

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2013 ANALYSIS AND RECOMMENDATIONS IOWA

### 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.*

Iowa Code § 710A.2 (Human trafficking) makes sex trafficking illegal and imposes enhanced penalties if the victim of the offense is a minor. Iowa Code § 710A.2 states,

1. A person who knowingly engages in human trafficking is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.
2. A person who knowingly engages in human trafficking by causing or threatening to cause serious physical injury to another person is guilty of a class “C” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “B” felony.
3. A person who knowingly engages in human trafficking by physically restraining or threatening to

<sup>1</sup>Unless otherwise specified, all references to Iowa statutes were taken from Iowa’s Annotated Statutes (LEXIS through the 2013 Supplement (2013 Legislation)) and all federal statutes were taken from United States Code (LEXIS through PL 113-11, approved 5/24/13). This report includes legislation enacted as of August 1, 2013.

physically restrain another person is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.

4. A person who knowingly engages in human trafficking by soliciting services or benefiting from the services of a victim is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.

5. A person who knowingly engages in human trafficking by abusing or threatening to abuse the law or legal process is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.

6. A person who knowingly engages in human trafficking by knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of a victim is guilty of a class “D” felony, except that if that other person is under the age of eighteen, the person is guilty of a class “C” felony.

7. A person who benefits financially or by receiving anything of value from knowing participation in human trafficking is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.

8. A person’s ignorance of the age of the victim or a belief that the victim was older is no defense to a violation of this section.

Iowa Code § 710A.1(4) (Definitions) defines “human trafficking,”

a. “Human trafficking” means participating in a venture<sup>2</sup> to recruit, harbor, transport, supply provisions, or obtain<sup>3</sup> a person for any of the following purposes:

1. Forced labor or service<sup>4</sup> that results in involuntary servitude,<sup>5</sup> peonage, debt bondage, or slavery.
2. Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen, the commercial sexual activity need not involve force, fraud, or coercion.

b. “Human trafficking” also means knowingly purchasing or attempting to purchase services involving commercial sexual activity from a victim or another person engaged in human trafficking.”

Iowa Code § 710A.1(1) defines “commercial sexual activity” as “any sex act or sexually explicit performance for which anything of value is given, promised to, or received by any person and includes, but is not limited to, prostitution, participation in the production of pornography, and performance in strip clubs.”

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<sup>2</sup> Iowa Code § 710A.1(12) (Definitions) defines “venture” to mean “any group of two or more persons associated in fact, whether or not a legal entity.”

<sup>3</sup> Iowa Code § 710A.1(8) (Definitions) defines “obtain” to mean “in relation to labor or services, to secure performance thereof.”

<sup>4</sup> Iowa Code § 710A.1(3) (Definitions) defines “forced labor or services” as

labor or services that are performed or provided by another person and that are obtained or maintained through any of the following:

- a. Causing or threatening to cause serious physical injury to any person.
- b. Physically restraining or threatening to physically restrain another person.
- c. Abusing or threatening to abuse the law or legal process.
- d. Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.

<sup>5</sup> Iowa Code § 710A.1(5) (Definitions) defines “involuntary servitude” as

a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint or the threatened abuse of legal process.

Class B, C, and D felonies are punishable as follows: Class B felonies are punishable by imprisonment up to 25 years, Class C felonies by imprisonment up to 10 years and a fine of \$1,000–\$10,000,<sup>6</sup> and Class D felonies by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(b), (d), (e).<sup>7</sup> A habitual felon may receive imprisonment up to 15 years.<sup>8</sup> Iowa Code § 902.9(1)(c).

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 distinct crime in Iowa:

1. Iowa Code § 725.3(2) (Pandering) makes it illegal if

[a] person . . . persuades, arranges, coerces, or otherwise causes a minor to become a prostitute or to return to the practice of prostitution after having abandoned it, or keeps or maintains any premises for the purpose of prostitution involving minors or knowingly shares in the income from such premises knowing the character and content of such income . . . .

A first conviction under Iowa Code § 725.3(2) is punishable as a Class C felony by imprisonment up to 10 years, a fine of \$1,000–\$10,000, and an additional “law enforcement initiative surcharge” of \$125.<sup>9</sup> Iowa Code §§ 725.3(2), 902.9(1)(d), 911.3. A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(d), 901A.2(3),<sup>10</sup> (4), 902.1.

2. Iowa Code § 728.12(1) (Sexual exploitation of a minor) states in part,

It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act<sup>11</sup> or in the simulation of

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<sup>6</sup> Iowa Code § 911.1(1) states in part, “When a court imposes a fine or forfeiture for a violation of state law, or a city or county ordinance, except an ordinance regulating the parking of motor vehicles, the court or the clerk of the district court shall assess an additional penalty in the form of a criminal penalty surcharge equal to thirty-five percent of the fine or forfeiture imposed.”

<sup>7</sup> Here and elsewhere in this report that Iowa Code § 902.9 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 417. H.F. 417, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>8</sup> Iowa Code § 902.8 (Minimum sentence—habitual offender) states, “An habitual offender is any person convicted of a class ‘C’ or a class ‘D’ felony, who has twice before been convicted of any felony in a court of this or any other state, or of the United States. An offense is a felony if, by the law under which the person is convicted, it is so classified at the time of the person’s conviction. A person sentenced as an habitual offender shall not be eligible for parole until the person has served the minimum sentence of confinement of three years.”

<sup>9</sup> Iowa Code § 902.9 (Maximum sentences for felons) specifies that the surcharges required by Iowa Code § 911.1 (Criminal penalty surcharge), Iowa Code § 911.2 (Drug abuse resistance education surcharge), and Iowa Code § 911.3 (Law enforcement initiative surcharge) “are not a part of or subject to the maximums set in this section.” Iowa Code § 911.3(1)(b) sets out a \$125 surcharge “if an adjudication of guilt or a deferred judgment has been entered for a criminal violation under any of the following: . . . b. Section . . . 725.1 [Prostitution], 725.2 [Pimping], or 725.3 [Pandering].”

<sup>10</sup> Here and elsewhere in this report that Iowa Code § 901A.2 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 556. H.F. 556, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>11</sup> Iowa Code § 728.1(7) (Definitions), defines “prohibited sexual act,” except as otherwise provided, as

any of the following:

a. A sex act as defined in section 702.17.

a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a visual depiction.<sup>12</sup>

A first conviction under Iowa Code § 728.12(1) is punishable as a Class C felony by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 728.12(1), 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(b), 901A.2(3), (4), 902.1. Additionally, Iowa Code § 728.12(1) states, “Notwithstanding section 902.9 [Maximum sentence for felons], the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.”

3. Iowa Code § 710.10(1), (2) (Enticing a minor) states,

1. A person commits a class “C” felony when, without authority and with the intent to commit . . . sexual exploitation upon a minor under the age of thirteen, the person entices or attempts to entice a person reasonably believed to be under the age of thirteen.
2. A person commits a class “D” felony when, without authority and with the intent to commit . . . sexual exploitation of a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen.

A first conviction under Iowa Code § 710.10(1) is punishable as a Class C felony by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1. A conviction under Iowa Code § 710.10(2) is punishable as a Class D felony by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e).

4. Iowa Code § 710A.2A<sup>13</sup> (Solicitation of commercial sexual activity) states,

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- . . . .
- c. Fondling or touching the pubes or genitals of a minor.
  - d. Fondling or touching the pubes or genitals of a person by a minor.
- . . . .
- g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a visual depiction of the nude minor.

Pursuant to Iowa Code § 702.17 (Sex act), the term “sex act” or “sexual activity,”

[M]eans any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person . . . ; ejaculation onto the person of another; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

Iowa Code § 702.17 is updated here and elsewhere in this report to reflect the changes and amendments added by Senate File No. 298. S.F. 298, 85<sup>th</sup> Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>12</sup> Under Iowa Code § 728.1(11) (Definitions), “visual depiction” means but is not limited to any picture, slide, photograph, digital or electronic image, negative image, undeveloped film, motion picture, videotape, digital or electronic recording, live transmission, or other pictorial of three-dimensional representation.

<sup>13</sup> Here and elsewhere in this report that § 710A.2A is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 556. H.F. 556, 85<sup>th</sup> Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

A person shall not entice, coerce, or recruit, or attempt to entice, coerce, or recruit either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, to engage in a commercial sexual activity.

Violation of this provision will result in a Class D felony punishable by up to 5 years in prison and a fine between \$750-7,500. Iowa Code § 902.9(1)(e).

Several other sexual offenses, while not expressly commercial in nature, may also be applicable in cases involving the commercial sexual exploitation of a child. Some of those statutes are as follows:

1. Iowa Code § 709.2 (Sexual abuse in the first degree) states that “[a] person commits sexual abuse in the first degree when in the course of committing sexual abuse<sup>14</sup> the person causes another serious injury.” A conviction under Iowa Code § 709.2 is punishable as a Class A felony by imprisonment for life or, if the offender was under 18 years of age at the time of the offense, for a minimum of 25 years. Iowa Code §§ 709.2, 902.1(1), (2)(a).
2. Iowa Code § 709.3(2)<sup>15</sup> (Sexual abuse in the second degree), states that “[1] [a] person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances: . . . . The other person is under the age of twelve.” Sexual abuse in the second degree is a Class B felony punishable by imprisonment up to 25 years. Iowa Code §§ 709.3, 902.9(1)(b). The conviction is punishable as a Class A felony under Iowa Code § 902.14(1) (Enhanced penalty—sexual abuse or lascivious acts with a child) by imprisonment between 25 years to life if a person has a prior conviction under this statute or a number of other statutes. Iowa Code § 902.14(1).<sup>16</sup>
3. Iowa Code § 709.4(2)(b), (c)(4)<sup>17</sup> (Sexual abuse in the third degree) states,

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

. . . .

b. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

. . .

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<sup>14</sup> Iowa Code § 709.1(3) (Sexual abuse defined) states, “Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances: . . . 3. Such other person is a child.” Iowa Code § 702.5 states, “For purposes of Title XVI [Criminal Code], unless another age is specified, a ‘child’ is any person under the age of fourteen years.” This definition is not applicable to chapters 709A (Contributing to juvenile delinquency), 718A, 822, 904, 913, and 914 even though they are codified in Title XVI.

<sup>15</sup> Here and elsewhere in this report that Iowa Code § 709.3 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 556. H.F. 556, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>16</sup> Iowa Code § 902.14(1) states,

A person commits a class “A” felony if the person commits a second or subsequent offense involving any combination of the following offenses:

a. Sexual abuse in the second degree in violation of section 709.3,

b. Sexual abuse in the third degree in violation of section 709.4.

c. Lascivious acts with a child in violation of section 709.8, subsection (1), paragraph “a” or “b”.

Here and elsewhere in this report that Iowa Code § 902.14 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 417. H.F. 417, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>17</sup> Here and elsewhere in this report that Iowa Code § 709.4 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 556. H.F. 556, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

2. The other person is twelve or thirteen years of age.
3. The other person is fourteen or fifteen years of age and any of the following are true:
  - (a) The person is a member of the same household as the other person.
  - ....
  - (d) The person is four or more years older than the other person.

Sexual abuse in the third degree is a Class C felony punishable by imprisonment up to 10 years and a fine of \$1,000 to \$10,000. Iowa Code §§ 709.4, 902.9(1)(d). A conviction is punishable as a Class A felony, however, if a person has a prior conviction under this statute or a number of other statutes. Iowa Code § 902.14(1).<sup>18</sup>

4. Iowa Code § 709.12<sup>19</sup> (Indecent contact with a child) states,

1. A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person’s spouse, with or without the child’s consent, for the purpose of arousing or satisfying the sexual desires of either of them:
  - a. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
  - b. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.
  - c. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
  - d. Solicit a child to engage in any act prohibited under section 709.8<sup>20</sup> [Lascivious acts with a child], subsection 1, paragraph “a”, “b”, or “d”.

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An offender convicted of an aggravated misdemeanor may receive imprisonment up to 2 years and a fine of \$625–\$6,250. Iowa Code § 903.1(2).<sup>21</sup>

5. Iowa Code § 709.8<sup>22</sup> (Lascivious acts with a child) states,

1. It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child’s consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:
  - a. Fondle or touch the pubes or genitals of a child.
  - b. Permit or cause a child to fondle or touch the person’s genitals or pubes.
  - c. Cause the touching of the person’s genitals to any part of the body of a child.
  - d. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.
  - e. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

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<sup>18</sup> See *supra* note 16 for the provisions of Iowa Code § 902.14(1).

<sup>19</sup> Here and elsewhere in this report that Iowa Code § 709.12 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 417. H.F. 417, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>20</sup> Here and elsewhere in this report that Iowa Code § 709.8 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 417 and Senate File No. 298. H.F. 417, S.F. 298, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>21</sup> Iowa Code § 903.1(2) (Maximum sentence for misdemeanants) further states, “When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.”

<sup>22</sup> See *supra* note 20.

Convictions under Iowa Code § 709.8(1)(a), (b), (c) are punishable as Class C felonies by imprisonment up to 10 years and a fine of \$1,000–\$10,000, while convictions under Iowa Code § 709.8(1)(d),(e) are punishable as Class D felonies by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 709.8, 902.9(1)(d), (e). A conviction under Iowa Code § 709.8(1)(a), (b), (c) may be punishable as a Class A felony for prior convictions under this statute or other listed statutes. Iowa Code § 902.14(1).<sup>23</sup>

6. Iowa Code § 710.10 (Enticing a minor) states,

1. A person commits a class “C” felony when, without authority and with the intent to commit sexual abuse<sup>24</sup> . . . upon a minor under the age of thirteen, the person entices or attempts to entice a person reasonably believed to be under the age of thirteen.
2. A person commits a class “D” felony when, without authority and with the intent to commit an illegal sex act upon . . . a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen.
3. A person commits a class “D” felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices a person reasonably believed to be under the age of sixteen.
4. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice a person reasonably believed to be under the age of sixteen. A person convicted under this subsection shall not be subject to the registration requirements under chapter 692A [Sex offender registry] unless the finder of fact determines that the illegal act was sexually motivated.
5. A person shall not be convicted of a violation of this section unless the person commits an overt act evidencing a purpose to entice.

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Class D felonies are punishable by imprisonment up to 5 years and a fine of \$750–\$7,500, while offenders convicted of an aggravated misdemeanor may receive imprisonment up to 2 years and a fine of \$625–\$6,250. Iowa Code §§ 902.9(1)(e), 903.1(2).

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

While Iowa Code § 725.1 (Prostitution) does not refer to the human trafficking law when a minor is engaged in prostitution, an affirmative defense to prostitution charges is provided in the human trafficking chapter. Iowa Code § 710A.3 (Affirmative defense) states,

It shall be an affirmative defense, in addition to any other affirmative defenses for which the victim might be eligible, to a prosecution for a criminal violation directly related to the defendant’s status as a victim of a crime that is a violation of section 710A.2 [Human trafficking], that the defendant committed the violation under compulsion by another’s threat of serious injury, provided that the defendant reasonably believed that such injury was imminent.

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.*

Iowa Code § 706A.2 (Violations) criminalizes engaging in “specified unlawful activity”. Iowa Code § 706A.2 states in part,

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<sup>23</sup> See *supra* note 16 for the provisions of Iowa Code § 902.14(1).

<sup>24</sup> See *supra* note 14 for the definition of “sexual abuse.”

1. Specified unlawful activity influenced enterprises.<sup>25</sup>
  - a. It is unlawful for any person who has knowingly received any proceeds<sup>26</sup> of specified unlawful activity to use or invest, directly or indirectly, any part of such proceeds in the acquisition of any interest in any enterprise or any real property, or in the establishment or operation of any enterprise.
  - b. It is unlawful for any person to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through specified unlawful activity.
  - c. It is unlawful for any person to knowingly conduct the affairs of any enterprise through specified unlawful activity or to knowingly participate, directly or indirectly, in any enterprise that the person knows is being conducted through specified unlawful activity.
  - d. It is unlawful for any person to conspire or attempt to violate or to solicit or facilitate the violations of the provisions of paragraph “a”, “b”, or “c”.
4. Acts of specified unlawful activity. It is unlawful for a person to commit specified unlawful activity as defined in section 706A.1.

Iowa Code § 706A.1(5) (Definitions) defines “specified unlawful activity” as “any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable as an indictable offense under the laws of the state in which it occurred and under the laws of this state.” Iowa Code § 710A.2 (Human trafficking) and Iowa’s CSEC laws fall within the definition of specified unlawful activity, as each is punishable by imprisonment of more than 1 year. Prostitution and other misdemeanors are unlikely to fall under this category because, under Iowa law, misdemeanors are not indictable offenses. Iowa Code § 725.1

Convictions under Iowa Code § 706A.2(1) and (4) are punishable as Class B felonies by imprisonment up to 25 years. Iowa Code §§ 706A.4, 902.9(1)(b). Additionally, pursuant to Iowa Code §706A.3,<sup>27</sup> “The prosecuting attorney . . . may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this chapter or to prevent, restrain, or remedy such violation.” Subsection(3) states, in part:

If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including any of the following:

- a. Ordering any defendant to divest the defendant of any interest in any enterprise, or in any real property.
- d. Ordering the payment of all reasonable costs and expenses of the investigation and prosecution of any violation, civil or criminal, including reasonable attorney fees in the trial and appellate courts. Such payments received by the state, by judgment, settlement, or otherwise, shall be considered forfeited property and disposed of pursuant to section 809A.17.
- e. Ordering the forfeiture of any property subject to forfeiture under chapter 809A, pursuant to the provisions and procedures of that chapter.

Additionally, Iowa Code § 706A.3(12) states,

<sup>25</sup> Iowa Code § 706A.1(2) defines a “enterprise” as “any sole proprietorship, partnership, corporation, trust, or other legal entity, or any unchartered union, association, or group of persons associated in fact although not a legal entity, and includes unlawful as well as lawful enterprises.”

<sup>26</sup> Iowa Code § 706A.1(3) defines “proceeds” as “property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.”

<sup>27</sup> Here and elsewhere in this report that Iowa Code § 706A.3 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 556. H.F. 556, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

The attorney general may bring a civil action as parens patriae on behalf of the general economy, resources, and welfare of this state, and shall recover threefold the proceeds acquired, maintained, produced, or realized by or on behalf of the defendant by reason of a violation of this chapter, plus the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts.

***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.*

Iowa's human trafficking law clearly applies to buyers of sex acts with minors. Iowa Code § 710A.2(4) states, "A person who knowingly engages in human trafficking by soliciting services or benefiting from the services of a victim . . . if the victim is under the age of eighteen . . . is guilty of a class 'C' felony." Iowa Code § 710A.1(4)(b) (Definitions) explicitly defines "human trafficking" to include "knowingly purchasing or attempting to purchase services involving commercial sexual activity from a victim or another person engaged in human trafficking."

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

Included under the state's human trafficking chapter, Iowa Code § 710A.2A<sup>28</sup> (Solicitation of commercial sexual activity) states that "a person shall not entice, coerce, or recruit, or attempt to entice, coerce, or recruit either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, to engage in a commercial sexual activity. A person who violates this section commits a class 'D' felony" punishable by up to 5 years in prison and a fine between \$750-7,500. Iowa Code § 902.9(1)(e).<sup>29</sup>

Additionally, several sexual offense laws, including the non-commercial clauses of Iowa Code § 710.10(1), (2) (Enticing a minor) and solicitation of a minor for sex acts under Iowa Code § 709.12<sup>30</sup> (Indecent contact with a child) or Iowa Code § 709.8<sup>31</sup> (Lascivious acts with a child), could be used to prosecute certain buyers of

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<sup>28</sup> See *supra* note 13.

<sup>29</sup> See *supra* note 7.

<sup>30</sup> See *supra* note 19.

<sup>31</sup> See *supra* note 20.

commercial sex acts with a minor but these do not specifically criminalize the purchase of sex acts with a child.<sup>32</sup>

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

Iowa's age-neutral solicitation law, Iowa Code § 725.1 (Prostitution), does not distinguish between buying sex acts with an adult and buying sex with a minor, stating only that “[a] person who . . . purchases or offers to purchase [‘services as a partner in a sex act’] commits an aggravated misdemeanor.” A conviction under Iowa Code § 725.1 is an aggravated misdemeanor punishable by imprisonment up to 2 years and a fine of \$625–\$6,250. Iowa Code § 903.1(2). However, under Iowa Code § 710A.2A<sup>33</sup> (Solicitation of commercial sexual activity), “a person shall not entice, coerce, or recruit, or attempt to entice, coerce, or recruit either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, to engage in a commercial sexual activity.”

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

Buyers convicted under Iowa Code § 710A.2 (Human trafficking) face enhanced penalties if the victim of the offense is a minor. Iowa Code § 710A.2 states,

1. A person who knowingly engages in human trafficking is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.
  2. A person who knowingly engages in human trafficking by causing or threatening to cause serious physical injury to another person is guilty of a class “C” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “B” felony.
  3. A person who knowingly engages in human trafficking by physically restraining or threatening to physically restrain another person is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.
  4. A person who knowingly engages in human trafficking by soliciting services or benefiting from the services of a victim is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.
  5. A person who knowingly engages in human trafficking by abusing or threatening to abuse the law or legal process is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.
  6. A person who knowingly engages in human trafficking by knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of a victim is guilty of a class “D” felony, except that if that other person is under the age of eighteen, the person is guilty of a class “C” felony.
- . . . .

Class B, C, and D felonies are punishable as follows: Class B felonies are punishable by imprisonment up to 25 years, Class C felonies by imprisonment up to 10 years and a fine of \$1,000–\$10,000,<sup>34</sup> and Class D felonies by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(b), (d), (e). A habitual felon may receive imprisonment up to 15 years.<sup>35</sup> Iowa Code § 902.9(1)(c).

<sup>32</sup> See *supra* Section 1.2 for a full description of the sexual offenses laws that may be used to prosecute buyers.

<sup>33</sup> See *supra* note 13.

<sup>34</sup> Iowa Code § 911.1(1) states in part, “When a court imposes a fine or forfeiture for a violation of state law, or a city or county ordinance, except an ordinance regulating the parking of motor vehicles, the court or the clerk of the district court shall assess an additional penalty in the form of a criminal penalty surcharge equal to thirty-five percent of the fine or forfeiture imposed.”

<sup>35</sup> Iowa Code § 902.8 (Minimum sentence—habitual offender) states, “An habitual offender is any person convicted of a class ‘C’ or a class ‘D’ felony, who has twice before been convicted of any felony in a court of this or any other

Buyers convicted under the sex offense of Iowa Code § 710.10(1), (2) (Enticing a minor) will be guilty of a Class C or D felony, depending on what provision is violated. A violation of Iowa Code § 710A.2A<sup>36</sup> (Solicitation of commercial sexual activity) results in a Class D felony, which is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e). A Class C felony is punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d). A second conviction under Iowa Code § 710.10(1) is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3),<sup>37</sup> (4), 902.1.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>38</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 buyer has a prior conviction for a federal sex offense<sup>39</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>40</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>41</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.*

Iowa has not enacted a separate statute that specifically criminalizes the use of the Internet to lure, entice, or purchase commercial sex acts with a minor. However, Iowa Code § 710.10 (Enticing a minor), although not expressly commercial in its application to buyers, may be used to penalize buyers who attempt to entice or

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state, or of the United States. An offense is a felony if, by the law under which the person is convicted, it is so classified at the time of the person's conviction. A person sentenced as an habitual offender shall not be eligible for parole until the person has served the minimum sentence of confinement of three years.”

<sup>36</sup> See *supra* note 13.

<sup>37</sup> See *supra* note 10.

<sup>38</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>39</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

an offense under section 1591 [18 USCS § 1591] (relating to sex trafficking of children), 2241 [18 USCS § 2241] (relating to aggravated sexual abuse), 2242 [18 USCS § 2242] (relating to sexual abuse), 2244(a)(1) [18 USCS § 2244(a)(1)] (relating to abusive sexual contact), 2245 [18 USCS § 2245] (relating to sexual abuse resulting in death), 2251 [18 USCS § 2251] (relating to sexual exploitation of children), 2251A [18 USCS § 2251A] (relating to selling or buying of children), 2422(b) [18 USCS § 2422(b)] (relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).

<sup>40</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>41</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).

purchase commercial sex acts with minors over the Internet.<sup>42</sup> Iowa Code § 710.10(6) suggests a violation of Iowa Code § 710.10 may occur through the use of an Internet, by providing,

For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice or attempt to entice a person believed to be a minor who is present in this state originates from another state, or the communication to entice or attempt to entice a person believed to be a minor is sent from this state.

Buyers who “entice a person reasonably believed to be under the age of thirteen” in violation of Iowa Code § 710.10(1) (Enticing a minor), are guilty of a Class C felony punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(4d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3),<sup>43</sup> (4), 902.1. Buyers who violate Iowa Code § 710.10(2) will be guilty of a Class D felony punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e).

2.5.1 Recommendation: Amend Iowa Code § 710.10 (Enticing a minor) to include soliciting a minor over the Internet for commercial sexual activity.

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

Iowa Code § 710A.2(8) (Human trafficking) states, “[a] person’s ignorance of the age of the victim or a belief that the victim was older is no defense to a violation of this section.” However, Iowa Code § 710.10 (Enticing a minor) and § 709.8<sup>44</sup> (Lascivious acts with a child) do not expressly prohibit the use of an age mistake defense by a buyer of commercial sex acts with a minor. Iowa Code § 725.1 (Prostitution) is age-neutral, making the mistake of age defense inapplicable.

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

Under Iowa Code § 710A.2A<sup>45</sup> (Solicitation of commercial sexual activity) and Iowa Code § 710A.2 (Human trafficking), all minors under the age of 18 are protected. Iowa Code § 710.10(1), (2) (Enticing a minor), however, fails to protect minors who are 16 or 17 and, subsection (1) only applies to minors who are under 13. Where the minor victim is under 13, a violation of Iowa Code § 710.10(1) is a Class C felony. A violation of Iowa Code § 710.10(1) (minor under 16) is a Class D felony. Class C felonies are punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000 and Class D felonies are punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(d), (e). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3),<sup>46</sup> (4), 902.1.

2.7.1 Recommendation: Amend Iowa Code § 710.10 (Enticing a minor) to apply to all minors under 18 and to raise the penalties applicable where the victim is a minor 13 years of age or older.

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<sup>42</sup> See *supra* Section 1.2 for the relevant provisions of Iowa Code § 710.10.

<sup>43</sup> See *supra* note 10.

<sup>44</sup> See *supra* note 20.

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

<sup>46</sup> See *supra* note 10.

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 Iowa Code § 710A.2 (Human trafficking), face fines ranging from \$750 to \$10,000. Iowa Code § 902.9(1)(b), (d), (e). Buyers convicted under Iowa Code § 710.10(1), (2) (Enticing a minor) will be guilty of a Class C or D felony, depending on what provision is violated. A Class D felony is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e). A Class C felony is punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3),<sup>47</sup> (4), 902.1. If convicted under Iowa Code § 710A.2A<sup>48</sup> (Solicitation of commercial sexual activity), a buyer would face a Class D felony, which is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e).

Under Iowa’s “Forfeiture Reform Act,” Chapter 809A, certain types of offenses must give rise to forfeiture where authorized, including, pursuant to Iowa Code § 809A.3(1),<sup>49</sup> (Conduct giving rise to forfeiture),

- a. An act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony.
  - b. An act or omission occurring outside of this state, that would be punishable by confinement of one year or more in the place of occurrence and would be a serious or aggravated misdemeanor or felony if the act or omission occurred in this state.
  - c. An act or omission committed in furtherance of any act or omission described in paragraph “a”, which is a serious or aggravated misdemeanor or felony, including any inchoate or preparatory offense.
- ....

The following types of property are subject to forfeiture under Iowa Code § 809A.4 (Property subject to forfeiture),

2. a. All property . . . including the whole of any lot or tract of land and any appurtenances or improvements to real property, including homesteads that are otherwise exempt from judicial sale pursuant to section 561.16, that is either:
    - (1) Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture.
    - (2) Used or intended to be used in any manner or part to facilitate<sup>50</sup> conduct giving rise to forfeiture.
- ....
6. a. Any property of a person up to the value of property which is either of the following:
    - (1) Described in subsection 2 that the person owned or possessed for the purpose of a use described in subsection 2.
    - (2) Described in subsection 3 and is proceeds of conduct engaged in by the person or for which the person is criminally responsible.
- ....

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<sup>47</sup> See *supra* note 10.

<sup>48</sup> See *supra* note 13.

<sup>49</sup> Here and elsewhere in this report that Iowa Code § 809A.3 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 417. H.F. 417, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>50</sup> Iowa Code § 809A.4(7) (Property subject to forfeiture) states, “As used in this section, ‘facilitate’ means to have a substantial connection between the property and the conduct giving rise to forfeiture.”

. . . .

Property may be seized pursuant to procedures outlined in Iowa Code § 809A.6. Property may be forfeited in an *in rem* proceeding, pursuant to Iowa Code §809A.13<sup>51</sup> or an *in personam* proceedings pursuant to Iowa Code § 809A.14. Both of these actions are civil in nature. Iowa Code § 809A. 17 provides for the allocation of forfeited property and states, in part:

2. Forfeited property not needed as evidence in a criminal case shall be delivered to the department of justice, or, upon written authorization . . . the property may be destroyed, sold, or delivered to an appropriate agency for disposal in accordance with this section.
3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.
4. Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state.

Buyers are subject to a mandatory order of restitution, to be paid directly to the victim. Iowa Code § 910.2(1) (Restitution or community service to be ordered by sentencing court) states,

In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims<sup>52</sup> of the offender's criminal activities<sup>53</sup> . . . . In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, fines, penalties, and surcharges, crime victim compensation program reimbursement, public agencies, court costs including correctional fees . . . , court-appointed attorney fees . . . , including the expense of a public defender, contribution to a local anticrime organization, and the medical assistance program . . . .

Iowa Code § 910.1(4) (Definitions) defines “restitution” as

payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. “Restitution” also includes fines, penalties, and surcharges, . . . court costs . . . and payment to the medical assistance program pursuant to chapter 249A [State supplementary assistance] for expenditures paid on behalf of the victim resulting from the offender's criminal activities including investigative costs incurred by the Medicaid fraud control unit pursuant to section 249A.7 [Assistance inalienable].

Iowa Code § 915.100(2) (Victim restitution rights) states,

2. The right to restitution includes the following:

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<sup>51</sup> Here and elsewhere in this report that Iowa Code § 809A.13 is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate File No. 282. S.F. 282, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>52</sup> Iowa Code § 910.1(5) defines a “victim” as “a person who has suffered pecuniary damages as a result of the offender's criminal activities.”

<sup>53</sup> Iowa Code § 910.1(1) defines “criminal activities” as

any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982, which is admitted or not contested by the offender, whether or not prosecuted. However, “criminal activities” does not include simple misdemeanors under chapter 321.

a. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender’s criminal activities.

....

e. Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program reimbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

....

i. The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

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

Iowa Code § 728.12(3) (Sexual exploitation of a minor) criminalizes the buying and possessing of child pornography. Iowa Code § 728.12(3) states,

It shall be unlawful to knowingly purchase or possess a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A visual depiction containing pictorial representation of different minors shall be prosecuted and punished as separate offenses for each pictorial representation of a different minor in the visual depiction. However, violations of this subsection involving multiple visual depictions of the same minor shall be prosecuted and punished as one offense. . . .

An offender’s first violation of Iowa Code § 728.12(3) is an aggravated offense, punishable by imprisonment up to 2 years and a fine of \$625–\$6,250, while any subsequent violations are Class D felonies punishable by imprisonment up to 5 years and a fine of \$750–\$7,500.<sup>54</sup> Iowa Code §§ 728.12(3), 903.1(2), 902.9(1)(e).

In comparison, a federal conviction for possession of child pornography<sup>55</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>56</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>57</sup>

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<sup>54</sup> Iowa Code § 728.12(3) explains,

For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person’s having been convicted under this subsection, any of the following apply:

- a. The person has a prior conviction or deferred judgment under this subsection.
- b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

<sup>55</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>56</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>57</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

- 2.9.1 Recommendation: Amend Iowa Code § 728.12(3) to increase the penalties for buying and possessing child pornography to be comparable to federal penalties.

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

Iowa Code § 692A.103(1) states in part, “A person who has been convicted of any sex offense classified as a tier I, tier II, or tier III offense, or an offender required to register in another jurisdiction under the other jurisdiction’s sex offender registry, shall register as a sex offender as provided in this chapter if the offender resides, is employed, or attends school in this state.”

Iowa Code § 692A.102(1)<sup>58</sup> (Sex offense classifications) outlines a tiered offender registry for purposes of Chapter 692A (Sex offender registry), as follows:

1. For purposes of this chapter [Sex offender registry], all individuals required to register shall be classified as a tier I, tier II, or tier III offender. For purposes of this chapter, sex offenses are classified into the following tiers:

a. Tier I offenses include a conviction for the following sex offenses:

...

(12) Receipt or possession of child pornography in violation of 18 U.S.C. § 2252.

(13) Material containing child pornography in violation of 18 U.S.C. § 2252A.

...

b. Tier II offenses include a conviction for the following sex offenses:

(1) Lascivious acts with a child in violation of section 709.8,<sup>59</sup> subsection 1 paragraph c or e.

(2) Solicitation of a minor to engage in an illegal sex act in violation of section 705.1<sup>60</sup> [Solicitation].

(3) Solicitation of a minor to engage in an illegal act under section 709.8, subsection 1 paragraph c, in violation of section 705.1.

....

(19) Sexual exploitation of a minor in violation of section 728.12, subsection . . . 3 [Prohibiting the purchase or possession of child pornography].

....

(22) Transportation of a minor for illegal sexual activity in violation of 18 U.S.C. § 2421.

(23) Coercion and enticement of a minor for illegal sexual activity in violation of 18 U.S.C. § 2422(a) or (b).

(24) Transportation of minors for illegal sexual activity in violation of 18 U.S.C. § 2423(a).

(25) Travel with the intent to engage in illegal sexual conduct with a minor in violation of 18 U.S.C. § 2423.

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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).

<sup>58</sup> Here and elsewhere in this report that Iowa Code § 692A.102 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 417. S.F. 417, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>59</sup> *See supra* note 20.

<sup>60</sup> Here and elsewhere in this report that Iowa Code § 705.1 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 556. H.F. 556, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

(26) Engaging in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(c).

....

c. Tier III offenses include a conviction for the following sex offenses:

....

(24) Human trafficking in violation of section 710A.2 if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense.

(25) Purchase or sale of an individual in violation of section 710.11 if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

....

(31) Enticing a minor in violation of section 710.10, if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor.

(32) Solicitation of commercial sexual activity in violation of section 710A.2A [Solicitation of a commercial sexual activity].

....

(38) Sexual exploitation of children in violation of 18 U.S.C. § 2251.

(39) Selling or buying of children in violation of 18 U.S.C. § 2251A.

....

**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.

Traffickers who violate Iowa Code § 710A.2 (Human trafficking),<sup>61</sup> when the victim is a minor, commit a Class B or a Class C felony. Class B felonies are punishable by imprisonment up to 25 years, while Class C felonies are punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(b), (d).<sup>62</sup> To the extent that a trafficker is a habitual offender,<sup>63</sup> the trafficker may receive imprisonment up to 15 years. Iowa Code § 902.9(1)(c).

A conviction under Iowa Code § 725.3(2) (Pandering),<sup>64</sup> is punishable as a Class C felony by imprisonment up to 10 years, a fine of \$1,000–\$10,000, and an additional “law enforcement initiative surcharge” of \$125. Iowa Code §§ 902.9(1)(d), 911.3. A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(d), 901A.2(3),<sup>65</sup> (4), 902.1. A conviction under Iowa Code § 710.10(1) (Enticing a minor)<sup>66</sup> is punishable as a Class C felony by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1. A conviction under Iowa Code § 710.10(2) is punishable as a Class D felony by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e). Traffickers may be convicted under Iowa Code § 710A.2A<sup>67</sup> (Solicitation of commercial sexual activity) which also results in a Class D felony punishable by imprisonment up to 5 years and a fine of \$750–\$7,500.

Iowa Code § 710.8(2), (3) (Harboring a runaway child prohibited—penalty) states,

- 2. A person shall not harbor a runaway child with the intent of committing a criminal act involving the child or with the intent of enticing or forcing the runaway child to commit a criminal act.

<sup>61</sup> See *supra* Section 1.1 for the provisions of Iowa Code § 710A.2.

<sup>62</sup> See *supra* note 7.

<sup>63</sup> This provision applies throughout section 3.1 in all cases where a trafficker is a habitual offender, the offense committed is a Class D or C felony, and the maximum imprisonment term otherwise provided for an offense is less than 15 years. See *supra* note 8 for the provisions of Iowa Code § 902.8 (Minimum sentence—habitual offender).

<sup>64</sup> See *supra* Section 1.2 for the provisions of Iowa Code § 725.3(2).

<sup>65</sup> See *supra* note 10.

<sup>66</sup> See *supra* Section 1.2 for the provisions of Iowa Code § 710.10(1), (2).

<sup>67</sup> See *supra* note 13.

3. A person shall not harbor a runaway child with the intent of allowing the runaway child to remain away from home against the wishes of the child’s parent, guardian, or custodian. However, the provisions of this subsection do not apply to a shelter care home which is licensed or approved by the department of human services.

A conviction under Iowa Code § 710.8(2), (3) is punishable as an aggravated misdemeanor by imprisonment up to 2 years and a fine of \$625–\$6,250.<sup>68</sup> Iowa Code §§ 710.8(4), 903.1(2).

Lastly, traffickers may be prosecuted under Iowa Code § 706B.2 (Money laundering penalty—civil remedies). Iowa Code § 706B.2(1) states,

It is unlawful for a person to commit money laundering by doing any of the following:

- a. To knowingly transport, receive, or acquire property or to conduct a transaction involving property, knowing that the property involved is the proceeds of some form of unlawful activity,<sup>69</sup> when, in fact, the property is the proceeds of specified unlawful activity.<sup>70</sup>
- b. To make property available to another, by transaction, transportation, or otherwise, knowing that it is intended to be used for the purpose of committing or furthering the commission of specified unlawful activity.
- c. To conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction-reporting requirement under chapter 529, the Iowa financial transaction reporting Act, or federal law.
- d. To knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving property, knowing that the property involved in the transaction is the proceeds of some form of unlawful activity, that, in fact, is the proceeds of specified unlawful activity.

Iowa Code § 710A.2 (Human trafficking) and Iowa’s CSEC laws fall within the definition of specified unlawful activity, as each is punishable by imprisonment of more than 1 year. A conviction under Iowa Code § 706B.2(1)(a),(b), (c) is punishable as a Class C felony by imprisonment up to 10 years, a fine up to the greater of \$10,000 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code § 706B.2(2)(a). A conviction under Iowa Code § 706B.2(1)(d) is punishable as a Class D felony and by imprisonment up to 5 years, a fine up to the greater of \$7,500 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code § 706B.2(2)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>71</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.

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<sup>68</sup> See *supra* note 21.

<sup>69</sup> Iowa Code § 706B.1(5) (Definitions) defines “unlawful activity” as “any act which is chargeable or indictable as a public offense of any degree under the laws of the state in which the act occurred or under federal law and, if the act occurred in a state other than this state, would be chargeable or indictable as a public offense of any degree under the laws of this state or under federal law.”

<sup>70</sup> Iowa Code § 706B.1(3) defines for this section “specified unlawful activity” as “any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable by confinement of one year or more under the laws of this state, or, if the act occurred outside this state, would be punishable by confinement of one year or more under the laws of the state in which it occurred and under the laws of this state.”

<sup>71</sup> See *supra* note 38.

§§ 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>72</sup> against a minor.

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

The creation or distribution of child pornography is prohibited under Iowa Code § 728.12 (Sexual exploitation of a minor). Iowa Code § 728.12 states,

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act<sup>73</sup> or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a visual depiction. . . .
2. It shall be unlawful to knowingly promote<sup>74</sup> any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. . . .

Traffickers who produce child pornography in violation of Iowa Code § 728.12(1), a Class C felony, will receive imprisonment up to 10 years and a fine of \$1,000–\$10,000 and may receive an additional \$50,000 fine for each violation under Iowa Code § 728.12. Iowa Code §§ 728.12(1), 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(b), 901A.2(3),<sup>75</sup> (4), 902.1. Those who distribute child pornography in violation of Iowa Code § 728.12(2), a Class D felony, will receive imprisonment up to 5 years and a fine of \$750–\$7,500 and may receive an additional \$25,000 fine for each violation under Iowa Code § 728.12. Iowa Code §§ 728.12(2), 902.9(1)(e).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>76</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>77</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>78</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>79</sup>

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<sup>72</sup> See *supra* note 39.

<sup>73</sup> See *supra* note 11 for definition of “prohibited sexual act.”

<sup>74</sup> Iowa Code § 728.1(8) defines “promote” as “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.”

<sup>75</sup> See *supra* note 10.

<sup>76</sup> See *supra* note 39.

<sup>77</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>78</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>79</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)

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.*

Iowa has not enacted a separate statute that specifically makes the use of the Internet illegal to lure, entice, recruit, or purchase commercial sex acts with a minor. However, although not specific to the Internet or to commercial sex acts, Iowa Code § 710.10 (Enticing a minor) may be used to penalize buyers who attempt to entice or to purchase commercial sex acts with minors over the Internet. Iowa Code § 710.10(6) suggests a violation of Iowa Code § 710.10 may occur through the use of an Internet, as it states,

For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice or attempt to entice a person believed to be a minor who is present in this state originates from another state, or the communication to entice or attempt to entice a person believed to be a minor is sent from this state.

A person who “entices or attempts to entice a person reasonably believed to be under the age of thirteen” in violation of Iowa Code § 710.10(1) (Enticing a minor),<sup>80</sup> is guilty of a Class C felony punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3),<sup>81</sup> (4), 902.1. A person who violates Iowa Code § 710.10(2) commits a Class D felony punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e).

- 3.3.1 Recommendation: Enact a separate statute that specifically criminalizes the use of the Internet to recruit minors for commercial sex acts with a minor or amend Iowa Code § 710.10 (Enticing a minor) to include recruiting a minor over the Internet for commercial sexual activity.

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

Several statutes impose financial penalties for trafficking a child for sexual exploitation. A violation of Iowa Code § 710A.2 (Human trafficking) involving a minor victim is punishable either as a Class B or as a Class C felony, whereas a violation of Iowa Code § 710A.2A<sup>82</sup> (Solicitation of Commercial Sexual Activity) results in a Class D felony. Traffickers convicted of Class B felonies are not required to pay a fine; however, those convicted of Class C felonies will be required to pay a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)((b), (d). Traffickers convicted of CSEC crimes are subject to fines. A conviction under Iowa Code § 710.10(1) (Enticing a minor),<sup>83</sup> is punishable as a Class C felony carrying a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(d), while a conviction under Iowa Code § 710.10(2) is punishable as a Class D felony with a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e). A conviction under Iowa Code § 728.12(1) (Sexual exploitation of a minor)<sup>84</sup> is punishable as a Class C felony, generally subject to fine of \$1,000–\$10,000; however, “[n]otwithstanding section 902.9 [Maximum sentence for felons], the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.” Traffickers convicted of violating Iowa Code § 725.3(2) (Pandering),<sup>85</sup> a Class C felony,

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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>80</sup> *See supra* Section 1.2 for the provisions of Iowa Code § 710.10(1), (2).

<sup>81</sup> *See supra* note 10.

<sup>82</sup> *See supra* note 13.

<sup>83</sup> *See supra* Section 1.2 for the provisions of Iowa Code § 710.10(1), (2).

<sup>84</sup> *See supra* Section 1.2 for the provisions of Iowa Code § 728.12(1).

<sup>85</sup> *See supra* Section 1.2 for the provisions of Iowa Code § 725.3(2).

face a fine of \$1,000–\$10,000, as well as an additional “law enforcement initiative surcharge” of \$125.<sup>86</sup> Iowa Code §§ 725.3(2), 902.9(1)(d).

Traffickers prosecuted under Iowa Code § 706B.2 (Money laundering penalty—civil remedies) also will be required to pay fines. Convictions under Iowa Code § 706B.2(1)(a), (b), (c), punishable as Class C felonies, may be required to pay a fine up to the greater of \$10,000 or twice the value of the of the property involved. Iowa Code § 706B.2(2)(a). A conviction under Iowa Code § 706B.2(1)(d) is punishable as a Class D felony with a fine up to the greater of \$7,500 or twice the value of the of the property involved. Iowa Code § 706B.2(2)(b).

Iowa Code § 809A.3(1)(a), (b), (c)<sup>87</sup> (Conduct giving rise to forfeiture) and Iowa Code § 809A.4 (Property subject to forfeiture) broadly provide that defendants who commit serious misdemeanors, aggravated misdemeanors, or felonies will be required to forfeit all proceeds of the “conduct giving rise to forfeiture,” as well as all property used to commit or “to facilitate the conduct giving rise to forfeiture.”<sup>88</sup>

Furthermore, traffickers convicted of crimes under Iowa’s laws will be required to make restitution directly to their victims. Iowa Code § 910.2(1) (Restitution or community service to be ordered by sentencing court) states that “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender’s criminal activities . . . .”<sup>89</sup> Iowa Code § 710A.4 (Restitution) further specifies that in making restitution to a victim of Iowa Code § 710A.2 (Human trafficking), “[t]he gross income of the defendant or the value of labor or services performed by the victim<sup>90</sup> to the defendant shall be considered when determining the amount of restitution.”

In addition to a fine of \$625–\$6,250 imposed by § 903.1(2) for the aggravated misdemeanor offense of harboring a runaway under Iowa Code § 710.8, pursuant to Iowa Code § 710.9 (Civil liability for harboring a runaway child),

A parent, guardian, or custodian of a runaway child has a right of action against a person who harbored the runaway child in violation of section 710.8 [Harboring a runaway child—penalty] for expenses sustained in the search for the child, for damages sustained due to physical or emotional distress due to the absence of the child, and for punitive damages.

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

Iowa Code § 692A.103(1) (Offenders required to register) states, “A person who has been convicted of any sex offense classified as a tier I, tier II, or tier III offense,<sup>91</sup> or an offender required to register in another jurisdiction under the other jurisdiction’s sex offender registry, shall register as a sex offender as provided in this chapter if the offender resides, is employed, or attends school in this state.” Tier I offenses includes both Iowa Code § 725.2 (Pimping) and Iowa Code § 725.3(2) (Pandering) where the victim was a minor and “a determination is made that the offense was sexually motivated pursuant to section 692A.126.” Iowa Code § 692A.102(1)(a)(7),<sup>92</sup> (8). Tier II offenses include Iowa Code § 728.12(2) (Sexual exploitation of a minor). Iowa Code § 692A.102(1)(b)(19). Tier III offenses include Iowa Code § 710A.2 (Human trafficking) “if sexual

<sup>86</sup> See *supra* note 9 for the provisions of Iowa Code § 911.3 (Law enforcement initiative surcharge).

<sup>87</sup> See *supra* note 49.

<sup>88</sup> See *supra* Section 2.8 for the provisions of Iowa Code § 809A.3(1)(a), (b), (c) (Conduct giving rise to forfeiture) and Iowa Code § 809A.4 (Property subject to forfeiture).

<sup>89</sup> See *supra* Section 2.8 for the provisions of Iowa Code § 910.2(1) (Restitution or community service to be ordered by sentencing court). See *supra* note 53 for definition of “criminal activities.”

<sup>90</sup> Pursuant to Iowa Code § 710A.1(13), “victim” is defined as “a person subjected to human trafficking.”

<sup>91</sup> See *supra* Section 2.10 for a full list of sex offense classifications grouped into tier I, tier II, and tier III offenses.

<sup>92</sup> See *supra* note 58.

abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense,” § 710.11 (Purchase or sale of an individual) “if a determination is made that the offense was sexually motivated,” and § 728.12(1) (Sexual exploitation of a minor). Iowa Code § 692A.102(1)(c)(24), (25), (26).

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.*

Convictions under Iowa Code § 710A.2 (Human trafficking) and Iowa’s CSEC laws are included as grounds for terminating parental rights under Iowa Code § 232.116(1)(o) (Grounds for termination) and § 600A.8(10) (Grounds for termination). Both Iowa Code § 232.116(1)(o) and § 600A.8(10) authorize the termination of parental rights if

[t]he parent has been convicted of a felony offense that is a sex offense against a minor as defined in section 692A.101<sup>93</sup> [Definitions], the parent is divorced from or was never married to the minor’s other parent, and the parent is serving a minimum sentence of confinement of at least five years for that offense.

Iowa Code § 692A.101(28)<sup>94</sup> defines a “sex offense against a minor” as “an offense for which a conviction has been entered for a sex offense classified as a tier I, tier II, or tier III offense under this chapter if such offense was committed against a minor, or otherwise involves a minor.” Therefore, a conviction under the following laws, assuming the other requirements of the statute are met, could serve as the basis for terminating parental rights: Iowa Code § 710A.2 (Human trafficking), “if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense;” Iowa Code § 725.3(2) (Pandering), “if a determination is made that the offense was sexually motivated pursuant to section 692A.126;” Iowa Code § 710.10(1) (Enticing a minor), “if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor;” and Iowa Code § 710.11 (Purchase or sale of individual), “if a determination is made that the offense was sexually motivated pursuant to section 692A.126;” and Iowa Code § 728.12(1) (Sexual exploitation of a minor). Iowa Code §§ 692A.101(a)(7), (8), (c)(24), (25), (31).

Other grounds for terminating parental rights provided under Iowa Code § 232.116(1) include the following:

- i. The court finds that all of the following have occurred:
  - (1) The child meets the definition of child in need of assistance<sup>95</sup> based on a finding of physical or sexual abuse<sup>96</sup> or neglect as a result of the acts or omissions of one or both parents.
  - (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
  - (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

...

- m. The court finds that both of the following have occurred:
  - (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.

<sup>93</sup> Here and elsewhere in this report that Iowa Code § 692A.101 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 417. H.F. 417, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>94</sup> *Id.*

<sup>95</sup> See *infra* Section 5.4 for discussion regarding a “child in need of assistance.”

<sup>96</sup> See *supra* note 14 for the definition of “sexual abuse.”

(2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

....

***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.*

The act of assisting or facilitating the crime of sex trafficking is prohibited under Iowa Code § 710A.2(7) (Human trafficking), which states it is a Class C felony if the victim is under 18 and a facilitator “benefits financially or by receiving anything of value from knowing participation in human trafficking.” Iowa Code § 710A.1(4)(a) (Definitions) defines “human trafficking” as, “participating in a venture<sup>97</sup> to . . . transport . . . a person for,” among other things, “[c]ommercial sexual activity,” without regard to the use of force, fraud, or coercion where the trafficked person is a minor. Therefore, facilitators also may be prosecuted under Iowa Code § 710A.2(1) for “knowingly engag[ing] in human trafficking,” which is a Class C felony when the victim is a minor. Class C felonies are punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d).<sup>98</sup> Habitual offenders may receive imprisonment up to 15 years.<sup>99</sup> Iowa Code § 902.9 (1)(c).

A facilitator also may be prosecuted under Iowa Code § 725.3(2) (Pandering) to the extent that a facilitator “keeps or maintains any premises for the purpose of prostitution involving minors or knowingly shares in the income from such premises knowing the character and content of such income . . . .” A violation of Iowa Code § 725.3(2) is a Class C felony, punishable by imprisonment up to 10 years, a fine of \$1,000–\$10,000, and an additional “law enforcement initiative surcharge” of \$125. Iowa Code §§ 725.3(2), 902.9(1)(d), 911.3. A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(d), 901A.2(3),<sup>100</sup> (4), 902.1. A habitual offender may receive imprisonment up to 15 years.<sup>101</sup> Iowa Code § 902.9(1)(c).

Lastly, facilitators may be prosecuted under Iowa Code § 706B.2 (Money laundering penalty—civil remedies). Iowa Code § 706B.2.<sup>102</sup> Facilitators who violate Iowa Code § 710A.2 (Human trafficking) and Iowa’s CSEC laws will fall within the definition of “specified unlawful activity,” as each is punishable by imprisonment of more than 1 year. A conviction under Iowa Code § 706B.2(1)(a), (b), (c), is punishable as a Class C felony by imprisonment up to 10 years, a fine up to the greater of \$10,000 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code § 706B.2(2)(a). A conviction under Iowa Code

<sup>97</sup> See *supra* note 2 for the definition of “venture.”

<sup>98</sup> See *supra* note 7.

<sup>99</sup> This provision applies throughout section 4.1 in all cases where a facilitator is a habitual offender and the maximum imprisonment term otherwise provided for an offense is less than 15 years. See *supra* note 8 for the provisions of Iowa Code § 902.8 (Minimum sentence—habitual offender).

<sup>100</sup> See *supra* note 10.

<sup>101</sup> See *supra* note 8.

<sup>102</sup> See *supra* Section 3.1 for the provisions of Iowa Code § 706B.2 and the definition of “specified unlawful activity” under Iowa Code § 706B.1(3).

§ 706B.2(1)(d), is punishable as a Class D felony by imprisonment up to 5 years, a fine up to the greater of \$7,500 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code §706B.2(2)(b).

#### 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 who violate Iowa Code § 710A.2(1), (4), (7) (Human trafficking), a Class C felony when the victim is a minor, face a fine of \$1,000–\$10,000. Iowa Code §§ 710A.2(1), (4), (7), 902.9(1)(d). A facilitator convicted under Iowa Code § 725.3(2) (Pandering), also a Class C felony, faces a fine of a fine of \$1,000–\$10,000, as well as an additional “law enforcement initiative surcharge” of \$125. Iowa Code §§ 725.3, 902.9(1)(e), 911.3.

Facilitators convicted under Iowa Code § 706B.2(1)(a), (b), (c) (Money laundering penalty — civil remedies), face a fine up to the greater of \$10,000 or twice the value of the of the property involved, while those convicted under Iowa Code § 706B.2(1)(d) face a fine up to the greater of \$7,500 or twice the value of the of the property involved. Iowa Code § 706B.2(2). Additionally, property involved in a violation of Iowa Code § 706B.2 “is subject to forfeiture under chapter 809A [Forfeiture Reform Act].” Iowa Code § 706B.2(4).

Facilitators convicted of other crimes also are subject to forfeiture provisions. Iowa Code § 809A.3 (Conduct giving rise to forfeiture) and Iowa Code § 809A.4 (Property subject to forfeiture) explain that facilitators convicted of serious misdemeanors, aggravated misdemeanors, and felonies will be required to forfeit property used in the commission of the illegal act and proceeds from the prohibited conduct.<sup>103</sup>

Mandatory restitution laws also apply to facilitators of domestic minor sex trafficking.<sup>104</sup> Iowa Code § 910.2(1) (Restitution or community service to be ordered by sentencing court) states that “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims<sup>105</sup> of the offender’s criminal activities.”<sup>106</sup> Iowa Code § 915.100(1) (Victim restitution rights) reiterates that “[v]ictims, as defined in section 910.1, have the right to recover pecuniary damages, as defined in section 910.1.” Furthermore, under chapter 710 (Human trafficking), Iowa Code § 710A.4 (Restitution) specifies that “[t]he gross income of the defendant or the value of labor or services performed by the victim<sup>107</sup> to the defendant shall be considered when determining the amount of restitution.”

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

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

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

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

Promoting child pornography is illegal under Iowa Code § 728.12(2) (Sexual exploitation of a minor), which states,

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<sup>103</sup> See *supra* Section 2.8 for the provisions of Iowa Code § 809A.3 and Iowa Code § 809A.4.

<sup>104</sup> See *supra* Section 2.8 for a discussion of Iowa’s restitution laws.

<sup>105</sup> See *supra* note 52 for the definition of “victim.”

<sup>106</sup> See *supra* note 53 for the definition of “criminal activities.”

<sup>107</sup> See *supra* note 90.

It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor engaging in a prohibited sexual act<sup>108</sup> or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class “D” felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

As a Class D felony, a conviction under Iowa Code § 728.12(2) is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500, in addition to the fine of up to \$25,000 authorized under Iowa Code § 728.12(2). Iowa Code §§ 725.2, 902.9(1)(e).

- 4.4.1 Recommendation: Amend § 728.12(2) (Sexual exploitation of a minor) to increase the penalties for buying and possessing child pornography to be comparable to federal penalties.

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<sup>108</sup> See *supra* note 11 for definition of “prohibited sexual act.”

**Legal Components:**

- 5.1 *A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims' compensation and other victim benefits.*
  - 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 *A victim of domestic minor sex trafficking or CSEC is defined as a victim for purposes of qualifying for crime victims' compensation and other victim benefits.*

The Iowa Code clearly defines a commercially sexually exploited child as a victim. Iowa Code § 915.35(1)<sup>109</sup> (Child victim services) defines a "victim" as a "a minor under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 [Sexual abuse], 710A [Human trafficking] or 726 [Protection of the family and dependent persons] or who has been the subject of a forcible felony."

- 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.*

Iowa Code § 710A.2(8) (Human trafficking), § 710A.2A<sup>110</sup> (Solicitation of commercial sexual activity), § 728.12(1) (Sexual exploitation of a minor), § 710.10(1), (2) (Enticing a minor), and § 725.3(2) (Pandering) do not expressly state that the consent of a minor to a commercial sex act is immaterial to the crime. However, Iowa Code § 709.8<sup>111</sup> (Lascivious acts with a child), explicitly states, "It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless

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<sup>109</sup> Here and elsewhere in this report that Iowa Code § 915.35 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 590. H.F. 590, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013, subsection (4)(b) effective January 1, 2014).

<sup>110</sup> See *supra* note 13.

<sup>111</sup> See *supra* note 20.

married to each other . . . .” Similarly, Iowa Code § 709.12<sup>112</sup> (Indecent contact with a child) states, “A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person’s spouse, with or without the child’s consent . . . .”

5.2.1 Recommendation: Amend § 728.12(1) (Sexual exploitation of a minor), § 710.10(1), (2) (Enticing a minor), and § 725.3(2) (Pandering) to expressly prohibit a defense to any commercial sexual offense against a minor under 18 based on consent of the child to the sex act.

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

Iowa Code § 725.1 (Prostitution) does not exclude minors from prosecution for prostitution. However, under the human trafficking law, Iowa Code § 710A.3 (Affirmative defense) states,

It shall be an affirmative defense, in addition to any other affirmative defenses for which the victim might be eligible, to a prosecution for a criminal violation directly related to the defendant’s status as a victim of a crime that is a violation of section 710A.2 [Human trafficking], that the defendant committed the violation under compulsion by another’s threat of serious injury, provided that the defendant reasonably believed that such injury was imminent.

5.3.1 Recommendation: Amend Iowa Code § 725.1 to make the law inapplicable to minors under 18 and refer cases of minors under 18 used in prostitution to Iowa Code § 710A.2 (Human trafficking) for prosecution and victim protections.

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.*

### **Child Identified as Abused/Neglected**

Pursuant to Iowa Code § 232.68(2)(c), (e), a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under Iowa Code § 232.68(2)(c), (e), the definition of a person responsible for the care of a child under Iowa Code § 232.68(7)(b), (d) is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

Iowa Code § 232.69(1)<sup>113</sup> (Mandatory and permissive reporters—training required) requires certain people, including social workers, peace officers, and school employees, among others, to “make a report within twenty-four hours and as provided in section 232.70 [Reporting procedure], of cases of child abuse.” When the department of human services (department) receives a report of child abuse,<sup>114</sup> under Iowa Code § 232.70(5)<sup>115</sup>

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<sup>112</sup> See *supra* note 19.

<sup>113</sup> Here and elsewhere in this report that Iowa Code § 232.69 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 396. S.F. 396, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>114</sup> Iowa Code § 232.68(2) (Definitions) defines “child abuse” as

c. The commission of a sexual offense with or to a child pursuant to chapter 709 [Sexual abuse], section 726.2 [Incest], or section 728.12, subsection 1 [Sexual exploitation of a minor], as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5 [Child], the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.

. . . .

e. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1 [Prostitution]. Notwithstanding section

(Reporting procedure), it must “[i]mmediately make a determination as to whether the report constitutes an allegation of child abuse as defined in section 232.68 [Definitions]<sup>116</sup> . . . [and] [n]otify the appropriate county attorney of the receipt of the report.”

Once a minor is identified as a victim, child protection assistance teams are available to assist domestic minor sex trafficking victims. Pursuant to Iowa Code § 915.35(1)<sup>117</sup> (Child victim services) a victim is defined in part as “a minor under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter . . . 710A [Human trafficking].” Pursuant to Iowa Code § 915.35(2), (4),

2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim’s parents or guardians.

. . . .

4. a. A child protection assistance team involving the county attorney, law enforcement personnel, and personnel of the department of human services shall be established for each county by the county attorney. However, by mutual agreement, two or more county attorneys may establish a single child protection assistance team to cover a multicounty area. A child protection assistance team, to the greatest extent possible, may be consulted in cases involving a forcible felony against a child who is less than age fourteen in which the suspected offender is the person responsible for the care of a child, as defined in section 232.68. A child protection assistance team may also be utilized in cases involving a violation of chapter 709 or 726 or other crime committed upon a victim as defined in subsection 1.

b. A child protection assistance team may also consult with or include juvenile court officers, medical and mental health professionals, physicians or other hospital-based health professionals, court-appointed special advocates, guardians ad litem, and members of a multidisciplinary team created by the department of human services for child abuse investigations. A child protection assistance team may work cooperatively with the early childhood Iowa area board established under chapter 256I. The child protection assistance team shall work with the department of human services in accordance with section 232.71B<sup>118</sup>, subsection 3, in developing the protocols for prioritizing the actions taken in response to child abuse assessments and for law enforcement agencies working jointly with the department at the local level in processes for child abuse assessments. The department of justice may provide training and other assistance to support the activities of a child protection assistance team.

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702.5, acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

. . . .

i. Knowingly allowing a person custody or control of, or unsupervised access to a child or minor, after knowing the person is required to register or is on the sex offender registry under chapter 692A for a violation of section 726.6 [Child endangerment].

. . . .

<sup>115</sup> Here and elsewhere in this report that Iowa Code § 232.70 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 590. H.F. 590, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective January 1, 2014).

<sup>116</sup> Here and elsewhere in this report that Iowa Code § 232.68 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 590. H.F. 590, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective January 1, 2014).

<sup>117</sup> See *supra* note 109.

<sup>118</sup> Here and elsewhere in this report that Iowa Code § 232.71B is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 590. H.F. 590, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective January 1, 2014).

Some protective provisions are also available to a commercially sexually exploited child, if found to be a “child in need of assistance.”<sup>119</sup>

### I. Initial Custody

#### a) Authority for initial custody

A “child in need of assistance” may be taken into custody in several ways. Specifically, the court may issue an ex parte order to take a child into custody under the provisions of Iowa Code § 232.78(1) (Temporary custody of a child pursuant to ex parte court order) under certain exigent conditions. A child also may also be taken into custody without a court order pursuant to Iowa Code § 232.79 (Custody without court order) if certain conditions threaten the well-being of the child.

A child may also come to the court’s attention pursuant to Iowa Code § 709.13 (Child in need of assistance complaints), which states,

During or following an investigation into allegations of violations of this chapter [Sexual Abuse] or of chapter 726 [Protection of family and dependent persons] or 728 [Obscenity, which includes §728.12 Sexual exploitation of a minor] involving an alleged victim under the age of eighteen and an alleged offender who is not a person responsible for the care of the child, anyone with knowledge of the alleged offense may file a complaint pursuant to section 232.83 [Child sexual abuse involving a person not responsible for the care of the child] alleging the child to be a child in need of assistance. In all cases, the complaint shall be filed by any peace officer with knowledge of the investigation when the peace officer has reason to believe that the alleged victim may require treatment as a result of the alleged offense and that the child’s parent, guardian, or custodian will be unwilling or unable to provide the treatment.

Additionally, according to Iowa Code § 232.81(1) (Complaint) any person “having knowledge of the circumstances may file a complaint with the person or agency designated by the court to perform intake duties alleging that a child is a child in need of assistance.”

#### b) Placement

Pursuant to Iowa Code §232.78. (Temporary custody of a child pursuant to ex parte court order)

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<sup>119</sup> Iowa Code § 232.2(6)<sup>119</sup> (Definitions) defines a “child in need of assistance” as

an unmarried child:

.....

d. Who has been, or is imminently likely to be, sexually abused by the child’s parent, guardian, custodian, or other member of the household in which the child resides.

.....

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political, or artistic value.

.....

3. Except for good cause shown or unless the child is sooner returned to the place where the child was residing or permitted to return to the child care facility, a petition shall be filed under this chapter within three days of the issuance of the order.

Pursuant to Iowa Code § 232.79. (Custody without court order)

b. The court shall authorize the department of human services or the juvenile probation department to cause a child thus removed or kept to be returned if it concludes there is not an imminent risk to the child's life and health in so doing. . . . If the child is not returned, the department of human services or the juvenile probation department shall forthwith cause a petition to be filed within three days after the removal.

## II. Process Following Initial Custody

After receiving a complaint, “the court may request the department of human services, juvenile probation office, or other authorized agency or individual to conduct a preliminary investigation of the complaint to determine if further action should be taken.” Iowa Code § 232.81(2). “A petition alleging the child to be a child in need of assistance may be filed pursuant to section 232.87 [Filing of a petition —contents of a petition] provided the allegations of the complaint, if proven, are sufficient to establish the court’s jurisdiction and the filing is in the best interests of the child.” Iowa Code § 232.81(3). Filing such a petition starts “[a] formal judicial proceeding to determine whether a child is a child in need of assistance under this chapter . . . .” Iowa Code § 232.87(1).

## III. Placement Process pending Adjudication/Investigation

Once the petition is filed a person “may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from the home. . . .” Iowa Code § 232.95(1). Iowa Code § 232.95(2)(a), (b) (Hearing concerning temporary removal) authorizes the court to do the following:

a. Remove the child from the home and place the child in a shelter care facility or in the custody of a suitable person or agency pending a final order of disposition if the court finds that substantial evidence exists to believe that removal is necessary to avoid imminent risk to the child’s life or health.

. . . .  
b. Release the child to the child’s parent, guardian, or custodian pending a final order of disposition.

. . . .

## IV. Adjudication

A temporary removal order may also be made by the court after the court “enters an order adjudicating the child to be in need of assistance . . . .” Iowa Code § 232.96(10).

## V. Outcomes

Following an order under Iowa Code § 232.96 (Adjudicatory hearing), the court must hold a dispositional hearing pursuant to Iowa Code § 232.99(1). Iowa Code § 232.99(4) (Dispositional hearing—findings) states,

When the dispositional hearing is concluded the court shall make the least restrictive disposition appropriate considering all the circumstances of the case. The dispositions which may be entered under this division are listed in sections 232.100 [Suspended judgment] to 232.102 [Transfer of legal custody of child and placement] in order from least to most restrictive.

As an alternative to returning the child to the custody of the child’s parent, Iowa Code § 232.102(1)(a) (Transfer of legal custody of child and placement) authorizes the court to make one of the following post-dispositional hearing placements transferring legal custody of the child to one of the following:

- (1) A parent who does not have physical care of the child, other relative, or other suitable person.
- (2) A child-placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.<sup>120</sup>
- (3) The department of human services.

However, Iowa Code § 232.102(5)(a) states,

Whenever possible the court should permit the child to remain at home with the child's parent, guardian, or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

- (1) The child cannot be protected from physical abuse without transfer of custody; or
- (2) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

Iowa Code § 232.102(5)(b) further states in part, "In order to transfer custody of the child under this subsection, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and shall identify the reasonable efforts<sup>121</sup> that have been made."

### **Child Identified as Delinquent**

A court could find a commercially sexually exploited child to be a delinquent if the minor committed a delinquent act, which Iowa Code § 232.2(12) (Definitions) defines in part as a "violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter" or a "violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court . . . ." Since a minor could be charged with prostitution under Iowa Code § 725.1 (Prostitution), a court could find a sexually exploited minor to be a delinquent.

#### **I. Initial Custody**

- a) Authority for initial custody

Iowa Code § 232.19(1) (Taking a child into custody) states that a child may be taken into custody by one of the following methods:

- a. By order of the court.
- b. For a delinquent act pursuant to the laws relating to arrest.

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<sup>120</sup> Iowa Code § 232.102(6) states, "The child shall not be placed in the state training school."

<sup>121</sup> Iowa Code § 232.102(10)(a) states,

As used in this division, "reasonable efforts" means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. Reasonable efforts shall include but are not limited to giving consideration, if appropriate, to interstate placement of a child in the permanency planning decisions involving the child and giving consideration to in-state and out-of-state placement options at a permanency hearing and when using concurrent planning. If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child. A child's health and safety shall be the paramount concern in making reasonable efforts. . . .

. . . .

c. By a peace officer, when the peace officer has reasonable grounds to believe the child has run away from the child's parents, guardian, or custodian, for the purposes of determining whether the child shall be reunited with the child's parents, guardian, or custodian, placed in shelter care, or, if the child is a chronic runaway and the county has an approved country runaway treatment plan, placed in a runaway assessment center . . . .

. . . .

b) Placement

According to Iowa Code § 232.19(2),

When a child is taken into custody as provided in subsection 1 the person taking the child into custody shall notify the child's parent, guardian, or custodian as soon as possible. The person may place bodily restraints, such as handcuffs, on the child if the child physically resists; threatens physical violence when being taken into custody; is being taken into custody for an alleged delinquent act of violence against a person; or when, in the reasonable judgment of the officer, the child presents a risk of injury to the child or others. The child may also be restrained by handcuffs or other restraints at any time after the child is taken into custody if the child has a known history of physical violence to others. Unless the child is placed in shelter care or detention in accordance with the provisions of section 232.21 [Placement in shelter care] or 232.22 [Placement in detention], the child shall be released to the child's parent, guardian, custodian, responsible adult relative, or other adult approved by the court upon the promise of such person to produce the child in court at such time as the court may direct.

When a child is not released, Iowa Code § 232.20 (Admission of child to shelter care or detention) mandates the child "immediately be taken to a detention or shelter care facility as specified in sections 232.21 [Placement in shelter care] or 232.22 [Placement in detention]." Iowa Code § 232.21(1) (Placement in shelter care) states,

no child shall be placed in shelter care unless one of the following circumstances applies:

- a. The child has no parent, guardian, custodian, responsible adult relative or other adult approved by the court who will provide proper shelter, care and supervision.
- b. The child desires to be placed in shelter care.
- c. It is necessary to hold the child until the child's parent, guardian, or custodian has been contacted and has taken custody of the child.
- d. It is necessary to hold the child for transfer to another jurisdiction.
- e. The child is being placed pursuant to an order of the court.

According to Iowa Code § 232.21(2)(a) a child eligible for shelter care must be placed in one of the following places:

- (1) A juvenile shelter care home.
- (2) A licensed foster home.
- (3) An institution or other facility operated by the department of human services, or one which is licensed or otherwise authorized by law to receive and provide care for the child.
- (4) Any other suitable place designated by the court provided that no place used for the detention of a child may be so designated.

However, Iowa Code § 232.21(6) further specifies that a child 12 years old or younger must not be placed in a group shelter care home unless reasonable efforts to place the child in an emergency foster family home have failed. Pursuant to Iowa Code § 232.21(4),

A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without an oral or written court order authorizing the shelter care. When the action is

authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order. A child placed in shelter care pursuant to section 232.19, subsection 1, paragraph “c”, shall not be held in excess of seventy-two hours in any event. . . .

The placement of a child in detention is governed by Iowa Code § 232.22 (Placement in detention). Iowa Code § 232.22(1) states,

A child shall not be placed in detention unless one of the following conditions is met:

- a. The child is being held under warrant for another jurisdiction.
- b. The child is an escapee from a juvenile correctional or penal institution.

. . . .

d. There is probable cause to believe the child has committed a delinquent act, and one of the following conditions is met:

- (1) There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.

. . . .

. . . .

Once it is determined a child should be placed in detention, under Iowa Code § 232.22(3), the child may be placed in one of the following:

- a. A juvenile detention home.
- b. Any other suitable place designated by the court . . . .

. . . .

d. A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement . . . .

## II. Process Following Initial Custody

Pursuant to Iowa Code §232.28. (Intake)

1. Any person having knowledge of the facts may file a complaint with the court or its designee alleging that a child has committed a delinquent act. A written record shall be maintained of any oral complaint received.
2. The court or its designee shall refer the complaint to an intake officer who shall consult with law enforcement authorities having knowledge of the facts and conduct a preliminary inquiry to determine what action should be taken.
3. In the course of a preliminary inquiry, the intake officer may:
  - a. Interview the complainant, victim or witnesses of the alleged delinquent act.
  - b. Check existing records of the court, law enforcement agencies, public records of other agencies, and child abuse records as provided in section 235A.15, subsection 2, paragraph “e”.
  - c. Hold conferences with the child and the child's parent or parents, guardian or custodian for the purpose of interviewing them and discussing the disposition of the complaint in accordance with the requirements set forth in subsection 8.
  - d. Examine any physical evidence pertinent to the complaint.
  - e. Interview such persons as are necessary to determine whether the filing of a petition would be in the best interests of the child and the community as provided in section 232.35, subsections 2 and 3.
4. Any additional inquiries may be made only with the consent of the child and the child's parent or parents, guardian or custodian. . . .

. . . .

6. The intake officer, after consultation with the county attorney when necessary, shall determine whether the complaint is legally sufficient for the filing of a petition. A complaint shall be deemed legally sufficient for the filing of a petition if the facts as alleged are sufficient to establish the jurisdiction of the court and probable cause to believe that the child has committed a delinquent act. If the intake officer determines that the complaint is legally sufficient to support the filing of a petition, the officer shall determine whether the interests of the child and the public will best be served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.

7. If the intake officer determines that the complaint is not legally sufficient for the filing of a petition or that further proceedings are not in the best interests of the child or the public, the intake officer shall dismiss the complaint.

8. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that an informal adjustment of the complaint is in the best interests of the child and the community, the officer may make an informal adjustment of the complaint in accordance with section 232.29.

9. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that the filing of a petition is in the best interests of the child and the public, the officer shall request the county attorney to file a petition in accordance with section 232.35.

### III. Placement Process pending Adjudication/Investigation

For any child placed in a detention or shelter care facility pursuant to Iowa Code § 232.22 or § 232.21, a hearing pursuant to Iowa Code § 232.44(1) (Detention or shelter care hearing—release from detention upon change of circumstance) “shall be held within forty-eight hours . . . of the time of the child’s admission to a shelter care facility, and within twenty-four hours . . . , excluding Saturdays, Sundays, and legal holidays of the time of a child’s admission to a detention facility.” After the hearing, the court will either find that release is proper or authorize either shelter care or detention. Iowa Code § 232.44(5), (6). Pursuant to Iowa Code § 232.44(8), “[a] child held in a detention or shelter care facility . . . may be released upon a showing that a change of circumstances makes continued detention unnecessary.” However, Iowa Code § 232.44 “does not apply to a child placed in accordance with section 232.78 [Temporary custody of a child pursuant to ex parte court order], 232.79 [Custody without court order], or 232.95 [Hearing concerning temporary removal].” Iowa Code § 232.44(11).

### IV. Adjudication

#### a) Adjudication hearing

Pursuant to Iowa Code §232.47. (Adjudicatory hearing--findings—adjudication)

1. If a child denies the allegations of the petition, that child may be found to be delinquent only after an adjudicatory hearing conducted in accordance with the provisions of this section. . . .

. . . .

8. At the conclusion of an adjudicatory hearing, the court shall make a finding as to whether the child has committed a delinquent act. The court shall make and file written findings as to the truth of the specific allegations of the petition and as to whether the child has engaged in delinquent conduct.

9. If the court finds that the child did not engage in delinquent conduct, the court shall enter an order dismissing the petition.

10. If the court finds that the child did engage in delinquent conduct, the court may enter an order adjudicating the child to have committed a delinquent act. The child shall be presumed to be innocent of the charges and no finding that a child has engaged in delinquent conduct may be made unless the state has proved beyond a reasonable doubt that the child engaged in such behavior.

11. If the court enters an order adjudicating the child to have committed a delinquent act, the court may issue an order authorizing either shelter care or detention until the dispositional hearing is held.

b) Diversion or alternate process

When a child has admitted his or her involvement in a delinquent act, the child can proceed under Iowa Code § 232.29(1) (Informal adjustment). A child may voluntarily enter into an informal adjustment agreement and sign the terms of the agreement to proceed through this informal procedure. Iowa Code § 232.29(1)(c), (d).

V. Outcomes

If instead the child is formally adjudicated under Iowa Code § 232.47 (Adjudicatory hearing—findings—adjudication),<sup>122</sup> and found to have committed a delinquent act, a dispositional hearing must be held pursuant to Iowa Code § 232.50(1) (Dispositional hearing), and the court must “enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child’s culpability as indicated by the circumstances of the particular case, the age of the child, the child’s prior record, or the fact that the child has been placed on youthful offender status under section 907.3A<sup>123</sup> [Youthful offender status].” Iowa Code § 232.52(1)<sup>124</sup>. Specifically, under Iowa Code § 232.52(2) (Disposition of child found to have committed a delinquent act), the court may order, among other things, the child placed on probation and released to the child’s parents, the child to receive “special care and treatment required for the physical, emotional, or mental health of the child” and probation or other supervision pursuant to Iowa Code § 232.52(2)(c), or an order “transferring the legal custody of the child, subject to the continuing jurisdiction of the court” to, among others, “[a]n adult relative or other suitable adult and placing the child on probation,” a private agency or facility, or foster care pursuant to Iowa Code § 232.52(2)(d)(1)–(3).

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

Commercial sexual exploitation is identified as a type of abuse within Iowa’s child protection statutes. As used within Iowa’s laws related to children in need of assistance, Iowa Code § 232.68(2)(c), (e) (Definitions), defines “child abuse” or “abuse” as

c. The commission of a sexual offense with or to a child pursuant to chapter 709 [Sexual abuse] . . . or section 728.12 [Sexual exploitation of a minor], subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5 [defines child as a person under 14 years of age], the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.

. . . .

e. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1 [Prostitution]. Notwithstanding section 702.5 5 [defines child as a person under 14 years of age], acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

5.5.1 Recommendation: Amend the definitions of “child abuse” and “abuse” under Iowa Code § 232.68(2)(c), (e) (Definitions) to include violations of Iowa Code § 710A.2 (Human trafficking).

<sup>122</sup> Iowa Code § 232.47(1) (Adjudicatory hearing—findings—adjudication) states, “If a child denies the allegations of the petition, that child may be found to be delinquent only after an adjudicatory hearing conducted in accordance with the provisions of this section.”

<sup>123</sup> Here and elsewhere in this report that Iowa Code § 907.3A is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate File No. 288. S.F. 288, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>124</sup> Here and elsewhere in this report that Iowa Code § 232.52 is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate File No. 288. S.F. 288, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

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.*

As used within the child abuse reporting laws, Iowa Code § 232.68(7)(b), (d) (Definitions) defines a “person responsible for the care of a child” as

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

. . . .

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

This broad definition should include situations in which a trafficker is in custody of a child.

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

Pursuant to Iowa Code § 915.94 (Victim compensation fund),

A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of section 915.41 and this subchapter. In addition, the department may use moneys from the fund . . . for the award of funds to programs that provide services and support . . . to victims under section 710A.2 [Human trafficking] . . .

Victims of domestic minor sex trafficking who suffer personal injury<sup>125</sup> resulting from a crime<sup>126</sup> may apply for victims’ compensation under Iowa Code § 915.84(1) (Application for compensation). However, minor victims who otherwise qualify for compensation still may face barriers to receiving crime victims’ compensation due to certain ineligibility criteria in the laws. Iowa Code § 915.84(1) requires the application to be filed “within two years after the date of the crime, the discovery of the crime, or the date of death of the victim.” Also, subsection (2) requires a report “to the local police department or county sheriff department within seventy-two hours of” the occurrence of the crime or of the time a “report can reasonably be made.” In either case, the department of justice “may waive this requirement if good cause is shown.” Iowa Code § 915.84(1), (2). Also, subsection (3) states,

Notwithstanding subsection 2, a victim under the age of eighteen . . . who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 [Sexual abuse] or 726 [Protection of the family or dependent persons] or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for compensation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in section 232.68 [Definitions], subsection 7,<sup>127</sup> . . . and was reported to an employee of the department of human services and the employee verifies the report to the department.

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<sup>125</sup> Iowa Code § 915.80(6)(a) (Definitions) defines “victim” in part as “a person who suffers personal injury or death as a result of . . . [a] crime.”

<sup>126</sup> Iowa Code § 915.80(2) (Definitions) defines “crime” in part as “conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony or misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state.”

<sup>127</sup> See *supra* Section 5.6.

Other potential barriers to a child victim of sex trafficking receiving crime victims' compensation includes the requirement in Iowa Code § 915.84(6) that the victim "cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation or prosecution of the crime." Also, victims face possible reductions in compensation claims if found to have "committed the crime or . . . [are] otherwise responsible for damages resulting from the crime." Iowa Code § 915.87(1)(a).

Iowa Code § 915.87(2) (Reductions and disqualifications) states that "[c]ompensation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following: a. Consent, provocation, or incitement by the victim, b. The victim assisting, attempting, or committing a criminal act. This paragraph shall not apply to a victim under the age of eighteen involved in commercial sexual activity as defined in section 710A.1.<sup>128</sup>" Consequently, CSEC victims may not be ineligible for compensation on the basis of "assisting, attempting, or committing a criminal act," but may still be denied compensation on the basis of consent under subsection (a). Since consent is not expressly barred as a defense under the human trafficking or CSEC laws, this could constitute a barrier to compensation in some cases.

5.7.1 Recommendation: Amend Iowa Code § 915.87 (Reductions and disqualifications) to extend the exception for commercially sexually exploited children to the grounds for disqualification under subsection (a) as well as the filing and reporting time limits under subsections (1) and (2).

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

Child crime victims and witnesses are provided some protections through the trial process. Iowa Code § 915.37 (Guardian ad litem for prosecuting child witnesses) expressly authorizes the court to appoint a guardian ad litem for a child who is a victim of Iowa Code § 710A.2 (Human trafficking) or CSEC. Specifically, Iowa Code § 915.37(1) states in part,

A prosecuting witness who is a child, as defined in section 702.5,<sup>129</sup> in a case involving a violation of chapter 709 [Sexual abuse] or 710A [Human trafficking], or section . . . or 728.12 [Commercial sexual exploitation of a minor], is entitled to have the witness's interests represented by a guardian ad litem at all stages of the proceedings arising from such violation. . . .

Children who are witnesses in criminal cases also may be allowed to provide testimony through closed-circuit television. Under Iowa Code § 915.38(1) (Televised, videotaped, and recorded evidence—limited court testimony—minors and others), the court may order a minor's<sup>130</sup> testimony taken outside the courtroom and broadcast by closed-circuit equipment to protect the minor "from trauma caused by testifying in the physical presence of the defendant where it would impair the minor's ability to communicate . . . . However, such an order shall be entered only upon a specific finding by the court that such measures are necessary to protect the

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<sup>128</sup> Iowa Code § 710A.1(1) defines "commercial sexual activity" as "any sex act or sexually explicit performance for which anything of value is given, promised to, or received by any person and includes, but is not limited to, prostitution, participation in the production of pornography, and performance in strip clubs."

<sup>129</sup> Iowa Code § 702.5 (Child) states "unless another age is specified, a 'child' is any person under the age of fourteen years."

<sup>130</sup> Iowa Code § 915.38(1) refers to the definition of minor in Iowa Code § 599.1 (Period of minority—exception for certain inmates), which states,

The period of minority extends to the age of eighteen years, but all minors attain their majority by marriage.

. . .

A person who is less than eighteen years old, but who is tried, convicted, and sentenced as an adult and committed to the custody of the director of the department of corrections shall be deemed to have attained the age of majority for purposes of making decisions and giving consent to medical care, related services, and treatment during the period of the person's incarceration.

minor from trauma.” Pursuant to the section, “Only the judge, prosecuting attorney, defendant’s attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may be present in the room with the minor during the minor’s testimony” and the minor shall be informed that “the defendant will not be present in the room in which the minor will be testifying but that the defendant will be viewing the minor’s testimony through closed-circuit television.”

Additionally, under Iowa Code § 915.38(2)–(4),

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a minor, as defined in section 599.1, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 2.13(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the minor is unavailable as provided in rule of evidence 5.804(a), order the videotaping of the minor’s testimony for viewing in the courtroom by the court. . . .

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5 [Child], describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under rule of evidence 5.803(24)<sup>131</sup> or 5.804(b)(5).<sup>132</sup>

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child’s testimony. However, the court shall, upon motion, limit the duration of a child’s uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

Certain additional protections apply to domestic minor sex trafficking victims whose offenders are prosecuted under Iowa’s sexual offense laws. Iowa R. Evid. 5.412(a) (Sexual abuse cases; relevance of victim’s past behavior) states generally that “[n]otwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, reputation or opinion evidence of the past sexual behavior of an alleged victim of such sexual abuse is not admissible.” However, pursuant to Iowa R. Evid. 5.412(b),

Notwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, evidence of a victim’s past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence is either of the following:

- (1) Admitted in accordance with rules 5.412(c)(1) and 5.412(c)(2) and is constitutionally required to be admitted.
- (2) Admitted in accordance with rule 5.412(c) and is evidence of either of the following:
  - (A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury.
  - (B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which sexual abuse is alleged.

Iowa Code § 915.36(1), (2) (Protection of child victim’s privacy) states that in filings related to any violation of chapter 709 (Sexual abuse) or § 728.12 (Sexual exploitation of a minor), in which the child victim is under 14

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<sup>131</sup> Rule 5.803(24) has been transferred to Rule 5.807 (Residual exception). Rule 5.807 states that “[a] statement not specifically covered by any of the exceptions in rules 5.803 or 5.804 but having equivalent circumstantial guarantees of trustworthiness is not excluded by the hearsay rule” if the requirements of the rule are met.

<sup>132</sup> Rule 5.804(b)(5) has been transferred to Rule 5.807 (Residual exception). *See supra* note 131.

years of age, “the name of the child and identifying biographical information shall not appear on the information or indictment or any other public record. Instead, a nondescriptive designation shall appear on all public records.”

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.*

Pursuant to Iowa Code § 232.150 (Sealing of records), juvenile records may be sealed as follows:

1. a. Upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court’s own motion, the court, after hearing, shall order the official juvenile court records in the case including those specified in sections 232.147<sup>133</sup> [Confidentiality of juvenile court records] and 232.149 [Records of criminal or juvenile justice agencies] sealed if the court finds all of the following:

(1) The person is eighteen years of age or older and two years have elapsed since the last official action in the person’s case.

(2) The person has not been subsequently convicted of a felony or an aggravated or serious misdemeanor or adjudicated a delinquent child for an act which if committed by an adult would be a felony, an aggravated misdemeanor, or a serious misdemeanor and no proceeding is pending seeking such conviction or adjudication.

(3) The person was not placed on youthful offender status, transferred back to district court after the youthful offender’s eighteenth birthday, and sentenced for the offense which precipitated the youthful offender placement.

b. If the person was adjudicated delinquent for an offense which if committed by an adult would be an aggravated misdemeanor or a felony, the court shall not order the records in the case sealed unless, upon application of the person or upon the court’s own motion and after hearing, the court finds that paragraph “a”, subparagraphs (1) and (2), apply and that the sealing is in the best interests of the person and the public.

....

When a juvenile’s court records are not sealed in accordance with Iowa Code § 232.150, Iowa Code § 232.147 (Confidentiality of juvenile court records) provides that juvenile court records still are confidential and may not be inspected except as authorized under Iowa Code § 232.147.

5.9.1 Recommendation: Amend Iowa Code § 232.150 (Sealing of records) to reduce the waiting period for victims of human trafficking and CSEC offenses.

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.*

Iowa has enacted various statutes that provide for mandatory restitution and civil remedies for minors victimized through prostitution, pornography, or sexual performance. Iowa Code § 910.2(1) (Restitution or community service to be ordered by sentencing court)<sup>134</sup> states, “In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender’s criminal activities . . . .” Iowa Code § 915.100(1) (Victim restitution rights) further states that “[v]ictims, as defined in section 910.1

<sup>133</sup> Here and elsewhere in this report that Iowa Code § 232.147 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 592. H.F. 592, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

<sup>134</sup> See *supra* Section 2.8 for the provisions of Iowa Code § 910.2(1).

[Definitions], have the right to recover pecuniary damages,<sup>135</sup> as defined in section 910.1.” Furthermore, Iowa Code § 915.100(2) specifies that,

a. In all criminal cases in which there is a plea of guilty, verdict of guilty or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender’s criminal activities.

....

e. Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program reimbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

....

i. The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

Iowa Code § 710A.4 (Restitution) specifies that, with regard to a victim of Iowa Code § 710A.2 (Human trafficking), “[t]he gross income of the defendant or the value of labor or services<sup>136</sup> performed by the victim<sup>137</sup> to the defendant shall be considered when determining the amount of restitution.”

Victims of Iowa Code § 706B.2 (Money laundering penalty — civil remedies) also may seek civil remedies. Offenders may be required to pay “a civil penalty of three times the value of the property involved in the transaction, in addition to any criminal sanction imposed.” Iowa Code § 706B.2(3). Traffickers who violate Iowa Code § 706B.2 will also be “subject to forfeiture under chapter 809A [Forfeiture Reform Act].” Iowa Code § 706B.2(4).

Finally, victims of ongoing criminal conduct, pursuant to Iowa Code §706A may seek civil remedies. Iowa Code §706A.3<sup>138</sup> states, in part: “[A]n aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this chapter or to prevent, restrain, or remedy such violation.”

5.10.1 Recommendation: Enact a law to provide a civil remedy for victims of violations of Iowa’s human trafficking and CSEC laws.

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<sup>135</sup> Pursuant to Iowa Code § 910.1(3) (Definitions),

“Pecuniary damages” means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, “pecuniary damages” includes damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity.

<sup>136</sup> Pursuant to Iowa Code § 710A.1 (Definitions), “services” is defined as “an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor, including commercial sexual activity and sexually explicit performances.”

<sup>137</sup> See *supra* note 90 for definition of “victim.”

<sup>138</sup> See *supra* note 27.

5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Under Iowa Code § 802.3 (Felony—aggravated or serious misdemeanor), violations of Iowa Code § 710A.2 (Human trafficking) and Iowa’s CSEC laws are subject to a 3 year statute of limitations. Iowa Code § 802.3 specifies that “[i]n all cases, except those enumerated in section . . . 802.2 [Sexual abuse] . . . an indictment or information for a felony or aggravated or serious misdemeanor shall be found within three years after its commission.”

With regard to civil actions, Iowa Code § 614.8A (Damages for child sexual abuse—time limitation) states,

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

To the extent that a civil claim by a CSEC victim does not fall within the exception provided in Iowa Code § 614.8A, the general 2-year statute of limitations for civil claims “founded on injuries to the person or reputation” would apply. Iowa Code § 614.1(2)<sup>139</sup> (Period). However, Iowa Code § 614.8(2) (Minors and persons with mental illness) states,

Except as provided in section 614.1, subsection 9 [relating to medical malpractice], the times limited for actions in this chapter . . . except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have one year from and after attainment of majority within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.

- 5.11.1 Recommendation: Amend Chapter 802 (Limitation of criminal actions) to allow offenses committed under Iowa Code § 710A.2 (Human Trafficking) and Iowa’s CSEC laws to be commenced at any time, and amend and Chapter 614 (Limitations of actions) to toll the statute of limitations for civil actions by victims to recover for injuries resulting from these offenses.

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<sup>139</sup> Here and elsewhere in this report that Iowa Code § 614.1 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 356. H.F. 356, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

***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.*

Iowa Code § 80B.11 (Rules) establishes the training standards applicable to law enforcement officers in Iowa, including minimum entrance requirements, basic training requirements, and advanced training requirements for law enforcement officers.

Iowa Code § 80B.11(1)(e) states,

The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

. . . .

e. Training standards on the subject of human trafficking, to include curricula on cultural sensitivity and the means to deal effectively and appropriately with trafficking victims. Such training shall encourage law enforcement personnel to communicate in the language of the trafficking victims. The course of instruction and training standards shall be developed by the director in consultation with the appropriate national and state experts in the field of human trafficking.

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

Iowa law allows for single party consent to audio-taping. Although Iowa Code § 727.8 (Electronic and mechanical eavesdropping) states, “Any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor . . . .” The law carves out an exception, stating further that “the sender or recipient of a message or one who is openly present and participating in or listening to a communication shall not be prohibited hereby from recording such message or communication . . . .” Furthermore, Iowa Code § 808B.2(2)(c) makes it clear that it is not “unlawful under this chapter [Interception of communications] for a person not acting under color of law to intercept a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.” Additionally, Iowa Code § 808B.2(2)(b) states, “It is not unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.”

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

Iowa Code § 727.8 (Electronic and mechanical eavesdropping) and Iowa Code § 808B.2 (Unlawful acts—penalty) generally prohibit wiretapping. Iowa Code § 808B.3 (Court order for interception by special agents) allows the attorney general to “authorize and prepare any application for an order authorizing the interception of wire, oral, or electronic communications.” Iowa Code § 808B.3 explains that the court may issue and order authorizing wiretapping by law enforcement investigating specified crimes, subject to the requirements of the chapter. Neither Iowa Code § 710A.2 (Human trafficking) nor any of Iowa’s CSEC laws are included among the specified crimes (except to the extent they are forcible felonies); however to the extent that a trafficker or facilitator is violating Iowa Code § 706B.2 (Money laundering penalty—civil remedies) or the statutes against ongoing criminal conduct, wiretapping may be authorized under Iowa Code § 808B. Iowa Code § 808B.3 states,

[T]he court may grant, subject to this chapter, an order authorizing the interception of wire, oral, or electronic communications by special state agents having responsibility for the investigation of the offense as to which application is made, when the interception may provide or has provided evidence of the following:

- ....
- 2. A forcible felony as defined in section 702.11 [Forcible felony].<sup>140</sup>
- 3. A felony offense involving ongoing criminal conduct in violation of chapter 706A.
- 4. A felony offense involving money laundering in violation of chapter 706B.
- ....

Pursuant to Iowa Code § 808B.4(2) (Permissible disclosure and use), “An investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, oral, or electronic communication or has obtained evidence derived from a wire, oral, or electronic communication may use the contents to the extent the use is appropriate to the proper performance of the officer’s official duties.”

- 6.3.1. Recommendation: Amend Iowa Code § 808B.3 (Court order for interception by special agents) to specifically include § 710A.2 (Human trafficking) and Iowa’s CSEC laws as crimes that are grounds for authorizing a wiretapping order, and make any resulting evidence admissible in investigations of domestic minor sex trafficking under Iowa Code § 710A.2 (Human trafficking) or Iowa Code § 728.12 (Commercial sexual exploitation of a minor).

### 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.*

Iowa Code § 710A.2A<sup>141</sup> (Solicitation of commercial sexual activity) states, “[a] person shall not entice, coerce, or recruit, or attempt to entice, coerce, or recruit either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, engage in a commercial sexual activity. A person who violates this section commits a class “D” felony.” Case law also indicates that undercover police officers have been employed in the investigation of buyers soliciting prostitutes. Moreover, Iowa Code § 710.10(2) (Enticing a minor) makes it a crime when a person “with the intent to commit an illegal sex act upon or sexual exploitation of a minor . . . entices or attempts to entice a person reasonably believed to be under the age of sixteen.” The language “reasonably believed to be under the age of sixteen” suggests that Iowa Code § 710.10 may apply when a law enforcement officer acts as a decoy for

<sup>140</sup> Iowa Code § 702.11 (1) (Forcible felony) defines “forcible felony” as “any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.”

<sup>141</sup> See *supra* note 13.

the purpose of investigating a violation of Iowa Code § 710.10. Furthermore, Iowa Code § 704.11 (Police activity) states,

A peace officer or person acting as an agent of or directed by any police agency who participates in the commission of a crime by another person solely for the purpose of gathering evidence leading to the prosecution of such other person shall not be guilty of that crime or of the crime of solicitation as set forth in section 705.1<sup>142</sup> [Solicitation], provided that all of the following are true:

1. The officer or person is not an instigator of the criminal activity.
2. The officer or person does not intentionally injure a nonparticipant in the crime.
3. The officer or person acts with the consent of superiors, or the necessity of immediate action precludes obtaining such consent.
4. The officer's or person's actions are reasonable under the circumstances.

This section is not intended to preclude the use of undercover or surveillance persons by law enforcement agencies in appropriate circumstances and manner. It is intended to discourage such activity to tempt, urge or persuade the commission of offenses by persons not already disposed to commit offenses of that kind.

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

Iowa law does not expressly authorize the use of the Internet to investigate buyers and traffickers. However, Iowa Code § 710.10(2) (Enticing a minor) makes it a crime when a person “with the intent to commit an illegal sex act upon or sexual exploitation of a minor . . . entices or attempts to entice a person reasonably believed to be under the age of sixteen.” The language “reasonably believed to be under the age of sixteen” suggests that Iowa Code § 710.10 may apply when a law enforcement officer uses the Internet investigating a violation of Iowa Code § 710.10. Case law also indicates that in investigating violations of Iowa Code § 710.10, law enforcement officers have used the Internet to pose as minors.

- 6.5.1 Recommendation: Amend Iowa Code § 710.10 (Enticing a minor) to specifically permit law enforcement to use the Internet to investigate buyers and traffickers.

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

Iowa Code § 694.2 (Complaint of missing person) states that “[a] person may file a complaint for a missing person<sup>143</sup> with a law enforcement agency having jurisdiction,” and the report will be circulated “to all law enforcement personnel currently on active duty for that agency through internal means and over the law enforcement administration network immediately upon its being filed.” Law enforcement agencies who have received a complaint of a missing person “shall prepare, as soon as practicable, a report on the missing person,” which must include information from the complaint, any evidence gathered through any investigation, any

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<sup>142</sup> See *supra* note 60.

<sup>143</sup> Pursuant to Iowa Code § 694.1(1) (Missing persons), “missing person” is defined as a person who is missing and meets one of the following characteristics:

1. . . . .
  - b. Is missing under circumstances indicating that the person's safety may be in danger.
  - c. Is missing under circumstances indicating that the disappearance was not voluntary.
  - d. Is an unemancipated minor.

2. “Unemancipated minor” means a minor who has not married and who resides with a parent or other legal guardian.

Here and elsewhere in this report that Iowa Code § 694.1 is quoted or cited, it has been updated to reflect the amendments added by the passage of House File No. 556. H.F. 556, 85th Gen. Assemb., Leg. Sess. (Iowa 2013) (effective July 1, 2013).

statement by law enforcement officers in charge, and an explanation of the next steps that will be taken by the law enforcement agency. Iowa Code § 694.3.

Pursuant to Iowa Code § 694.4 (Dissemination of report), once the report is completed, a copy must be forwarded to various other law enforcement agencies. Iowa Code § 694.5(1) (Unemancipated minors) states that when “a report of missing persons involves an unemancipated minor, the law enforcement agency shall immediately transmit the proper information for inclusion in the national crime information center computer.” Furthermore, “a law enforcement agency shall not prevent an immediate active investigation on the basis of an agency rule which specifies an automatic time limitation for a missing person investigation.” Iowa Code § 694.5 (2).

Iowa Code § 694.10(2)–(6) (Missing person information clearinghouse) specifies the duties of Iowa’s department of public safety (department) regarding missing persons.<sup>144</sup> Iowa Code § 694.10(2) directs the department of public safety to establish a “statewide missing person information clearinghouse” and to perform various duties related to training and investigations of missing persons. Included among these duties, the department is required to “[d]istribute monthly bulletins to all local law enforcement agencies and to media outlets . . . containing . . . the names of person reported missing whose locations have been determined and confirmed.” Iowa Code § 694.10(2)(g). Pursuant to Iowa Code § 694.10(3), “A law enforcement agency shall submit all missing person reports compiled pursuant to section 694.3 and updated information relating to the reports to the clearinghouse.” Iowa Code § 694.10(4) further states, “Subsequent to the filing of a complaint of a missing person with a law enforcement agency pursuant to section 694.2, the person filing the complaint may submit information regarding the missing person to the clearinghouse. If the person reported missing is an unemancipated minor, any person may submit information regarding the missing unemancipated minor to the clearinghouse.”

Iowa Code § 694.10(5) states, “A person who has filed a missing person complaint with a law enforcement agency shall immediately notify that law enforcement agency when the location of the missing person has been determined.” Pursuant to Iowa Code § 694.10(6), “All information relating to a missing person in the clearinghouse shall be purged when the person’s location has been determined and confirmed, except that information relating to a missing child shall be purged when the child reaches eighteen years of age and the child’s location has been determined and confirmed.”

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<sup>144</sup> “‘Missing person’ means a missing person as defined in section 694.1 whose temporary or permanent residence is in Iowa, or is believed to be in Iowa, whose location has not been determined, and who has been reported as missing to a law enforcement agency.” Iowa Code § 694.10(1)(a).