

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

ANALYSIS AND RECOMMENDATIONS WYOMING

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.*

Wyoming has not enacted a human trafficking or sex trafficking law. Also, Wyoming's statutes do not address human trafficking generally, do not address sex trafficking specifically, and do not clearly define a human trafficking victim as any minor under 18 used in a commercial sex act without regard to the use of force, fraud, or coercion, which would align the state law to federal law.

¹ Unless otherwise specified, all references to Wyoming statutes were taken from Wyoming Statutes Annotated (LEXIS through 2012 Budget 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.

- 1.1.1 Recommendation: Enact a sex trafficking statute that establishes the crime of domestic minor sex trafficking and does not require proof of the use of force, fraud, or coercion when the victim is a minor under 18.²

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

The following laws treat CSEC as distinct crimes.

1. Pursuant to Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties), “A person commits a felony if he: (i) Knowingly or intentionally entices or compels another person to become a prostitute” Where the “person enticed or compelled is under eighteen (18) years of age,” a conviction for violating Wyo. Stat. Ann. § 6-4-103(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$5,000, or both.³ Wyo. Stat. Ann. § 6-4-103(b).
2. Pursuant to Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) (Sexual exploitation of children; penalties; definitions),

A person is guilty of sexual exploitation of a child⁴ if, for any purpose, he knowingly:
(i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;⁵
(ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;⁶

² Recommendations within this report are predicated upon the recommendations in Section 1.1.1 being previously or simultaneously implemented.

³ The penalties listed in this report are found in the relevant laws, and, for the statutes that do not set out a fine, a general felony fine provisions is found in Wyo. Stat. Ann. § 6-10-102 (Imposition of fine for any felony; maximum fine where not established by statute; court automation fee; indigent civil legal services fee). In addition to the penalties established in the relevant law, defendants who are considered “habitual criminals” may receive enhanced sentences. Wyo. Stat. Ann. § 6-10-201 (“Habitual criminal” defined; penalties). A habitual criminal is one who “is convicted of a violent felony” and “has been convicted of a felony on two (2) or more previous charges separately brought and tried which arose out of separate occurrences in this state or elsewhere.” Wyo. Stat. Ann. § 6-10-201(a). A “violent felony” is defined by Wyo. Stat. Ann. § 6-1-104(a)(xii) to include, among other crimes, kidnapping, sexual assault in the first or second degree, or sexual abuse of a minor in the first or second degree when the victim is under 13 and the offender is 16 or older. Habitual criminals shall be punished by imprisonment for 10–50 years if the defendant has 2 prior felony convictions, or life imprisonment if the defendant has 3 or more prior felony convictions. Wyo. Stat. Ann. § 6-10-201(b).

⁴ Wyo. Stat. Ann. § 6-4-303(a)(i) defines “child” as “a person under the age of eighteen (18) years.”

⁵ Wyo. Stat. Ann. § 6-4-303(a)(ii) states:

- (ii) “Child pornography” means any visual depiction, including any photograph, film, video, picture, computer or computer-generated image or picture, whether or not made or produced by electronic, mechanical or other means, of explicit sexual conduct, where:
 - (A) The production of the visual depiction involves the use of a child engaging in explicit sexual conduct;
 - (B) The visual depiction is of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child; or
 - (C) The visual depiction has been created, adapted or modified to depict explicit sexual conduct involving a child or an individual virtually indistinguishable from a child.

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A first time conviction under Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). A subsequent conviction for violating Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

Several other non-commercial sex offenses may be applicable in cases involving the commercial sexual exploitation of a child. Such laws include the following:

1. Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) states,

Except under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 through 6-2-317, anyone who has reached the age of majority and who solicits,⁷ procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 is guilty of a felony

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

2. Under Wyo. Stat. Ann. § 6-2-314(a)(i) (Sexual abuse of a minor in the first degree; penalties) a person commits a crime when “[b]eing sixteen (16) years of age or older, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age.”⁸ A conviction under this statute is generally punishable by imprisonment up to 50 years, “unless the person convicted qualifies under W.S. 6-2-306(e) [Penalties for sexual assault],” which requires a defendant with prior convictions for specific sex crimes to receive life imprisonment without the possibility of parole.⁹ Wyo. Stat. Ann.

⁶ Wyo. Stat. Ann. § 6-4-303(a)(iii) defines “explicit sexual conduct” as “actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse or lascivious exhibition of the genitals or pubic area of any person.”

⁷ “Solicit” is not defined in either Wyo. Stat. § 6-2-301 (the definitions for the sexual offenses) or Wyo. Stat. § 6-1-104 (the general definitions for all criminal laws). In *Blakeman v. State*, 100 P.3d 1229, 1234–36 (Wyo. 2004) (decided under prior law), the Supreme Court of Wyoming held that the district court made no error in instructing the jury on the definition of “solicit,” which defined “solicit” as “(1) to ask or seek earnestly or pleadingly, (2) to tempt or to entice someone to do wrong, (3) to approach for some immoral purpose.”

⁸ Wyo. Stat. Ann. § 6-2-301(a)(vii) (Definitions) defines “sexual intrusion” as follows:

(A) Any intrusion, however slight, by any object or any part of a person’s body, except the mouth, tongue or penis, into the genital or anal opening of another person’s body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or

(B) Sexual intercourse, cunnilingus, fellatio, analingus or anal intercourse with or without emission.

⁹ Wyo. Stat. Ann. § 6-2-306(e) provides,

An actor who is convicted of sexual abuse of a minor under W.S. 6-2-314 or 6-2-315 shall be punished by life imprisonment without parole if the actor has one (1) or more previous convictions for a violation of W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], 6-2-314 or 6-2-315, or a criminal statute containing the same or similar elements as the crimes defined by W.S.

§§ 6-2-314(b), 6-2-306(e). However, if the person convicted for violating this statute is 21 years of age or older, the defendant will receive imprisonment for 25–50 years, “unless the person convicted qualified under W.S. 6-2-306(e).” Wyo. Stat. Ann. § 6-2-314(c). In either case, the court may order the defendant to pay a possible fine not to exceed \$10,000 in addition to his sentence. Wyo. Stat. Ann. § 6-10-102.¹⁰

3. Pursuant to Wyo. Stat. Ann. § 6-2-315(a)(i), (ii) (Sexual abuse of a minor in the second degree),

Except under circumstance constituting sexual abuse of a minor in the first degree as defined by W.S. 6-2-314, an actor commits the crime of sexual abuse of a minor in the second degree if:

- (i) Being seventeen (17) years of age or older, the actor inflicts sexual intrusion on a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;
- (ii) Being sixteen (16) years of age or older, the actor engages in sexual contact¹¹ of a victim who is less than thirteen (13) years of age;

A conviction for violating Wyo. Stat. Ann. § 6-2-315(a)(i), (ii) is punishable by imprisonment up to 20 years and a possible fine not to exceed \$10,000, “unless the person convicted qualifies under W.S. 6-2-306(e),” to be punished by life imprisonment without the possibility of parole.¹² Wyo. Stat. Ann. §§ 6-2-315(b), 6-2-306(e), 6-10-102.

4. Wyo. Stat. Ann. § 6-2-316(a) (Sexual abuse of a minor in the third degree) states in part,

Except under circumstance constituting sexual abuse of a minor in the first or second degree as defined by W.S. 6-2-314 and 6-2-315, an actor commits the crime of sexual abuse of a minor in the third degree if:

- (i) Being seventeen (17) years of age or older, the actor engages in sexual contact with a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;
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- (iii) Being less than sixteen (16) years of age, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or
- (iv) Being seventeen (17) years of age or older, the actor knowingly takes immodest, immoral or indecent liberties with a victim who is less than seventeen (17) years of age and the victim is at least four (4) years younger than the actor.

A conviction for violating Wyo. Stat. Ann. § 6-2-316(a) is punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-316(b), 6-10-102.

6-2-302 through 6-2-304, 6-2-314 or 6-2-315, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere.

¹⁰ Although Wyo. Stat. Ann. § 6-2-314 through § 6-2-317 do not specifically classify the offenses listed in each statute as felonies, the fact that each of the offenses are punishable by imprisonment for more than one year make them felonies according to Wyo. Stat. Ann. § 6-10-101 and subject to the fines listed in Wyo. Stat. Ann. § 6-10-102.

¹¹ Wyo. Stat. Ann. § 6-2-301(a)(vi) defines “sexual contact” as “touching, with the intention of sexual arousal, gratification or abuse, of the victim’s intimate parts by the actor, or of the actor’s intimate parts by the victim, or of the clothing covering the immediate area of the victim’s or actor’s intimate parts.”

¹² See *supra* note 9 for the text of Wyo. Stat. Ann. § 6-2-306(e).

5. Wyo. Stat. Ann. § 6-2-317(a) (Sexual abuse of a minor in the fourth degree) states,

Except under circumstance constituting sexual abuse of a minor in the first, second or third degree as defined by W.S. 6-2-314 through 6-2-316, an actor commits the crime of sexual abuse of a minor in the fourth degree if:

- (i) Being less than sixteen (16) years of age, the actor engages in sexual contact with a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or
- (ii) Being twenty (20) years of age or older, the actor engages in sexual contact with a victim who is either sixteen (16) or seventeen (17) years of age, and the victim is at least four (4) years younger than the actor, and the actor occupies a position of authority in relation to the victim.

A conviction for violating Wyo. Stat. Ann. § 6-2-317(a) is punishable by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-317(b), 6-10-102.

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.*

Wyoming has not enacted a human trafficking statute and its laws related to the commercial sexual exploitation of children do not identify commercially sexually exploited children as trafficking victims. Similarly, Wyoming's age-neutral prostitution statute, Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties), does not identify minors engaged in prostitution as victims of commercial sexual exploitation.

- 1.3.1 Recommendation: Upon enactment of a human trafficking statute, amend Wyo. Stat. Ann. § 6-4-103(a)(ii)-(iv) (Promoting prostitution; penalties) and Wyo. Stat. Ann. § 6-4-303(b)(i),(ii) (Sexual exploitation of children; penalties; definitions) to refer to the human trafficking statute and to classify the status of those under 18 involved in commercial sexual activity as trafficking victims.
- 1.3.2 Recommendation: Amend Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) to identify minors engaged in prostitution as victims of commercial sexual exploitation and to refer to a human trafficking law upon enactment.

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.*

Wyoming has not enacted a racketeering statute. However, gangs engaged in commercial sexual exploitation of children may face prosecution under Wyo. Stat. Ann. § 6-2-403(a) (Intimidation in furtherance of the interests of a criminal street gang), which provides the following:

A person is guilty of intimidation in furtherance of the interests of a criminal street gang if he threatens or intimidates by word or conduct to cause physical injury to another person or damage to the property of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang.

A "criminal street gang" is "an ongoing formal or informal organization, association or group of five (5) or more persons having as one (1) of its primary activities the commission of" one of the offenses listed under the definition of "pattern of criminal street gang activity" and "having a common name or identifying sign or symbol and whose members or associates individually or collectively engage in or have been engaged in a pattern of criminal street gang activity." Wyo. Stat. Ann. § 6-1-104(a)(xiv) (Definitions). A "pattern of

criminal street gang activity” includes “the commission of, conviction or adjudication for or solicitation, conspiracy or attempt to commit two (2) or more of the offenses listed in this paragraph [includes § 6-4-103, promoting prostitution] on separate occasions within a three (3) year period.” Wyo. Stat. Ann. § 6-1-104(a)(xv). A violation of Wyo. Stat. Ann. § 6-2-403(a) is a high misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Wyo. Stat. Ann. § 6-2-403(b).¹³

- 1.4.1 Recommendation: Amend Wyo. Stat. Ann. § 6-2-403(a) (Intimidation in furtherance of the interests of a criminal street gang) to include the CSEC offense of Wyo. § 6-4-303(b)(i), (ii) (Sexual exploitation of children; penalties; definitions), as well as a human trafficking offense (upon enactment pursuant to recommendation 1.1.1) as predicate crimes so it may be used to prosecute trafficking enterprises.

¹³ For additional information on racketeering provisions, see <http://www.sharedhope.org/wp-content/uploads/2012/11/SHI-WhitePaperFederalStateRacketeeringGangCrimeLaws.pdf>.

Legal Components:

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

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

Wyoming has not enacted a human trafficking or sex trafficking law.

- 2.1.1 **Recommendation:** Wyoming should enact a human trafficking law that reaches buyers of commercial sex with minors.

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

Wyoming has not enacted a separate CSEC law specifically criminalizing the buying of sex from a minor. Instead, a buyer most likely would be prosecuted under Wyoming's generally applicable solicitation law, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties). Pursuant to Wyo. Stat. Ann. § 6-4-102, "A person is guilty of soliciting an act of prostitution if, with the intent that an act of sexual intrusion . . . be committed, that person knowingly or intentionally pays, or offers or agrees to pay money or other property to another person under circumstances strongly corroborative of the intention that an act of prostitution be committed." A conviction for violating Wyo. Stat. Ann. § 6-4-102 is punishable as a misdemeanor by imprisonment up to 6 months, a fine not to exceed \$750, or both. Wyo. Stat. Ann. § 6-4-102.

Although the statute is not expressly commercial in nature, buyers could be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty).¹⁴ A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

¹⁴ See *supra* Section 1.2 for a full discussion of Wyo. Stat. Ann. § 6-2-318.

Several sexual offense laws could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to a human trafficking law because Wyoming lacks such a law.¹⁵

2.2.1 Recommendation: Enact a law that makes it a crime to purchase sex with a minor and imposes substantial penalties.

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

Wyoming's solicitation statute, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties), does not differentiate between buying sex with an adult and buying sex with a minor.

While not expressly commercial, Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) makes it a separate crime for adult buyers to "solicit" minors under 14 for "sexual intrusion."¹⁶ Buyers prosecuted under Wyo. Stat. Ann. § 6-2-318 face imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

2.3.1 Recommendation: Amend Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties) to provide a heightened penalty when the person solicited or patronized is a minor under 18.

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

Buyers of commercial sex from minors may be prosecuted for crimes ranging from misdemeanors to felonies. Misdemeanors are punishable by imprisonment up to 6 months, fines not to exceed \$750, or both, to felonies punishable by varying ranges of imprisonment and fines not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-4-102, 6-2-314(c), 6-2-306(e), 6-10-102.

A conviction under Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties) is punishable as a misdemeanor by imprisonment up to 6 months, a fine not to exceed \$750, or both. Wyo. Stat. Ann. § 6-4-102. Buyers convicted of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalties), a felony offense, face imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102. Buyers face similar or greater penalties under Wyoming's sexual offense laws.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)¹⁷ 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 offense¹⁸ against a minor. 18 U.S.C. § 3559(e)(1). To the

¹⁵ See *supra* Section 1.2 for a full description of the sexual offenses laws that may be used to prosecute buyers.

¹⁶ See *supra* Section 1.2 for a full discussion of Wyo. Stat. Ann. § 6-2-318.

¹⁷ 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.).

¹⁸ 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

extent buyers can be prosecuted under other federal CSEC laws,¹⁹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁰

2.4.1 Recommendation: Increase the penalties for buying sex with minors to reflect the penalties available for federal trafficking offenders.

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.*

The use of the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor is not a separate crime and does not result in an enhanced penalty for buyers. However, buyers who use the Internet to lure, entice, recruit, or purchase commercial sex acts with minors may be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Wyo. Stat. Ann. § 6-2-318 makes it unlawful when an adult buyer

[e]xcept under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 [Sexual abuse of a minor in the first degree] through 6-2-317 [Sexual abuse of a minor in the fourth degree] . . . solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 [Definitions]

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment not to exceed 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

2.5.1 Recommendation: Enact a law that makes it a separate crime for a buyer of sex with a minor to use the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor or amend Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) to impose enhanced penalties where the crime is commercial sexual exploitation using the Internet.

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

Because Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution) is age-neutral, the defense of mistake of age is inapplicable. However, under Wyo. Stat. Ann. § 6-2-308 (Criminality of conduct; victim's age) the

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).

¹⁹ 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).

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

defense of mistake of age is available to buyers charged with some noncommercial sexual offenses in article 3 (Sexual assault). Specifically, Wyo. Stat. Ann. § 6-2-308 provides,

(a) Except as provided by subsection (b) of this section, if criminality of conduct in this article depends on a victim being under sixteen (16) years of age, it is an affirmative defense that the actor reasonably believed that the victim was sixteen (16) years of age or older.

(b) If criminality of conduct in this article depends upon a victim being under twelve (12) years or under fourteen (14) years, it is no defense that the actor did not know the victim's age, or that he reasonably believed that the victim was twelve (12) years or fourteen (14) years of age or older, as applicable.

2.6.1 Recommendation: Enact a law that makes it a crime to purchase sex with a minor and prohibits buyers from asserting a mistake of age defense.

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

Wyoming has not enacted a separate CSEC law that specifically criminalizes buying sex with a minor. The age-neutral solicitation statute, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution), applies the same penalties regardless of the age of person solicited.

Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) is not specifically commercial and only applies when a buyer solicits a minor who is under 14. Wyo. Stat. Ann. § 6-2-318.

2.7.1 Recommendation: Enact a statute that makes it a crime to purchase sex with a minor and imposes substantial penalties for all offenses involving a minor under the age of 18.

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

Buyers may be ordered to pay fines up to \$10,000. Specifically, a buyer convicted under Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution) may be ordered to pay a fine not to exceed \$750, while a buyer convicted under Wyo. Stat. Ann. § 6-2-318 or Wyo. Stat. Ann. § 6-4-303(b)(iv), may be ordered to pay a fine of up to \$10,000. Wyo. Stat. Ann. §§ 6-4-102, 6-2-318, 6-10-102, 6-4-303(d), (e).

Buyers are also subject to mandatory orders of restitution pursuant to Wyo. Stat. Ann. § 7-9-102, which states,

In addition to any other punishment prescribed by law the court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim as determined under W.S. 7-9-103 and 7-9-114 unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.

Specifically, under Wyo. Stat. Ann. § 7-9-103(b),

In every case in which a claim for restitution is submitted, the court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant's criminal activity, and shall include its determination of the pecuniary damage as a special finding in the judgment of conviction . . . In determining the amount of restitution, the court shall consider and include as a special finding, each victim's reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant's criminal activity. A long-term physical health care

restitution order shall be entered as provided in W.S. 7-9-113 [Restitution for long-term care] through 7-9-115 [Modification of order].

Buyers who possess child pornography in violation of Wyo. Stat. Ann. § 6-4-303(b) (Sexual exploitation of children; penalties; definitions) are subject to additional fines and mandatory criminal asset forfeiture. A violation is subject to a fine of not more than \$10,000. Wyo. Stat. Ann. § 6-4-303(d). Additionally, pursuant to Wyo. Stat. Ann. § 6-4-303(f), a convicted offender shall forfeit

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

The property shall be forfeited directly to the state. There are no specific seizure provisions authorized. Wyo. Stat. Ann. § 6-4-303(f).

- 2.8.1 Recommendation: Enact a statute that makes it a crime to purchase sex with a minor and imposes increased mandatory fines and asset forfeiture to deter those who buy commercial sex acts with a minor and to offset the costs of investigation and restoration of victims.

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

Under Wyo. Stat. Ann. § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions), it is illegal if a person “possesses child pornography.”²¹ A first conviction under Wyo. Stat. Ann. § 6-4-303(b)(iv) is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(d). A second or subsequent conviction is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

In comparison, a federal conviction for possession of child pornography²² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²⁴

²¹ See *supra* note 5.

²² 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).

²³ 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).

²⁴ 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

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

Wyo. Stat. Ann. § 7-19-302(a) (Registration of offenders; procedure; verification) requires offenders who reside in Wyoming, enter Wyoming “for the purpose of residing,” attend school, or are employed in Wyoming to “register with the sheriff of the county in which he resides, attends school or is employed, or other relevant entity specified in subsection (c) of this section.” Offenders required to register under Wyo. Stat. Ann. § 7-19-302 include those who are convicted of Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties) (where the person solicited is a minor), § 6-2-318 (Soliciting to engage in illicit relations; penalty), § 6-2-314(a)(i) (Sexual abuse of a minor in the first degree; penalties), § 6-2-315(a)(i), (ii) (Sexual abuse of a minor in the second degree; penalties), § 6-2-316 (a)(i), (iii), (iv) (Sexual abuse of a minor in the third degree), § 6-2-317(a)(i),(ii) (Sexual abuse of a minor in the fourth degree), and § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions). Wyo. Stat. Ann. § 7-19-302(g)–(j).

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).

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.

In the absence of a human trafficking law, traffickers of a child for commercial sex acts could be prosecuted under Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), if the trafficker “[k]nowingly or intentionally entices or compels another person to become a prostitute” who “is under eighteen (18) years of age,” then “the crime is a felony punishable by imprisonment for not more than five (5) years, a fine of not more than five thousand dollars (\$5,000.00), or both.” Wyo. Stat. Ann. § 6-4-103(a)(i), (b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)²⁵ 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 offense²⁶ against a minor.

- 3.1.1 Recommendation: Enact a sex trafficking law with significant, deterrent penalties for trafficking a minor under 18 for commercial sex acts.
- 3.1.2 Recommendation: Amend Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties) to raise the penalties to align with penalties provided under the federal trafficking law when the victim is a minor.

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

Also, a trafficker of children for the making of child pornography and sexual performance could be prosecuted under Wyo. Stat. Ann. § 6-4-303(b)(i)-(iii) (Sexual exploitation of children; penalties; definitions). Wyo Stat. Ann. § 6-4-303(b) states, in part,

A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly:

²⁵ See *supra* note 17.

²⁶ See *supra* note 18.

- (i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;
- (ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;
- (iii) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography.

A conviction under Wyo. Stat. Ann. § 6-4-303(b)(i)–(iii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). Subsequent convictions are punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

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 offense²⁷ against a minor. Additionally, a federal conviction for distribution of child pornography²⁸ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁹ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁰

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.*

The use of the Internet to recruit or to sell commercial sex acts with a minor is not a separate crime and does not result in an enhanced penalty for buyers. However, traffickers who use the Internet to lure, entice, or recruit minors to perform commercial sex acts may be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Wyo. Stat. Ann. § 6-2-318 makes it unlawful when an adult trafficker

[e]xcept under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree],

²⁷ See *supra* note 18.

²⁸ 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).

²⁹ 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).

³⁰ 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).

or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 [Sexual abuse of a minor in the first degree] through 6-2-317 [Sexual abuse of a minor in the fourth degree] . . . solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 [Definitions]

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment not to exceed 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

3.3.1 Recommendation: Enact a law that makes it a separate crime for a trafficker to use the Internet to recruit or to sell commercial sex acts with a minor, or amend Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) to impose enhanced penalties where the crime is commercial sexual exploitation using the Internet.

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

Under Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), if the trafficker “[k]nowingly or intentionally entices or compels another person to become a prostitute” who “is under eighteen (18) years of age,” then “the crime is a felony punishable by . . . a fine of not more than five thousand dollars (\$5,000.00), or both.” Wyo. Stat. Ann. § 6-4-103(a)(i), (b).

Additionally, Wyo. Stat. Ann. § 6-4-303(f) (Sexual exploitation of children; penalties; definitions) expressly provides for mandatory criminal asset forfeiture for traffickers who violate Wyo. Stat. Ann. § 6-4-303(b) and states,

Any person who is convicted of an offense under this section shall forfeit to the state the person’s interest in:

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

This statute does not provide specific seizure provisions. Assets forfeited go directly to the state.

Traffickers are also subject to mandatory orders of restitution pursuant to Wyo. Stat. Ann. § 7-9-102, which states,

In addition to any other punishment prescribed by law the court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim as determined under W.S. 7-9-103 and 7-9-114 unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.

Specifically, under Wyo. Stat. Ann. § 7-9-103(b),

In every case in which a claim for restitution is submitted, the court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant’s criminal

activity, and shall include its determination of the pecuniary damage as a special finding in the judgment of conviction In determining the amount of restitution, the court shall consider and include as a special finding, each victim’s reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant’s criminal activity. A long-term physical health care restitution order shall be entered as provided in W.S. 7-9-113 [Restitution for long-term care] through 7-9-115 [Modification of order].

3.4.1 Recommendation: Amend the CSEC laws and upon enactment, a human trafficking law, to require mandatory fines for these offenses.

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

Wyo. Stat. Ann. §7-19-302(a) (Registration of offenders; procedure; verification) requires offenders who reside in Wyoming, enter Wyoming “for the purpose of residing,” attend school, or are employed in Wyoming to “register with the sheriff of the county in which he resides, attends school or is employed, or other relevant entity specified in subsection (c) of this section.” Offenders required to register under Wyo. Stat. Ann. § 7-19-302 include those who are convicted of Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit relations; penalty), and Wyo. Stat. Ann. § 6-4-303(b)(i)–(iii) (Sexual exploitation of children; penalties; definitions). Wyo. Stat. Ann. § 7-19-302(h).

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

Pursuant to Wyo. Stat. Ann. § 14-2-309(a) (Grounds for termination of parent-child relationship; clear and convincing evidence),

(a) The parent-child legal relationship may be terminated if any one (1) or more of the following facts is established by clear and convincing evidence:

. . .

(iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child’s health and safety would be seriously jeopardized by remaining with or returning to the parent;

(iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;

. . . .

Therefore, under Wyo. Stat. Ann. § 14-2-309(a)(iv), if a person is incarcerated because they have been convicted of a felony related to domestic minor sex trafficking, such as Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), Wyo. Stat. Ann. § 6-4-303(b) (Sexual exploitation of children; penalties; definitions), or Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty), and the court finds that “the parent is unfit to have the custody and control of the child,” the court may terminate the convicted parent’s parental rights. Wyo. Stat. Ann. § 14-2-309(a)(iv). To the extent that in the commission of any of those felonies, the child suffers “serious bodily injury,” the court may terminate parental rights regardless of whether the parent is incarcerated. Wyo. Stat. Ann. § 14-2-309(b)(ii).

Additionally, because “abuse,” as used in Wyo. Stat. Ann. § 14-2-309(a)(iii) includes sexual abuse, the parental rights of a trafficker may also be terminated pursuant to Wyo. Stat. Ann. § 14-2-309(a)(iii).³¹

³¹ Wyo. Stat. Ann. § 14-2-308 (Definitions) incorporates the definition of “abuse” from Wyo. Stat. Ann. § 14-3-202 (Definitions) for the purposes of chapter 2 (Parents). Specifically, Wyo. Stat. Ann. § 14-3-202(a)(ii) (Definitions) provides that “abuse” means the following:

[I]nflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, . . . excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

. . .
D. “Imminent danger” includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. . . .

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.*
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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.*

Wyoming has not enacted a human trafficking law and none of Wyoming’s CSEC laws apply to facilitators. In the absence of CSEC laws, other laws may apply to facilitators.

Under Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv) (Promoting prostitution; penalties), a facilitator who has “control over the use of a place, [and] knowingly or intentionally permits another person to use the place for prostitution” or who “[r]eceives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution” is guilty of a felony punishable by imprisonment up to 3 years, a fine not to exceed \$3,000, or both. Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv), (b).

- 4.1.1 **Recommendation:** Enact a human trafficking law that makes it a crime to knowingly aid, assist, or financially benefit from sex trafficking to ensure that the law applies to facilitators.

- 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.*

Wyoming has not enacted a human trafficking law, and no CSEC laws apply to facilitators. However, Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv) (Promoting prostitution; penalties) is punishable by a fine not to exceed \$3,000. Wyo. Stat. Ann. § 6-4-103(b).

Facilitators are also subject to mandatory orders of restitution following any misdemeanor or felony conviction pursuant to Wyo. Stat. Ann. § 7-9-102 which states,

In addition to any other punishment prescribed by law the court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim as determined under W.S. 7-9-103 and 7-9-114 unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.

Specifically, under Wyo. Stat. Ann. § 7-9-103(b),

In every case in which a claim for restitution is submitted, the court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant’s criminal activity, and shall include its determination of the pecuniary damage as a special finding in the judgment of conviction In determining the amount of restitution, the court shall consider and

include as a special finding, each victim’s reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant’s criminal activity. A long-term physical health care restitution order shall be entered as provided in W.S. 7-9-113 [Restitution for long-term care] through 7-9-115 [Modification of order].

Additionally, facilitators are subject to mandatory criminal asset forfeiture following a conviction for sexual exploitation of children. Wyo. Stat. Ann. § 6-4-303(f) (Sexual exploitation of children; penalties; definitions) expressly provides,

Any person who is convicted of an offense under this section shall forfeit to the state the person’s interest in:

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

Pursuant to Wyo. Stat. Ann. § 6-4-303(f), a facilitator who “distributes, reproduces, delivers or possesses with the intent to deliver” child pornography under Wyo. Stat. Ann. § 6-4-303(b)(iii), if convicted, shall forfeit any proceeds obtained from the crime and any property used in the commission of the crime.

- 4.2.1 Recommendation: Amend offenses applicable to facilitators to require mandatory fines when these offenses involve domestic minor sex trafficking.

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

Wyoming has not enacted a law prohibiting the promotion or sale of child sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

Wyo. Stat. Ann. § 6-4-303(b)(iii) (Sexual exploitation of children; penalties; definitions) states, “A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly: . . . receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography.”³² A conviction for violating Wyo. Stat. Ann. § 6-4-303(b)(iii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). A subsequent conviction is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

³² As used in Wyo. Stat. Ann. § 6-4-303, a “child” includes any minor under 18 years of age. Wyo. Stat. Ann. § 6-4-303(a)(i).

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.*

Under Wyoming’s Crime Victims Compensation Act, Wyo. Stat. Ann. § 1-40-102(a)(ix) (Definitions) defines a “victim” as follows:

- (A) A person who suffers personal injury³³ or is killed in this state as a direct result of:
 - (I) A criminal act³⁴ of another person;

³³ “Personal injury” is defined by Wyo. Stat. Ann. § 1-40-102(a)(vii) as “actual bodily injury or actual mental harm.”

³⁴ A “criminal act” is defined as “an act committed or attempted in this state, including an act of domestic violence, which constitutes a crime as defined by the laws of this state or an act of terrorism, as defined by 18 U.S.C. 2331 outside the United States, and which results in actual bodily injury, or actual mental harm, or death to the victim. No act involving the operation of a motor vehicle, boat or aircraft which results in injury or death constitutes a crime for the purpose of this act unless the injury or death was recklessly or intentionally inflicted through the use of the vehicle, boat or aircraft, or unless the act constitutes a violation of W.S. 31-5-233.” Wyo. Stat. Ann. § 1-40-102(a)(iii).

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- (IV) A federal crime occurring in Wyoming.
 - (B) A resident who is a victim of a crime occurring outside this state if:
 - (I) The crime would be compensable had it occurred inside this state; and
 - (II) The crime occurred in a state which does not have a crime victim compensation program, for which the victim is eligible as eligibility is set forth in W.S. 1-40-101 [Short title] through 1-40-119 [Surcharge to be assessed in certain criminal cases; paid to account].
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This definition applies to § 1-40-101 through § 1-40-119, including § 1-40-110 (Compensation award.), § 1-40-112 (Recovery from offender; restitution), and § 1-40-118 (Distribution of monies to crime victim service and victim assistance providers. [providing access to victim advocates]). Wyo. Stat. Ann. § 1-40-102(a).

Additionally, Wyoming’s Victim and Witness Bill of Rights defines a “victim” to mean “an individual who has suffered direct or threatened physical, emotional or financial harm as the result of the commission of a criminal act³⁵ or a family member of a victim who is a minor or an incompetent or a surviving family member of a homicide victim.” Wyo. Stat. Ann. § 1-40-202(a)(ii) (Definitions).

For purposes of Title 7, Chapter 9 Victim Restitution, Wyo. Stat. Ann. § 7-9-101(a)(v) defines victim as “a person who has suffered pecuniary damage as a result of a defendant’s criminal activities. . . .” For purposes of this chapter, criminal activity is defined by Wyo. Stat. Ann. § 7-9-101(a)(i) as

any crime for which there is a plea of guilty, nolo contendere or verdict of guilty upon which a judgment of conviction may be rendered and includes any other crime which is admitted by the defendant, whether or not prosecuted. In the case of restitution ordered under W.S. 7-13-301 [Placing person found guilty, but not convicted, on probation.], “criminal activity” also includes a crime charged against the defendant

- 5.1.1 Recommendation: Amend the definition of victim and criminal activity in Wyo. Stat. Ann. §§ 1-40-102(a) (Crime Victims Compensation Act) and 1-40-202(a) to expressly include victims of both CSEC offenses, Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties) and Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) (Sexual exploitation of children; penalties; definitions), as well as human trafficking (upon enactment pursuant to recommendation 1.1.1).

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

The CSEC laws, Wyo. Stat. Ann. § 6-4-103(a)(i) (Promoting prostitution; penalties) and § 6-4-303(b) (Sexual exploitation of children; penalties; definitions), do not indicate whether consent is available as a defense in a prosecution for the crime. Similarly, Wyoming’s laws criminalizing sexual abuse of a minor, Wyo. Stat. Ann. § 6-2-314 (Sexual abuse of a minor in the first degree; penalties), § 6-2-315 (Sexual abuse of a minor in the second degree), § 6-2-316 (Sexual abuse of a minor in the third degree), and § 6-2-317 (Sexual abuse of a minor in the fourth degree), do not specifically state that the consent of a minor is immaterial to the crime.

³⁵ A “criminal act” is defined as “conduct which would constitute a crime as defined by the laws of [Wyoming].” Wyo. Stat. § 1-40-202(a)(i).

5.2.1 Recommendation: Amend Wyo. Stat. Ann. § 6-4-103(a)(i) (Promoting prostitution; penalties), Wyo. Stat. Ann. § 6-4-303(b) (Sexual exploitation of children; penalties; definitions) to expressly provide that the consent of a minor to a commercial sex act is not a defense to the crime.

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

Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) is age-neutral and, therefore, allows the arrest and prosecution of a minor for the misdemeanor crime of prostitution. Specifically, Wyo. Stat. Ann. § 6-4-101 provides, “A person who knowingly or intentionally performs or permits, or offers or agrees to perform or permit an act of sexual intrusion . . . for money or other property commits prostitution . . .” A conviction for violating Wyo. Stat. Ann. § 6-4-101 is punishable as a misdemeanor by imprisonment up to 6 months, a fine not to exceed \$750, or both. Wyo. Stat. Ann. § 6-4-101.

5.3.1 Recommendation: Amend Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) to make minors under the age of 18 specifically immune from prosecution for prostitution and to refer to any minor involved in prostitution as a victim of human trafficking.

5.4 *Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*

Some protective provisions may be available to commercially sexually exploited children if they are identified as abused or neglected. Pursuant to Wyo. Stat. Ann. § 14-3-205(a) (Child abuse or neglect; persons required to report), “[a]ny person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected . . . shall immediately report it to the child protective agency or local law enforcement agency” Once law enforcement or child protective agencies receive a report of child abuse, the information must be “[c]onveyed immediately by the agency receiving the report to the appropriate local child protective agency or local law enforcement agency. . . .” Wyo. Stat. Ann. § 14-3-206(a)(i). A local child protective agency that receives a report of child abuse must “initiate an investigation or assessment and verification” of the report within 24 hours of its receipt. Wyo. Stat. Ann. § 14-3-204(a)(iii) (Duties of local child protective agency).

Under Wyo. Stat. Ann. § 14-3-405(a) (Taking of child into custody; when permitted),

A child may be taken into custody by a law enforcement officer without a warrant or court order and without the consent of the parents, guardians or others exercising temporary or permanent control over the child when:

- (i) There are reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody appears to be necessary for his protection; or
- (ii) The child’s conduct or behavior seriously endangers himself and immediate custody appears necessary.

Additionally, under Wyo. Stat. Ann. § 14-3-405(c),

A district attorney may file an emergency petition, or the department of family services, a local law enforcement officer . . . may request the court for a protective order. After considering the emergency petition or request, the judge or commissioner, upon finding that there is reasonable cause to believe that a child has been abused or neglected and that the child, by continuing in his place of residence or in the care and custody of the person responsible for his health, safety and welfare, would be in imminent danger of his life, health or safety, may:

- (i) Issue an ex parte order or search warrant. The order shall place the child in the temporary protective custody of the local child protection agency;
- (ii) Issue an emergency order or search warrant upon application and hearing, authorizing ordinary or emergency care of the child

A child taken into temporary protective custody pursuant to Wyo. Stat. Ann. § 14-3-405 may not be held in temporary protective custody for more than 48 hours and may not be placed in shelter care, absent court order, “unless, shelter care is required to: (i) [p]rotect the child’s person; (ii) [p]revent the child from being removed from the jurisdiction of the court; or (iii) [p]rovide the child having no parent, guardian, custodian or other responsible adult with supervision and care” Wyo. Stat. Ann. §§ 14-3-405(d), 14-3-406(a). After a child is taken into protective custody under Wyo. Stat. Ann. § 14-3-405(a), “the person taking custody shall immediately notify the local department of family services office and place or transfer temporary protective custody to the local department of family services office as soon as practicable.” Wyo. Stat. Ann. § 14-3-208. Pursuant to Wyo. Stat. Ann. § 14-3-208(a) (Temporary protective custody; order; time limitation; remedial health care),

The local department of family services office shall:

- (i) Accept physical custody of the child;
- (ii) Make reasonable efforts to inform the parent, noncustodial parent or other person responsible for the child’s welfare that the child has been taken into temporary protective custody, unless otherwise ordered by a court of competent jurisdiction;
- (iii) Arrange for care and supervision of the child in the most appropriate and least restrictive setting necessary to meet the child’s needs, including foster homes or other child care facilities certified by the department or approved by the court. When it is in the best interest of the child, the department shall place the child with the child’s noncustodial birth parent or with the child’s extended family, including adult siblings, grandparents, great-grandparents, aunts or uncles. . . . The department may leave the child in the care of a physician or hospital when necessary to ensure the child receives proper care. A neglected child shall not be placed in a jail or detention facility other than for a delinquent act;
- (iv) Initiate an investigation of the allegations; and
- (v) Assess the child’s mental and physical needs, provide for the child’s ordinary and emergency medical care and seek emergency court authorization for any extraordinary medical care that is needed prior to the shelter care hearing.

When shelter care “appears necessary to the person taking custody of the child,” a petition must be promptly filed. Wyo. Stat. Ann. §§ 14-3-407(a), 14-3-409(a). Then, a shelter hearing must be held by the court or, “in the absence or incapacity of the judge,” a district court commissioner within 48 hours of the time the child is taken into temporary protective custody. Wyo. Stat. Ann. §§ 14-3-410(a), 14-3-409(a). At the shelter care hearing, the court will decide whether “full-time shelter care is required to protect the child’s welfare pending further proceedings” and, if it finds that it would not be in the interests of the child’s welfare to return home, the court may order that the child be placed in the legal custody of the department of family services. Wyo. Stat. Ann. § 14-3-409(d). “If the court finds that full-time shelter care is not required,” it may place the child in “the custody and supervision of his parents, guardian or custodian, under the supervision of the department of family services or under the protective supervision of any individual or organization approved by the court that agrees to supervise the child.” Wyo. Stat. Ann. § 14-3-409(d)(i). The court may also impose any other conditions of release necessary to protect the child from harm. Wyo. Stat. Ann. § 14-3-409(d)(ii).

A complaint alleging that a child is neglected “shall be referred” to the district attorney, who, after an investigation, may commence a proceeding in juvenile court by filing a petition alleging that the child is a neglected child.³⁶ Wyo. Stat. Ann. § 14-3-411. At an adjudicatory hearing, if the court determines that the child is neglected, it may make a disposition that the child is a neglected child and order the child placed in “the least restrictive environment consistent with what is best suited to the public interest of preserving families and the physical, mental and moral welfare of the child.” Wyo. Stat. Ann. §§ 14-3-426(c), 14-3-429(a)(iii). Pursuant to Wyo. Stat. Ann. § 14-3-429(b),

If the child is found to be neglected the court may:

- (i) Permit the child to remain in the legal custody of his parents, guardian or custodian without protective supervision, subject to terms and conditions prescribed by the court;
- (ii) Place the child under protective supervision;
- (iii) Transfer temporary legal custody to a relative or other suitable adult the court finds qualified to receive and care for the child, with or without supervision, subject to terms and conditions prescribed by the court;
- (iv) Transfer temporary legal custody to the department of family services or a state or local public agency responsible for the care and placement of neglected children, provided the child shall not be committed to the Wyoming boys’ school, the Wyoming girls’ school or the Wyoming state hospital.

Despite these protections, a child may also be arrested and detained by law enforcement for actions related to their condition as trafficking victims. Domestic minor sex trafficking victims may be treated as “children in need of supervision,” which is defined in Wyo. Stat. Ann. § 14-6-402(a)(iv) (Definitions) to include

any child who has not reached his seventeenth birthday who is habitually truant or has run away from home or habitually disobeys reasonable and lawful demands of his parents, guardian, custodian or other proper authority or is ungovernable and beyond control. “Child in need of supervision” includes any child who has not reached his seventeenth birthday who has committed a status offense.

Wyo. Stat. Ann. § 14-6-405(a)(i), (iii), (iv) (Taking of child into custody; when permitted) authorizes law enforcement to take a child into custody when

- (i) The circumstances would permit an arrest without a warrant under W.S. 7-2-102;
- ...
- (iii) There are reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody appears to be necessary for his protection;
- (iv) The child’s conduct or behavior seriously endangers himself and immediate custody appears necessary; or
- (v) There are reasonable grounds to believe the child has run away from his parents, guardian or custodian.

After being taken into custody pursuant to Wyo. Stat. Ann. § 14-6-405(a), Wyo. Stat. Ann. § 14-6-406(a) (Child in custody; no detention or shelter care placement without court order; exceptions; notice to parent or guardian; release) states,

³⁶ For purposes of Wyoming’s Child Protection Act, under Wyo. Stat. Ann. § 14-3-402(a)(xii) (Definitions) a “neglected child” is one “(A) Who has been subjected to neglect as defined in W.S. 14-3-202(a)(vii) [Definitions]; (B) Who has been subjected to abuse as defined in W.S. 14-3-202(a)(ii) [which includes sexual abuse].”

A child taken into custody shall not be placed in detention or shelter care without a court order unless shelter care is required to:

- (i) Protect the child's person;
- (ii) Prevent the child from being removed from the jurisdiction of the court; or
- (iii) Provide the child having no parent, guardian, custodian or other responsible adult with supervision and care and return him to the court when required.

If it is found necessary to place the child in detention or shelter care, under Wyo. Stat. Ann. § 14-6-407(b) (Detention or shelter care; delivery of child pending hearing; placing children; notice if no court order),

- (i) A child alleged to be in need of supervision shall be placed for detention or shelter care in the least restrictive environment reasonably available, which may be a foster home or other child care facility certified by the department of family services or approved by the court;
- (ii) If facilities or services are not immediately available to house and protect the child, the judge may order the child held in a temporary holding area at the local law enforcement complex. No child in need of supervision shall be placed in a jail, but may be placed in a juvenile detention facility if the child has been adjudicated under article 2 [Juvenile Justice Act] of this chapter for having committed a delinquent act;
- (iii) A child alleged to be in need of supervision shall, if necessary, be detained in a separate detention home or facility, provided the child shall not be detained in the Wyoming boys' school or the Wyoming girls' school.

If a child in need of supervision is held in detention or shelter care under Wyo. Stat. Ann. § 14-6-407(b), "[T]he district attorney shall immediately review the need for detention or shelter care and may order the child released unless he determines detention or shelter care is necessary under the provisions of W.S. 14-6-406(a) or unless ordered by the court." Wyo. Stat. Ann. § 14-6-408(b). Proceedings against the child will commence through the filing of a petition with the court providing the basis for why the child is alleged to be a child in need of supervision and "[a]n informal detention or shelter care hearing" must be held within 48 hours after taking the child into custody. Wyo. Stat. Ann. §§ 14-6-409(a), 14-6-412(a), (b). At the hearing, the court will determine whether the child will be held in full-time detention or shelter care during the pendency of the proceedings. Wyo. Stat. Ann. § 14-6-409(d). Where the court finds that returning home is not in the interests of the child's welfare, the court will order the child placed in the legal custody of the department of family services, otherwise the court will order the child released subject to any restrictions or conditions the court deems reasonably necessary. Wyo. Stat. Ann. § 14-6-409(d).

Pursuant to Wyo. Stat. Ann. § 14-6-411 (Complaints alleging child in need of supervision; investigation and determination by district attorney), the district attorney decides whether to take judicial action, and, under subsection (b),

In determining the action necessary to protect the interest of the public or the child with regard to a petition alleging a child in need of supervision, the prosecuting attorney shall consider the following:

- (i) Alternative community programs;
- (ii) Mental health counseling services available to the family;
- (iii) Family preservation services offered by the department of family services;
- (iv) Use of truancy statute enforcement;
- (v) Municipal and circuit court remedies;
- (vi) If the child has reached his sixteenth birthday, whether or not the child presents a clear and present danger to himself, his family or the community.

If the court adjudicates the child to be a child in need of services, “the court shall enter its decree to that effect and make a disposition as provided in this section that places the child in the least restrictive environment consistent with what is best suited to the public interest of preserving families, the physical, mental and moral welfare of the child.” Wyo. Stat. Ann. § 14-6-429(a)(iii). It may, under Wyo. Stat. Ann. § 14-6-429(b) (Decree where child adjudged in need of supervision; dispositions; terms and conditions; legal custody),

- (i) Permit the child to remain in the custody of his parents, guardian or custodian under protective supervision, subject to terms and conditions prescribed by the court;
- (ii) Transfer temporary legal custody to a relative or other suitable adult the court finds qualified to receive and care for the child, with supervision, subject to terms and conditions prescribed by the court;
- (iii) Transfer temporary legal custody to a state or local public agency responsible for the care and placement of children in need of supervision, provided:
 - (A) The child shall not be committed to the Wyoming boys’ school or the Wyoming girls’ school unless the child has attained the age of twelve (12) years and is also found delinquent;
 - (B) The court may not transfer the temporary legal custody to a state agency for out-of-community placement unless the child or the child’s family has failed to perform under a court supervised consent decree or the department of family services has certified that a community treatment plan has proven unsuccessful.

Domestic minor sex trafficking victims may be treated as delinquent children. Wyo. Stat. Ann. § 14-6-201(x) (Definitions; short title; statement of purpose and interpretation) defines a “delinquent child” as a “child who has committed a delinquent act.” A “delinquent act” is defined as “an act punishable as a criminal offense by the laws of this state or any political subdivision thereof . . . but does not include a status offense.” Wyo. Stat. Ann. § 14-6-201(a)(ix). Wyo. Stat. Ann. § 14-6-205(a)(i), (iv) (Taking of child into custody; when permitted) authorizes law enforcement to take a child into custody in certain circumstances, including when “[t]he circumstances would permit an arrest without a warrant under W.S. 7-2-102 [Preconditions for arrests]” or when “[t]he child’s conduct or behavior seriously endangers himself or the person or property of others and immediate custody appears necessary.”

Under Wyo. Stat. Ann. § 7-2-102(b)(i), (iii), a law enforcement officer may make a warrantless arrest where “[a]ny criminal offense is being committed in the officer’s presence by the person to be arrested,” or where,

- The officer has probable cause to believe that a misdemeanor has been committed, that the person to be arrested has committed it and that the person, unless immediately arrested:
- (A) Will not be apprehended;
 - (B) May cause injury to himself or others or damage to property; or
 - (C) May destroy or conceal evidence of the commission of the misdemeanor.

Thus, under Wyo. Stat. Ann. § 14-6-205(a)(i), a commercially sexually exploited child could be taken into custody when the child violates Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) in the officer’s presence by soliciting a buyer, or when the officer has probable cause to believe that the child has violated Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) and will not be apprehended unless arrested. Wyo. Stat. Ann. §§ 14-6-205(a)(i), 7-2-102(b)(i), (iii).

After being taken into custody pursuant to Wyo. Stat. Ann. § 14-6-205, Wyo. Stat. Ann. § 14-6-206(a) (Child in custody; no detention without court order; exceptions; notice to parent or guardian; release) states,

In accordance with procedures specified in W.S. 7-1-108(c) and (d) [Incarceration of juvenile offenders], a child taken into custody shall not be held in detention or placed in shelter care without a court order unless detention or shelter care is required to:

....

- (ii) Protect the person or property of others;
- (iii) Prevent the child from absconding or being removed from the jurisdiction of the court; or
- (iv) Provide the child having no parent, guardian, custodian or other responsible adult with supervision and care and return him to the court when required.

Wyo. Stat. Ann. § 7-1-108(b) states, “A minor convicted of a misdemeanor or of violating a municipal ordinance, other than a status offense, for which a term of imprisonment is authorized, shall only be imprisoned in a juvenile detention facility.”³⁷ Under Wyo. Stat. Ann. § 7-1-108(c), unless an alleged delinquent minor is released to his or her parents,

[T]he person taking the minor into custody shall ensure a juvenile detention risk assessment shall be promptly performed, using a uniform assessment instrument designed by the county sheriffs. If the risk assessment finds that the minor is a serious risk to himself or to the safety of others, the minor may be:

- (i) Placed in a hardware or staff secure juvenile detention facility;³⁸
- (ii) Transferred to a medical facility if the minor is believed to be suffering from a serious physical or mental illness that requires prompt diagnosis or treatment;
- (iii) If the minor is not held pursuant to paragraph (i) of this subsection, placed in shelter care or a staff secure juvenile detention facility, or released to a parent, guardian or other custodian who can provide supervision and care for the minor pending the minor's appearance in court. If no space is available in shelter care or a staff secure juvenile detention facility, the minor may be held in a hardware secure juvenile detention facility.

However, “A minor under the age of eleven (11) years shall not be held in a hardware secure juvenile detention facility.” Wyo. Stat. Ann. § 7-1-108(d).

Proceedings against the child will commence through the filing of a petition with the court providing the basis for the child’s alleged delinquent act and “[a]n informal detention or shelter care hearing” held within 48 hours after taking the child into custody. Wyo. Stat. Ann. §§ 14-6-209(a). At the hearing, the court will determine whether the child will be held in full-time detention or shelter care during the pendency of the proceedings. Wyo. Stat. Ann. § 14-6-209(d). Where the court finds that returning home is not in the interests of the child’s welfare, the court will order the child placed in the legal custody of the department, otherwise the court will order the child released subject to any restrictions or conditions the court deems reasonably necessary. Wyo. Stat. Ann. § 14-6-209(d).

If the court adjudicates the child delinquent, “the court shall enter its decree to that effect and make a disposition consistent with the purposes of this act.” Wyo. Stat. Ann. § 14-6-229(a)(iii). “[T]he court may impose any sanction authorized by W.S. 14-6-245 [Progressive sanction guidelines] through 14-6-252 [Sanction level five].” Wyo. Stat. Ann. § 14-6-229(d). Wyo. Stat. Ann. § 14-6-246(a)(i) (Sanction levels) assigns a

³⁷ Wyo. Stat. Ann. § 7-1-107(b)(i) (Detention of juvenile offenders) defines a “juvenile detention facility” as “any facility which may legally and physically restrict and house a child, other than the Wyoming boys’ school, the Wyoming girls’ school, the Wyoming state hospital or other private or public psychiatric facility within the state of Wyoming. A juvenile detention facility may be housed within an adult jail or correction facility if the facility otherwise meets the requirements of state law.”

³⁸ Wyo. Stat. Ann. § 7-1-107(b)(iv) defines a “hardware secure juvenile detention facility” as “a facility used for the detention of minors that is characterized by locks on the doors and other restrictive hardware designed to restrict the movement of the minors and protect public safety.” A “staff secure juvenile detention facility” is one “used for the detention of minors that is characterized by a trained staff to supervise the movement and activities of detained minors at the facility, without the additional use of hardware secure equipment.” Wyo. Stat. Ann. § 7-1-107(b)(vi).

misdemeanor punishable by imprisonment up to 6 months, such as Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties), to sanction level one. However, if the child was previously adjudicated delinquent for a crime “that is the same level of seriousness as the child’s previous conduct, the juvenile court may assign the child a sanction level that is one (1) level higher than the previously assigned sanction level, unless the child’s previously assigned sanction level is five.” Wyo. Stat. Ann. § 14-6-246(b). Under the sanction enhancement found in Wyo. Stat. Ann. § 14-6-246(b), a child with multiple adjudications for violating Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) could obtain an increasingly severe sanction level with each subsequent conviction.

For any sanction level, the court may, under Wyo. Stat. Ann. § 14-6-247(a) (Sanctions common to all levels),

- (i) Transfer temporary legal custody to a relative, other suitable adult, state agency or local public agency the court finds qualified to receive and care for the child, subject to terms and conditions prescribed by the court;
- (ii) Commit the child to a certified hospital willing to accept the child, or the Wyoming state hospital, for not more than ninety (90) days for treatment for substance abuse or for specialized treatment and rehabilitation programs conducted especially for juveniles;
- (iii) Commit the child to a juvenile detention facility for not more than six (6) months, if the adjudicated delinquent has attained the age of twelve (12) years;
- ...
- (viii) Order the child to be examined or treated by a physician, surgeon, psychiatrist or psychologist or to obtain other specialized treatment, care, counseling or training, and place the child in a hospital or medical facility, youth camp, school or other suitable facility for treatment;
- ...
- (xi) Order the child, his parents, or the guardian, to undergo evaluation and indicated treatment or another program designed to address problems which contributed to the adjudication. . . .
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In addition to the possible sanctions common to all levels, under sanction level one, a child may be placed on probation for 3–6 months or referred “to a community-based youth intervention program,” while under sanction level 2, a child may receive a minimum of probation for 6 months. Wyo. Stat. Ann. §§ 14-6-248(a)(i), (iii), 14-6-249(a)(i).

- 5.4.1 Recommendation: Establish a mandatory response law that directs any minor involved in prostitution or who is a victim of trafficking for sexual servitude away from the criminal justice system and into a protective system.

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

Commercial sexual exploitation is not specifically identified as a type of abuse and neglect within Wyoming’s child protection statutes; however, sexual abuse is identified generally as a type of abuse. Specifically, Wyo. Stat. Ann. § 14-3-202(a)(ii) (Definitions), which provides the definitions for Wyoming’s statutes on child abuse reporting, defines “abuse” as

inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, . . . excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

...

(D) “Imminent danger” includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. . . .

Under Wyo. Stat. Ann. § 14-3-202(a)(vii), “neglect” is defined as

a failure or refusal by those responsible for the child’s welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child’s well being. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone.

5.5.1 Recommendation: Amend the definitions of “abuse” and “neglect” under Wyo. Stat. Ann. § 14-3-202(a)(ii) and (vii) (Definitions) to explicitly include commercial sexual exploitation of a child in violation of Wyo. Stat. Ann. § 6-4-103(a)(i) (Promoting prostitution; penalties), Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) (Sexual exploitation of children; penalties; definitions), and Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties).

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.*

Under Wyo. Stat. Ann. § 14-3-202(a)(i) (Definitions), which provides the definitions for the statutes on child abuse reporting, “a person responsible for a child’s welfare” is defined to include, “the child’s parent, noncustodial parent, guardian, custodian, stepparent, foster parent or other person, institution or agency having the physical custody or control of the child.”

5.6.1 Recommendation: Amend the definition of “a person responsible for a child’s welfare” under Wyo. Stat. Ann. § 14-3-202(a)(i) to include a person who physically possesses or controls a child in order to allow child protective services an opportunity to respond to cases of abuse within a non-familial trafficker relationship.

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.*

A domestic minor sex trafficking victim may be eligible to receive compensation under the Wyoming Crime Victims Compensation Act, Wyo. Stat. Ann. § 1-40-101 et. seq. Pursuant to Wyo. Stat. Ann. § 1-40-106 (Eligibility for compensation) victims are “entitled to compensation under” the Wyoming Crime Victims Compensation Act if certain requirements are met. Wyo. Stat. Ann. § 1-40-106(a). For purposes of the Wyoming Crime Victims Compensation Act, Wyo. Stat. Ann. § 1-40-102(a)(ix) (Definitions) defines a “victim” to include the following:

- (A) A person who suffers personal injury³⁹ or is killed in this state as a direct result of:
 - (I) A criminal act⁴⁰ of another person;

³⁹ See supra note 33.

⁴⁰ See supra note 34.

- (II) The person’s good faith and reasonable effort in attempting to prevent the commission of a criminal act, or to apprehend a person engaging in a criminal act or assisting a law enforcement officer to do so;
 - (III) Assisting or attempting to assist a person against whom a crime is being perpetrated or attempted;
 - (IV) A federal crime occurring in Wyoming.
 - (B) A resident who is a victim of a crime occurring outside this state if:
 - (I) The crime would be compensable had it occurred inside this state; and
 - (II) The crime occurred in a state which does not have a crime victim compensation program, for which the victim is eligible as eligibility is set forth in W.S. 1-40-101 [Short title] through 1-40-119 [Surcharge to be assessed in certain criminal cases; paid to account].
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Even to the extent that a commercially sexually exploited child “suffers personal injury . . . as a direct result of” another’s crime, several other requirements for compensation may present difficulties for domestic minor sex trafficking victims. Wyo. Stat. Ann. § 1-40-102(a)(ix)(A). Specifically, to be eligible for compensation Wyo. Stat. Ann. § 1-40-106(a) requires,

- (i) The victim suffered personal injury as a result of a criminal act;
-
- (iii) The injury to or death of the victim was not attributable to his own wrongful act;
 - (iv) The appropriate law enforcement authorities were notified of the criminal act allegedly causing the injury to or death of the victim as soon as practical under the circumstance after perpetration of the offense and the claimant cooperates with appropriate law enforcement authorities with respect to the crime for which compensation is sought; [and]
 - (v) The application for compensation is filed with the division within one (1) year after the date of the injury to or death of the victim, or within any extension of time the division allows for good cause shown;
-

“Good cause” is not defined within Wyo. Stat. Ann. § 1-40-106, but 015-031-003 Wyo. Code R. § 4(b)(viii)(A) states,

Good cause in determining whether a victim has satisfied the requirement to report a crime to law enforcement, the Division may consider the victims age, physical condition and psychological state, and any compelling health or safety reason that would jeopardize the well being of the victim. The Division may waive the report to law enforcement or the 1 year filing date if good cause is shown.

Additionally, 015-031-003 Wyo. Code R. § 4(c)(i) provides guidance regarding what constitutes “reasonable cooperation with law enforcement.” Specifically, the regulations state,

In determining whether a victim reasonably cooperated with law enforcement the Division may consider the victims age, physical condition and psychological state and any compelling health and safety reasons that would jeopardize the well being of the victim.

- (i) Reasonable cooperation with law enforcement by the victim may include but not be limited to the following:
 - (A) providing law enforcement with a true, accurate and complete statement of the circumstances that led to the crime;
 - (B) participating in the investigation of the crime to assist law enforcement with the identification of a suspect;

(C) participating in prosecution procedures including deposition and trial testimony as requested;

(D) Sexual abuse victims shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual assault forensic exam.

5.7.1 Recommendation: Amend Wyo. Stat. Ann. § 1-40-106 (Eligibility for compensation) to exempt victims of domestic minor sex trafficking from the listed requirements.

5.7.2 Recommendation: Amend 015-031-003 Wyo. Code R. § 4(b)(viii)(A) to clarify that a domestic minor sex trafficking victim has good cause for failing to report.

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

Wyoming law includes several victim-friendly criminal justice procedures and protections throughout the criminal justice process.

The Wyoming Victim and Witness Bill of Rights, codified at Wyo. Stat. Ann. § 1-40-203 (Victim and witness bill of rights), sets out key rights of crime victims. Some of these rights are expounded in other statutes.

For example, under Wyo. Stat. Ann. § 1-40-205(a), crime victims specifically have the right to “be free from any form of harassment, intimidation or retribution.” To ensure this right, a victim may sit in a separate waiting room from other witness while waiting to testify in “any proceeding regarding a criminal act,” and law enforcement shall provide the victim information regarding other protections available to the victim. Wyo. Stat. Ann. § 1-40-205(b), (d).

Additionally, under Wyo. Stat. Ann. § 1-40-204(a) (Rights of victims and witnesses to be informed during the criminal justice process),

- (a) Victims of a criminal act shall be informed without undue delay by law enforcement about:
 - (i) The rights enumerated in this act;
 - (ii) The right to be informed of the status of the case from the initial police investigation to the final appellate review;
 - (iii) The fact that financial assistance or other social service options may be available to the victim;
 - (iv) The existence of the Crime Victims Compensation Act and that compensation may be available to the victim;
 - (v) The right to have an interpreter or translator to inform the victim of these rights;
 - (vi) The name and official telephone number of the primary law enforcement officer assigned to investigate the case together with the official address and telephone number of the criminal justice agency investigating the case;
 - (vii) The right to seek legal counsel and to employ an attorney.

Also, the victim has the right to information including the right to receive written notice of a certain event’s related to the defendant’s progress in the criminal justice system. Wyo. Stat. Ann. § 1-40-204(b).

Some additional protections are afforded in Wyo. Stat. Ann. § 7-11-408 (Videotape depositions) to children who are the victims of sexual abuse under Wyo. Stat. Ann. § 6-2-314 (Sexual abuse of a minor in the first degree; penalties) through Wyo. Stat. Ann. § 6-2-317 (Sexual abuse of a minor in the fourth degree), but not to victims of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Specifically,

under Wyo. Stat. Ann. § 7-11-408, a victim under the age of 12 may give testimony that may be admissible at trial⁴¹ through a videotaped deposition if the judge finds the following, pursuant to subsection (c),

- (i) The child’s testimony would be relevant and material;
- (ii) The best interests of the child would be served by permitting the videotape deposition;
- (iii) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial; and
- (iv) The defendant or his legal counsel has the opportunity to be present and to cross-examine the child at the videotape deposition.

Only video technicians, “the child, the judge, prosecutor, defendant and defense counsel, [and] a family member who was not a witness to the offense or a support person for the child” may be present at the child’s videotaped deposition. Wyo. Stat. Ann. § 7-11-408(b). However, pursuant to Wyo. Stat. Ann. § 7-11-408(d), the judge may “deny the defendant’s face-to-face confrontation of the child” if

- (i) The defendant is alleged to have inflicted physical harm or is alleged to have threatened to inflict physical harm upon the child, and physical or psychological harm to the child is likely to occur if there is a face-to-face confrontation of the child by defendant;
- (ii) The defendant’s legal counsel will have reasonable opportunity to confer with his client before and at any time during the videotape deposition; and
- (iii) The defendant will have opportunity to view and hear the proceedings while being taken.

In addition, a child who is “unable to articulate what was done to them will be permitted to demonstrate the sexual act or acts committed against them with the aid of anatomically correct dolls.” Wyo. Stat. Ann. § 7-11-408(f). These “demonstrations will be under the supervision of the court and shall be videotaped to be viewed at trial, and shall be received into evidence as demonstrative evidence.” Wyo. Stat. Ann. § 7-11-408(f).

Wyo. Stat. Ann. § 6-2-312 (Evidence of victim’s prior sexual conduct or reputation; procedure for introduction) also provides limited protection to victims of sexual assault, without regard to their age, including victims of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). However, the protection does not extend to victims of Wyoming’s CSEC laws, Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties) and Wyo. Stat. Ann. § 6-4-303(b)(i)–(ii) (Sexual exploitation of children; penalties; definitions). Pursuant to Wyo. Stat. Ann. § 6-2-312(a), where a defendant is prosecuted under Wyoming’s sexual assault laws, or “lesser included offense[s],” evidence of the victim’s prior sexual conduct and reputation or opinion evidence regarding the victim’s character may only be admitted when “the court finds that the probative value of the evidence substantially outweighs the probability that its admission will create prejudice.” Wyo. Stat. Ann. § 6-2-312(a)(iv). However, nothing in Wyo. Stat. Ann. § 6-2-312(a) prevents a defendant from introducing “evidence as to prior sexual conduct of the victim with the actor.” Wyo. Stat. Ann. § 6-2-312(b).

⁴¹ Pursuant to Wyo. Stat. Ann. § 7-11-408(e):

- (e) A videotape deposition may be admitted at trial in lieu of the direct testimony of the child, if the judge finds, after hearing, that:
 - (i) The visual and sound qualities of the videotape are satisfactory;
 - (ii) The videotape is not misleading;
 - (iii) All portions of the videotape that have been ruled inadmissible have been deleted; and
 - (iv) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial.

Another victim-friendly criminal justice procedure is found in Wyo. Stat. Ann. § 6-2-311 (Corroboration unnecessary), which states, “Corroboration of a victim’s testimony is not necessary to obtain a conviction for sexual assault.” Wyo. Stat. Ann. § 6-2-311.

5.8.1 Recommendation: Amend Wyo. Stat. Ann. § 6-2-312 (Evidence of victim’s prior sexual conduct or reputation; procedure for introduction) to apply to minor victims of Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties) and § 6-4-303(b)(i)–(ii) (Sexual exploitation of children; penalties; definitions).

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.*

Under Wyo. Stat. Ann. § 14-6-241(a) (Expungement of records in juvenile and municipal courts), once 18 years old, a person “adjudicated delinquent as a result of having committed a delinquent act other than a violent felony”⁴² may petition to have the court expunge the person’s juvenile court records. Under Wyo. Stat. Ann. § 14-6-241(a),

If after investigation the court finds that the petitioner has not been convicted of a felony since adjudication, that no proceeding involving a felony is pending or being instituted against the petitioner and the rehabilitation of the petitioner has been attained to the satisfaction of the court or the prosecuting attorney, it shall order expunged all records in the custody of the court or any agency or official, pertaining to the petitioner’s case. . . .

Once the court enters an order of expungement, “the proceedings in the petitioner’s case are deemed never to have occurred and the petitioner may reply accordingly upon any inquiry in the matter.” Wyo. Stat. Ann. § 14-6-241(a). Records related to the conviction of a juvenile for a misdemeanor in circuit court also may be expunged, subject to the requirements of Wyo. Stat. Ann. § 14-6-241(a). Wyo. Stat. Ann. § 14-6-241(c).

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.*

Wyoming law does not provide specific civil remedies for victims of domestic minor sex trafficking; however, Wyo. Stat. Ann. § 7-9-110(a) (Civil action) provides that any restitution received by a victim of a crime does not preclude them from bringing a civil suit, but “[a]ny restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim, however, in a civil action arising out of the same facts or event.” Additionally, Wyo. Stat. Ann. § 1-3-105(b) (Actions other than recovery of real property) suggests that there is a “a civil action based upon sexual assault as defined by W.S. 6-2-301(a)(v)⁴³ against a minor” under Wyoming law.

⁴² Pursuant to Wyo. Stat. Ann. § 6-1-104(a)(xii) (Definitions) a “violent felony” includes “murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, aircraft hijacking, arson in the first or second degree or aggravated burglary or a violation of W.S. 6-2-314(a)(i) [Sexual abuse of a minor in the first degree; penalties] or 6-2-315(a)(ii) [Sexual abuse of a minor in the second degree; penalties].”

⁴³ Sexual assault is defined in Wyo. Stat. Ann. § 6-2-301(a)(v) (Definitions) as “any act made criminal pursuant to W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-319 [Names not to be released; restrictions on disclosures or publication of information; violations; penalties].”

Domestic minor sex trafficking victims also are able to receive restitution from their offender. Wyo. Stat. Ann. § 7-9-102 (Order to pay upon conviction) provides,

In addition to any other punishment prescribed by law the court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim as determined under W.S. 7-9-103 [Determination of amount owed; execution] and 7-9-114 [Determination of long-term restitution; time for order; enforcement] unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.

Specifically, under Wyo. Stat. Ann. § 7-9-103(b),

In every case in which a claim for restitution is submitted, the court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant's criminal activity, and shall include its determination of the pecuniary damage as a special finding in the judgment of conviction In determining the amount of restitution, the court shall consider and include as a special finding, each victim's reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant's criminal activity. A long-term physical health care restitution order shall be entered as provided in W.S. 7-9-113 [Restitution for long-term care] through 7-9-115 [Modification of order].

- 5.10.1 Recommendation: When enacting a human trafficking law, include a provision that grants victims a civil cause of action against their offenders.
- 5.10.2 Recommendation: Amend Wyo. Stat. Ann. § 7-9-103 to require restitution of non-pecuniary damages for convictions under CSEC laws and, upon enactment, human trafficking laws.

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.

No statutes of limitations apply to the prosecution of any crimes in Wyoming;⁴⁴ however civil actions are subject to certain statutes of limitations. Wyo. Stat. Ann. § 1-3-102.

The most relevant provision to victims of domestic minor sex trafficking is, “an action for . . . [a]n injury to the rights of the plaintiff, not arising on contract and not herein enumerated” must be commenced within four years of the date the plaintiff's cause of action accrues. Wyo. Stat. Ann. § 1-3-105(a)(iv)(C). Actions for “[a]ssault or battery not including sexual assault” shall be brought within one year. Wyo. Stat. Ann. § 1-3-105(a)(v)(B). Additionally, for “a civil action based upon sexual assault as defined by W.S. 6-2-301(a)(v) (Definitions)⁴⁵ against a minor” a claim “may be brought within the later of: (i) Eight (8) years after the minor's eighteenth birthday; or (ii) Three (3) years after the discovery.” Wyo. Stat. Ann. § 1-3-105(b). Moreover, under Wyo. Stat. Ann. § 1-3-114 (Legal disabilities),

If a person entitled to bring any action except for an action arising from error or omission in the rendering of licensed or certified professional or health care services or for a penalty or forfeiture, is, at the time the cause of action accrues, a minor . . . the person may bring the action within three (3) years

⁴⁴ See *Boggs v. State*, 484 P.2d 711, 714 (Wyo. 1971). Wyoming Representatives Vranish, Byrd, and Madden and Senator Driskill introduced House Bill 0134, “Statute of Limitations for Criminal Offenses,” in the 2011 General Session of the 61st Legislature, however, the bill did not make it out of committee.

⁴⁵ See *supra* note 43.

after the disability is removed or within any other statutory period of limitation, whichever is greater.

Legal Components:

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

Legal Analysis:

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

Law enforcement officers in Wyoming are not required to complete training on human trafficking or domestic minor sex trafficking. While the Peace Officers Standards and Training Commission may establish basic training and in-service training requirements for law enforcement in Wyoming, nothing mandates that they establish training requirements related to human trafficking or domestic minor sex trafficking. Wyo. Stat. Ann. § 9-1-702(e)–(k).

- 6.1.1 Recommendation: Mandate training on human trafficking for law enforcement officers to provide them with the skills to identify and to investigate cases of domestic minor sex trafficking and respond appropriately to the victims.

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

Single party consent to audiotaping is permitted in Wyoming. Wyo. Stat. Ann. § 7-3-702(a)(i), (b)(iv) (Prohibition against interception or disclosure of wire, oral or electronic communications; exceptions; penalties) provides,

- (a) Except as provided in subsection (b) of this section, no person shall intentionally:
 - (i) Intercept, attempt to intercept, or procure any other person to intercept or attempt to intercept any wire, oral or electronic communication;
 -
- (b) Nothing in subsection (a) of this section prohibits:
 -
 - (iv) Any person from intercepting an oral, wire or electronic communication where the person is a party to the communication or where one (1) 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.

Therefore, if one party to the communication consents, audio-taping the communication is permissible under Wyo. Stat. Ann. § 7-3-702(a).

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

Offenses related to domestic minor sex trafficking are not included as crimes for which a wiretapping order may be issued. Under Wyo. Stat. Ann. § 7-3-705(a) (Authorization for interception of wire, oral or electronic communications), applications for orders authorizing the use of wiretapping may only be requested when the investigation involves a violation of the Wyoming Controlled Substances Act of 1971 or a specified crime incident to or discovered while investigating a violation of the Wyoming Controlled Substances Act of 1971.

6.3.1 Recommendation: Amend Wyo. Stat. Ann. § 7-3-705(a) (Authorization for interception of wire, oral or electronic communications) to specifically authorize the attorney general or district attorney to seek a court order permitting the use of wiretapping where the interception may provide evidence of domestic minor sex trafficking.

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

No statute explicitly permits the use of a decoy by law enforcement to investigate sex trafficking of minors. However, because Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) applies where a defendant “solicits, procures or knowingly encourages . . . a person purported to be less than the age of fourteen (14) years,” the use of a decoy by law enforcement in the investigation of a violation of Wyo. Stat. Ann. § 6-2-318 seems to be permissible.

6.4.1 Recommendation: Amend § 6-4-103 (Promoting prostitution) to expressly authorize law enforcement’s use of a decoy posing as a minor to investigate offenses of sex trafficking in which a minor is used in prostitution and live sexual performance.

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

No statute expressly authorizes law enforcement to use the Internet to investigate buyers and traffickers of sex with minors.

6.5.1 Recommendation: Enact a law expressly criminalizing use of the Internet to commit or attempt to commit a CSEC offense and prohibit a defense to prosecution based on the “minor” being a law enforcement officer or other adult.

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

Reporting of missing children and rescued domestic minor sex trafficking victims is not mandated by the Wyoming Legislature. However, “[d]uring the 1990 Wyoming legislative session, the legislature mandated ‘The Office of the Attorney General shall establish and operate a central repository of information and clearinghouse on missing children and missing persons.’”⁴⁶ Under Wyoming’s current “Amber Alert Plan”:

Each state or local program establishes its own AMBER Plan criteria; however, the National Center for Missing & Exploited Children suggests the following criteria should be met before an Alert is activated:

- Law enforcement confirms a child has been abducted.
- A child is considered seventeen years old or younger.

⁴⁶ Wyoming Division of Criminal Investigation, Office of the Attorney General, *Wyoming Missing Person Clearinghouse: 2010 Annual Report*, 4 (2010), <http://attorneygeneral.state.wy.us/dci/pdf/AnnualReportMissingPerson.pdf>.

- Law enforcement will only activate an Amber Alert if it is believed the circumstances surrounding the abduction indicate that the child is in danger of serious bodily harm or death.
- There is enough descriptive information about the child, abductor, and/or suspect's vehicle to believe an immediate broadcast alert will help in the safe return of the child.⁴⁷

6.6.1 Recommendation: Enact a law requiring law enforcement and child welfare services to report missing and recovered children to the clearinghouse on missing children and to the National Crime Information Center (NCIC) database to ensure law enforcement have information to identify missing and runaway children who are at high risk for sex trafficking,

⁴⁷ Wyoming Division of Criminal Investigation, Office of the Attorney General, *Current Wyoming Amber Alert Plan*, <http://attorneygeneral.state.wy.us/dci/amberalert/amberalert.html> (last visited Jan. 27, 2012).

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