCFS] nor the court has any duty to make ‘reasonable efforts’ or to . . . attempt to maintain a child in the child’s home, return a child to the child’s home, provide reunification services, or attempt to rehabilitate the offending parent or parents.” Furthermore, Utah Code Ann. § 78A-6-306(15) states,

(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child because harm may result to the child if the child were returned home, the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Pursuant to Utah Code Ann. § 78A-6-307(2) (Shelter hearing—Placement—DCFS custody), the court will make reasonable efforts at a shelter hearing to place the child with the child’s parent. However, Utah Code Ann. § 78A-6-307(7) states,

(7) If, at the time of the shelter hearing, a child is removed from the custody of the child’s parent and is not placed in the custody of the child’s other parent, the court:

- (a) shall, at that time, determine whether, subject to Subsections (18)(c) through (e), there is a relative of the child or a friend of a parent of the child who is able and willing to care for the child; [and]

- ...
(d) may order that the child be placed in the custody of the division pending the determination under Subsection (7)(a).

At a dispositional hearing, the court may order any disposition stated in Utah Code Ann. § 78A-6-117(2). Utah Code Ann. § 78A-6-312. Pursuant to Utah Code Ann. § 78A-6-117(2) (Adjudication of jurisdiction of juvenile court—Disposition of cases—Enumeration of possible court orders—Considerations of court—Obtaining DNA sample), “[u]pon adjudication the court may make” any of the listed dispositions, including “place the minor in state supervision . . . under the legal custody of: (A) the minor’s parent or guardian; (B) the Division of Juvenile Services; or (C) the Division of Child and Family Services.” Utah Code Ann. § 78A-6-117(2)(a)(ii).

Furthermore, “[t]he court may: (A) vest legal custody of the minor in the Division of Child and Family Services, Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health; and (B) order the Department of Human Services to provide dispositional recommendations and services.” Utah Code Ann. § 78A-6-117(2)(c)(i). Pursuant to Utah Code Ann. § 78A-6-117(2)(d)(i) the “court may commit a minor to the Division of Juvenile Justice Services for secure confinement” but not if the minor is only under the jurisdiction of the court for “abuse, neglect or dependency.” Utah Code Ann. § 78A-6-117(2)(d)(ii). Minors under the jurisdiction of the court for committing an act “which if committed by an adult would be a criminal offense” may be placed in “detention or an alternative to detention” for no more than 30 days. Utah Code Ann. § 78A-6-117(2)(f)(i), (2)(f)(ii). Pursuant to Utah Code Ann. § 78A-6-312(1) the court can may also enter any of the following alternative orders at a dispositional hearing:

- (b) place the minor in the custody or guardianship of any:

- (i) individual; or
- (ii) public or private entity or agency; or
- (c) order:
 - (i) protective supervision;
 - (ii) family preservation;
 - (iii) subject to Subsection 78A-6-117(2)(n)(iii) [Adjudication of jurisdiction of juvenile court—Disposition of cases—Enumeration of possible court orders—Considerations of court—Obtaining DNA sample], medical or mental health treatment; or
 - (iv) other services.

Furthermore, if at the dispositional hearing the court determines that continued removal is in the best interest of the minor, it must “(a) establish a primary permanency goal for the minor; and (b) determine whether, in view of the primary permanency goal, reunification services are appropriate for the minor and the minor’s family” Utah Code Ann. § 78A-6-312(2). However, “[i]n cases where obvious sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the [DCFS] nor the court has any duty to make ‘reasonable efforts’ or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents.” Utah Code Ann. § 78A-6-312(4).

If the court does not order reunification services at the dispositional hearing, a permanency hearing must be held within 30 days after the day on which the dispositional hearing ends. Utah Code Ann. § 78A-6-314(1)(b).

Despite these protections and services, it still appears that it is possible for a child to be taken into custody and detained for a conviction under Utah Code Ann. § 76-10-1302(1) (Prostitution) or for a status offense arising from the child’s exploitation. Utah Code Ann. § 78A-6-112(1) (Minor taken into custody by peace officer, private citizen, or probation officer—Grounds—Notice requirements—Release or detention—Grounds for peace officer to take adult into custody) states,

- (1) A minor may be taken into custody by a peace officer without order of the court if:
 - (a) in the presence of the officer the minor has violated a state law, federal law, local law, or municipal ordinance;
 - . . .
 - (d) there are reasonable grounds to believe the minor has run away or escaped from the minor’s parents, guardian, or custodian; or
 - (e) there is reason to believe that the minor is:
 - (i) subject to the state’s compulsory education law; and
 - (ii) absent from school without legitimate or valid excuse, subject to Section 53A-11-105 [Taking custody of a person believed to be a truant minor—Disposition—Receiving centers—Reports—Immunity from liability).

When a child is arrested for committing a Class B misdemeanor⁹⁴ or below, the arresting officer must prepare a citation and submit it to the juvenile court within five days. Utah Code Ann. § 78A-6-603. Such citation shall require the juvenile to appear in court. Utah Code Ann. § 78A-6-603(10). When a child is arrested for committing a Class A misdemeanor or a felony, the arresting officer must file a formal referral with the juvenile court within 10 days of the child’s arrest, unless the arrested child was taken to a detention facility, in which case, the arresting officer must file within 72 hours. Utah Code Ann. § 78A-6-602(2)(a).

⁹⁴ Prostitution is a Class B misdemeanor. Utah Code Ann. § 76-10-1302. *See supra* Section 5.3.

Upon arrival at the youth corrections facility, a staff member must immediately determine “whether to admit the minor to secure detention,⁹⁵ admit the minor to home detention, place the minor in a placement other than detention, or return the minor home.” Utah Code Ann. § 78A-6-112(5)(b)(i). Pursuant to Utah Code Ann. § 78A-6-113(1) (Placement of minor in detention or shelter facility—Grounds—Detention hearings—Period of detention—Notice—Confinement for criminal proceedings—Bail laws applicable—Exception),

- (a) A minor may not be placed or kept in a secure detention facility pending court proceedings unless it is unsafe for the public to leave the minor with the minor’s parents, guardian, or custodian and the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.
- (b) A child who must be taken from the child’s home but who does not require physical restriction shall be given temporary care in a shelter facility and may not be placed in a detention facility.
- (c) A child may not be placed or kept in a shelter facility pending court proceedings unless it is unsafe to leave the child with the child’s parents, guardian, or custodian.

Additionally, “[a] child under 16 years of age may not be held in jail, lockup, or other place for adult detention except as provided by Section 62A-7-201 [Definitions] or unless certified as an adult pursuant to Section 78A-6-703 [Certification hearings—Juvenile court to hold preliminary hearing —Factors considered by juvenile court for waiver of jurisdiction to district court].” Utah Code Ann. § 78A-6-113(8)(a).

A child placed in a shelter facility “may not be held in a shelter facility longer than 48 hours prior to a shelter hearing, excluding weekends and holidays,” pursuant to Utah Code Ann. § 78A-6-113(4)(b). Similarly, “[a] minor may not be held in a detention facility longer than 48 hours prior to a detention hearing, excluding weekends and holidays, unless the court has entered an order for continued detention.” Utah Code Ann. § 78A-6-113(4)(a). If at the detention hearing the court determines that it would be unsafe to release the minor, the minor may continue to be held in that facility or a more appropriate facility. Utah Code Ann. § 78A-6-113(4)(d). After the detention hearing has been conducted, only the court has the authority to release the minor. Utah Code Ann. § 78A-6-113(4)(e)(i). Once a dispositional order has been entered, the minor may not be held in nonsecure substitute care⁹⁶ or community-based placement for longer than 72 hours, unless the court determines that it is in the best interest of the minor that the period of detention be extended. Utah Code Ann. § 78A-6-113(5).

Upon adjudication, Utah Code Ann. § 78A-6-117(2) (Adjudication of jurisdiction of juvenile court—Disposition of cases—Enumeration of possible court orders—Considerations of court—Obtaining DNA samples) allows the court to enter certain adjudicatory decrees, including placing the child on probation in the child’s home; “place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision;” “commit a minor to the Division of Juvenile Justice Services for secure

⁹⁵ Although Utah Code Ann. § 78A-6-105 (Definitions) does not define “secure detention,” it defines “secure facility” as “any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.” Utah Code Ann. § 78A-6-105(36). Utah Code Ann. § 62A-7-101(19), however, defines “secure detention” as “predisposition placement in a facility operated by or under contract with the division, for conduct by a child who is alleged to have committed a delinquent act.”

⁹⁶ “Substitute care” is defined in Utah Code Ann. § 78A-6-113(5) by referring to Utah Code Ann. § 62A-4a-101(32), which defines the term as

- (a) the placement of a minor in a family home, group care facility, or other placement outside the minor’s own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor’s own home would be contrary to the minor’s welfare;
- (b) services provided for a minor awaiting placement; and
- (c) the licensing and supervision of a substitute care facility.

confinement;” or “vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.”

- 5.4.1 Recommendation: Enact a mandatory response law that diverts any minor involved in prostitution or who is a victim of Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) away from the juvenile justice system and into specialized services for sexually exploited children.

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

For purposes of Utah’s Juvenile Court Act of 1996, and for Utah’s “Child and Family Services” chapter, which refers back to the Juvenile Court Act definition, commercial sexual exploitation is expressly identified as a type of abuse; however, the definition of commercial sexual exploitation used in Utah’s child protection statutes only includes conduct criminalized under Utah Code Ann. § 76-5b-201 (Sexual exploitation of a minor—Offenses) and does not expressly include conduct prohibited under Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) or Utah’s other CSEC laws.

Specifically, Utah Code Ann. § 78A-6-105(1) (Definitions) defines “abuse” as the “(i) nonaccidental harm of a child; (ii) threatened harm of a child; (iii) sexual exploitation; or (iv) sexual abuse.” Utah Code Ann. § 78A-6-105(40), then defines “sexual exploitation” as

knowingly:

- (a) employing, using, persuading, inducing, enticing, or coercing any child to:
 - (i) pose in the nude for the purpose of sexual arousal of any person; or
 - (ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way sexual or simulated sexual conduct;
- (b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:
 - (i) in the nude, for the purpose of sexual arousal of any person; or
 - (ii) engaging in sexual or simulated sexual conduct; or
- (c) engaging in any conduct that would constitute an offense under Section 76-5b-201 [Sexual exploitation of a minor—Offenses], regardless of whether the person who engages in the conduct is actually charged with, or convicted of, the offense.

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

Utah’s child protective statutes do not use the term “caregiver.” Although, Utah’s child protective statutes frequently refer to a child’s parent, guardian, or custodian, these terms are not defined in Utah Code Ann. § 78A-6-105(21) (Definitions) of the Juvenile Court Act of 1996 or 62A-4a-101 (Definitions) of the Utah Human Services Code.

- 5.6.1 Recommendation: Amend Utah Code Ann. § 78A-6-105 (Definitions) and § 62A-4a-101 (Definitions) to define “custodian” so that traffickers with physical custody of trafficking victims may be brought within the jurisdiction of Child Protective Services and trafficked children may be removed from the trafficker’s custody.

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

The Utah Crime Victim Reparations and Assistance Board may award reparations to victims of criminally injurious conduct that occurred in Utah, or, if the claimant is a Utah resident, for criminally injurious conduct⁹⁷ that occurred outside of Utah if the location where the conduct occurred “does not provide a crime victims’ compensation program.” Utah Code Ann. §§ 63M-7-509(1)(a), (2), 63M-7-506(1)(h). For purposes of awarding victim reparations, a “victim” includes “a person who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Section 76-5b-201[Sexual exploitation of a minor—Offenses] if the person is a minor.” Utah Code Ann. § 63M-7-502(35)(a).⁹⁸

The requirement under Utah Code Ann. § 63M-7-502(9)(a)(iii) that the criminal conduct must “cause[, or pose[] a substantial threat of causing, bodily injury or death” to the victim could prevent some domestic minor sex trafficking victims from being eligible to receive a reparations award.

Additionally, under Utah Code Ann. § 63M-7-509(4), (5)(a) (Grounds for eligibility), to be eligible to receive a reparations award, a victim must report the criminally injurious conduct to “law enforcement, or other federal or state investigative agencies,” and “cooperate with the appropriate law enforcement agencies and prosecuting attorneys in their efforts to apprehend or convict the perpetrator of the alleged offense.”

Even when a domestic minor sex trafficking victim qualifies as a victim under Utah Code Ann. § 63M-7-502(35)(a), (b) and meets the eligibility requirements of Utah Code Ann. § 63M-7-509, several other requirements in Utah Code Ann. § 63M-7-510 (Ineligible persons—Fraudulent claims—Penalties) and Utah Code Ann. § 63M-7-512(1) (Reparations reduction) could present difficulties for domestic minor sex trafficking victims. Utah Code Ann. § 63M-7-510(1)(f) provides that “any convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility” is ineligible to receive a reparations award. Consequently, to the extent a domestic minor sex trafficking victim has been sentenced for a crime in connection with his or her exploitation, that victim may be ineligible to receive a reparations award. Similarly, under Utah Code Ann. § 63M-7-512(1), even an eligible victim’s reparations award can be reduced or denied if:

- (a) the economic loss upon which the claim is based has been or could be recouped from other persons, including collateral sources;
- (b) the reparations officer considers the claim unreasonable because of the misconduct of the claimant or of a victim through whom the claimant claims; . . .
-

No provision of Utah’s laws regarding reparation awards provides guidance as to when the reparations officer may consider a victim’s claim “unreasonable” or exempts commercially sexually exploited child victims from the eligibility requirements or these award reduction factors. Moreover, under Utah Code Ann. § 63M-7-511.5(1)(a) (Limitations of awards), most reparations awards cannot exceed \$25,000. In contrast, “claims involving homicide, attempted homicide, aggravated assault, or DUI offenses,” provide victim reparation awards up to \$50,000. Utah Code Ann. § 63M-7-511.5(1)(b).

5.7.1 Recommendation: Amend Utah Code Ann. § 63M-7-509 (Grounds for eligibility) to specify that victims of Utah Code Ann. § 76-5-310 (Aggravated human trafficking and human smuggling—

⁹⁷ See *supra* note 84 for a definition of “criminally injurious conduct.”

⁹⁸ See *supra* note 85.

Penalties) are eligible victims. Amend Utah Code Ann. § 63M-7-510 (Ineligible persons—Fraudulent claims—Penalties) and § 63M-7-512(1) (Reparations reduction) to expressly exempt commercially sexually exploited children from the listed ineligibility and award reduction factors with a good cause exception from the requirement to cooperate with law enforcement.

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

Utah Code Ann. § 77-37-3 (Bill of rights) affords victims and witnesses in criminal justice proceedings several rights, including the following:

(a) Victims and witnesses have a right to be informed as to the level of protection from intimidation and harm available to them, and from what sources, as they participate in criminal justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections personnel have the duty to timely provide this information in a form which is useful to the victim.
. . . .

(d) Victims and witnesses should have a secure waiting area that does not require them to be in close proximity to defendants or the family and friends of defendants.

(e) Victims may seek restitution or reparations

(f) Victims and witnesses have a right to have any personal property returned Criminal justice agencies shall expeditiously return the property
. . . .

(h) Victims and witnesses, particularly children, should have a speedy disposition of the entire criminal justice process. All involved public agencies shall establish policies and procedures to encourage speedy disposition of criminal cases.
. . . .

Additionally, Utah Code Ann. § 77-37-4 (Additional rights—Children) affords additional rights to child victims¹⁰⁰ and witnesses, specifically stating that

(1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process.

(2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard.

(3) Child victims and witnesses have the right to have interviews relating to criminal procedure kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.

(4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process.

(5) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to have their investigative interviews that are conducted at a

⁹⁹ Utah Code Ann. § 77-37-2(1) defines “child” as “a person who is younger than 18 years of age, unless otherwise specified in statute. The rights to information as extended in this chapter also apply to the parents, custodian, or legal guardians of children.”

¹⁰⁰ Utah Code Ann. § 77-37-2(3) defines “victim” as “a person against whom a crime has allegedly been committed, or against whom an act has allegedly been committed by a juvenile or incompetent adult, which would have been a crime if committed by a competent adult.”

Children’s Justice Center, including both video and audio recordings, protected. Except as provided . . . [within Utah Code Ann. § 77-37-4 (5)(b), (c)], interviews may not be distributed, released, or displayed to anyone without a court order.

. . . .

Additionally, “in any criminal proceeding or juvenile court proceeding,” the court may appoint an advisor to witnesses under the age of 14 to assist the witness “in understanding questions asked by counsel.” Utah Code Ann. § 77-38-8(1), (2)(a). Utah Code Ann. § 77-38-8(1) also states that the person examining or cross-examining the child witness shall use “age-appropriate language.”

Utah law does not, however, expressly authorize the court to appoint a guardian ad litem for a child victim or witness in a criminal proceeding. However, for purposes of the Juvenile Court Act of 1996,¹⁰¹ the court “may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court.” Utah Code Ann. § 78A-6-902(1)(a)(i).

Children who are under the age of 14 and are victim witnesses in criminal prosecutions involving sexual or physical abuse may be allowed to give testimony outside the courtroom. Utah R. Crim. P. 15.5(a), (b). In cases of child abuse or a sexual offense against a child, Utah R. Crim. P. 15.5(a) (Out of court statement and testimony of child victims or child witnesses of sexual or physical abuse—Conditions of admissibility) allows out of court oral statements of victims or witnesses under the age of 14 that were “recorded prior to the filing of an information or indictment” to be admitted as evidence in court if certain requirements are met.¹⁰²

Additionally, in cases involving child abuse or a sexual offense against a child (e.g., Utah Code Ann. § 76-5-404.1(4) (Sexual abuse of a child—Aggravated sexual abuse of a child)), but not involving Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) or Utah’s other CSEC laws,¹⁰³ the court may order the testimony of a child under “14 years of age to be taken in a room other than the court room, and be televised by closed circuit equipment to be viewed by the jury in the court room.” Utah R. Crim. P. Rule 15.5(b). Pursuant to Utah R. Crim. P. 15.5(b)(1), when a child under 14 years of age provides testimony via closed-circuit television,

(1) Only the judge, attorneys for each party and the testifying child (if any), persons needed to operate the recording equipment and a counselor or therapist whose presence contributes to the welfare and

¹⁰¹ Utah Code Ann. § 78A-6-101 et seq.

¹⁰² Pursuant to Utah R. Crim. P. 15.5(a), a child’s recorded out of court oral statement may be admissible in court if

- (1) the child is available to testify and to be cross-examined at trial, either in person or as provided by law, or the child is unavailable to testify at trial, but the defendant had a previous opportunity to cross-examine the child concerning the recorded statement, such that the defendant’s rights of confrontation are not violated;
- (2) no attorney for either party is in the child’s presence when the statement is recorded;
- (3) the recording is visual and aural and is recorded on film, videotape or other electronic means;
- (4) the recording is accurate and has not been altered;
- (5) each voice in the recording is identified;
- (6) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;
- (7) the defendant and his attorney are provided an opportunity to view the recording before it is shown to the court or jury; and
- (8) the court views the recording before it is shown to the jury and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence.

¹⁰³ See *supra* Section 1.2 for Utah’s statutes.

emotional well-being of the child may be in the room during the child's testimony. A defendant who consents to be hidden from the child's view may also be present unless the court determines that the child will suffer serious emotional or mental strain if required to testify in the defendant's presence, or that the child's testimony will be inherently unreliable if required to testify in the defendant's presence. If the court makes that determination, or if the defendant consents:

- (A) the defendant may not be present during the child's testimony;
- (B) the court shall ensure that the child cannot hear or see the defendant;
- (C) the court shall advise the child prior to his testimony that the defendant is present at the trial and may listen to the child's testimony;
- (D) the defendant shall be permitted to observe and hear the child's testimony, and the court shall ensure that the defendant has a means of two-way telephonic communication with his attorney during the child's testimony; and
- (E) the conditions of a normal court proceeding shall be approximated as nearly as possible.

While not limited in application to child victims, Utah R. Evid. 412(a), (b) (Admissibility of alleged victim's sexual behavior or alleged sexual predisposition) applies in "any criminal proceeding involving alleged sexual misconduct" and prohibits the admission of evidence "offered to prove that any alleged victim engaged in other sexual behavior" or "offered to prove any alleged victim's sexual predisposition," except,

The following evidence is admissible, if otherwise admissible under these rules:

- (1) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of the semen, injury, or other physical evidence;
- (2) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered:
 - (A) by the accused to prove consent; or
 - (B) by the prosecution; and
- (3) evidence the exclusion of which would violate the constitutional rights of the defendant.

5.8.1 Recommendation: Amend Utah R. Crim. P. 15.5 (Out of court statement and testimony of child victims or child witnesses of sexual or physical abuse—Conditions of admissibility) and Utah Code Ann. § 77-38-8(1) (Age-appropriate language at judicial proceedings—Advisor) to specifically apply in cases involving violations of Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) and Utah's CSEC laws.

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.*

Utah Code Ann. § 78A-6-1105(1)(a) (Expungement of juvenile court record—Petition—Procedure) allows a person adjudicated under the Juvenile Court Act of 1996 to

petition the court for the expungement of the person's juvenile court record and any related records in the custody of a state agency, if:

- (i) the person has reached the age of 18 years of age; and
- (ii) one year has elapsed from the date of termination of the continuing jurisdiction of the juvenile court, or if the person was committed to a secure youth corrections facility, one year from the date of the person's unconditional release from the custody of the Division of Juvenile Justice Services.

However, the court may waive either of these requirements when it deems it appropriate. Utah Code Ann. § 78A-6-1105(1)(b). A hearing is held on the request and, pursuant to Utah Code Ann. § 78A-6-1105(2)(c),

The court may order sealed all petitioner's records under the control of juvenile court of any of petitioner's records under the control of any other agency or official pertaining to the petitioner's adjudicated juvenile court cases, including relevant related records contained in the Management Information System created by Section 62A-4a-1003 [Management information system—Requirements—Contents—Purpose—Access] and the Licensing Information System created by Section 62A-4a-1005 [Supported finding of a severe type of child abuse or neglect], if the court finds that:

- (i) the petitioner has not, since the termination of the court's jurisdiction or his unconditional release from the Division of Juvenile Justice Services, been convicted of a:
 - (A) felony; or
 - (B) misdemeanor involving moral turpitude;
- (ii) no proceeding involving a felony or misdemeanor is pending or being instituted against the petitioner; and
- (iii) a judgment for restitution entered by the court on the conviction for which the expungement is sought has been satisfied.

If however, the petitioner's juvenile court records consist "solely of nonjudicial adjustments as provided in Section 78A-6-602 [Petition—Preliminary inquiry—Nonjudicial adjustments—Formal referral—Citation—Failure to appear]," the juvenile may only petition the court for expungement after turning 18 years old and only if they have "completed the conditions of the nonjudicial adjustments," in which case the court shall, without a hearing, order the records relating to the petitioner's nonjudicial adjustments sealed. Utah Code Ann. § 78A-6-1105(6).

Once the court orders the person's records sealed, the person's case will "be considered never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter only be permitted by the court upon petition by the person who is the subject of the records, and only to persons named in the petition." Utah Code Ann. § 78A-6-1105(4).

5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*

Victims of crimes in Utah may be eligible to receive restitution from their offender pursuant to Utah's Crime Victims Restitution Act. Specifically, Utah Code Ann. § 77-38a-301 (Restitution—Convicted defendant may be required to pay) authorizes the court to order "a convicted defendant to make restitution." Convicted offenders who caused pecuniary damages are subject to mandatory restitution. Utah Code Ann. § 77-38a-302(1) (Restitution criteria), states in part, "When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims¹⁰⁴ of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition." In determining restitution, the court shall determine "court-ordered restitution,"¹⁰⁵ and "complete restitution"¹⁰⁶ using the criteria provided in subsection (5). Utah Code Ann. § 77-38a-302(1), (2).

¹⁰⁴ "Victim" is defined as "any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities" and it "may not include a codefendant or accomplice." Utah Code Ann. § 77-38a-102(14).

¹⁰⁵ Utah Code Ann. § 77-38a-302(2)(b) defines "court-ordered restitution" as "the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing."

¹⁰⁶ Utah Code Ann. § 77-38a-302(2)(a) defines "complete restitution" as the "restitution necessary to compensate a victim for all losses caused by the defendant."

For purposes of the Crime Victims Restitution Act, a “victim” is defined as “any person whom the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities,” who is not “a codefendant or accomplice.” Utah Code Ann. § 77-38a-102(14). Pursuant to Utah Code Ann. § 77-38a-102(6), a victim’s pecuniary damages include

all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant’s criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

Pursuant to Utah Code Ann. § 77-38a-302(5)(b), the court considers a number of factors in determining the amount of complete restitution, several of which are as follows:

- (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;
- (ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
- (iii) the cost of necessary physical and occupational therapy and rehabilitation;
- (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim as a result of the offense if the offense resulted in bodily injury to a victim;
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In determining court-ordered restitution, pursuant to Utah Code Ann. § 77-38a-302(5)(c), the court shall consider the factors listed in Utah Code Ann. § 77-38a-302(5)(b), as well as the following factors:

- (i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;
- (ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and
- (iv) other circumstances which the court determines may make restitution inappropriate.

Lastly, while there is no specific civil cause of action for damages under Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties), victims who are injured under Utah Code Ann. § 76-10-1603 (Unlawful acts)¹⁰⁷ are expressly afforded the right to “sue . . . and recover twice the damages [that the victim] sustains.” Utah Code Ann. § 76-10-1605(1). Evidence that the defendant has been ordered to pay or has paid restitution based on a criminal court ruling is inadmissible in any civil action based on the same facts or events. Utah Code Ann. § 77-38a-403(1).

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.

Under Utah Code Ann. § 76-1-301(2)(n), (o) (Offenses for which prosecution may be commenced at any time), prosecutions under Utah Code Ann. § 76-5-404.1 (Sexual abuse of a child—Aggravated sexual abuse of a child) may be brought at any time. Prosecutions of most other felonies must be commenced within 4 years of the

¹⁰⁷ See *supra* Section 3.1 for the substantive provisions of Utah Code Ann. § 76-10-1603.

commission of the crime. Utah Code Ann. § 76-1-302(1)(a). Prosecutions for misdemeanors generally must commence within 2 years of the commission of the crime. Utah Code Ann. § 76-1-302(1)(b).

For civil actions arising out of the sexual abuse of a child, Utah Code Ann. § 78B-2-308(2) (Civil actions for sexual abuse of a child) specifies,

- (2) A person shall file a civil action for intentional or negligent sexual abuse¹⁰⁸ suffered as a child¹⁰⁹:
 - (a) within four years after the person attains the age of 18 years; or
 - (b) if a person discovers sexual abuse only after attaining the age of 18 years, that person may bring a civil action for such sexual abuse within four years after discovery of the sexual abuse, whichever period expires later.

However, until the child attains the age of majority, all statutes of limitations for civil causes of actions, “other than for the recovery of real property may not run.” Utah Code Ann. § 78B-2-108. A 3-year statute of limitations applies to victims seeking to bring damages claims for violations of Utah Code Ann. § 76-10-1603 (Unlawful acts). Utah Code Ann. § 76-10-1605(9) (Remedies of person injured by a pattern of unlawful activity—Double damages—Costs, including attorney fees—Arbitration—Agency—Burden of proof—Actions by attorney general or county attorney—Dismissal—Statute of limitations—Authorized orders of district court).

- 5.11.1 Recommendation: Amend Utah Code Ann. § 76-1-301 (Offenses for which prosecution may be commenced at any time) to include Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties).

¹⁰⁸ “Sexual Abuse” is defined as “acts or attempted acts of sexual intercourse, sodomy, or molestation directed towards a child.” Utah Code Ann. § 78B-2-308(1)(g).

¹⁰⁹ A “child” includes any person under the age of 18. Utah Code Ann. § 78B-2-308(1)(a).

Legal Components:

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

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

While Utah’s Peace Officer Training and Certification Act¹¹⁰ requires law enforcement officers in Utah to complete a basic training course and authorizes individual municipalities to adopt higher minimum training standards, nothing expressly requires law enforcement in Utah to complete training on human trafficking or domestic minor sex trafficking. Utah Code Ann. §§ 53-6-205(1), 53-6-207.

- 6.1.1 Recommendation: Enact a law mandating that law enforcement officers receive training on domestic minor sex trafficking issues.

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

Single-party consent to audiotaping is permissible under Utah Code Ann. § 77-23a-4(7)(a), (b):

- (a) A person acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception.
- (b) A person not acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.

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

Utah Code Ann. § 77-23a-8(1) (Court order to authorize or approve interception—Procedure) allows “the attorney general of the state [among others] . . . [to] authorize an application to a judge . . . for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state that is responsible for investigating the type of offense for which the application is made.” If the interception has provided or may provide evidence of a violation of, among other crimes, Utah Code Ann. § 76-10-1305 (Exploiting prostitution) or § 76-10-1306 (Aggravated exploitation of prostitution), a judge may grant the order. Utah Code Ann. § 77-23a-8(2)(ii), (2)(jj). However,

¹¹⁰ Utah Code Ann. § 53-6-201 et seq.

Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) is not included among those crimes listed in Utah Code Ann. § 77-23a-8(2) for which a judge may grant an order authorizing wiretapping.

- 6.3.1 Recommendation: Amend Utah Code Ann. § 77-23a-8 (Court order to authorize or approve interception—Procedure) to allow judges to grant orders for wiretapping where the interception may provide evidence of Utah Code Ann. § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties).

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

No provision in Utah law expressly authorizes the use of a decoy by law enforcement in investigations of prostitution or sex trafficking.

However, under Utah Code Ann. § 76-2-303(1) (Entrapment),

Entrapment occurs when a peace officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

Although it is unclear whether the defense of entrapment under Utah Code Ann. § 76-2-303 would be available in a case involving the commercial sexual exploitation of a child, this defense should only be available to the extent that a law enforcement decoy “induces the commission of an offense” by a defendant who was not otherwise predisposed to commit the offense. Utah Code Ann. § 76-2-303(1).

Furthermore, Utah Code Ann. § 76-4-401(3) provides that “it is not a defense to the crime of enticing a minor . . . or an attempt to commit this offense, that a law enforcement officer or undercover operative who is working with law enforcement agency was involved in the detection or investigation of the offense.” Furthermore, the use of the phrase “or another person the actor believes to be a minor,” implies that under Utah law it is permissible for officers to pose as minors to investigate buyers and traffickers of commercial sex act with minors.

- 6.4.1 Recommendation: Amend Utah Code Ann. § 76-5-308 (Human trafficking), § 76-5-309 (Human trafficking and human smuggling—Penalties), and § 76-5-310 (Aggravated human trafficking and aggravated human smuggling—Penalties) to include provisions that explicitly permit the use of a decoy to investigate minor sex trafficking and CSEC related crimes.

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

The use of the Internet to investigate buyers and traffickers appears to be a permissible investigative technique under Utah law. Utah Code Ann. § 76-4-401(2) (Enticing a minor—Elements—Penalties) states,

- (a) A person commits enticement of a minor when the person knowingly uses or attempts to use the Internet or text messaging to solicit, seduce, lure, or entice a minor or another person that the actor believes to be a minor to engage in any sexual activity which is a violation of state criminal law.
- (b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:

- (i) initiate contact with a minor or a person the actor believes to be a minor; and
- (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

Utah Code Ann. § 76-4-401(3) further provides that “it is not a defense to the crime of enticing a minor . . . or an attempt to commit this offense, that a law enforcement officer or undercover operative who is working with law enforcement agency was involved in the detection or investigation of the offense.” Furthermore, the use of the phrase “or another person the actor believes to be a minor,” implies that under Utah law it is permissible for officers to pose as minors to investigate buyers and traffickers of commercial sex act with minors.

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

Utah Code Ann. § 53-10-203 (Missing persons—Reports—Notification) provides a series of steps that must be taken when law enforcement receives a report of a missing person. First, each law enforcement agency involved in the investigation of a missing person¹¹¹ must inform the division¹¹² about the missing person. Utah Code Ann. § 53-10-203(1). The division then must inform the state registrar of Vital Statistics and the FBI National Crime Information Center of the missing persons report and provide the state registrar with “information concerning the identity of the missing person.” Utah Code Ann. § 53-10-203(2). Once the missing person is discovered, the division must notify the “state registrar and any school that it has previously informed of the person’s disappearance.” Utah Code Ann. § 53-10-203(4). Lastly, the division is required to immediately notify law enforcement “[u]pon notification by the state registrar or school personnel that a request for a birth certificate, school record, or other information concerning a missing person has been made, or that an investigation is needed in accordance with Section 53A-11-503” Utah Code Ann. § 53-10-203(6).

Furthermore, Utah Code Ann. § 26-2-27(2) (Identifying birth certificates of missing persons—Procedures) provides,

- (a) In accordance with Section 53-10-203, upon the state registrar’s notification by the division that a person who was born in this state is missing, the state and local registrars shall flag the registered birth certificate of that person so that when a copy of the registered birth certificate or information regarding the birth record is requested, the state and local registrars are alerted to the fact the registered birth certificate is that of a missing person.
- (b) Upon notification by the division the missing person has been recovered, the state and local registrars shall remove the flag from that person’s registered birth certificate.

Similarly, Utah Code Ann. § 53A-11-502 (Identifying records—Reporting requirements) provides,

- (1) Upon notification by the division of a missing child¹¹³ in accordance with Section 53-10-203, a school in which that child is currently or was previously enrolled shall flag the record of that child in a

¹¹¹ Utah Code Ann. § 53-10-102(15) (Definitions), defines “missing child” as “any person under the age of 18 years who is missing from the person’s home environment or a temporary placement facility for any reason and whose location cannot be determined by the person responsible for the child’s care.”

¹¹² Utah Code Ann. § 53-10-102(12) (Definitions), defines “division” as the Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103 [Division—Creation—Director appointment and qualifications].

¹¹³ Utah Code Ann. § 53A-11-501(2) defines “missing child” by referring to Utah Code Ann. § 26-2-27, which defines the term as “a person younger than 18 years of age who is missing from the person’s home environment or a

manner that whenever a copy of or information regarding the record is requested, the school is alerted to the fact that the record is that of a missing child.

(2) The school shall immediately report any request concerning flagged records or knowledge as to the whereabouts of any missing child to the division.

(3) Upon notification by the division that a missing child has been recovered, the school shall remove the flag from that child's record.

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temporary placement facility for any reason, and whose whereabouts cannot be determined by the person responsible for the child's care.”