

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2013 ANALYSIS AND RECOMMENDATIONS ALABAMA

### 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 *Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*
- 1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

#### *Legal Analysis<sup>1</sup>:*

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*

The Representatives Jack Williams and Merika Coleman Act codifies Alabama's human trafficking law at Ala. Code §§ 13A-6-150 et seq. Ala. Code § 13A-6-153(a) (Human trafficking in the second degree), applicable without regard to the age of the trafficking victim, makes it a crime when, in part,

- (1) A person knowingly benefits, financially or by receiving anything of value, from participation in a venture or engagement for the purpose of sexual servitude or labor servitude.
- (2) A person knowingly recruits, entices, solicits, induces, harbors, transports, holds, restrains, provides, maintains, subjects, or obtains by any means another person for the purpose of labor servitude or sexual servitude.

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<sup>1</sup> Unless otherwise specified, all references to Alabama statutes were taken from the Code of Alabama (LEXIS through the 2013 Reg. Sess.), and all federal statutes were taken from United States Code (LEXIS through PL 113-13, approved 6/3/13). This report includes legislation enacted as of August 1, 2013.

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) states,

A person commits the crime of human trafficking in the first degree if:

....

(2) He or she knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.<sup>2</sup>

For purposes of Ala. Code § 13A-6-152(a) and § 13A-6-153(a), “sexual servitude” is defined in Ala. Code § 13A-6-151(7) (Definitions) as

a. Any sexual conduct as defined in subdivision (3) of Section 14-11-30, Code of Alabama 1975, for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception from a person.

b. Sexual conduct includes:

1. Sexually explicit performances, meaning an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.
2. Commercial sex acts, meaning any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.
3. Acts defined in subdivision (3) of Section 14-11-30, Code of Alabama 1975.

A conviction under Ala. Code § 13A-6-152(a) is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$60,000.<sup>3</sup> Ala. Code

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<sup>2</sup> Ala. Code § 13A-6-151(5) defines a “minor” as “[a] person under the age of 18.”

<sup>3</sup> Ala. Code § 13A-5-2(a), (d) (Penalties permitted or required) notes,

(a) Every person convicted of a felony shall be sentenced by the court to imprisonment for a term authorized by Sections 13A-5-6 [Prison terms; felonies], 13A-5-9 [Repeat or habitual offenders; generally] and 13A-5-10 [Repeat or habitual offenders; hearings; corporations].

....

(d) Every person convicted of a felony, misdemeanor or violation, except for the commission of a criminal sex offense involving a child as defined in Section 15-20-21(5), may be placed on probation as authorized by law.

Ala. Code § 15-20-21 is located in the article entitled, “Community Notification of Released Convicted Sex Offenders,” codified at Ala. Code §§ 15-20-20 et seq, but these statutes have since been repealed and replaced with the article entitled, “Alabama Sex Offender Registration and Community Notification Act,” codified at Ala. Code §§ 15-20A-1 et seq. Cross-references in other statutes throughout the Alabama Code to the old sex offender registry statutes have not been updated to reflect the renumbering of the sex offender registry statutes due to the passage of Senate Bill 296 in the 2011 Regular Session. These cross-references should be updated throughout the Alabama Code to fully implement the amendments made by Senate Bill 296. Here and in other places where this report cites Ala. Code §§ 15-20A-1 et seq. or Ala. Code §§ 15-20-20 et seq., the statute numbers and the substance of the analysis have been updated to reflect the new sex offender registry statutes. (LEXIS, however, does note in brackets the cross-referenced statutes that have been repealed and the new statutes that replaced them.) Ala. Code § 15-20A-48(a) states that “[f]or the purposes of sections 13A-5-2 [and] 13A-5-6, a criminal sex offense involving a child shall mean a conviction for any sex offense in which the victim was under the age of 12 or any offense involving child pornography.” See *infra* Section 2.10 for a list of sexual offenses. Additionally, the commentary to Ala. Code § 13A-5-2 on Lexis notes,

Section 13A-5-2 makes no attempt to revise the law on probation as provided outside this Criminal Code. Subsection (d). While some jurisdictions permit suspension of imposition of sentence or suspension of

§§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-152 is under 12 years old and the “offense involves sexual servitude,”<sup>4</sup> a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a). A conviction under Ala. Code § 13A-6-153(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-153(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).<sup>5</sup> If the victim of a violation of Ala. Code § 13A-6-153 is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(29), 15-20A-48(a).

1.1.1 Recommendation: Amend the definition of “sexual servitude” in Ala. Code § 13A-6-151(7) (Definitions) to remove the requirement that “coercion or deception” be used when the victim is a minor.<sup>6</sup>

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

The following laws make CSEC a crime in Alabama:

1. Under Ala. Code § 13A-12-111(a) (Promoting prostitution; first degree),

A person commits the crime of promoting prostitution in the first degree if he knowingly:

- (1) Advances prostitution<sup>7</sup> by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or
- (2) Advances or profits from prostitution<sup>8</sup> of a person less than 16 years of age.

A conviction under Ala. Code § 13A-12-111(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-12-111(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of Ala. Code § 13A-12-111 (Promoting prostitution; first degree) is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(12), 15-20A-48(a).

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execution of sentence, Alabama follows the rule that a definite sentence must first be imposed, which may be suspended and defendant placed on probation on certain terms and conditions.

<sup>4</sup> See *supra* Section 1.1 for the definitions of “sexual servitude” and “sexual conduct.”

<sup>5</sup> For any felony in Alabama, the court may impose a fine greater than the maximum listed in the statute if it does not exceed “double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.” Ala. Code § 13A-5-11(a)(4). Ala. Code § 13A-5-11(b) defines “gain” as “the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized or surrendered to lawful authority prior to the time sentence is imposed.”

<sup>6</sup> Subsequent recommendations that discuss referring certain crimes to the human trafficking statute are predicated upon the recommendations in 1.1 being simultaneously or previously enacted.

<sup>7</sup> Ala. Code § 13A-12-110(1) (Definitions) states,

A person “advances prostitution” if, acting other than as a prostitute or a patron of a prostitute, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise.

<sup>8</sup> Ala. Code § 13A-12-110(2) (Definitions) states, “A person ‘profits from prostitution’ if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, he accepts or receives money or other property pursuant to a prior agreement with any person whereby he participates or is to participate in the proceeds of prostitution activity.”

2. Ala. Code § 13A-12-112(a) (Promoting prostitution; second degree) states,

A person commits the crime of promoting prostitution in the second degree if he knowingly:

- (1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes other than the defendant; or
- (2) Advances or profits from prostitution of a person less than 18 years of age.

A conviction under Ala. Code § 13A-12-112(a) is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-12-112(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

3. Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child) states in part,

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child’s name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child. . . .

A conviction under Ala. Code § 13A-6-121 is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

4. Ala. Code § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act) states in part,

Any person who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of facilitating the transport of a child for an unlawful sex act. . . .

A conviction under Ala. Code § 13A-6-125 is punishable as a Class A felony punishable by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-125, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-125 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(27), 15-20A-48(a).

The following sexual offenses also may be applicable in cases involving the commercial sexual exploitation of a child:

1. Ala. Code § 13A-6-124 (Traveling to meet a child for an unlawful sex act) states in part,

Any person who travels either within this state, to this state, or from this state by any means, who attempts to do so, or who knowingly causes another to do so or to attempt to do so for the purpose of engaging in any unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of traveling to meet a child for an unlawful sex act. . . .

A conviction under Ala. Code § 13A-6-124 is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-124, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-124 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(26), 15-20A-48(a).

2. Ala. Code § 13A-12-196 (Permitting or allowing child to engage in production of obscene matter) states, “Any parent or guardian who knowingly permits or allows their child, ward, or dependent under the age of 17 years to engage in the production of any obscene matter containing a visual depiction of such child, ward, or dependent under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.” A Class A felony is punishable by life imprisonment or 10–99 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-12-196, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-196 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

3. Ala. Code § 13A-6-69(a) (Child molestation; luring child someplace in order to perform or to propose sexual acts) states,

It shall be unlawful for any person with lascivious intent to entice, allure, persuade, or invite, or attempt to entice, allure, persuade or invite, any child under 16 years of age to enter any vehicle, room, house, office or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or . . . for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.

A conviction under Ala. Code § 13A-6-69(a) is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-6-69(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

4. Ala. Code § 13A-6-61(a)(3) (Rape; first degree), states, “(a) A person commits the crime of rape in the first degree if: . . . (3) He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.” Ala. Code § 13A-6-61(a)(3) is punishable as a Class A felony by imprisonment for life or 20–99 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-61(b), 13A-5-2(a), (b), 13A-5-6(a)(1), (4), 13A-5-11(a)(1), 15-20A-5(1), 15-20A-48(a). If the victim of Ala. Code § 13A-6-61(a)(3) is six years old or younger and the offender is twenty-one years old or older, the offender must be sentenced to life imprisonment. Ala. Code § 13A-5-6(d).

5. Ala. Code § 13A-6-62(a)(1) (Rape; second degree) states,

(a) A person commits the crime of rape in the second degree if:

- (1) Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex.

A conviction under Ala. Code § 13A-6-62(a)(1) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-62(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).

6. Under Ala. Code § 13A-6-66(a)(1) (Sexual abuse; first degree), “A person commits the crime of sexual abuse in the first degree if: (1) He subjects another person to sexual contact by forcible compulsion.” A conviction under Ala. Code § 13A-6-66(a)(1) is punishable as a Class C felony and by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-6-66(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

7. Under Ala. Code § 13A-6-67(a) (Sexual abuse; second degree), a person is guilty of second degree sexual abuse if

(1) He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old or (2) He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

A first offense under Ala. Code § 13A-6-67(a) is punishable as a Class A misdemeanor by “imprisonment in the county jail or to hard labor for the county” up to 1 year, a possible fine not to exceed \$6,000, or both. Ala. Code §§ 13A-6-67(b), 13A-5-2(c), 13A-5-7(a)(1), 13A-5-12(a)(1). The violation increases to a Class C felony where the defendant “commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense.” Ala. Code § 13A-6-67(b). Class C felonies are punishable by imprisonment of 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and possible fines not to exceed \$15,000. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

8. Ala. Code § 13A-6-69.1(a) (Sexual abuse of child under 12) states, “A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.” A conviction under Ala. Code § 13A-6-69.1(a) is a Class B felony punishable by a sentence of imprisonment for 10–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-69.1(b), 13A-5-2(a), (b), 13A-5-6(a)(2), (a)(5), 13A-5-11(a)(2), (15-20A-5(11), 15-20A-48(a).

*1.3 Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

Alabama’s prostitution law, Ala. Code § 13A-12-121(a) (Prohibited activity), does not refer to the human trafficking law when the person engaged in prostitution is a minor. However, pursuant to Ala. Code § 13A-6-159 (Permitted defenses),

In a prosecution for prostitution, or a sexually explicit performance<sup>9</sup> defined in this article, of a human trafficking victim for the victim’s illegal acts engaged in or performed as a result of labor servitude or sexual servitude, it shall be an affirmative defense that the person was a victim of human trafficking.

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

Alabama does not have a state racketeering statute and Ala. Code § 13A-12-233 (Drug trafficking enterprise defined; punishment), which applies to criminal enterprises, is solely focused on drug trafficking enterprises. While Alabama’s law criminalizing compelling gang membership might reach the actions of sex trafficking networks that compel streetgang membership in the implementation of the trafficking crime, this offense is geared toward making the forced gang membership the criminal act, rather than criminalizing participation in a

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<sup>9</sup> Ala. Code § 13A-6-151(7)(b)(1) defines “sexually explicit performances” as “an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.”

gang that commits the predicate crimes of human trafficking or CSEC, which might limit its use in combatting these crimes. Ala. Code § 13A-6-26 (Compelling streetgang membership) states,

(a) For purposes of this section, the term “streetgang” means any combination, confederation, alliance, network, conspiracy, understanding, or other similar arrangement in law or in fact, of three or more persons that, through its membership or through the agency of any member, engages in a course or pattern of criminal activity.<sup>10</sup>

(b) A person who expressly or by implication threatens to do bodily harm or does bodily harm to a person, a family member or a friend of the person, or any other person, or uses any other unlawful criminal means to solicit or cause any person to join or remain in a streetgang is guilty of the crime of compelling streetgang membership.

(c) The crime of compelling streetgang membership is a Class C felony.

(d) Notwithstanding subsection (c), the crime of compelling streetgang membership is a Class A felony if the defendant is over the age of 18 years and the other person is under the age of 18 years.

(e) This section shall not be construed to repeal other criminal laws. Whenever conduct proscribed by this section is also proscribed by any other provision of law, the provision which carries the more serious penalty shall apply.

1.4.1 Recommendation: Enact a racketeering statute that includes CSEC and trafficking offenses as predicate crimes that may be used to prosecute trafficking enterprises.

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<sup>10</sup> Ala. Code § 13A-6-26 (Compelling streetgang membership) does not define “course or pattern of criminal activity” and Ala. Code § 13A-6-1 (Definitions) which defines terms used in Articles 1 and 2 of Chapter 6, Title 13A, also does not define this term.

***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.*

Ala. Code § 13A-6-152(a)(2) and § 13A-6-153(a)(2) can apply to buyers of commercial sex with minors following federal precedent through the term “obtain.”<sup>11</sup> Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) states, “A person commits the crime of human trafficking in the first degree if: . . . [h]e or she knowingly obtains . . . any minor for the purpose of causing a minor to engage in sexual servitude.” Under Ala. Code § 13A-6-153(a)(2) (Human trafficking in the second degree), “A person commits the crime of human trafficking in the second degree if: . . . [a] person knowingly . . . obtains by any means another person for the purpose of labor servitude or sexual servitude.”

However, under the definition of “sexual servitude” in Ala. Code § 13A-6-151(7) (Definitions), the sexual conduct must be “induced or obtained by coercion or deception from a person.”

- 2.1.1 **Recommendation:** Amend the definition of sexual servitude in Ala. Code Ala. Code § 13A-6-151(7) (Definitions) to include language making the purchase of sex with a trafficking victim a criminal act of trafficking.

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<sup>11</sup> See *United States v. Jungers*, 702 F.3d 1066 (8<sup>th</sup> Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers when it reversed a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers. *United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011). Holding that the conduct of buyers who obtain a child for commercial sex can violate 18 U.S.C. § 1591(a)(1), the Eighth Circuit illustrated through hypothetical buyer scenarios that, under certain circumstances, most of the terms in the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) could apply to buyers. While other terms may apply to buyers’ conduct under state law as well, the analysis here focuses on the term “obtains” which is most likely to apply in the majority of buyer cases.



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

None of Alabama’s CSEC laws include the crime of buying sex acts with a minor. The non-commercial sexual offense under Ala. Code § 13A-6-124 (Traveling to meet a child for an unlawful sex act) could apply to buyers who satisfy the “travel” requirement. Ala. Code § 13A-6-124 states in part,

Any person who travels either within this state, to this state, or from this state by any means, who attempts to do so, or who knowingly causes another to do so or to attempt to do so for the purpose of engaging in any unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of traveling to meet a child for an unlawful sex act. . . .

A conviction under Ala. Code § 13A-6-124 is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-124, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-124 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(26), 15-20A-48(a).

Several other sexual offenses 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.<sup>12</sup>

2.2.1 Recommendation: Enact a law that makes it a crime to purchase sex acts with a minor under 18.

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

Ala. Code § 13A-12-121(b) (Prohibited activity), which includes the crime of soliciting prostitution, does not distinguish between solicitation of minors and the solicitation of adults. Each conviction for violating Ala. Code § 13A-12-121(b) is punishable as a Class A misdemeanor, regardless of the age of the person patronized, by imprisonment up to 1 year, a possible fine up to \$6,000, or both imprisonment and a fine. Ala. Code §§ 13A-12-122, 13A-5-2(c), 13A-5-7(a)(1), 13A-5-12(a)(1).

2.3.1 Recommendation: Amend Ala. Code § 13A-12-121 (Prohibited activities) to distinguish solicitation of commercial sex acts with minors from solicitation of commercial sex acts with adults and provide a heightened penalty when offenses involve a minor under 18.

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

Buyers may be prosecuted for crimes ranging from Class A felonies to Class A misdemeanors. A buyer may be convicted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), or § 13A-6-61(a)(3) (Rape; first degree), all punishable as Class A felonies<sup>13</sup> punishable by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and possible fines up to \$60,000. Ala. Code §§ 13A-6-152(b), 13A-6-124, 13A-6-61(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of either offense is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(1), (28), 15-20A-48(a).

Under Ala. Code § 13A-5-6(c) (Prison terms; felonies),

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<sup>12</sup> See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

<sup>13</sup> If, in the commission of any Class A felony, the defendant used or attempted to use a firearm, a mandatory minimum imprisonment of 20 years applies. Ala. Code § 13A-5-6(a)(4).

In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20-25.3 [repealed; see now Section 15-20A-19],<sup>14</sup> or where an offender is convicted of a Class A felony criminal sex offense involving a child as defined in Section 15-20-21(5) [repealed; see now Sections 15-20A-4 and 15-20A-48], and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant's release from incarceration.

If a buyer is convicted under Ala. Code § 13A-6-122 (Electronic solicitation of a child), § 13A-6-62(a) (Rape; second degree), or § 13A-6-69.1 (Sexual abuse of child under 12), the buyer is guilty of a Class B felony punishable by a sentence of 2–20 years, “which imprisonment includes hard labor,” and possible fines not to exceed \$30,000. Ala. Code §§ 13A-6-122, 13A-6-62(b), 13A-6-69.1, 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of one of these offenses is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(2), (11), (24), 15-20A-48(a).

If a buyer is convicted under Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), § 13A-6-69(a) (Child molestation; luring child someplace in order to perform or to propose sexual acts), or is convicted for a second time under § 13A-6-67(a)(2) (Sexual abuse; second degree) within one year of another sexual offense, the buyer is guilty of a Class C felony.<sup>15</sup> As such, the buyer is punishable by 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and possible fines not to exceed \$15,000. Ala. Code §§ 13A-6-121, 13A-6-69(b), 13A-6-67(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

A buyer convicted under Ala. Code § 13A-12-121(b) (Prohibited activity), which includes soliciting prostitution, or § 13A-6-67(a) (Sexual abuse; second degree) for a first offense is guilty of a Class A misdemeanor punishable by imprisonment in the county jail up to 1 year and a possible fine up to \$6,000. Ala. Code §§ 13A-6-67(b), 13A-12-122, 13A-5-2(c), 13A-5-7(a)(1), 13A-5-12(a)(1).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>16</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the

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<sup>14</sup> Ala. Code § 15-20A-48(d) now states that “for the purposes of section 13A-5-6(c) . . . an offender is designated a sexually violent predator pursuant to section 15-20A-19.” See *supra* note 3 for a discussion of cross-referencing in light of Alabama's statutory revisions. Additionally, Ala. Code § 13A-5-6(d) states,

In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is convicted of a sex offense pursuant to Section 13A-6-61 [Rape; first degree], 13A-6-63 [Sodomy; first degree], or 13A-6-6.51 [Sexual torture], when the defendant was 21 years of age or older and the victim was six years of age or less at the time the offense was committed, the defendant shall be sentenced to life imprisonment without the possibility of parole.

<sup>15</sup> If the defendant uses or attempts to use a firearm or deadly weapon in the commission of any Class C felony, a minimum imprisonment of 10 years applies. Ala. Code § 13A-5-6(a)(5).

<sup>16</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as,

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

extent buyers can be prosecuted under other federal CSEC laws,<sup>17</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>18</sup>

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 reach children under 16 for commercial sex acts is illegal under Ala. Code § 13A-6-122 (Electronic solicitation of a child).<sup>19</sup> Pursuant to Ala. Code § 13A-6-122,

[A] person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service . . . or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit or for the benefit of another, is guilty of electronic solicitation of a child. . . .

A conviction for violating Ala. Code § 13A-6-122 is punishable as a Class B felony punishable by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-6-122, 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).

Ala. Code § 13A-6-111(a) (Child; transmission of obscene material) states in part,

A person is guilty of transmitting obscene material to a child if the person transmits, by means of any computer communication system allowing the input, output, examination, or transfer of computer programs from one computer to another, material which, in whole or in part, depicts actual or simulated nudity, sexual conduct, or sadomasochistic abuse, for the purpose of initiating or engaging in sexual acts with the child.

Pursuant to subsection (d), “Transmitting obscene material of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit to a child is a Class B felony” punishable by 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-111(d), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of Ala. Code § 13A-12-111(Child; transmission of obscene material) is under 12 years old,

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(relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).

<sup>17</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

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

<sup>19</sup> For purposes of Ala. Code § 13A-6-122 (Electronic solicitation of a child), § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), § 13A-6-123 (Facilitating the on-line solicitation of a child), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), and § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act) a “child” means “a person under 16 years of age.” Ala. Code § 13A-6-120.

a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(20), 15-20A-48(a).

Additionally, pursuant to Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child),

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child. . . .

As a Class C felony, a conviction for violating Ala. Code § 13A-6-121 is punishable by 1 year and 1 day to 10 years, "which imprisonment includes hard labor," and a possible fine of up to \$15,000. Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

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

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) is applicable to buyers, and § 13A-6-152(a)(3) expressly eliminates the use of mistake of age as a defense by stating that "it is not required that the defendant have knowledge of a minor victim's age, nor is reasonable mistake of age a defense to liability under this section." Furthermore, Ala. Code § 13A-6-154(5) (Prohibited defenses) states that a mistake in the age of the trafficking victim, "even if the mistake is reasonable," "shall not constitute a defense in a prosecution for human trafficking in the first or second degree." However, the CSEC offense of Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child) does not preclude a mistake of age defense.

2.6.1 Recommendation: Amend Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child) to prohibit defendants 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.*

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) makes no distinction between older minors and younger minors. A minor is defined by Ala. Code § 13A-6-151(5) (Definitions) as any person under 18. A conviction under Ala. Code § 13A-6-152(a) is punishable as a Class A felony by imprisonment for life or 10–99 years, "which imprisonment includes hard labor," and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-152 is under 12 years old and the "offense involves sexual servitude,"<sup>20</sup> a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a).

2.7.1 Recommendation: Amend Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) to apply heightened penalties in an offense committed against all minors under 18 years old.

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<sup>20</sup> See *supra* Section 1.1 for the definitions of "sexual servitude" and "sexual conduct."

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

Buyers convicted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree), a Class A felony, may be required to pay a possible fine up to \$60,000. Those convicted under Ala. Code § 13A-12-192(b) (Possession of obscene matter) or § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), both Class C felonies, may be ordered to pay a possible fine up to \$15,000. Ala. Code § 13A-5-11(a)(3). In a prosecution for any of the crimes listed above, the court may impose a fine “not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.” Ala. Code § 13A-5-11(a)(4).

A buyer convicted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) may be required to pay restitution and civil damages to a human trafficking victim and forfeit property used in committing the crime. Pursuant to Ala. Code § 13A-6-155(a) (Penalties—Restitution to victim), buyers convicted under any provision of the human trafficking article, Ala. Code §§ 13A-6-150 to 13A-6-160, will be required to “pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution.” Ala. Code § 13A-6-156 (Penalties—Forfeiture of property) states,

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

Additionally, under Ala. Code § 13A-12-198 (Forfeiture and condemnation of contraband), buyers convicted under, among other provisions, Ala. Code § 13A-12-192(b) (Possession of obscene matter) will be required to forfeit to the State “[a]ny article, equipment, machine, materials, matter, vehicle or other thing whatsoever used in the commercial production, transportation, dissemination, display or storage of any obscene matter displaying or depicting a person under the age of 17 years engaged in any of the obscene acts” described in that section.

Buyers convicted of other offenses under Alabama’s criminal laws may also be required to make restitution to the victims of the crimes pursuant to Ala. Code § 15-18-67 (Hearings), which states,

When a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages<sup>21</sup> or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant’s criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the

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<sup>21</sup> Ala. Code 15-18-66(2) defines “pecuniary damages” is defined to include the following:

All special damages which a person shall recover against the defendant in a civil action arising out of the facts or events constituting the defendant’s criminal activities; the term shall include, but not be limited to the money or other equivalent of property taken, broken, destroyed, or otherwise used or harmed and losses such as travel, medical, dental or burial expenses and wages including but not limited to wages lost as a result of court appearances.

administrator of any victim’s estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

However, “victim” is defined in Ala. Code § 15-18-66(4) (Definitions) as “[a]ny person whom the court determines has suffered a direct or indirect pecuniary damage as a result of the defendant’s criminal activities. ‘Victim’ shall not include any participant in the defendant’s criminal activities.”

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

Pursuant to Ala. Code § 13A-12-192(b) (Possession of obscene matter), “Any person who knowingly possesses any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct shall be guilty of a Class C felony.”

A conviction under Ala. Code § 13A-12-192(b) is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine up to \$15,000. Ala. Code §§ 13A-12-192(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

In comparison, a federal conviction for possession of child pornography<sup>22</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>23</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>24</sup>

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

Adult sex offenders are required to register pursuant to Ala. Code § 15-20A-10(a)(1) (Registration rules for an adult sex offender). An “adult sex offender” is defined as “[a]n adult convicted of a sex offense.” Ala. Code § 15-20A-4(1). Pursuant to Ala. Code § 15-20A-5 (Offenses),

For the purposes of this article, a sex offense includes any of the following offenses:

- (1) Rape in the first degree, as provided by Section 13A-6-61, Code of Alabama 1975.
- (2) Rape in the second degree, as provided by Section 13A-6-62, Code of Alabama 1975.
- ....
- (5) Sexual misconduct, as provided by Section 13A-6-65, Code of Alabama 1975, provided that on a first conviction or adjudication the sex offender is only subject to registration and

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<sup>22</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>23</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>24</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

verification pursuant to this article. On a second or subsequent conviction or adjudication, if the second or subsequent conviction or adjudication does not arise out of the same set of facts and circumstances as the first conviction or adjudication, the sex offender shall comply with all requirements of this article. The sentencing court may exempt from this article a juvenile sex offender adjudicated delinquent of sexual misconduct.

....

(7) Sexual abuse in the first degree, as provided by Section 13A-6-66, Code of Alabama 1975.

(8) Sexual abuse in the second degree, as provided by Section 13A-6-67, Code of Alabama 1975.

....

(10) Enticing a child to enter a vehicle, room, house, office, or other place for immoral purposes, as provided by Section 13A-6-69, Code of Alabama 1975.

(11) Sexual abuse of a child less than 12 years old, as provided by Section 13A-6-69.1, Code of Alabama 1975.

....

(14) Violation of the Alabama Child Pornography Act, as provided by Sections 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197, Code of Alabama 1975.

....

(20) Transmitting obscene material to a child by computer, as provided by Section 13A-6-111, Code of Alabama 1975.

....

(23) Facilitating solicitation of unlawful sexual conduct with a child, as provided by Section 13A-6-121, Code of Alabama 1975.

(24) Electronic solicitation of a child, as provided by Section 13A-6-122, Code of Alabama 1975.

(25) Facilitating the on-line solicitation of a child, as provided by Section 13A-6-123, Code of Alabama 1975.

(26) Traveling to meet a child for an unlawful sex act, as provided by Section 13A-6-124, Code of Alabama 1975.

(27) Facilitating the travel of a child for an unlawful sex act, as provided by Section 13A-6-125, Code of Alabama 1975.

(28) Human trafficking in the first degree, as provided by Section 13A-6-152, Code of Alabama 1975, provided that the offense involves sexual servitude.

(29) Human trafficking in the second degree, as provided by Section 13A-6-153, Code of Alabama 1975, provided that the offense involves sexual servitude.

....

(32) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in subdivisions (1) to (32).

....

(35) Any crime committed in another state, the District of Columbia, any United States territory, or a federal, military, Indian, or foreign country jurisdiction if that jurisdiction also requires that anyone convicted of that crime register as a sex offender in that jurisdiction.

....

***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.*

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) makes it illegal if a trafficker “knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.”<sup>25</sup> A conviction under Ala. Code § 13A-6-152(a)(2) is punishable as a Class A felony<sup>26</sup> by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-152 is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a). Also, Ala. Code § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act) states that a person “who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another” commits a Class A felony punishable by life imprisonment or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-125, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). Under Ala. Code § 13A-5-6(c),

In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20-25.3 [repealed; see now Section 15-20A-19],<sup>27</sup> or where an offender is convicted of a Class A felony criminal sex offense involving a child as defined in Section 15-20-21(5) [repealed; see now Sections 15-20A-4 and 15-20A-48], and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant’s release from incarceration.

Traffickers may also be prosecuted under Ala. Code § 13A-12-111(a) (Promoting prostitution; first degree).<sup>28</sup> A conviction for violating Ala. Code § 13A-12-111(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-12-111(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of Ala. Code § 13A-12-111

<sup>25</sup> See *supra* Section 1.1 for the definitions of “sexual servitude” and “sexual conduct.”

<sup>26</sup> See *supra* note 13.

<sup>27</sup> See *supra* note 14.

<sup>28</sup> See *supra* Section 1.2 for the substantive provisions of Ala. Code § 13A-12-111(a).



is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(12), 15-20A-48(a).

Additionally, traffickers could be prosecuted under Ala. Code § 13A-12-112(a) (Promoting prostitution; second degree), punishable as a Class C felony<sup>29</sup> by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-12-112(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3). Some traffickers could be prosecuted under Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), which is a Class C felony, and is punishable by 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine of up to \$15,000. Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>30</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>31</sup> against a minor.

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

Alabama criminalizes the production, dissemination,<sup>32</sup> and possession with the intent to disseminate child pornography separately. Ala. Code § 13A-12-197(a) (Production of obscene matter) states, “Any person who knowingly<sup>33</sup> films, prints, records, photographs or otherwise produces any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse,<sup>34</sup> sexual excitement,<sup>35</sup> masturbation, breast nudity, genital nudity, or other sexual conduct<sup>36</sup> shall be guilty of a Class A felony.” Pursuant to Ala. Code § 13A-12-197(b), each depiction of each individual under 17 counts as a separate offense. A conviction under Ala. Code § 13A-12-197 is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-197 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

Ala. Code § 13A-12-191 (Dissemination or display of obscene matter) states,

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<sup>29</sup> See *supra* note 15.

<sup>30</sup> See *supra* Section 2.4 for further discussion.

<sup>31</sup> See *supra* note 16.

<sup>32</sup> Ala. Code § 13A-12-190(1) (Definitions) defines “disseminate” as “[t]o sell, lend or show for monetary consideration or to offer or agree to do the same.”

<sup>33</sup> Ala. Code § 13A-12-190(4) (Definitions) defines “knowingly” as the following:

“[a] person knowingly disseminates or publicly displays obscene matter when the person knows the nature of the matter. A person knows the nature of the matter when either of the following circumstances exist:

a. The person is aware of the character and content of the matter; or

b. The person recklessly disregards circumstances suggesting the character and content of the matter.

<sup>34</sup> Ala. Code § 13A-12-190(7) (Definitions) defines “sexual intercourse” as “[i]ntercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal.”

<sup>35</sup> Ala. Code § 13A-12-190(6) (Definitions) defines “sexual excitement” as “[t]he condition of human male or female genitals when in a state of sexual stimulation.”

<sup>36</sup> Ala. Code § 13A-12-190(9) (Definitions) defines “other sexual conduct” as “[a]ny touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.”

Any person who shall knowingly disseminate or display publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony.

Ala. Code § 13A-12-192(a) (Possession of obscene matter) states,

Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.

Class B felonies are punishable by imprisonment of 2–20 years, “which imprisonment includes hard labor,” and possible fines up to \$30,000. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the child involved in the commission of Ala. Code § 13A-12-197(a) (Production of obscene matter) is under 12 years old, a mandatory minimum imprisonment of 20 years applies, while if the child involved in the commission of Ala. Code § 13A-12-191 (Dissemination or display of obscene matter) or § 13A-12-192(a) (Possession of obscene matter) is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(4), (a)(5), 15-20A-5(14), 15-20A-48(a).

Pursuant to Ala. Code § 13A-12-196 (Permitting or allowing child to engage in production of obscene matter),

Any parent or guardian who knowingly permits or allows their child, ward, or dependent under the age of 17 years to engage in the production of any obscene matter containing a visual depiction of such child, ward, or dependent under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.

A Class A felony is punishable by life imprisonment or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-5-6(a)(1), 13A-5-11(a)(1). Additionally, if the child involved is under the age of 12, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>37</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>38</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>39</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>40</sup>

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<sup>37</sup> See *supra* note 16.

<sup>38</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>39</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to

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 reach children under 16 for commercial sex acts is illegal under Ala. Code § 13A-6-122 (Electronic solicitation of a child).<sup>41</sup> Pursuant to Ala. Code § 13A-6-122,

[A] person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service . . . or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit or for the benefit of another, is guilty of electronic solicitation of a child. . . .

A conviction for violating Ala. Code § 13A-6-122 is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-6-122, 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).

Additionally, pursuant to Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child),

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child’s name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child. . . .

As a Class C felony, a conviction for violating Ala. Code § 13A-6-121 is punishable by 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine of up to \$15,000. Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

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the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

<sup>41</sup> For purposes of Ala. Code § 13A-6-122 (Electronic solicitation of a child), § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), § 13A-6-123 (Facilitating the on-line solicitation of a child), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), and § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act), a “child” means “a person under 16 years of age.” Ala. Code § 13A-6-120.

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

Traffickers convicted of trafficking or offenses related to domestic minor sex trafficking face a number of financial penalties, including fines, restitution, forfeiture, and civil damages. Traffickers convicted of Ala. Code § 13A-12-197 (Production of obscene matter), a Class A felony, are subject to a possible fine up to \$60,000 pursuant to Ala. Code § 13A-5-11(a)(1). Traffickers convicted of Ala. Code § 13A-12-111 (Promoting prostitution; first degree), § 13A-6-122 (Electronic solicitation of a child), § 13A-12-191 (Dissemination or display of obscene matter), or § 13A-12-192 (Possession of obscene matter), all Class B felonies, are subject to possible fines up to \$30,000. Ala. Code § 13A-5-11(a)(2). Traffickers convicted of Ala. Code § 13A-12-112 (Promoting prostitution; second degree) or § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), both Class C felonies, are subject to a possible fine up to \$15,000. Ala. Code §§ 13A-12-112(b), 13A-6-121, 13A-5-11(a)(3). Pursuant to Ala. Code § 13A-5-11(a)(4), the court may fix the fine at “[a]ny amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.”

Asset forfeiture provisions apply to traffickers convicted of Ala. Code § 13A-12-197(a), § 13A-12-191, and § 13A-12-192(a). Ala. Code § 13A-12-198 (Forfeiture and condemnation of contraband) states in part,

Any article, equipment, machine, materials, matter, vehicle or other thing whatsoever used in the commercial production, transportation, dissemination, display or storage of any obscene matter displaying or depicting a person under the age of 17 years engaged in any of the obscene acts described in Sections 13A-12-191, 13A-12-192, 13A-12-196 and 13A-12-197 shall be contraband and shall be forfeited to the State of Alabama.

Traffickers convicted of other offenses under Alabama’s criminal laws may also be required to make restitution to the victims of the crimes pursuant to Ala. Code § 15-18-67 (Hearings), which states that

[w]hen a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages or loss<sup>42</sup> to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant’s criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim’s estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

However, “victim” is defined in Ala. Code § 15-18-66(4) (Definitions) as “[a]ny person whom the court determines has suffered a direct or indirect pecuniary damage as a result of the defendant’s criminal activities. ‘Victim’ shall not include any participant in the defendant’s criminal activities.”

Traffickers convicted of Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) are subject to additional forfeiture and restitution provisions. Pursuant to Ala. Code § 13A-6-156 (Forfeiture of profits or proceeds and interest in property),

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go

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<sup>42</sup> See *supra* note 21.

toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

Pursuant to Ala. Code § 13A-6-155(a) (Penalties—Restitution to victim), traffickers convicted under any provision of the human trafficking article, Ala. Code § 13A-6-150 et seq., will be required to “pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution.”

Furthermore, under Ala. Code § 13A-6-157 (Civil action—Damages),

An individual who is a victim of human trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages shall be awarded on proof of actual damages where defendant’s acts were willful and malicious.

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

Adult sex offenders are required to register pursuant to Ala. Code § 15-20A-10(a)(1) (Registration rules for an adult sex offender). An “adult sex offender” is defined as “[a]n adult convicted of a sex offense.” Ala. Code § 15-20A-4(1). Pursuant to Ala. Code § 15-20A-5 (Offenses),

For the purposes of this article, a sex offense includes any of the following offenses:

- .....
- (12) Promoting prostitution in the first degree, as provided by Section 13A-12-111, Code of Alabama 1975.
- (13) Promoting prostitution in the second degree, as provided by Section 13A-12-112, Code of Alabama 1975.
- (14) Violation of the Alabama Child Pornography Act, as provided by Sections 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197, Code of Alabama 1975.
- .....
- (20) Transmitting obscene material to a child by computer, as provided by Section 13A-6-111, Code of Alabama 1975.
- .....
- (23) Facilitating solicitation of unlawful sexual conduct with a child, as provided by Section 13A-6-121, Code of Alabama 1975.
- (24) Electronic solicitation of a child, as provided by Section 13A-6-122, Code of Alabama 1975.
- (25) Facilitating the on-line solicitation of a child, as provided by Section 13A-6-123, Code of Alabama 1975.
- (26) Traveling to meet a child for an unlawful sex act, as provided by Section 13A-6-124, Code of Alabama 1975.
- (27) Facilitating the travel of a child for an unlawful sex act, as provided by Section 13A-6-125, Code of Alabama 1975.
- (28) Human trafficking in the first degree, as provided by Section 13A-6-152, Code of Alabama 1975, provided that the offense involves sexual servitude.
- (29) Human trafficking in the second degree, as provided by Section 13A-6-153, Code of Alabama 1975, provided that the offense involves sexual servitude.
- .....
- (32) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in subdivisions (1) to (31).
- .....
- (35) Any crime committed in another state, the District of Columbia, any United States

territory, or a federal, military, Indian, or foreign country jurisdiction if that jurisdiction also requires that anyone convicted of that crime register as a sex offender in that jurisdiction.

....

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.*

Neither convictions under the human trafficking laws, Ala. Code § 13A-6-152(a)(1), (2) (Human trafficking in the first degree) and § 13A-6-153(a)(1), (2) (Human trafficking in the second degree), nor any CSEC law are expressly enumerated in Ala. Code § 12-15-319(a) (Grounds for termination of parental rights; factors considered; presumption arising from abandonment) as grounds for the termination of parental rights. However, the definition of “abuse,” which includes subjecting a child to prostitution and sexual exploitation, as well as “[c]onviction of and imprisonment for a felony” provide grounds for terminating a trafficker’s parental rights. Ala. Code § 12-15-319(a) states in part,

(a) If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parents. In determining whether or not the parents are unable or unwilling to discharge their responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

....

(3) That the parent has tortured, abused,<sup>43</sup> cruelly beaten, or otherwise maltreated the child, or attempted to torture, abuse, cruelly beat, or otherwise maltreat the child, or the child is in clear and present danger of being thus tortured, abused, cruelly beaten, or otherwise maltreated as evidenced by the treatment of a sibling.

(4) Conviction of and imprisonment for a felony.

(5) Commission by the parents of any of the following:

a. Murder or manslaughter of another child of that parent.

b. Aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of that parent.

c. A felony assault or abuse which results in serious bodily injury to the surviving child or another child of that parent. The term serious bodily injury shall mean bodily injury which

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<sup>43</sup> Pursuant to Ala. Code § 12-15-301, abuse includes the following:

(2) Abuse. Harm or the risk of harm to the emotional, physical health, or welfare of a child. Harm or the risk of harm to the emotional, physical health, or welfare of a child can occur through nonaccidental physical or mental injury, sexual abuse, or attempted sexual abuse or sexual exploitation or attempted sexual exploitation.

....

(12) Sexual abuse. Sexual abuse includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct. Sexual abuse also includes rape, molestation, prostitution, or other forms of sexual exploitation or abuse of children, or incest with children, as those acts are defined in this article or by Alabama law.

(13) Sexual exploitation. Sexual exploitation includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child.

involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

.....

***Legal Components:***

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

***Legal Analysis:***

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

Ala. Code § 13A-6-153(a)(1) (Human trafficking in the second degree) makes it a crime if a person “knowingly benefits, financially or by receiving anything of value, from participation in a venture or engagement for the purpose of sexual servitude or labor servitude.”<sup>44</sup> Pursuant to Ala. Code § 13A-6-153(b), a conviction for violating Ala. Code § 13A-6-153(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-6-153(a)(4), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of Ala. Code § 13A-6-153 (Human trafficking in the second degree) is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(29), 15-20A-48(a). Pursuant to Ala. Code § 13A-6-153(a)(3),

A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the second degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person’s employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring.

Additionally, some facilitators could be prosecuted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree). Ala. Code § 13A-6-152(a)(2) states,

- (a) A person commits the crime of human trafficking in the first degree if:
  - ....
  - (2) He or she knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.

If the victim of a violation of Ala. Code § 13A-6-152 is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a). Under subsection (b), this is a Class A felony,<sup>45</sup> punishable by life imprisonment or 10–99

<sup>44</sup> See *supra* Section 1.1 for the definitions of “sexual servitude” and “sexual conduct.”

<sup>45</sup> See *supra* note 13.



years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1).<sup>46</sup> Under Ala. Code § 13A-5-6(c),

In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20-25.3 [repealed; see now Section 15-20A-19],<sup>47</sup> or where an offender is convicted of a Class A felony criminal sex offense involving a child as defined in Section 15-20-21(5) [repealed; see now Sections 15-20A-4 and 15-20A-48], and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant’s release from incarceration.

Additionally, a facilitator may be prosecuted under Ala. Code § 13A-12-112(a) (Promoting prostitution; second degree).<sup>48</sup> A conviction under Ala. Code § 13A-12-112(a) is punishable as a Class C felony<sup>49</sup> by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine up to \$15,000. Ala. Code §§ 13A-12-112(b), 13A-5-2(a), (b), 13A-5-6(3), 13A-5-11(a)(3). Similarly, a facilitator may be prosecuted under Ala. Code § 13A-12-111(a) (Promoting prostitution; first degree).<sup>50</sup>

A conviction for violating Ala. Code § 13A-12-111(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-12-111(b), 13A-5-2(a), (b), 13A-5-6(a) (3), 13A-5-11(a) (3). If the victim of a violation of Ala. Code § 13A-12-111(a) is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(12), 15-20A-48(a).

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

Facilitators convicted of first or second degree human trafficking may be subjected to forfeiture provisions, ordered to make restitution to the victim, and held liable for civil damages.

Ala. Code § 13A-6-156 (Penalties—Forfeiture of property) states,

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

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<sup>46</sup> Ala. Code § 13A-6-152(a)(4) states,

A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the first degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person’s employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring.

<sup>47</sup> See *supra* note 14.

<sup>48</sup> See *supra* Section 1.2 for a discussion of Ala. Code § 13A-12-112.

<sup>49</sup> See *supra* note 15.

<sup>50</sup> See *supra* Section 1.2 for a discussion of Ala. Code § 13A-12-111.

Additional forfeiture provisions apply to facilitators convicted under certain child pornography provisions. Ala. Code § 13A-12-198 (Forfeiture and condemnation of contraband) states in part,

Any article, equipment, machine, materials, matter, vehicle or other thing whatsoever used in the commercial production, transportation, dissemination, display or storage of any obscene matter displaying or depicting a person under the age of 17 years engaged in any of the obscene acts described in Sections 13A-12-191 [Dissemination or display of obscene matter], 13A-12-192 [Possession of obscene matter], 13A-12-196 and 13A-12-197 [Production of obscene matter] shall be contraband and shall be forfeited to the State of Alabama.

Pursuant to Ala. Code § 13A-6-155(a) (Penalties—Restitution to victim), facilitators convicted under any provision of the human trafficking article, Ala. Code § 13A-6-150 et seq. will be required “to pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution.” Facilitators convicted of other offenses may be subject to restitution under Ala. Code § 15-18-67 (Hearings), which states that

[w]hen a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages<sup>51</sup> or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant’s criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim’s estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

Finally, pursuant to Ala. Code § 13A-6-157 (Civil action—Damages),

An individual who is a victim of human trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages shall be awarded on proof of actual damages where defendant’s acts were willful and malicious.

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

Ala. Code § 13A-6-124 (Traveling to meet a child for an unlawful sex act) states,

Any person who travels either within this state, to this state, or from this state by any means, who attempts to do so, or who knowingly causes another to do so or to attempt to do so for the purpose of engaging in any unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of traveling to meet a child for an unlawful sex act.

Pursuant to Ala. Code § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act),

Any person who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of facilitating the transport of a child for an unlawful sex act.

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<sup>51</sup> See *supra* note 21.

A conviction for violating either Ala. Code § 13A-6-125 or § 13A-6-124 is punishable as a Class A felony by life imprisonment or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-125, 13A-6-124, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of either statute is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(26), (27), 15-20A-48(a).

- 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 under 18, if the offer, sale, or travel occurs in Alabama.

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

Under Ala. Code § 13A-12-191 (Dissemination or display of obscene matter),

Any person who shall knowingly<sup>52</sup> disseminate<sup>53</sup> or display publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse,<sup>54</sup> sexual excitement,<sup>55</sup> masturbation, breast nudity, genital nudity, or other sexual conduct<sup>56</sup> shall be guilty of a Class B felony.

Additionally, under Ala. Code § 13A-12-192(a) (Possession of obscene matter),

Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.

A conviction for violating either Ala. Code § 13A-12-191 or § 13A-12-192(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-12-191, 13A-12-192(a), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of either offense is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(14), 15-20A-48(a).

A facilitator who “knowingly films, prints, photographs, or otherwise produces any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, general nudity, or other sexual conduct” will be guilty under Ala. Code § 13A-12-197(a) (Production of obscene matter). A conviction under Ala. Code § 13A-12-197(a) is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-12-197(a), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-197 (Production of obscene matter) is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

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<sup>52</sup> See *supra* note 33.

<sup>53</sup> See *supra* note 32.

<sup>54</sup> See *supra* note 34.

<sup>55</sup> See *supra* note 35.

<sup>56</sup> See *supra* note 36.

**Legal Components:**

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

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

For the purposes of the Alabama Crime Victims’ Compensation Act, a “victim” means “[a] person who suffered serious personal injury or death as a result of criminally injurious conduct.” Ala. Code § 15-23-3(3).

“Criminally injurious conduct” is defined in part as “[a]n act occurring or attempted within the geographical boundaries of this state which results in serious personal injury or death to a victim for which punishment by fine, imprisonment, or death may be imposed.” Ala. Code § 15-23-3(2)(a).

- 5.1.1 *Recommendation: Amend the definition of victim in Ala. Code § 15-23-3 to expressly include victims of sex trafficking and CSEC offenses.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*

Ala. Code § 13A-6-154(3) (Prohibited defenses) expressly provides that evidence of certain facts or conditions, such as “[c]onsent of or permission by a victim of human trafficking or anyone else on the victim’s behalf to any commercial sex act or sexually explicit performance,” is not a defense to first or second degree human trafficking. However, none of Alabama’s CSEC or sexual offense laws expressly states that consent is not a defense to the crime.

For sexual offenses, such as first or second degree rape, Ala. Code § 13A-6-61 and § 13A-6-62, first or second degree sexual abuse, Ala. Code § 13A-6-66 and § 13A-6-67, or child molestation, Ala. Code § 13A-6-69, lack of consent is an element of the offense. Ala. Code § 13A-6-70. A person is deemed incapable of consent if he or she is less than 16. Ala. Code § 13A-6-70(c)(1). Finally, pursuant to Ala. Code § 13A-5-51(3) (Mitigating circumstances—generally), a victim’s participation in or consent to the defendant’s conduct is considered a mitigating circumstance.

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

The prohibition on prostitution in Ala. Code § 13A-12-121(a) (Prohibited activity) is age neutral, stating “[n]o person shall commit an act of prostitution as defined in Section 13A-12-120 [Prostitution defined].” Under Ala. Code § 13A-12-120, “prostitution” means “the commission by a person of any natural or unnatural sexual act, deviate sexual intercourse, or sexual contact for monetary consideration or other thing of value.”

5.3.1 Recommendation: Amend Ala. Code § 13A-12-121(a) (Prohibited activity) to make minors under 18 immune from prosecution for prostitution.

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

Victims of domestic minor sex trafficking could be considered delinquent, dependent, or in need of services depending on the response process.

### **Child Identified as Dependent**

Pursuant to Ala. Code § 12-15-102, commercially sexually exploited children could fall within all these definitions of a child in need of supervision. For example, a minor could be considered a delinquent child for having violated Ala. Code § 13A-12-121(a) (Prohibited activity), which makes it a crime for a either a child or an adult to “commit an act of prostitution” if unable to successfully assert an affirmative defense that the child is a victim of human trafficking, as provided in Ala. Code § 13A-6-159 (Permitted defenses).

Pursuant to Ala. Code § 12-15-102(8)(a), a dependent child is defined as

[a] child who has been adjudicated dependent by a juvenile court and is in need of care of supervision and meets any of the following circumstances:

1. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in subdivision (2) of Section 12-15-301 or neglect as defined in subdivision (4) of Section 12-15-301, or allows the child to be so subjected.<sup>57</sup>
2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.
3. Whose parent, legal guardian, legal custodian, or other custodian neglects or refuses, when able to do so or when the service is offered without charge, to provide or allow medical, surgical, or other care necessary for the health or well-being of the child.
4. Whose parent, legal guardian, legal custodian, or other custodian fails, refuses, or neglects to send the child to school in accordance with the terms of the compulsory school attendance laws of this state.
- ...
8. Who, for any other cause, is in need of the care and protection of the state.

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<sup>57</sup> See *infra* section 5.6.

b. The commission of one or more status offenses as defined in subdivision (4) of Section 12-15-201 is not a sufficient basis for an adjudication of dependency.

### *I. Initial Custody*

#### a. Authority for initial custody

A commercially sexually exploited child can be taken into custody pursuant to Ala. Code § 12-15-125(a), (b) (Taking into custody of children generally), which states,

(a) A child or minor may be taken into custody for any of the following reasons:

(1) Pursuant to an order of the juvenile court.

(2) By a law enforcement officer having reasonable grounds to believe that the child or minor has run away from a juvenile detention, residential, shelter, or other care facility.

(3) By a law enforcement officer having reasonable grounds to believe that the child or minor is suffering from an illness or injury or is in immediate danger from the surroundings of the child or minor and that the immediate removal of the child or minor from those surroundings is necessary for the protection of the health and safety of the child or minor.

(b) In addition to the grounds listed in subsection (a), a child may also be taken into custody for any of the following reasons:

(1) By a law enforcement officer for an alleged delinquent act pursuant to the laws of arrest;

(2) By a law enforcement officer who has reasonable grounds to believe that the child has run away from his or her parents, legal guardian, or other legal custodian;

(3) By a law enforcement officer who has reasonable grounds to believe that the child has no parent, legal guardian, legal custodian, or other suitable person willing and able to provide supervision and care for the child . . .

#### b. Placement

Pursuant to Ala. Code § 12-15-127(a) (Release, delivery to detention or shelter care facility, medical facility of children taken into custody generally), when a child is taken into custody without an order of the juvenile court, the law enforcement officer taking the child into custody must as quickly as possible do one of the following:

(1) Release the child to the parents, legal guardian, or legal custodian of the child or other suitable person able to provide supervision and care for the child and issue verbal counsel and warning as may be appropriate.

(2) Release the child to the parents, legal guardian, or legal custodian of the child upon his or her promise to bring the child before the juvenile court when requested, unless the placement of the child in detention or shelter care appears required. If a parent, legal guardian, or other legal custodian fails, when requested, to bring the child before the juvenile court as provided in this section, the juvenile court may issue an order directing that the child be taken into custody and brought before the juvenile court.

(3) Bring the child, if not released, to the place designated by the juvenile court and give written notice of the action taken and the reasons for taking the child into custody to the juvenile court intake officer, to the parent, legal guardian, or other legal custodian of the child, and, in the case of dependency, to the Department of Human Resources.

### *II. Process following initial custody*

Before the child may be placed in “detention, shelter, or other care,” Ala. Code § 12-15-127(b) directs a juvenile court intake officer, if dependency is alleged, to

review the need for detention or shelter care, including reviewing the written notice of the person who took the child into custody without an order of the juvenile court, and shall direct the law enforcement officer or other person currently having the child in custody to release the child unless detention or shelter care is required pursuant to Section 12-15-128 [Authority and criteria for continuation of detention or shelter care of children taken into custody beyond 72 hours]. . . .

Ala. Code § 12-15-128(a)(1), (a)(3) states,

An allegedly . . . dependent child . . . lawfully taken into custody shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody, and control of the parent, legal guardian, or legal custodian of the child or other suitable person able to provide supervision and care for the child, unless the juvenile court or juvenile court intake officer, subject to the limitations in Section 12-15-208, finds any of the following:

(1) The child has no parent, legal guardian, legal custodian, or other suitable person able to provide supervision and care for the child.

. . . .

(3) The release of the child would present a serious threat of substantial harm to the child.

### *III. Placement process pending adjudication/investigation*

Allegedly dependent children who are removed from the home also must receive a hearing within the same time frame “to determine whether continued shelter care is required.” Ala. Code § 12-15-308(a).

Additionally, Ala. Code § 12-15-141 (Emergency ex parte orders authorized upon showing of verified evidence of abuse or neglect; evidence required; hearing required within 72 hours of issuance of order), states, in part,

The juvenile court may enter an ex parte order of protection or restraint on an emergency basis, without prior notice and a hearing, upon a showing of verified written or verbal evidence of abuse or neglect injurious to the health or safety of a child subject to a juvenile court proceeding and the likelihood that the abuse or neglect will continue unless the order is issued.

### *IV. Adjudication or referral to alternative process*

#### *a. Adjudicatory/dispositional hearing*

Under Ala. Code § 12-15-121, a petition alleging dependency “may be signed by any person 18 years of age or older, other than a juvenile court intake officer, who has knowledge of the facts alleged or is informed of them and believes that they are true.”

### *V. Outcomes*

Ala. Code § 12-15-314(a) (Dispositions for dependent children) states that when the juvenile court finds a child to be dependent, it may

(1) Permit the child to remain with the parent, legal guardian, or other legal custodian of the child, subject to conditions and limitations as the juvenile court may prescribe.

(2) Place the child under protective supervision under the Department of Human Resources.

(3) Transfer legal custody to any of the following:

a. The Department of Human Resources [DHR].

b. A local public or private agency, organization, or facility willing and able to assume the education, care, and maintenance of the child and which is licensed by the [DHR] or otherwise authorized by law to receive and provide care for the child.

c. A relative or other individual who, after study by the [DHR], is found by the juvenile court to be qualified to receive and care for the child. Unless the juvenile court finds it not in the best interests of the child, a willing, fit, and able relative shall have priority for placement or custody over a non-relative.

(4) Make any other order as the juvenile court in its discretion shall deem to be for the welfare and best interests of the child.

(5) In appropriate cases, award permanent custody to the [DHR] or to a licensed child-placing agency after termination of parental rights and authorization to place for adoption, without appointing a legal guardian, or award temporary custody to the department or a licensed child-placing agency without appointing a legal custodian or legal guardian.

Unless also found to be a delinquent child, a dependent child may not be “confined in an institution established for the care and rehabilitation of delinquent children or in a juvenile detention facility.” Ala. Code § 12-15-314(b). Additionally, Ala. Code § 12-15-208(a)(1), (3), (4) (Facilities to be used for detention or shelter care of children generally) enumerates certain categories of children who may not be contained in secure custody,<sup>58</sup> including

(1) Status offenders.<sup>59</sup> Effective October 1, 2009, status offenders, as defined in this article, shall not be detained or confined in secure custody, except that a status offender who is charged with or who commits a violation of a valid court order may be detained in secure custody in a juvenile detention facility for up to 72 hours in any six-month period, provided that all conditions set forth in subdivision (3) of subsection (b) are satisfied. Short-term secure custody of accused status offenders may be necessary, such as detention in a juvenile detention facility for a brief period, not exceeding 24 hours, prior to formal juvenile court action, for investigative purposes, for identification purposes, or for the purpose of allowing return of a status offender to the parent, legal guardian, or legal custodian. Detention for a brief period of time pursuant to juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement. . . .

(3) Nonoffenders.<sup>60</sup> Nonoffenders, as defined in this article, shall not be detained or confined in secure custody.

(4) Children 10 years of age and younger shall not be detained or confined in secure custody, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults. Children 11 or 12 years of age may only be detained or confined in secure custody by orders of juvenile courts, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults.

Moreover, pursuant to Ala. Code § 12-15-208(c), no child under 18 years of age can be detained in an adult jail unless one of the following exceptions applies:

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<sup>58</sup> Secure custody includes, “with regard to juvenile detention facilities and the Department of Youth Services . . . residential facilities with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings . . .” Ala. Code § 12-15-102(24).

<sup>59</sup> Ala. Code § 12-15-201(4) (Definitions) defines a “status offender” to include minors who have been charged with or adjudicated for conduct that would not, pursuant to the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. . . . Status offenses include, but are not limited to, the following:

- a. Truancy.
- b. Violations of municipal ordinances applicable only to children.
- c. Runaway.
- d. Beyond control.

<sup>60</sup> A “nonoffender” is “[a] child who is subject to the jurisdiction of the juvenile court for reasons other than the legally prohibited conduct of the child.” Ala. Code § 12-15-201(3).



- (1) A child may be detained in a jail or lockup for adults for up to 6 hours while processing the case of the child.
- (2) A child transferred for criminal prosecution pursuant to Section 12-15-203 [Transfer of cases from juvenile court] may be detained in a jail or lockup for adults.
- (3) A person charged pursuant to Section 12-15-204 [Acts for which person who has attained 16 shall be charged, arrested, and tried as an adult; removal of a person from jurisdiction of juvenile court] may be detained in jail or lockup for adults.

....

Even in those circumstances in which a child may be confined in an adult jail or lockup, additional protections apply to ensure that the children do not have contact with adult inmates. Ala. Code § 12-15-208(d).

### **Child Initially Identified as In Need of Supervision (“CHINS”)**

Pursuant to Ala. Code § 12-15-102(4), a child in need of supervision is defined as

[a] child who has been adjudicated by a juvenile court for doing any of the following and who is in need of care, rehabilitation, or supervision:

- (a) Being subject to the requirement of compulsory school attendance, is habitually truant from school as defined by the State Board of Education in the Alabama Administrative Code. Notwithstanding the foregoing, a child shall not be found in need of supervision pursuant to this subdivision if the juvenile court determines that the parent, legal guardian, or legal custodian of the child was solely responsible for the nonattendance of the child.
- (b) Disobeys the reasonable and lawful demands of his or her parent, legal guardian, or legal custodian and is beyond the control of the parent, legal guardian, or legal custodian.
- (c) Leaves, or remains away from, the home without the permission of the parent, legal guardian, legal custodian, or person with whom he or she resides.
- (d) Commits an offense established by law but not classified as criminal.

#### *I. Initial Custody*

##### *a. Authority for initial custody*

A commercially sexually exploited child can be taken into custody pursuant to Ala. Code § 12-15-125(a), (b) (Taking into custody of children generally), which states,

- (a) A child or minor may be taken into custody for any of the following reasons:
  - (1) Pursuant to an order of the juvenile court.
  - (2) By a law enforcement officer having reasonable grounds to believe that the child or minor has run away from a juvenile detention, residential, shelter, or other care facility.
  - (3) By a law enforcement officer having reasonable grounds to believe that the child or minor is suffering from an illness or injury or is in immediate danger from the surroundings of the child or minor and that the immediate removal of the child or minor from those surroundings is necessary for the protection of the health and safety of the child or minor.
- (b) In addition to the grounds listed in subsection (a), a child may also be taken into custody for any of the following reasons:
  - (1) By a law enforcement officer for an alleged delinquent act pursuant to the laws of arrest;
  - (2) By a law enforcement officer who has reasonable grounds to believe that the child has run away from his or her parents, legal guardian, or other legal custodian;
  - (3) By a law enforcement officer who has reasonable grounds to believe that the child has no parent, legal guardian, legal custodian, or other suitable person willing and able to provide supervision and care for the child . . .

b. Placement

Pursuant to Ala. Code § 12-15-127(a) (Release, delivery to detention or shelter care facility, medical facility of children taken into custody generally), when a child is taken into custody without an order of the juvenile court, the law enforcement officer taking the child into custody must as quickly as possible do one of the following:

- (1) Release the child to the parents, legal guardian, or legal custodian of the child or other suitable person able to provide supervision and care for the child and issue verbal counsel and warning as may be appropriate.
- (2) Release the child to the parents, legal guardian, or legal custodian of the child upon his or her promise to bring the child before the juvenile court when requested, unless the placement of the child in detention or shelter care appears required. If a parent, legal guardian, or other legal custodian fails, when requested, to bring the child before the juvenile court as provided in this section, the juvenile court may issue an order directing that the child be taken into custody and brought before the juvenile court.
- (3) Bring the child, if not released, to the place designated by the juvenile court and give written notice of the action taken and the reasons for taking the child into custody to the juvenile court intake officer, to the parent, legal guardian, or other legal custodian of the child, and, in the case of dependency, to the Department of Human Resources.

*II. Process following initial custody*

Before the child may be placed in “detention, shelter, or other care,” Ala. Code § 12-15-127(b) directs a juvenile court intake officer, if need of supervision is alleged, to

review the need for detention or shelter care, including reviewing the written notice of the person who took the child into custody without an order of the juvenile court, and shall direct the law enforcement officer or other person currently having the child in custody to release the child unless detention or shelter care is required pursuant to Section 12-15-128 [Authority and criteria for continuation of detention or shelter care of children taken into custody beyond 72 hours]. . . .

Ala. Code § 12-15-128(a)(1), (a)(3) states,

An allegedly . . . child in need of supervision lawfully taken into custody shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody, and control of the parent, legal guardian, or legal custodian of the child or other suitable person able to provide supervision and care for the child, unless the juvenile court or juvenile court intake officer, subject to the limitations in Section 12-15-208, finds any of the following:

- (1) The child has no parent, legal guardian, legal custodian, or other suitable person able to provide supervision and care for the child.
- . . . .
- (3) The release of the child would present a serious threat of substantial harm to the child.

*III. Placement process pending adjudication/investigation*

For allegations of need of supervision, if the child is not released by the juvenile court intake officer, “a hearing [must be] held within 72 hours of placement in detention or shelter care, Saturdays, Sundays, and holidays included, to determine probable cause and to determine whether or not continued detention or shelter care is required.” Ala. Code § 12-15-207(a).

Additionally, Ala. Code § 12-15-141 (Emergency ex parte orders authorized upon showing of verified evidence of abuse or neglect; evidence required; hearing required within 72 hours of issuance of order), states, in part,

The juvenile court may enter an ex parte order of protection or restraint on an emergency basis, without prior notice and a hearing, upon a showing of verified written or verbal evidence of abuse or neglect injurious to the health or safety of a child subject to a juvenile court proceeding and the likelihood that the abuse or neglect will continue unless the order is issued.

*IV. Adjudication or referral to alternative process*

a. Adjudicatory/dispositional hearing

Under Ala. Code § 12-15-121, a petition alleging that a child is in need of supervision “may be signed by any person 18 years of age or older, other than a juvenile court intake officer, who has knowledge of the facts alleged or is informed of them and believes that they are true.”

If the juvenile court finds, “beyond a reasonable doubt,” that a child is in need of supervision, under Ala. Code § 12-15-215(a) (Disposition of delinquent children or children in need of supervision generally) it considers “whether the child is in need of care or rehabilitation.” Under Ala. Code § 12-15-215(a),

In the absence of evidence to the contrary, a finding that the child has committed an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the juvenile court finds that the child is not in need of care or rehabilitation, it shall dismiss the proceedings and discharge the child from any detention or other temporary care theretofore ordered. If the juvenile court finds that the child is in need of care or rehabilitation, it may make any of the following orders or dispositions, subject to the limitations and prohibitions on secure custody contained in Section 12-15-208:

- (1) Permit the child to remain with the parent, legal guardian, or other legal custodian of the child, subject to the conditions and limitations the juvenile court may prescribe.
- (2) Place the child on probation pursuant to conditions and limitations the juvenile court may prescribe.
- (3) Transfer legal and physical custody to any of the following:
  - a. The Department of Youth Services, with or without an order to a specific institution.
  - b. In the case of a child in need of supervision, the Department of Youth Services, or the Department of Human Resources . . . .
  - c. A local, public, or private agency, organization, or facility willing and able to assume the education, care, and maintenance of the child and which is licensed or otherwise authorized by law to receive and provide care for children.
  - d. During the term of supervision, a relative or other individual who is found by the juvenile court to be qualified to receive and care for the child.

. . . .

b. Diversion or alternative process

Pursuant to Ala. Code § 12-15-211(a) (Suspension of proceedings and continuation of cases under terms and conditions agreed to by parties),

The juvenile court may suspend . . . [a] child in need of supervision proceedings pursuant to a consent decree. . . . The consent decree shall be entered at any time after the filing of a . . . child in need of supervision petition and before the entry of an adjudication order.

Ala. Code § 12-15-211 (c) states,

A consent decree shall remain in force for six months unless the child is discharged sooner by the juvenile court. Upon application of a juvenile probation officer or other department or agency

supervising the child, made before the expiration of the six-month period, a consent decree may be extended by the juvenile court for an additional six months.

However, Ala. Code § 12-15-211(d) states,

If prior to discharge by the juvenile probation officer or expiration of the consent decree, a new delinquency or child in need of supervision petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the decree, the petition under which the child was continued under supervision may be reinstated after a hearing and the case may proceed to adjudication.

V. *Outcomes*

Ala. Code § 12-15-208(a)(1), (3), (4) (Facilities to be used for detention or shelter care of children generally) enumerates certain categories of children who may not be contained in secure custody,<sup>61</sup> including

(1) Status offenders.<sup>62</sup> Effective October 1, 2009, status offenders, as defined in this article, shall not be detained or confined in secure custody, except that a status offender who is charged with or who commits a violation of a valid court order may be detained in secure custody in a juvenile detention facility for up to 72 hours in any six-month period, provided that all conditions set forth in subdivision (3) of subsection (b) are satisfied. Short-term secure custody of accused status offenders may be necessary, such as detention in a juvenile detention facility for a brief period, not exceeding 24 hours, prior to formal juvenile court action, for investigative purposes, for identification purposes, or for the purpose of allowing return of a status offender to the parent, legal guardian, or legal custodian. Detention for a brief period of time pursuant to juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement. . . .

(3) Nonoffenders.<sup>63</sup> Nonoffenders, as defined in this article, shall not be detained or confined in secure custody.

(4) Children 10 years of age and younger shall not be detained or confined in secure custody, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults. Children 11 or 12 years of age may only be detained or confined in secure custody by orders of juvenile courts, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults.

Moreover, pursuant to Ala. Code § 12-15-208(c), no child under 18 years of age can be detained in an adult jail unless one of the following exceptions applies:

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<sup>61</sup> Secure custody includes, “with regard to juvenile detention facilities and the Department of Youth Services, . . . residential facilities with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings . . .” Ala. Code § 12-15-102(24).

<sup>62</sup> Ala. Code § 12-15-201(4) (Definitions) defines a “status offender” to include minors who have been charged with or adjudicated for conduct that would not, pursuant to the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. . . . Status offenses include, but are not limited to, the following:

- a. Truancy.
- b. Violations of municipal ordinances applicable only to children.
- c. Runaway.
- d. Beyond control.

<sup>63</sup> A “nonoffender” is “[a] child who is subject to the jurisdiction of the juvenile court for reasons other than the legally prohibited conduct of the child.” Ala. Code § 12-15-201(3).

- (1) A child may be detained in a jail or lockup for adults for up to 6 hours while processing the case of the child.
- (2) A child transferred for criminal prosecution pursuant to Section 12-15-203 [Transfer of cases from juvenile court] may be detained in a jail or lockup for adults.
- (3) A person charged pursuant to Section 12-15-204 [Acts for which person who has attained 16 shall be charged, arrested, and tried as an adult; removal of a person from jurisdiction of juvenile court] may be detained in jail or lockup for adults.

....

Even in those circumstances in which a child may be confined in an adult jail or lockup, additional protections apply to ensure that the children do not have contact with adult inmates. Ala. Code § 12-15-208(d).

### **Child Initially Identified as Delinquent**

Pursuant to Ala. Code § 12-15-102(7), a delinquent child is defined as “[a] child who has been adjudicated for a delinquent act and is in need of care or rehabilitation.” A “delinquent act” is any act “committed by a child that is designated a violation, misdemeanor, or felony offense pursuant to the law of municipality, county, or state in which the act was committed or pursuant to federal law.” Ala. Code § 12-15-102(6). This term does not apply when, among other situations, the minor has previously been convicted or adjudicated as a youth offender. Ala. Code § 12-15-102(6)(b).

#### *I. Initial Custody*

##### a. Authority for initial custody

A commercially sexually exploited child can be taken into custody pursuant to Ala. Code § 12-15-125(a), (b) (Taking into custody of children generally), which states,

- (a) A child or minor may be taken into custody for any of the following reasons:
  - (1) Pursuant to an order of the juvenile court.
  - (2) By a law enforcement officer having reasonable grounds to believe that the child or minor has run away from a juvenile detention, residential, shelter, or other care facility.
  - (3) By a law enforcement officer having reasonable grounds to believe that the child or minor is suffering from an illness or injury or is in immediate danger from the surroundings of the child or minor and that the immediate removal of the child or minor from those surroundings is necessary for the protection of the health and safety of the child or minor.
- (b) In addition to the grounds listed in subsection (a), a child may also be taken into custody for any of the following reasons:
  - (1) By a law enforcement officer for an alleged delinquent act pursuant to the laws of arrest;
  - (2) By a law enforcement officer who has reasonable grounds to believe that the child has run away from his or her parents, legal guardian, or other legal custodian;
  - (3) By a law enforcement officer who has reasonable grounds to believe that the child has no parent, legal guardian, legal custodian, or other suitable person willing and able to provide supervision and care for the child . . .

##### b. Placement

Under Ala. Code § 12-15-126 (Issuance of pick-up order for taking into custody):

If it appears from a sworn statement, written or verbal, presented to the juvenile court that a child needs to be placed in detention or shelter or other care, the juvenile court may issue a pick-up order that a law enforcement

officer or other person authorized by this chapter shall at once take the child into custody and take him or her to the place of detention or shelter or other care designated by the juvenile court.

## *II. Process following initial custody*

Before the child may be placed in “detention, shelter, or other care,” Ala. Code § 12-15-127(b) directs a juvenile court intake officer, if delinquency is alleged, to

review the need for detention or shelter care, including reviewing the written notice of the person who took the child into custody without an order of the juvenile court, and shall direct the law enforcement officer or other person currently having the child in custody to release the child unless detention or shelter care is required pursuant to Section 12-15-128 [Authority and criteria for continuation of detention or shelter care of children taken into custody beyond 72 hours]. . . .

Ala. Code § 12-15-128(a)(1), (a)(3) states,

An allegedly delinquent child . . . lawfully taken into custody shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody, and control of the parent, legal guardian, or legal custodian of the child or other suitable person able to provide supervision and care for the child, unless the juvenile court or juvenile court intake officer, subject to the limitations in Section 12-15-208, finds any of the following:

(1) The child has no parent, legal guardian, legal custodian, or other suitable person able to provide supervision and care for the child.

. . . .

(3) The release of the child would present a serious threat of substantial harm to the child.

## *III. Placement process pending adjudication/investigation*

For allegations of delinquency, if the child is not released by the juvenile court intake officer, “a hearing [must be] held within 72 hours of placement in detention or shelter care, Saturdays, Sundays, and holidays included, to determine probable cause and to determine whether or not continued detention or shelter care is required.” Ala. Code § 12-15-207(a).

Additionally, Ala. Code § 12-15-141 (Emergency ex parte orders authorized upon showing of verified evidence of abuse or neglect; evidence required; hearing required within 72 hours of issuance of order), states, in part,

The juvenile court may enter an ex parte order of protection or restraint on an emergency basis, without prior notice and a hearing, upon a showing of verified written or verbal evidence of abuse or neglect injurious to the health or safety of a child subject to a juvenile court proceeding and the likelihood that the abuse or neglect will continue unless the order is issued.

## *IV. Adjudication or referral to alternative process*

### *a. Adjudicatory/dispositional hearing*

Under Ala. Code § 12-15-121, a petition alleging delinquency “may be signed by any person 18 years of age or older, other than a juvenile court intake officer, who has knowledge of the facts alleged or is informed of them and believes that they are true.”

If the juvenile court finds, “beyond a reasonable doubt,” that a child is a delinquent child, under Ala. Code § 12-15-215(a) (Disposition of delinquent children or children in need of supervision generally) it considers “whether the child is in need of care or rehabilitation.” Under Ala. Code § 12-15-215(a),

In the absence of evidence to the contrary, a finding that the child has committed an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the juvenile court finds that the child is not in need of care or rehabilitation, it shall dismiss the proceedings and discharge the child from any detention or other temporary care theretofore ordered. If the juvenile court finds that the child is in need of care or rehabilitation, it may make any of the following orders or dispositions, subject to the limitations and prohibitions on secure custody contained in Section 12-15-208:

- (1) Permit the child to remain with the parent, legal guardian, or other legal custodian of the child, subject to the conditions and limitations the juvenile court may prescribe.
- (2) Place the child on probation pursuant to conditions and limitations the juvenile court may prescribe.
- (3) Transfer legal and physical custody to any of the following:
  - a. The Department of Youth Services, with or without an order to a specific institution.
  - b. In the case of a child in need of supervision, the Department of Youth Services, or the Department of Human Resources . . . .
  - c. A local, public, or private agency, organization, or facility willing and able to assume the education, care, and maintenance of the child and which is licensed or otherwise authorized by law to receive and provide care for children.
  - d. During the term of supervision, a relative or other individual who is found by the juvenile court to be qualified to receive and care for the child.

. . . .

- b. Diversion or alternative process

Pursuant to Ala. Code § 12-15-211(a) (Suspension of proceedings and continuation of cases under terms and conditions agreed to by parties),

The juvenile court may suspend delinquency . . . proceedings pursuant to a consent decree. . . . The consent decree shall be entered at any time after the filing of a delinquency . . . petition and before the entry of an adjudication order.

Ala. Code § 12-15-211 (c) states,

A consent decree shall remain in force for six months unless the child is discharged sooner by the juvenile court. Upon application of a juvenile probation officer or other department or agency supervising the child, made before the expiration of the six-month period, a consent decree may be extended by the juvenile court for an additional six months.

However, Ala. Code § 12-15-211(d) states,

If prior to discharge by the juvenile probation officer or expiration of the consent decree, a new delinquency or child in need of supervision petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the decree, the petition under which the child was continued under supervision may be reinstated after a hearing and the case may proceed to adjudication.

## V. Outcomes

Ala. Code § 12-15-208(a)(1), (3), (4) (Facilities to be used for detention or shelter care of children generally)

enumerates certain categories of children who may not be contained in secure custody,<sup>64</sup> including

(1) Status offenders.<sup>65</sup> Effective October 1, 2009, status offenders, as defined in this article, shall not be detained or confined in secure custody, except that a status offender who is charged with or who commits a violation of a valid court order may be detained in secure custody in a juvenile detention facility for up to 72 hours in any six-month period, provided that all conditions set forth in subdivision (3) of subsection (b) are satisfied. Short-term secure custody of accused status offenders may be necessary, such as detention in a juvenile detention facility for a brief period, not exceeding 24 hours, prior to formal juvenile court action, for investigative purposes, for identification purposes, or for the purpose of allowing return of a status offender to the parent, legal guardian, or legal custodian. Detention for a brief period of time pursuant to juvenile court authority may also be necessary in order to arrange for appropriate shelter care placement. . . .

. . . .

(3) Nonoffenders.<sup>66</sup> Nonoffenders, as defined in this article, shall not be detained or confined in secure custody.

(4) Children 10 years of age and younger shall not be detained or confined in secure custody, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults. Children 11 or 12 years of age may only be detained or confined in secure custody by orders of juvenile courts, unless the children are charged with offenses causing death or serious bodily injury to persons or offenses that would be classified as Class A felonies if committed by adults.

Moreover, pursuant to Ala. Code § 12-15-208(c), no child under 18 years of age can be detained in an adult jail unless one of the following exceptions applies:

(1) A child may be detained in a jail or lockup for adults for up to 6 hours while processing the case of the child.

(2) A child transferred for criminal prosecution pursuant to Section 12-15-203 [Transfer of cases from juvenile court] may be detained in a jail or lockup for adults.

(3) A person charged pursuant to Section 12-15-204 [Acts for which person who has attained 16 shall be charged, arrested, and tried as an adult; removal of a person from jurisdiction of juvenile court] may be detained in jail or lockup for adults.

. . . .

Even in those circumstances in which a child may be confined in an adult jail or lockup, additional protections apply to ensure that the children do not have contact with adult inmates. Ala. Code § 12-15-208(d).

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<sup>64</sup> Secure custody includes, “with regard to juvenile detention facilities and the Department of Youth Services . . . residential facilities with construction features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings . . .” Ala. Code § 12-15-102(24).

<sup>65</sup> Ala. Code § 12-15-201(4) (Definitions) defines a “status offender” to include minors who have been charged with or adjudicated for conduct that would not, pursuant to the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. . . . Status offenses include, but are not limited to, the following:

- a. Truancy.
- b. Violations of municipal ordinances applicable only to children.
- c. Runaway.
- d. Beyond control.

. . . .

<sup>66</sup> A “nonoffender” is “[a] child who is subject to the jurisdiction of the juvenile court for reasons other than the legally prohibited conduct of the child.” Ala. Code § 12-15-201(3).



- 5.4.1 Recommendation: Establish a mandatory response law directing any minor involved in prostitution or who is a victim of trafficking for sexual servitude away from the juvenile 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.*

Sexual exploitation is included within the definition of abuse within Alabama’s child protection statutes. “Abuse” is defined in Ala. Code § 12-15-301(2) (Definitions) as

[h]arm or the risk of harm to the emotional, physical health, or welfare of a child. Harm or the risk of harm to the emotional, physical health, or welfare of a child can occur through nonaccidental physical or mental injury, sexual abuse, or attempted sexual abuse or sexual exploitation or attempted sexual exploitation.

Ala. Code § 12-15-301(12) defines “sexual abuse” as including the following:

[T]he employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct. Sexual abuse also includes rape, molestation, prostitution, or other forms of sexual exploitation or abuse of children . . . as those acts are defined in this article or by Alabama law.

The term “sexual exploitation” is defined as “allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child.” Ala. Code § 12-15-301(13).

The term “neglect” is defined as “[n]egligent treatment or maltreatment of a child, including, but not limited to, the failure to provide adequate food, medical treatment, supervision, education, clothing, or shelter.” Ala. Code § 12-15-301(7).

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

The definition of “caregiver” is not broad enough to cover many situations in which a trafficker could be in custody of a child. Ala. Code § 12-15-301(3) (Definitions) defines “caregiver” in the article on Dependency and Termination of Parental Rights to mean

[a]n individual 21 years of age or older, other than a parent, legal guardian, or legal custodian of a child who is an approved foster parent and who is a relative of the child and has been providing care and support for the child while the child has been residing in the home of the caregiver for at least the last six consecutive months while in the legal custody of the Department of Human Resources.

Only individuals who are “legally related to the child by blood, marriage, or adoption within the fourth degree of kinship” are considered to be the child’s “relative.” Ala. Code § 12-15-301(11).

- 5.6.1 Recommendation: Amend Ala. Code § 12-15-301(3) (Definitions) to expand the definition of “caregiver” to include any person who has custody or control of the child, making the statute broad enough to encompass non-familial traffickers and allow for child welfare intervention.

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

The Alabama Crime Victims Compensation Act contains certain ineligibility criteria that could operate to exclude victims of domestic minor sex trafficking from receiving crime victims' compensation. For the Act, a "victim" means "[a] person who suffered serious personal injury or death as a result of criminally injurious conduct." Ala. Code § 15-23-3(3). "Criminally injurious conduct" is defined in part as "[a]n act occurring or attempted within the geographical boundaries of this state which results in serious personal injury or death to a victim for which punishment by fine, imprisonment, or death may be imposed." Ala. Code § 15-23-3(2)(a). A victim may receive compensation from the Alabama Crime Victims Compensation Commission if the commission is "satisfied by a preponderance of the evidence that the requirements for compensation have been met." Ala. Code § 15-23-8(a).

To the extent domestic minor sex trafficking victims meet the definition of victim, they may be eligible for compensation; however, several requirements for compensation could present difficulties for victims of domestic minor sex trafficking. Pursuant to Ala. Code § 15-23-12(a) (Grounds for denial—reduction of award),

Compensation shall not be awarded in any of the following circumstances:

- (1) A claim has been filed with the commission later than one year after the injury or death upon which the claim is based, unless the commission finds there was good cause for the failure to file within that time.
- (2) To a claimant who was the offender, or an accomplice of the offender, or who encouraged or in any way participated in the criminally injurious conduct.
- (3) If the award would unjustly benefit the offender or accomplice of the offender.
- (4) The criminally injurious conduct resulting in injury or death was reported to a law enforcement officer later than 72 hours after its occurrence, unless the commission finds there was good cause for the failure to report within that time.

Nothing expressly exempts domestic minor sex trafficking victims from these requirements or explains what constitutes good cause for the failure to report the crime or file a claim within the statutory timeframes.

- 5.7.1. Recommendation: Amend Ala. Code § 15-23-12 (Grounds for denial—reduction of award) to provide exceptions to the ineligibility factors in Ala. Code § 15-23-12(a) for victims of domestic minor sex trafficking.

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

Some victim-friendly criminal justice procedures and protections are afforded to minor victims of commercial sexual exploitation, but other critical protections, such as a rape shield law that protects victims from re-traumatizing cross-examination, are not available.

Alabama law provides special protections for children under the age of 16 who are victims in criminal prosecutions for sexual offenses or sexual exploitation. For example, pursuant to Ala. Code § 15-25-2 (Videotaped deposition) the court may allow victims of sexual offenses under the age of 16 to give videotaped depositions in criminal prosecutions while having a "person whose presence . . . contributes to the well-being of the child and who has dealt with the child in a therapeutic setting regarding the abuse" present during the deposition. Ala. Code § 15-25-2(c). Notably, the defendant's attorney, but not the defendant, may be present during the deposition. Ala. Code § 15-25-2(c). The videotaped deposition may be entered into evidence "in lieu of the direct testimony of the alleged victim or witness" unless "the court determines that its introduction . . . will unfairly prejudice the defendant." Ala. Code § 15-25-2(d).

Alternatively, pursuant to Ala. Code § 15-25-3(b) (Closed circuit examination of victim), a court may permit a victim of a sexual offense or sexual exploitation under the age of 16 to give testimony via closed circuit

equipment, which “shall be taken outside the courtroom in the judge’s chambers or in another suitable location designated by the judge.” Pursuant to Ala. Code § 15-25-3(c),

Examination and cross-examination of the alleged child victim or witness shall proceed as though he or she were testifying in the courtroom. Present in the room with the child during his or her testimony shall be the prosecuting attorney, the attorney of the defendant, and a person whose presence, in the judgment of the court, contributes to the well-being of the child and who has dealt with the child in a therapeutic setting regarding the abuse. Additional persons, such as the parent or parents or legal guardian, except the defendant, may be admitted into the room in the discretion of the court.

Ala. Code § 15-25-3(g) states, “Only the court, the prosecuting attorney and the attorney for the defendant may question the child.”

Other child-friendly victim provisions applicable in criminal prosecutions for sexual offenses include the “use of anatomically correct dolls or mannequins to assist an alleged victim or witness who is under the age of 10 in testifying on direct and cross-examination at trial, or in a videotaped deposition as provided in this article” pursuant to Ala. Code § 15-25-5 (Use of dolls or mannequins), a speedy trial “to minimize the length of time the child must endure the stress of involvement in the proceedings” pursuant to Ala. Code § 15-25-6 (Speedy trial), and “reasonable limits on the number of interviews a victim of sexual abuse or exploitation, who is under 12 years of age, must submit to” in order to protect the victim from psychological harm pursuant to Ala. Code § 15-1-2(a) (Child sexual abuse victims; protection from repeated interrogation; sealed court records).

Regardless of the age of the victim, pursuant to Ala. Code § 12-21-203(b)–(c) (Rape shield),

(b) In any prosecution for criminal sexual conduct<sup>67</sup> or for assault with intent to commit, attempt to commit or conspiracy to commit criminal sexual conduct, evidence relating to the past sexual behavior<sup>68</sup> of the complaining witness<sup>69</sup> . . . shall not be admissible, either as direct evidence or on cross-examination of the complaining witness or of other witnesses, except as otherwise provided in this section.

(c) In any prosecution for criminal sexual conduct, evidence relating to the past sexual behavior of the complaining witness shall be introduced if the court following the procedure described in subsection (d) of this section . . . finds that such past sexual behavior directly involved the participation of the accused.

5.8.1 Recommendation: Amend the definition of “criminal sexual conduct” in Ala. Code § 12-21-203(a)(2) (Rape shield) to include human trafficking and CSEC offenses.

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.*

Alabama law allows for the sealing and destruction of juvenile records. Under Ala. Code § 12-15-136(a) (Proceedings for sealing legal and social files and records of courts, pertaining to certain persons and effect thereof),

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<sup>67</sup> “Criminal sexual conduct” is defined in Ala. Code § 12-21-203(a)(2) as “[s]exual activity, including, but not limited to, rape, sodomy, sexual misconduct, sexual abuse or carnal knowledge.”

<sup>68</sup> “Evidence relating to past sexual behavior,” according to Ala. Code § 12-21-203(a)(3) “includes, but is not limited to, evidence of the complaining witness’s marital history, mode of dress and general reputation for promiscuity, nonchastity or sexual mores contrary to the community standards.”

<sup>69</sup> “Complaining witness” is defined in Ala. Code § 12-21-203(a)(1) as “[a]ny person alleged to be the victim of the crime charged, the prosecution of which is subject to the provisions of this section.”

(a) On motion of a person who has been the subject of a delinquency or child in need of supervision petition, the juvenile court may order the sealing of the legal and social files and records of the juvenile court pertaining to the person if it finds that:

- (1) Two years have elapsed since the final discharge of the person from legal custody or supervision or two years after the entry of any other order of the juvenile court not involving custody or supervision; and
- (2) The person has not been convicted or adjudicated delinquent or a youthful offender of any felony or a misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, prior to the filing of the motion and no proceeding is pending seeking the conviction or adjudication.

However, under Ala. Code § 12-15-136(e), “Any adjudication of delinquency or youthful offender or conviction of a felony or misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, subsequent to sealing shall have the effect of nullifying the sealing order.”

A minor may obtain a destruction order pursuant to Ala. Code § 12-15-137(a), (b) (Proceedings for destruction of legal and social files and records of juvenile courts pertaining to certain persons and effect thereof), which states,

- (a) A person who has been the subject of a delinquency petition and has met the conditions stipulated in subdivision (2) of subsection (a) of Section 12-15-136, five years after reaching the age of majority, may file a motion requesting the destruction of all records pertaining to his or her case. If the juvenile court grants the motion, copies of the order shall be sent to all offices, departments, or agencies that are repositories of the records, and all the offices, departments, and agencies shall comply with the order.
- (b) Upon the entry of a destruction order, all references including arrest, complaints, referrals, petitions, reports, and orders shall be removed from all department or agency official and institutional files and destroyed.

*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.*

Pursuant to Ala. Code § 13A-6-156 (Penalties—forfeiture of property),

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

Ala. Code § 13A-6-155(a) (Penalties—restitution to victim) states,

A person or entity convicted of any violation of this article shall be ordered to pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution. Restitution under this section shall include items covered under Article 4A, commencing with Section 15-18-65 [Legislative intent] of Chapter 18 of Title 15 of the Code of Alabama 1975, and any of the following:

- (1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court’s discretion.

- (2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion.
- (3) Cost of the investigation and prosecution, attorney's fees, and other court-related costs such as victim advocate fees.
- (4) The greater of a. the value of the human trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA); or b. the gross income or value to the defendant of the victim's labor servitude or sexual servitude engaged in by the victim while in the human trafficking situation.
- (5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (6) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim.
- (7) Any and all other losses suffered by the victim as a result of any violation of this article.

Restitution is available more generally to victims of other crimes pursuant to Ala. Code § 15-18-67 (Hearings), which provides that

[w]hen a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages<sup>70</sup> or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant's criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim's estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

Pursuant to Ala. Code § 15-18-68(a) (Determination of amount),

In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration all of the following:

- (1) The financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant.
- (2) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court.
- (3) The anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment.
- (4) Any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts.
- (5) The mental, physical, and financial well-being of the victim.<sup>71</sup>

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<sup>70</sup> See *supra* note 21.

<sup>71</sup> Ala. Code § 15-18-68(b)(2) adds,

When a defendant has been convicted of the following offenses after February 1, 2009, the court may consider the factors enumerated in subsection (a) and shall order restitution to be paid as follows:

- ....
- (2) When a defendant has been convicted of rape in the first degree under Section 13A-6-61 [Rape in the first degree] and the person has one or more prior convictions under Section 13A-6-61, the court

Civil remedies are also available to human trafficking victims. Ala. Code § 13A-6-157 (Civil action—damages) provides that human trafficking victims

may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages shall be awarded on proof of actual damages where defendant’s acts were willful and malicious.

*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.*

Pursuant to Ala. Code § 15-3-1 (Felonies), all felonies “except those specified in Sections 15-3-3 [Conversion of revenue] and 15-3-5 [Exemptions]” are subject to a 3-year statute of limitations. Ala. Code § 15-3-5(a)(1)–(4) eliminates the statute of limitations for a prosecution for

- (1) Any capital offense;
- (2) Any felony involving the use, attempted use, or threat of, violence to a person;
- (3) Any felony involving serious physical injury or death of a person;
- (4) Any sex offense involving a victim under 16 years of age, regardless of whether it involves force or serious physical injury or death.

For civil actions under Ala. Code § 13A-6-157 (Civil actions—damages), Ala. Code § 13A-6-158 (Civil action—statute of limitation) states,

- (a) (1) An action for an offense defined by this article where the victim is not a minor shall be brought within five years from the date the victim was removed or escaped from the human trafficking situation.
  - (2) Any statute of limitations that would otherwise preclude prosecution for an offense involving the trafficking of a minor, or the physical or sexual abuse of a minor, shall be tolled until such time as the victim has reached the age of 18 years.
  - (3) The running of the statute of limitations shall be suspended where a person entitled to bring a claim of an offense defined by this article could not have reasonably discovered the crime due to circumstances resulting from the human trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.
- (b) Any statute of limitation period imposed for the filing of a civil action under this article will not begin to run until the plaintiff discovers both that the sex trade act occurred and that the defendant caused, was responsible for, or profited from the sex trade act.
  - (1) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.
  - (2) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.
  - (3) If the plaintiff’s injury is caused by two or more acts that are part of a continuing series of sex trade acts by the same defendant, then the limitation period will not commence running until the last sex trade act in the continuing series occurs.
  - (4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the

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shall order restitution for an amount not less than ten thousand dollars (\$10,000) for each conviction under Section 13A-6-61.

defendant or by any person acting in the interest of the defendant, then the time when these acts occur will not be part of the time limited for the commencement of this action.

***Legal Components:***

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

The Alabama Peace Officers’ Standards and Training Commission (APOSTC) has the authority to, among other things, “adopt and promulgate standards relating to the physical, mental, and moral fitness of any applicant for or appointee as a law enforcement officer,” to “make recommendations for improving [law enforcement training] schools, curriculum, and courses,” and to “encourage the establishment of law enforcement training schools and courses on law enforcement in existing institutions of learning.” Ala. Code § 36-21-45(3)–(5). Law enforcement officer applicants must complete a required training course as established by APOSTC. Ala. Code § 36-21-46(a)(3). While law enforcement officers must meet continuing education requirements, APOSTC rules do not specifically mandate or authorize training for law enforcement officers regarding human trafficking or the sexual exploitation of children.<sup>72</sup>

However, Ala. Code § 26-19-4(3), (14) (Alabama Center for Missing and Exploited Children; functions) requires the Alabama Center for Missing and Exploited Children (ACMEC) to, among other things, “provide training to law enforcement officers, other professionals, and medical examiners, when available, on issues relating to missing persons, exploited children, and unidentified bodies” and “[t]o operate a resource center of information regarding prevention of abduction and sexual exploitation of children.” As a result, resources and training regarding exploited children, including sexually exploited children, currently should be available for use by law enforcement in Alabama.

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

Single party consent to audio-recording and interception of oral communications is permitted in Alabama. Ala. Code § 13A-11-31(a) (Criminal eavesdropping) makes it unlawful if a person “intentionally uses any device to eavesdrop.” However, “eavesdrop” is defined as “[t]o overhear, record, amplify or transmit any part of the private communication of others without the consent of at least one of the persons engaged in the communication, except as otherwise provided by law.” Ala. Code § 13A-11-30(1). Therefore, when one party to the communication consents to audiotaping, the conduct is not considered “eavesdropping” and does not violate Ala. Code § 13A-11-31.

<sup>72</sup> Ala. Admin. Code r. 650-X-12-.02(1) (2011).



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

Court cases in Alabama refer to wiretapping only within the context of an officer wearing a wire and do not set forth specific procedures allowing law enforcement to apply for a warrant to wiretap. Pursuant to Ala. Code § 13A-11-36(a) (Exceptions), “(a) A person does not commit a crime under this article if: (1) He was a peace officer engaged in the lawful performance of his duties; or . . . (3) He relies in good faith on a lawful court order or legislative authorization.”

However, neither Ala. Code § 13A-11-31 (Criminal eavesdropping) nor § 13A-11-36(a) has any procedures to allow for Alabama to authorize wiretapping.

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.*

The use of a decoy by law enforcement in certain investigations of child sex trafficking appears to be permissible under certain CSEC provisions of Alabama law. Ala. Code § 13A-6-127(a)(1) (Defenses) states, “(a) It shall not be a defense to prosecution under this article<sup>73</sup>: (1) That an undercover operative or law enforcement officer was involved in the detection and investigation of an offense.”

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

Ala. Code § 13A-6-122 (Electronic solicitation of a child) states in part,

[A] person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone . . . or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit or for the benefit of another, is guilty of electronic solicitation of a child. . . .

The standard of “believed by the defendant to be a child at least three years younger than the defendant” appears to allow for a law enforcement officer to use the Internet to pose as a minor in investigating this offense. Moreover, Ala. Code § 13A-6-127(a)(1) (Defenses) states, “(a) It shall not be a defense to prosecution under this article [Solicitation of Children by Electronic Means]<sup>74</sup>: (1) That an undercover operative or law enforcement officer was involved in the detection and investigation of an offense.”

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

Pursuant to Ala. Code § 26-19-5 (Missing person reports), “Any law enforcement agency in this state in which a complaint of a missing person has been filed shall prepare and send a report to the Alabama Center for Missing and Exploited Children (ACMEC) immediately on any missing person or unidentified deceased person.” Ala.

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<sup>73</sup> The following offenses are listed under this article: Section 13A-6-121 Facilitating solicitation of unlawful sexual conduct with a child: §13A-6-122 (Electronic solicitation of a child), §13A-6-123 (Facilitating the on-line solicitation of a child), §13A-6-124 (Traveling to meet a child for an unlawful sex act), §13A-6-125 (Facilitating the travel of a child for an unlawful sex act).

<sup>74</sup> The following offenses are listed under this article: Section 13A-6-121 Facilitating solicitation of unlawful sexual conduct with a child: §13A-6-122 (Electronic solicitation of a child), §13A-6-123 (Facilitating the on-line solicitation of a child), §13A-6-124 (Traveling to meet a child for an unlawful sex act), §13A-6-125 (Facilitating the travel of a child for an unlawful sex act).

Code § 26-19-6 (Missing person reports; dissemination) requires the law enforcement agency to then forward a copy of the report to the following:

- (1) All law enforcement agencies having jurisdiction of the location in which the missing person lives or was last seen.
- (2) All law enforcement agencies considered to be potentially involved by the law enforcement agency filing the report.
- (3) All law enforcement agencies which the complainant requests the report to be sent to, if the request is reasonable in light of the information contained in the report.
- (4) Any law enforcement agency requesting a copy of the missing person report.

Additionally, Ala. Code § 26-19-4(1), (2) (Alabama Center for Missing and Exploited Children; functions) requires ACMEC

- (1) To receive and promptly enter into the Department of Public Safety's computer system all reports of law enforcement agencies, and other persons and agencies, of missing children and adults, exploited children . . . and all pertinent information submitted by the person or agency reporting which is contained in any investigation or investigations conducted pursuant to the report. ACMEC shall promptly enter the information in the NCIC computer network. If a missing person is subsequently found or if an unidentified deceased person is subsequently identified, and the information is reported to the ACMEC, ACMEC shall maintain, as necessary, the data for law enforcement purposes only.
- (2) To coordinate with and provide assistance to state and local public and private nonprofit agencies, including those of other states and the federal government, in investigating cases of missing persons, exploited children, and unidentified bodies and to conduct appropriate investigations.

Finally, Ala. Code § 13A-13-8 (Failure to report missing child) requires a child's custodian to report a missing child and a custodian who fails to report is subject to criminal punishment.

Ala. Code § 13A-13-8(b)(3) defines "custodian" as

a child's father or mother, whether biological or adoptive, a child's legally appointed guardian, or the spouse of a child's father, mother, or legally appointed guardian. In the case where only one parent has legal custody, the term means the parent with legal custody or his or her spouse.

Ala. Code § 13A-13-8(c) states,

A child's custodian shall report, or cause a report to be made, to a law enforcement officer or agency that the child is missing when the child's whereabouts are unknown to the custodian and the custodian knows, believes, or has substantial reason to believe any of the following:

- (1) That the child's whereabouts are unknown to any person under whose temporary supervision the custodian placed the child.
  - (2) That the child is the victim of an abduction or the victim of serious bodily harm, abuse, or sexual exploitation.
  - (3) That the child is a lost or runaway child.
- (d) The report required under subsection (c) shall be made verbally, either by telephone or direct communication, followed by a written report as requested by a law enforcement official.

A child's custodian who fails to report the missing child is subject to criminal liability punishable as a misdemeanor or felony. Ala. Code § 13A-13-8 further provides that

- (e) (1) A child's custodian who is subject to the duty imposed by subsection (c) is guilty of failure to report a missing child in the second degree if he or she fails or delays to make, or fails to cause to be made, the required report with willful or reckless disregard for the safety of the

child.

(2) Failure to report a missing child in the second degree is a Class A misdemeanor.

(f) (1) A child's custodian who is subject to the duty imposed by subsection (c) is guilty of failure to report a missing child in the first degree if he or she fails or delays to make, or fails to cause to be made, the required report with willful or reckless disregard for the safety of the child and the child suffers serious bodily harm or death.

(2) Failure to report a missing child in the first degree is a Class C felony.<sup>75</sup>

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<sup>75</sup> It is a defense to prosecution “that the custodian made reasonably diligent efforts to verify the whereabouts and safety of the child during the period of any delay in making the report required by subsection (c).” Ala. Code § 13A-13-8(g).