

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2013 ANALYSIS AND RECOMMENDATIONS LOUISIANA

### 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.*

La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking) states,

A. It shall be unlawful:

- (1) For any person to knowingly recruit, harbor, transport, provide, solicit, obtain, or maintain the use of another person through fraud, force, or coercion<sup>2</sup> to provide services or labor.

<sup>1</sup> Unless otherwise specified, all references to Louisiana statutes were taken from Louisiana Revised Statutes Annotated (LEXIS through 2013 Reg. Sess.) 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.

<sup>2</sup> La. Rev. Stat. Ann. § 14:46.2(C)(2) defines “fraud, force, or coercion” as

- (a) Causing or threatening to cause serious bodily injury;

- (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.
- (3) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.

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D. It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, solicited, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.

A conviction under this statute is ordinarily punishable by imprisonment up to 10 years at hard labor and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:46.2(B)(1). A conviction “when the services include commercial sexual activity<sup>3</sup> or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, trafficking involving a person under 18 is punishable by imprisonment for 5–25 years at hard labor, 5 years of which “shall be without the benefit of parole, probation, or suspension of sentence,” and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Louisiana has enacted a separate statute making the sex trafficking of children a crime that does not require a showing of force, fraud, or coercion. La. Rev. Stat. Ann. § 14:46.3 (A), (B) (Trafficking of children for sexual purposes) states,

A. It shall be unlawful:

- (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.
- (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.
- (3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section.
- (4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.
- (5) For any person to knowingly advertise any of the activities prohibited by this Section.
- (6) For any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section.

B. For purposes of this Section, “commercial sexual activity” means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.

Pursuant to La. Rev. Stat. § 14:46.3(C)(3), “It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, sold, purchased, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.”

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- (b) Physically restraining or threatening to physically restrain another person;
  - (c) Intentionally 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; or
  - (d) Extortion as defined in R.S. 14:66.

<sup>3</sup> La. Rev. Stat. Ann. § 14:46.2(C)(1) defines “commercial sexual activity” as “any sexual act performed or conducted when anything of value has been given, promised, or received by any person.”

A conviction under this statute is ordinarily<sup>4</sup> punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by a possible fine of \$75,000 and imprisonment for 25–50 years at hard labor with no possibility of “probation, parole, or suspension of sentence” for at least 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b). Furthermore, any person who violates any of La. Rev. Stat. Ann. § 14:46.3(A)(1), (2), (4), (5) or (6) who was previously convicted of a sex offense when the victim of the sex offense was under 18, shall be fined up to \$100,000 and shall be imprisoned at hard labor for not less than 50 years or life with no possibility of “probation, parole, or suspension of sentence” for at least 50 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(c).

In addition, a convicted violator of La. Rev. Stat. Ann. § 14:46.3(A)(3) must “serve at least five years of the sentence provided for in subparagraph (D)(1)(A) of this Section without the benefit of probation, parole, or suspension of sentence,” and if the victim is under 14, at least 10 years. La. Rev. Stat. Ann. § 14:46.3(D)(2).

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

The following state laws create separate and specific crimes of commercial sexual exploitation of children:

1. La. Rev. Stat. Ann. § 14:82.1(C)<sup>5</sup> (Prostitution; definition; penalties; enhancement) states in part,

(4) Whoever commits the crime of prostitution with a person under the age of eighteen years shall be fined not more than fifty thousand dollars, imprisoned at hard labor for not less than fifteen years nor more than fifty years, or both.

(5) Whoever commits the crime of prostitution with a person under the age of fourteen years shall be fined not more than seventy-five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor more than fifty years, or both.

....

2. La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses) makes it unlawful “[f]or any person over the age of seventeen to engage in sexual intercourse<sup>6</sup> with any person under the age of eighteen who is practicing prostitution, and there is an age difference of greater than two years between the two persons.” A conviction under this statute is punishable by imprisonment for 15–50 years of hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:82.1(D)(1).

3. La. Rev. Stat. Ann. § 14:86(A)<sup>7</sup> (Enticing persons into prostitution) states,

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<sup>4</sup> Pursuant to La. Rev. Stat. Ann. § 14.46.3(D)(2) (Trafficking of children for sexual purposes), “Whoever violates the provisions of Paragraph (A)(3) of this Section shall be required to serve at least five years of the sentence imposed provided for in Subparagraph (D)(1)(a) of this Section without benefit of probation, parole, or suspension of sentence. Whoever violates the provisions of Paragraph (A)(3) when the victim is under the age of fourteen years shall be required to serve at least ten years of the sentence imposed provided for in Subparagraph (D)(1)(b) of this Section without benefit of probation, parole, or suspension of sentence.”

<sup>5</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:82 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

<sup>6</sup> “Sexual intercourse” is defined in La. Rev. Stat. Ann. § 14:82.1(C) as “anal, oral, or vaginal sexual intercourse.”

<sup>7</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:86 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

Enticing persons into prostitution is committed when any person over the age of seventeen entices, places, persuades, encourages, or causes the entrance of any other person under the age of twenty-one into the practice of prostitution, either by force, threats, promises, or by any other device or scheme. . . .

A conviction under this statute when the person being enticed is under 18 years is punishable by imprisonment at hard labor for 15–50 years, a possible fine of \$50,000, or both, and if the person being enticed into prostitution is under 14 years, a conviction is punishable by 25–50 years at hard labor, a possible fine of \$75,000, or both. La. Rev. Stat. Ann. § 14:86(B)(1)(b), (c).

4. La. Rev. Stat. Ann. § 14:81.3(A)(1) (Computer-aided solicitation of a minor) states,

Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication,<sup>8</sup> with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct<sup>9</sup> or a crime of violence as defined in R.S. 14:2(B) [Definitions],<sup>10</sup> or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen.

Subsection (2) states in part that it is a crime for a person as described above to communicate “for the purpose of or with the intent to arrange for any third party to engage in any of the conduct proscribed by the provisions of Paragraph (1) of this Subsection,” and subsection (3) ensures that the criminal liability attaches in cases where “the contact or communication is initially made through the use of electronic textual communication and subsequent communication is made through the use of any other form of communication.” La. Rev. Stat. Ann. § 14:81.3(A)(2), (3).

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<sup>8</sup> “Electronic textual communication” is defined in La. Rev. Stat. Ann. § 14:81.3(D)(1) as “a textual communication made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or on-line messaging service.”

<sup>9</sup> “Sexual conduct” is defined in La. Rev. Stat. Ann. § 14:81.3(D)(2) as “actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, lewd exhibition of the genitals, or any lewd or lascivious act.”

<sup>10</sup> La. Rev. Stat. Ann. § 14:2(B) defines a “crime of violence” as

an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as “crimes of violence”:

- . . .
- (42) Trafficking of children for sexual purposes
- (43) Human trafficking
- . . . .

All convictions under La. Rev. Stat. Ann. § 14:81.3(A), unless specifically mentioned below, are punishable by imprisonment at hard labor “without benefit of parole, probation, or suspension of sentence” and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). If the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and, if the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). If the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

5. La. Rev. Stat. Ann. § 14:81.1(A)(2) (Pornography involving juveniles) makes it a crime “for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.” A conviction under La. Rev. Stat. Ann. § 14:81.1(A)(2) is punishable by imprisonment for 5–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence,” and a possible fine of \$ 10,000. La. Rev. Stat. Ann. § 14:81.1(E)(3). Additionally, it is unlawful “for a person to produce, promote, advertise, distribute, or possess with the intent to distribute pornography involving juveniles” and a conviction is punishable by a possible fine of \$50,000 and 5–20 years’ imprisonment at hard labor “without the benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1 (A)(1), (E)(1)(a), (2)(a), (4). A subsequent conviction for the intentional possession of, distribution of, or intent to distribute pornography involving juveniles shall result in a possible fine of \$75,000 and 40 years’ imprisonment at hard labor “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1 (E)(1)(b), (2)(b).
6. La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) provides, “Crime against nature by solicitation is the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation.” Pursuant to La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), “Whoever violates the provisions of this Section, when the person being solicited is under the age of eighteen years,” shall be fined not more than \$50,000, imprisoned at hard labor for 15–50 years, or both, and when the person being solicited is under the age of 14 years a conviction is subject to a possible fine of \$75,000, 25–50 years’ imprisonment at hard labor, or both and “[t]wenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:89.2(B)(2), (3).
7. La. Rev. Stat. Ann. § 14:83.2<sup>11</sup> (Promoting prostitution) is “the knowing and willful control of, supervision of, or management of an enterprise for profit in which customers are charged a fee for services which include prostitution, regardless of what portion of the fee is actually for the prostitution services.” A conviction under La. Rev. Stat. Ann. § 14:83.2 is punishable by a fine not to exceed \$50,000, 15–50 years’ imprisonment at hard labor, or both when prostitution of a person under 18 is involved, and an offender faces a fine not to exceed \$75,000, 25–50 years’ imprisonment

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<sup>11</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:83.2 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

at hard labor, or both if the person engaged in prostitution is under 14. La. Rev. Stat. Ann. § 14:83.2(B)(2), (3).

8. La. Rev. Stat. Ann. § 14:84(A)<sup>12</sup> (Pandering) makes any of the following intentional acts a crime:

- (1) Enticing, placing, persuading, encouraging, or causing the entrance of any person into the practice of prostitution, either by force, threats, promises, or by any other device or scheme.
- (2) Maintaining a place where prostitution is habitually practiced,
- (3) Detaining any person in any place of prostitution by force, threats, promises, or by any other device or scheme,
- (4) Receiving or accepting by a person as a substantial part of support or maintenance anything of value which is known to be from the earnings of any person engaged in prostitution,
- (5) Consenting, on the part of any parent or tutor of any person, to the person's entrance or detention in the practice of prostitution,
- (6) Transporting any person from one place to another for the purpose of promoting the practice of prostitution.

Whoever commits the crime of pandering involving the prostitution of persons under the age of 18 shall be fined up to \$50,000, imprisoned at hard labor for 15–50 years, or both. Additionally, whoever commits the crime of pandering involving a person under the age of 14 shall be subject to a possible fine of \$75,000 and 25–50 years' imprisonment with hard labor, or both. La. Rev. Stat. Ann. § 14:84(B)(2), (3).

9. La. Rev. Stat. Ann. § 14:104(A)<sup>13</sup> (Keeping a disorderly place) is “the intentional maintaining of a place to be habitually used for any illegal purpose.” A person who “commits the crime of keeping a disorderly place for the purpose of prostitution of persons under the age of 18 shall be fined not more than \$50,000, imprisoned at hard labor 15–50 years, or both, and if the purpose of the offender is prostitution of persons under 14, the penalty shall be a fine not more than \$75,000, 25–50 years' imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:104(B)(2), (3).

10. La. Rev. Stat. Ann. § 14:105(A)<sup>14</sup> (Letting a disorderly place) is the “granting of the right to use any premises knowing that they are to be used as a disorderly place, or allowing the continued use of the premises with such knowledge. A person who “commits the crime of letting a disorderly place for the purpose of prostitution of persons under the age of 18” shall be fined not more than \$50,000, imprisoned at hard labor 15–50 years, or both, and if the purpose of the offender is prostitution of persons under 14, the penalty shall be a fine not more than \$75,000, 25–50 years' imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:105(B)(2), (3).

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<sup>12</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:84 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

<sup>13</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:104 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

<sup>14</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:105 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

11. La. Rev. Stat. Ann. § 14:83<sup>15</sup> (Soliciting for prostitutes) is “the soliciting, inviting, inducing, directing, or transporting a person to any place with the intention of promoting prostitution.” A conviction pursuant to La. Rev. Stat. Ann. § 14:82<sup>16</sup> when the person being solicited is under 18 years is punishable by a possible fine of \$50,000, 15–50 years’ imprisoned at hard labor, or both, and when the person being solicited is under 14 years is punishable by a possible fine of \$75,000, 25–50 years’ imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:82(B)(2), (3).

12. La. Rev. Stat. Ann. § 14:83.1<sup>17</sup> (Inciting Prostitution) is the unlawful aiding, abetting, or assisting in an enterprise for profit which:

- (1) Customers are charged a fee for services which include prostitution . . . .,
- (2) When the person knows or when a reasonable person in such a position would know that such aiding, abetting, or assisting is for prostitution, and
- (3) When the proceeds or profits are to be in any way divided by the prostitute and the person aiding, abetting, or assisting the prostitute.

Whoever commits the crime of inciting prostitution involving the prostitution of persons under the age of 18 years shall be fined not more than \$50,000, imprisoned at hard labor for 15–50 years, or both. Additionally, whoever commits the crime of inciting prostitution involving a person under the age of 14 years shall be subject to a possible fine of \$75,000 and 25–50 years’ imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:83:1(B)(2), (3).

13. La. Rev. Stat. Ann. § 14:85<sup>18</sup> (Letting premises for prostitution) makes unlawful “the granting of the right of use or the leasing of any premises, knowing that they are to be used for the practice of prostitution, or allowing the continued use of the premises with such knowledge.” When La. Rev. Stat. Ann. § 14:85 is committed for prostitution of persons under 18, the crime is punishable by a possible fine of \$50,000, 15–50 years’ imprisoned at hard labor, or both, and when the purpose of the offense is prostitution of a person under 14 years it is punishable by a possible fine of \$75,000, 25–50 years’ imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:85(B)(2), (3).

14. La. Rev. Stat. Ann. § 14:282(A)<sup>19</sup> (Operation of places of prostitution; prohibited; penalty) states,

No person shall maintain, operate, or knowingly own any place or any conveyance used for the purpose of . . . prostitution, or shall rent or let any place or conveyance to any person with knowledge of or good reason to believe that the lessee intends to use the place or conveyance for the purpose of . . . prostitution or reside in, enter, or remain in any place for the purpose of . . . prostitution.

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<sup>15</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:83 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

<sup>16</sup> See *supra* note 5.

<sup>17</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:83.1 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

<sup>18</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:85 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

<sup>19</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:282 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2013).

For a conviction pursuant to La. Rev. Stat. Ann. § 14:282 where the purpose is the prostitution of persons under 18 years of age the penalty is a possible fine of \$50,000, 15–50 years’ imprisoned at hard labor, or both, and if the person is under 14 years the penalty is a possible fine of \$75,000, 25–50 years’ imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:282(B)(2), (3).

Other laws that may apply in cases of commercial sexual exploitation of a child despite not specifically referring to commercial exchanges include,

1. La. Rev. Stat. Ann. § 14:42(A)(4) (Aggravated rape) states that aggravated rape occurs “where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed . . . [w]hen the victim is under the age of thirteen years.” If a capital verdict is sought by the district attorney, a conviction is punishable by “death<sup>20</sup> or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury.” La. Rev. Stat. Ann. § 14:42(D)(2)(a). If a capital verdict is not sought, a conviction is punishable “by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:42(D)(2)(b).
2. Pursuant to La. Rev. Stat. Ann. § 14:43.1(A) (Sexual battery),

Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, when any of the following occur:

- (1) The offender acts without the consent of the victim.
- (2) The act is consensual but the other person, who is not the spouse of the offender, has not yet attained fifteen years of age and is at least three years younger than the offender.

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If the victim is 13–14 years old, a conviction under this statute is punishable by imprisonment up to 10 years, “with or without hard labor, without benefit of parole, probation, or suspension of sentence;” however, where the victim is under 13 and the offender is 17 or older, a conviction is punishable by imprisonment for 25–99 years at hard labor, and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:43.1(C)(1), (2).

3. La. Rev. Stat. Ann. § 14:43.3(A) (Oral sexual battery) states,

Oral sexual battery is the intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender, or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim, when any of the following occur:

- (1) The victim, who is not the spouse of the offender, is under the age of fifteen years and is at least three years younger than the offender.

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<sup>20</sup> In *Kennedy v. Louisiana*, 554 U.S. 407, 412 (2008), the Supreme Court held that imposing the death sentence for child rape when the rape does not cause, or is not intended to cause, the child’s death violates the Eighth Amendment’s prohibition on cruel or unusual punishments.



If the victim is 13–14 years old, a conviction under this statute is punishable by imprisonment up to 10 years, “with or without hard labor, without benefit of parole, probation, or suspension of sentence;” however, if the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 25–99 years “at hard labor,” and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:43.3(C)(1), (2).

4. La. Rev. Stat. Ann. § 14:89<sup>21</sup> (Crime against nature) makes unlawful “the unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal . . .” and when the person solicited is under 18 years is punishable by a possible fine of \$50,000, 15–50 years’ imprisonment at hard labor, or both, and when the person solicited is under 14 years is punishable by a possible fine of \$75,000, 25–50 years’ imprisonment at hard labor, or both. La. Rev. Stat. Ann. § 14:89(B)(2), (3).
5. La. Rev. Stat. Ann. § 14:92(A)(7) (Contributing to the delinquency of juveniles) prohibits “the intentional enticing, aiding, soliciting, or permitting, by anyone over the age of seventeen, of any child under the age of seventeen . . . to: . . . (7) [p]erform any sexually immoral act.” A conviction under this statute is punishable by imprisonment up to 2 years, “with or without hard labor,” a possible fine of \$1,000, or both. La. Rev. Stat. Ann. § 14:92(D).
6. La. Rev. Stat. Ann. § 14:80(A) (Felony carnal knowledge of a juvenile) states,

Felony carnal knowledge of a juvenile is committed when:

- (1) A person who is seventeen years of age or older has sexual intercourse,<sup>22</sup> with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater; or
- (2) A person commits a second or subsequent offense of misdemeanor carnal knowledge of a juvenile, or a person who has been convicted one or more times of violating one or more crimes for which the offender is required to register as a sex offender under R.S. 15:542 [Registration of sex offenders and child predators] commits a first offense of misdemeanor carnal knowledge of a juvenile.

A conviction under this statute is punishable by imprisonment up to 10 years, “with or without hard labor,” a possible fine of \$5,000, or both, and “the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.” La. Rev. Stat. Ann. § 14:80(D)(1).

7. La. Rev. Stat. Ann. § 14:80.1(A) (Misdemeanor carnal knowledge of a juvenile) states,

Misdemeanor carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender, and when the difference between the age of the victim and age of the offender is greater than two years, but less than four years.

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<sup>21</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 14:89 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 261. 2013 La. Acts. 83 (effective August 1, 2012).

<sup>22</sup> “Sexual intercourse” is defined in La. Rev. Stat. Ann. § 14:80(B) as “anal, oral, or vaginal sexual intercourse.”

A conviction under this statute is punishable by imprisonment up to 6 months, a possible fine of \$1,000, or both. La. Rev. Stat. Ann. § 14:80(D).

8. La. Rev. Stat. Ann. § 14:81(A) (Indecent behavior with juveniles) states,

Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

- (1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. . . ; or
- (2) The transmission, delivery or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. . . .

If the victim is 13–17, a conviction under this statute is punishable by imprisonment up to 7 years, “with or without hard labor,” a possible fine of \$5,000, or both, and “the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.” La. Rev. Stat. Ann. § 14:81(H)(1). If the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 2–25 years at hard labor, at least 2 years of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81(H)(2).

9. La. Rev. Stat. Ann. § 14:106(A) (Obscenity) states, in part,

The crime of obscenity is the intentional:

- (1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place open to public view . . . with the intent of arousing sexual desire or which appeals to the prurient interest or is patently offensive.
- (2)(a) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct<sup>23</sup> when the trier of fact determines that the average

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<sup>23</sup> Pursuant to La. Rev. Stat. Ann. § 14:106(A)(2)(b), “hard core sexual conduct” is defined as

the public portrayal, for its own sake, and for ensuing commercial gain of:

- (i) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being; or
- (ii) Masturbation, excretory functions or lewd exhibition, actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples; or
- (iii) Sadoomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or in the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed; or
- (iv) Actual, simulated, or animated touching, caressing, or fondling of, or other similar physical contact with a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or

person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.

....

(5) Solicitation or enticement of an unmarried person under the age of seventeen years to commit any act prohibited by Paragraphs (1), (2), or (3) above.

....

A first conviction is punishable by imprisonment for 6 months–3 years, “with or without hard labor,” a fine of \$1,000–\$2,500, or both. La. Rev. Stat. Ann. 14:106(G)(1). A second conviction is punishable by imprisonment for 6 months–3 years, “with or without hard labor,” a fine of \$2,500–\$5,000, or both. La. Rev. Stat. Ann. 14:106(G)(2). Third and subsequent convictions are punishable by imprisonment for 2–5 years, “with or without hard labor,” a fine of \$5,000–\$10,000, or both. La. Rev. Stat. Ann. 14:106(G)(3). A conviction under subsection 1 or 2 of this statute is punishable by imprisonment for 2–5 years, “with or without hard labor,” but “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000 if committed “with or in the presence of an unmarried person under the age of seventeen years.” La. Rev. Stat. Ann. § 14:106(G)(4).

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

Louisiana’s age-neutral prostitution statutes, La. Rev. Stat. Ann. § 14:83.3(D) (Prostitution by massage) and § 14:83.4(C) (Massage; sexual conduct prohibited), and its prostitution statute containing minor-specific provisions, § 14:82(G) (Prostitution; definition; penalties; enhancement) refer to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) by providing an affirmative defense for minor trafficking victims. Each of these provisions state, “It shall be an affirmative defense to prosecution for a violation of this Section that, during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes as provided in R.S. 14:46.3(E).” Louisiana’s remaining prostitution law does not refer to the human trafficking law to identify commercially sexually exploited minors as victims of sex trafficking.

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

The Louisiana Racketeering Act is codified under Title 15, Chapter 11 of La. Rev. Stat. Ann. Under the act, La. Rev. Stat. Ann. § 15:1353 prohibits the following activities:

- A. It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise.
- B. It is unlawful for any person, through a pattern of racketeering activity, knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or immovable property.

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(v) Actual, simulated, or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured, or marketed for such purpose.

C. It is unlawful for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

D. It is unlawful for any person to conspire or attempt to violate any of the provisions of Subsections A, B, or C of this Section.

Racketeering Activity is defined under La. Rev. Stat. Ann. § 15:1352(a)<sup>24</sup> as “committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is punishable under the [select listed] provisions of Title 14 of the Louisiana Revised Statutes of 1950, the Uniform Controlled Dangerous Substances Law, or the Louisiana Securities Law . . . .” Notably, the CSEC offenses listed as racketeering activity under this definition are La. Rev. Stat. Ann. § 14:84 (Pandering), La. Rev. Stat. Ann. § 14:46.2 (Human trafficking), La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes), and La. Rev. Stat. Ann. § 14:286 (Sale of minor children).

Racketeering is punishable under the act by imprisonment up to 50 years at hard labor, a possible fine of \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred,” or both. La. Rev. Stat. Ann. § 15:1354(a).

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<sup>24</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 15:1352 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 279. 2013 La. Acts. 144 (effective August 1, 2013).

**Legal Components:**

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

**Legal Analysis:**

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

La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) applies to buyers by making it illegal for a person to “knowingly . . . purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”<sup>25</sup>

In addition, La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking) can apply to buyers of sex with minors following federal precedent through the term “obtain.”<sup>26</sup> La. Rev. Stat. Ann. § 14:46.2(A) states in part, “It shall be unlawful: (1) For any person to knowingly recruit, harbor, transport, provide, solicit, obtain, or maintain the use of another person through fraud, force, or coercion<sup>27</sup> to provide services or labor. (2) For any person to

<sup>25</sup> See *supra* section 1.1 for a full description of the relevant provisions of La. Rev. Stat. Ann. § 14:46.3.

<sup>26</sup> See *United States v. Jungers*, 702 F.3d 1066 (8<sup>th</sup> Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers when it reversed a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers. *United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011). Holding that the conduct of buyers who obtain a child for commercial sex can violate 18 U.S.C. § 1591(a)(1), the Eighth Circuit illustrated through hypothetical buyer scenarios that, under certain circumstances, most of the terms in the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) could apply to buyers. While other terms may apply to buyers’ conduct under state law as well, the analysis here focuses on the term “obtains” which is most likely to apply in the majority of buyer cases.

<sup>27</sup> See *supra* note 2.

knowingly benefit from activity prohibited by the provisions of this Section. . . .”<sup>28</sup> Enhanced penalties for commercial sexual activity<sup>29</sup> and for trafficking involving minors under 18 suggests that this law applies to domestic minor sex trafficking. La. Rev. Stat. Ann. § 14:46.2(B)(2), (3). Even if applied, however, the placement of the word “obtain” in La. Rev. Stat. Ann. § 14:46.2(A) requires the buyer to use force, fraud, or coercion in committing the crime. This requirement, however, makes it less likely that La. Rev. Stat. Ann. § 14:46.2(A) would be applicable against buyers.

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

Louisiana CSEC laws clearly identify the crime of buying sex acts with a minor under 18. La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses) makes it a crime “[f]or any person over the age of seventeen to engage in sexual intercourse with any person under the age of eighteen who is practicing prostitution, and there is an age difference of greater than two years between the two persons.” A conviction under this statute is punishable by imprisonment at hard labor for 15–50 years, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:82.1(A)(1), (D)(1). Furthermore, a person who violates La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses) when the person practicing prostitution is under 14 shall be fined up to \$75,000, imprisoned at hard labor 25–50 years, or both. Twenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:82.1(D)(2).

La. Rev. Stat. Ann. § 14:82(C)(4), (5)<sup>30</sup> (Prostitution; definition; penalties; enhancement) makes it a crime for a person to commit “the crime of prostitution with a person under the age of eighteen [or fourteen] years.” When this offense is committed with a person under 18, the buyer “shall be fined not more than fifty thousand dollars, imprisoned at hard labor for not less than fifteen years nor more than fifty years, or both,” and when the offense is committed with a person under 14, a buyer “shall be fined not more than seventy-five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor more than fifty years, or both.”

Additionally, La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) includes the crime of buying oral or anal sex with a minor, making “the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation” a crime. When the individual solicited is under 18, the crime is punishable by a fine not to exceed \$50,000, 15–50 years’ imprisonment at hard labor, or both, and if these offenses are committed with an individual under 14, the crime is punishable by a fine not to exceed \$75,000, 25–50 years’ imprisonment at hard labor, or both, and “[t]wenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), (b).

Where a computer is used, buyers may also be convicted under La. Rev. Stat. Ann. § 14:81.3(A) (Computer-aided solicitation of a minor) which criminalizes using a computer to solicit a minor to engage in sexual acts. Pursuant to La. Rev. Stat. Ann. § 14:81.3(B),

(1) (a) Whoever violates the provisions of this Section when the victim is thirteen years of age or more but has not attained the age of seventeen shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than ten years, without benefit of parole, probation, or suspension of sentence.

<sup>28</sup> See *supra* section 1.1 for a full description of the relevant provisions of La. Rev. Stat. Ann. § 14:46.2.

<sup>29</sup> See *supra* note 3.

<sup>30</sup> See *supra* note 5.

(b) Whoever violates the provisions of this Section when the victim is under thirteen years of age shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than ten years nor more than twenty years, without benefit of parole, probation, or suspension of sentence.

(c) Whoever violates the provisions of this Section, when the victim is a person reasonably believed to have not yet attained the age of seventeen, shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than two years nor more than ten years, without benefit of parole, probation, or suspension of sentence.

(d) If the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater, the offender shall be fined not more than ten thousand dollars and shall be imprisoned, with or without hard labor, for not less than seven years nor more than ten years.

(2) On a subsequent conviction, the offender shall be imprisoned for not less than ten years nor more than twenty years at hard labor without benefit of parole, probation, or suspension of sentence.

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

Louisiana's solicitation laws distinguish between the crime of buying sex with an adult and buying sex with a minor under 18. La. Rev. Stat. Ann. § 14:82(C)(4), (5)<sup>31</sup> (Prostitution; definition; penalties; enhancement) makes it a crime for a person to commit "the crime of prostitution with a person under the age of eighteen [or fourteen] years." A buyer who purchases sex with a minor under 18 will also be guilty of La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under eighteen; additional offenses), which is punishable by imprisonment at hard labor for 15–50 years, a possible fine of \$50,000, or both, and when the person practicing prostitution is under 14, a buyer "shall be fined up to \$75,000, imprisoned at hard labor 25–50 years, or both." La. Rev. Stat. Ann. § 14:82.1(D)(1), (2).

Similarly, La. Rev. Stat. Ann. § 14:89.2(B)(3) (Crime against nature by solicitation) provides a penalty of 15–50 years' imprisonment at hard labor," a possible fine of \$50,000, or both when these offenses are committed with a minor under 18, and a penalty of imprisonment of 25–50 years of hard labor, a possible fine of \$75,000, or both when the offenses involve a minor under 14. When the minor is under 14, "[t]wenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence." La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), (b).

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

A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) generally is punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a possible fine of \$75,000, with no eligibility for parole, probation, or suspension of sentence for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b). A conviction under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) "when the services include commercial sexual activity<sup>32</sup> or any sexual conduct constituting a crime under the laws of this state" is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, a conviction involving a person under 18 is punishable by imprisonment up to 5–25 years at hard labor, "without the benefit of parole,

<sup>31</sup> See *supra* note 5.

<sup>32</sup> See *supra* note 3.

probation, or suspension of sentence” for at least five years, and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Similarly, if prosecuted under the CSEC laws, a conviction under La. Rev. Stat. Ann. §§ 14:82(C)(4), (5)<sup>33</sup> (Prostitution; definition; penalties; enhancement), 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses), 14:89(A)<sup>34</sup> (Crime against nature) or 14:89.2(A) (Crime against nature by solicitation) is punishable by imprisonment at hard labor for 15–50 years, a possible fine of \$50,000, or both when the minor victim is under 18, and when the minor victim is under 14, a buyer faces 25–50 years imprisonment at hard labor, a fine not to exceed \$75,000, or both. La. Rev. Stat. Ann. §§ 14:82(C)(4), (5), 14:82.1(D)(1), (2), 14:89(B)(2), (3), 14:89.2(B)(3)(a), (b). For offenses under La. Rev. Stat. Ann. §§ 14:89.2 and 14:82.1 that involve a minor victim under 14, “[t]wenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. §§ 14:82.1(D)(2), 14:89.2(B)(3)(b).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>35</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>36</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>37</sup>

Finally a buyer of commercial sex acts with a minor under R.S. 15:539.3<sup>38</sup> will be mandated to pay restitution to the victim. La. Rev. Stat. Ann. § 15:539.3 states,

A person convicted of violation of R.S. 14:46.2 (human trafficking) or R.S. 14:46.3 (Trafficking of children for sexual purposes) shall be ordered to pay mandatory restitution to the victim

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<sup>33</sup> See *supra* note 5.

<sup>34</sup> See *supra* note 21.

<sup>35</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>36</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>37</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 possible fine of \$250,000 for any felony conviction).

<sup>38</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 15:539.3 is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate Bill 88. 2013 La. Acts. 429 (effective June 24, 2013).



....

Restitution under this Section shall include any of the following;

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. . . .

....

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.*

It is a crime in Louisiana to use the Internet to solicit a minor to engage in sex acts. Pursuant to La. Rev. Stat. Ann. § 14:81.3(A) (Computer-aided solicitation of a minor),

- (1) Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication,<sup>39</sup> with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct<sup>40</sup> or a crime of violence as defined in R.S. 14:2(B),<sup>41</sup> or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen.
- (2) It shall also be a violation of the provisions of this Section when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to arrange for any third party to engage in any of the conduct proscribed by the provisions of Paragraph (1) of this Subsection.

All convictions under La. Rev. Stat. Ann. § 14:81.3(A), unless specifically mentioned below, are punishable by imprisonment at hard labor that is “without benefits of parole, probation, or suspension of sentence” and are subject to a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). Where the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and where the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). Where the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of

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<sup>39</sup> See *supra* note 8.  
<sup>40</sup> See *supra* note 9.  
<sup>41</sup> See *supra* note 10.

the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

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

Several of Louisiana’s CSEC statutes and the trafficking of children for sexual purposes statute specifically state that no age mistake defense is permitted for a buyer of commercial sex acts with a minor. La. Rev. Stat. Ann. § 14:46.3(C)(2) (Trafficking of children for sexual purposes) and § 14:81.1(D)(1) (Pornography involving juveniles) state, “Lack of knowledge of the victim’s [juvenile’s] age shall not be a defense.” La. Rev. Stat. Ann. § 14:82.1(B)(1) (Prostitution; persons under eighteen; additional offenses) states, “Lack of knowledge of the age of the person practicing prostitution shall not be a defense.” Finally, La. Rev. Stat. Ann. § 14:89.2(D)(2) (Crime against nature by solicitation) provides, “Lack of knowledge of the age of the person being solicited shall not be a defense.”

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

La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) provides a substantial base penalty for sex trafficking of minors under 18 and provides an enhanced penalty for buyers of sex acts with minors under 14, paralleling the federal Trafficking Victims Protection Act. A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) is generally punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a possible fine of \$75,000, with no parole eligibility for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b).

La. Rev. Stat. Ann. § 14:82<sup>42</sup> (Prostitution; definition; penalties; enhancement) and § 14:82.1 (Prostitution; persons under eighteen; additional offenses) make offenses involving any minor under 18 punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:82.1(D)(1). Similarly, the operable statute regarding purchasing oral or anal sex acts with a minor, La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation), punishes convictions by 15–50 years imprisonment at hard labor, a fine not to exceed \$50,000, or both. If the minor is under 14 years of age, the offense is punishable by 25–50 years imprisonment at hard labor, a fine not to exceed \$75,000, or both and “[t]wenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), (b).

Buyers may also be convicted under La. Rev. Stat. Ann. § 14:81.3(A) (Computer-aided solicitation of a minor) which criminalizes using a computer to solicit a minor to engage in sexual acts. However, La. Rev. Stat. Ann. § 14:81.3(A) only protects minors who are less than 17 years of age.

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.*

Various fines ranging from \$500 to \$75,000 are in place for buyers of commercial sex with minors. A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) is punishable by a possible fine of \$50,000, or a possible fine of \$75,000 if the victim was under 14. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). A conviction under La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under eighteen;

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<sup>42</sup> See *supra* note 5.

additional offenses) also carries a possible fine of \$50,000 for minors under 18 and \$75,000 if the minor is under 14 years of age. La. Rev. Stat. Ann. §§ 14:82.1(D)(1), (2), 14:83(B)(2). Additionally, a person convicted under La. Rev. Stat. Ann. § 14:89.2 (Crime against nature by solicitation), when the victim is under 18, may face a possible possible fine of \$50,000, whereas if the victim is younger than 14, a first offense is punishable by a possible fine of \$75,000. La. Rev. Stat. Ann. §§ 14:89.2(B)(1), (2), (3). Lastly, a conviction under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) is punishable by a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B)(1).

Asset forfeiture provisions may also apply to buyers. Convictions under La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) are punishable by asset forfeiture under La. Rev. Stat. Ann. § 14:46.3(D)(3). La. Rev. Stat. Ann. §14:46.3 provides for criminal, mandatory asset forfeiture and states,

(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1 [Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property].

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

Likewise, La. Rev. Stat. Ann. § 14:81.3(B)(4)(b) (Computer-aided solicitation of a minor) provides for mandatory criminal asset forfeiture, also governed by La. Rev. Stat. Ann. §15:539.1, stating in part,

In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1. The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

Buyers convicted under La. Rev. Stat. Ann. § 14:81.1 (Pornography involving juveniles) also shall have “personal property used in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale.” La. Rev. Stat. Ann. § 14:81.1. Property subject to forfeiture pursuant to La. Rev. Stat. Ann. § 14:46.3(C)(3)(a) (Trafficking of children for sexual purposes), § 14:81.3(B)(4)(a) (Computer aided solicitation of a minor) and § 14:81.1(E)(5)(c) (Pornography involving juveniles), may be seized, impounded and sold following a court order and distribution of the forfeited property is governed by La. Rev. Stat. Ann. § 15:539.1.<sup>43</sup> La. Rev. Stat. Ann. § 15:539.1 (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property) which states,

(A) When personal property is forfeited under the provisions of . . . R.S. 14:46.3 (Trafficking of children for sexual purposes) . . . (Pornography involving juveniles) . . . (Computer-aided solicitation of a minor) . . . the district attorney shall authorize a public sale or a public auction

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<sup>43</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 15:539.1 is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate Bill 88. 2013 La. Acts. 429 (effective June 24, 2013).

conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public.

....

(E) Notwithstanding Subsection D of this section, when the property to be forfeited is related to human trafficking under R.S. 14:46:2 or trafficking of children for sexual purposes under R.S. 14:46.3, the proceeds of the public sale or public auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining proceeds shall be distributed in the following manner:

- (1) Twenty-five percent to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) Twenty-five percent to the prosecution agency.
- (3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S. 15:538.2.

Additionally, when a buyer is found or pleads guilty of trafficking children for sexual purposes as stated under R.S. 14:63:3 (Trafficking of children for sexual purposes), R.S. 14:82.1 (Prostitution with a minor under 17 years of age), or R.S. 14:86 (Enticing persons into prostitution) they must pay a mandatory fine of \$2,000 in addition to other mandatory restitutions. La. Rev. Stat. Ann. § 15:539.2<sup>44</sup>.

A buyer of commercial sex acts with a minor under R.S. 15:539.3<sup>45</sup> will be mandated to pay restitution to the victim. La. Rev. Stat. Ann. § 15:539.3 states;

A person convicted of violation of R.S. 14:46.2 (Human trafficking) or R.S. 14:46.3 (Trafficking of children for sexual purposes) shall be ordered to pay mandatory restitution to the victim

....

Restitution under this Section shall include any of the following:

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. . . .

....

Buyers are also subject to mandatory restitution orders where pecuniary damages can be shown. La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim) provides, "In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the

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<sup>44</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 15:539.2 is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate Bill 88. 2013 La. Acts. 429 (effective June 24, 2013).

<sup>45</sup> See *supra* note 38.

victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.”<sup>46</sup>

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

Possession of child pornography is illegal under La. Rev. Stat. Ann. § 14:81.1(A)(1) (Pornography involving juveniles), which states that “[i]t shall be unlawful for a person to . . . possess . . . pornography involving juveniles.”<sup>47</sup> A conviction under this statute generally is punishable by imprisonment for 5–20 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$50,000; however, if the victim is under 13 and the offender is at least 17, a conviction is punishable by “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment provided” (thus, 10–40 years), which also will “be served without benefit of parole, probation, or suspension of sentence,” and under a second conviction for the intentional possession of pornography involving juveniles the offender shall be fined up to \$75,000 and imprisoned at hard labor for up to 40 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(1)(a), (b), (E)(5)(a). Convicted violators also will have any “personal property used in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale or public auction by the district attorney.”<sup>48</sup> La. Rev. Stat. Ann. § 14:81.1(E)(5)(c).

Additionally, La. Rev. Stat. Ann. § 14:73.8(A) (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) states that “[u]nauthorized use of a wireless router system is the accessing or causing to be accessed of any computer, computer system, computer network, or any part thereof via any wireless router system for the purposes of uploading, downloading, or selling of pornography involving juveniles as defined in R.S. 14:81.1[Pornography involving juveniles].”<sup>49</sup> If the victim is 13–17 years old, a violation is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:73.8(C). However, if the

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<sup>46</sup> La. Rev. Stat. Ann. § 46:1844(M) (Basic rights for victim and witness) states,

(1) If the defendant is found guilty, the court or parole board shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the court or parole board may require the defendant to perform community service work in an amount and according to a schedule determined by the court.

(2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the parole board. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.

(3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.

<sup>47</sup> “Pornography involving juveniles” is defined in La. Rev. Stat. Ann. § 14:81.1(B)(5) as “any photograph, videotape, film, or other reproduction, whether electronic or otherwise, of any sexual performance involving a child under the age of seventeen.”

<sup>48</sup> La. Rev. Stat. Ann. § 14:81.1(E)(5)(d) states,

The personal property made subject to seizure and sale pursuant to Subparagraph (c) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

<sup>49</sup> La. Rev. Stat. Ann. § 14:73.8(B) defines “wireless router system” as “a device in a wireless local area network that determines the next network point to which a unit of data is routed between an origin and a destination on the Internet.”

victim is under 13, a violation is punishable by imprisonment for 25–99 years at hard labor, to “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(D).

In comparison, a federal conviction for possession of child pornography<sup>50</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>51</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>52</sup>

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

Some buyers of sex with minors convicted under Louisiana’s human trafficking and CSEC laws are required to register as sex offenders under La. Rev. Stat. Ann. § 15:542<sup>53</sup> (Registration of sex offenders and child predators). La. Rev. Stat. Ann. § 15:542(A)(1) states,

A. The following persons shall be required to register and provide notification as a sex offender or child predator in accordance with the provisions of this Chapter:

(1) Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or any conspiracy to commit either of the following:

(a) A sex offense as defined in R.S. 15:541 [Definitions],<sup>54</sup> with the exception of those convicted of felony carnal knowledge of a juvenile as provided in Subsection F of this Section;

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<sup>50</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>51</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 possible fine of \$250,000 for any felony conviction).

<sup>52</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a possible fine of \$250,000 for any felony conviction).

<sup>53</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 15:542 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 440. 2013 La. Acts. 408 (effective August 1, 2013).

<sup>54</sup> La. Rev. Stat. Ann. § 15:541(24)(a) (Definitions) defines “sex offense” as

deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration of or conspiracy to commit human trafficking when prosecuted under the provisions of R.S. 14:46.2(B)(2) or (3), R.S. 14:46.3 (trafficking of children for sexual purposes), . . . R.S. 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator and student), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), . . . R.S.

(b) A criminal offense against a victim who is a minor as defined in R.S. 15:541.<sup>55</sup>

Therefore, buyers convicted under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes), § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses), and, § 14:89.2(A) (Crime against nature by solicitation) will be required to register as sex offenders.

Finally, buyers required to register as sex offenders are prohibited from the unlawful use of a social networking websites. La. Rev. Stat. Ann. § 14:91.5(A)(1) (Unlawful use of a social networking website), makes unlawful “the intentional use of a social networking website<sup>56</sup> by a person who is required to register as a sex offender and who was convicted of R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.3 (Computer-aided solicitation of a minor), or R.S. 14:283 (Video voyeurism) or was previously convicted of a sex offense as defined in R.S. 15:541 in which the victim of the sex offense was a minor.<sup>57</sup>” Buyers that “commit the crime of unlawful use of a social networking website” are subject to a possible fine of \$10,000 and imprisonment at hard labor for up to 10 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:91.5(C)(1).

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14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), . . . R.S. 14:42 (aggravated rape) . . . committed on or after June 18, 1992 . . .

<sup>55</sup> La. Rev. Stat. Ann. § 15:541(12)(b), (c) (Definitions) defines “criminal offense against a victim who is a minor” in part as a “conviction for the perpetration or attempted perpetration of or conspiracy to commit . . . (b) A violation of any of the following provisions when the victim is under eighteen years of age: R.S. 14:82.1 [Prostitution; persons under eighteen; additional offenses] . . . , 84(1), (3), (5), or (6) [Pandering], or 86 [Enticing persons into prostitution], or R.S. 23:251(A)(4) [Minors under sixteen; prohibited employments or occupations; penalty—In any illegal, indecent, or immoral exhibition or practice] and (c) a violation of R.S. 14:83 (Soliciting for prostitutes), 83.1 (Inciting prostitution), 83.2 (Promoting prostitution), and 14:282 (Operation of places of prostitution prohibited; penalty) when the prostitution involves persons under the age of 18 years.

<sup>56</sup> La. Rev. Stat. Ann. § 14:91.5 (2)(a) defines “social networking website” in part as “an Internet website, the primary purpose of which is facilitating social interaction with other users of the website . . . .”

<sup>57</sup> La. Rev. Stat. Ann. § 15:541(25) (Definitions) defines “sexual offense against a victim who is a minor” in part as a “conviction for the perpetration or attempted perpetration of or conspiracy to commit . . . (c) R.S. 14:46.2(B)(3) (Human trafficking), . . . (e) R.S. 14:81.1 (Pornography involving juveniles, . . . (g) R.S. 14:81.3 (Computer-aided solicitation of a minor), (h) R.S. 14:82.1 (Prostitution; persons under eighteen), (i) R.S. 14:86 (Enticing minors into prostitution), (j) R.S. 14:84(1), (3), (5), (6) (Pandering), and (k) R.S. 14:89.1 (Aggravated crime against nature).”

**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.

La. Rev. Stat. Ann. § 14:46.3(A) (Trafficking of children for sexual purposes) makes it a crime for a person to “knowingly recruit, harbor, transport, provide, sell, purchase, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”<sup>58</sup> A conviction under this statute is punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both; however, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a possible fine of \$75,000, with no eligibility for “probation, parole, or suspension of sentence” for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). Pursuant to La. Rev. Stat. Ann. § 14:46.3(D)(1)(c), “Any person who violates the provisions of Paragraph (A)(1), (2), (4), (5), or (6) of this Section, who was previously convicted of a sex offense as defined in R.S. 15:541 when the victim of the sex offense was under the age of eighteen years, shall be fined not more than one hundred thousand dollars and shall be imprisoned at hard labor for not less than fifty years or for life. At least fifty years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.”

In addition, a trafficker could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking).<sup>59</sup> A conviction “when the services include commercial sexual activity<sup>60</sup> or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, a conviction when the victim is under 18 is punishable by imprisonment for 5–25 years at hard labor, “which shall be without the benefit of parole, probation, or suspension of sentence” for 5 years, and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Traffickers may also be convicted under Louisiana’s CSEC offenses, including La. Rev. Stat. Ann. § 14:86(A)<sup>61</sup> (Enticing persons into prostitution), § 14:282<sup>62</sup> (Operation of places of prostitution

<sup>58</sup> See *supra* Section 1.1 for a full description of the applicable provisions of La. Rev. Stat. Ann. § 14:46.3.

<sup>59</sup> See *supra* Section 1.1 for a full description of the applicable provisions of La. Rev. Stat. Ann. § 14:46.2.

<sup>60</sup> See *supra* note 3.

<sup>61</sup> See *supra* note 9.

<sup>62</sup> See *supra* note 19.



prohibited; penalty), § 14:83.2<sup>63</sup> (Promoting prostitution), § 14:84<sup>64</sup> (Pandering), § 14:104<sup>65</sup> (Keeping a disorderly place), § 14:105 (Letting a disorderly place), § 14:83<sup>66</sup> (Soliciting for prostitutes), § 14:83.1 (Inciting Prostitution) and § 14:85<sup>67</sup> (Letting premises for prostitution). These crimes are punishable by imprisonment at hard labor for 15–50 years if the minor victim is under 18, and 25–50 years’ imprisonment at hard labor if the minor victim is under 14. La. Rev. Stat. Ann. §§ 14:86 (B)(1)(b), (c), 14:282(B)(2), (3), 14:83.2(B)(2), (3), 14:84(B)(2), (3), 14:104(B)(2), (3), 14:105(B)(2), (3), 14:83.1(B)(2), (3), 14:85(B)(2), (3), 14:83(B)(2),(3).

A parent-trafficker may be convicted under La. Rev. Stat. Ann. § 14:81.1(A)(2) (Pornography involving juveniles), which makes it unlawful “for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.” A conviction for violating La. Rev. Stat. Ann. § 14:81.1(A)(2) is punishable by imprisonment for 5–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence,” and a possible fine of \$10,000; however, if the victim is under 13, the parent-trafficker will be punished by “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment [otherwise] provided,” here, 10–40 years, “without benefit of probation, parole, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(3), (E)(5)(a).

Traffickers may also be prosecuted under La. Rev. Stat. Ann. § 14:230(B) (Money laundering; transactions involving proceeds of criminal activity) if they

- (1) Conduct, supervise, or facilitate a financial transaction involving proceeds known to be derived from criminal activity,<sup>68</sup> when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or the control of proceeds known to be derived from such violation or to avoid a transaction reporting requirement under state or federal law.
- (2) Give, sell, transfer, trade, invest, conceal, transport, maintain an interest in, or otherwise make available anything of value known to be for the purpose of committing or furthering the commission of any criminal activity.
- (3) Direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of criminal activity.
- (4) Receive or acquire proceeds derived from any violation of criminal activity, or knowingly or intentionally engage in any transaction that the person knows involves proceeds from any such violations.
- (5) Acquire or maintain an interest in, receive, conceal, possess, transfer, or transport the proceeds of criminal activity.
- (6) Invest, expend, or receive, or offer to invest, expend, or receive, the proceeds of criminal activity.

Because criminal activities include convictions under La. Rev. Stat. Ann. § 14:46.3(A)(1), (2), (4), or (5) (Trafficking of children for sexual purposes), § 14:83.2(A) (Promoting prostitution), and § 14:86(A) (Enticing

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<sup>63</sup> See *supra* note 11.

<sup>64</sup> See *supra* note 12.

<sup>65</sup> See *supra* note 13.

<sup>66</sup> See *supra* note 20.

<sup>67</sup> See *supra* note 18.

<sup>68</sup> “Criminal activity” is defined in La. Rev. Stat. Ann. § 14:230(A)(1) as “any offense, including conspiracy and attempt to commit the offense, that is classified as a felony under the laws of this state or the United States or that is punishable by confinement for more than one year under the laws of another state.” Further, a “felony” is defined in La. Rev. Stat. Ann. § 14:2(4) (Definitions) as “any crime for which an offender may be sentenced to death or imprisonment at hard labor.”

persons into prostitution), persons convicted would be subject to the provisions of La. Rev. Stat. Ann. § 14:230. Punishments for convictions under La. Rev. Stat. Ann. § 14:230 vary based on the value of the funds derived, invested, spent, or received in the violation. If the value is less than \$3,000, a conviction is punishable by imprisonment up to 6 months, a possible fine of \$1,000, or both; if the value is \$3,000–\$19,999.99, a conviction is punishable by imprisonment for 2–10 years and a possible fine of \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by imprisonment for 2–20 years at hard labor and a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by imprisonment for 5–99 years and a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E).

The Louisiana Racketeering Act, codified at La. Rev. Stat. Ann. Title 15 (Criminal procedure), Chapter 11 (Drug racketeering and related organizations) provides greater financial penalties through criminal fines and civil remedies. La. Rev. Stat. Ann. § 15:1352(A)<sup>69</sup> (Definitions) defines “racketeering activity” as “committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is punishable under the following provisions of Title 14 of the Louisiana Revised Statutes of 1950: . . . (17) R.S. 14:230 [Money laundering; transactions involving proceeds of criminal activity] . . . R.S. 14:46.2 (Human trafficking), R.S. 14:46.3 (Trafficking of children for sexual purposes) . . . R.S. 14:286 (Sale of minor children) . . . ”

La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) states,

- A. It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise.
- B. It is unlawful for any person, through a pattern of racketeering activity, knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or immovable property.
- C. It is unlawful for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.
- D. It is unlawful for any person to conspire or attempt to violate any of the provisions of Subsections A, B, or C of this Section.

A conviction under La. Rev. Stat. Ann. § 15:1353 is punishable by imprisonment up to 50 years at hard labor, a possible fine of \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred,” or both. La. Rev. Stat. Ann. § 15:1354(A), (B).

Finally, any person convicted of commercial sex acts with a minor under R.S. 15:539.3<sup>70</sup> will be mandated to pay restitution to the victim. La. Rev. Stat. Ann. § 15:539.3 states;

A person convicted of violation of R.S. 14:46.2 (Human trafficking) or R.S. 14:46.3 (Trafficking of children for sexual purposes) shall be ordered to pay mandatory restitution to the victim

. . . .

Restitution under this Section shall include any of the following;

- (1) Costs of medical and psychological treatment.

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<sup>69</sup> See *supra* note 24.

<sup>70</sup> See *supra* note 38.

- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. . . .

. . . .

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

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

La. Rev. Stat. Ann. § 14:81.1(A) (Pornography involving juveniles) states,

- (1) It shall be unlawful for a person to produce,<sup>72</sup> promote, advertise, distribute,<sup>73</sup> possess, or possess with the intent to distribute pornography involving juveniles.<sup>74</sup>
- (2) It shall also be a violation of the provision of this Section for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.

Distributing child pornography is punishable by imprisonment for 5–20 years at hard labor, “without benefit of parole, probation, or suspension of sentence” and a possible fine of \$50,000; however, where the victim is under 13 and the offender is at least 17, the trafficker can be punished by “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment [otherwise] provided,” which, in this case, is 5–20 years, and on a second or subsequent conviction for distributing child pornography, the offender shall be fined up to \$75,000 and imprisoned at hard labor up to 40 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(2)(a), (b), (E)(5)(a).

The promotion, advertisement, and production of child pornography is punishable by imprisonment for 10–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence” and a possible fine of \$15,000; however, if the victim is under 13 and the offender is at least 17, the trafficker can be punished by imprisonment for 25–99 years at hard labor, at least 25 of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(4), (E)(5)(b).

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<sup>71</sup> See *supra* note 35.

<sup>72</sup> La. Rev. Stat. Ann. § 14:81.1(B)(6) defines “produce” as “to photograph, videotape, film, or otherwise reproduce pornography involving juveniles, or to solicit, promote, or coerce any child for the purpose of pornography involving juveniles.”

<sup>73</sup> La. Rev. Stat. Ann. § 14:81.1(B)(3) defines “distribute” as “to issue, sell, give, provide, lend, mail, deliver, transfer, transmute, distribute, circulate, or disseminate by any means.”

<sup>74</sup> See *supra* note 47.

Traffickers who sell or upload child pornography by using a computer also may be prosecuted under La. Rev. Stat. Ann. § 14:73.8 (Unauthorized use of a wireless router system; pornography involving juveniles; penalty).<sup>75</sup> If the victim is 13–17, a conviction under this statute is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000; however, if the victim is under 13, a conviction is punishable by imprisonment for 25–99 years at hard labor, 25 years of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(C), (D).

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>

### 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.*

It is a crime in Louisiana for a person at least 17 years old to use the Internet to communicate with a minor under 17 who is at least two years younger for the purpose of persuading that person to engage in or arranging for a third party to engage in sex acts (including acts constituting trafficking of children for sexual purposes) under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor).<sup>80</sup> All convictions under La. Rev. Stat. Ann. § 14:81.3, unless specifically mentioned below, are punishable by imprisonment at hard labor that is “without benefit of parole, probation, or suspension of sentence” and are subject to a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). If the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and, if the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat.

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<sup>75</sup> See *supra* section 2.9 for a more complete description of relevant provisions of La. Rev. Stat. Ann. § 14:73.8.

<sup>76</sup> See *supra* note 35.

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

<sup>80</sup> See *supra* sections 1.2 and 2.5 for more complete descriptions of relevant provisions of La. Rev. Stat. Ann. § 14:81.3.

Ann. § 14:81.3(B)(1)(a), (b). If the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

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

Several statutes impose significant financial penalties for trafficking a child for sexual exploitation, including fines, asset forfeiture, restitution and potential civil damages. A trafficker convicted under La. Rev. Stat. Ann. § 14:46.3(A)(1), (A)(2), (A)(4), or (A)(5) (Trafficking of children for sexual purposes), if the victim is 14–17, may be required to pay a possible fine of \$50,000, and, if the victim is under 14, a trafficker is required to pay a possible fine of \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (1)(b). Pursuant to La. Rev. Stat. Ann. § 14:46.3(D)(1)(c), “Any person who violates the provisions of Paragraph (A)(1), (2), (4), (5), or (6) of this Section, who was previously convicted of a sex offense as defined in R.S. 15:541 when the victim of the sex offense was under the age of eighteen years, shall be fined not more than one hundred thousand dollars. A trafficker could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking). A conviction “when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” is punishable by a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). When the victim is under 18, the fine is up to \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

A trafficker who produces child pornography faces a possible fine of \$15,000, while one who distributes child pornography is required to pay a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:81.1(E)(2)(a), (E)(4). A person convicted under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) is subject to a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). A conviction under La. Rev. Stat. Ann. § 14:73.8 (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) is also punishable by a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:73.8(D).

Louisiana’s CSEC laws may also subject traffickers to fines. A conviction under La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes), § 14:86(A)<sup>81</sup> (Enticing persons into prostitution), § 14:83.2<sup>82</sup> (Promoting prostitution), § 14:84<sup>83</sup> (Pandering) or § 14:83.1 (Inciting Prostitution) is punishable by a possible fine of \$50,000 if the person solicited is under 18 and \$75,000 if the person solicited is under 14. A conviction under La. Rev. Stat. Ann. § 14:83.2<sup>84</sup> (Promoting prostitution) is also punishable by a possible fine of \$50,000 if the person solicited is under 18 and \$75,000 if the person solicited is under 14. La. Rev. Stat. Ann. §§ 14:83(B)(1), (2), 14:83.2(B)(2), (3). A conviction under La. Rev. Stat. Ann. § 14:104<sup>85</sup> (Keeping a disorderly place), La. Rev. Stat. Ann. § 14:282<sup>86</sup> (Operation of places of prostitution prohibited; penalty), § 14:105 (Letting a disorderly place) or § 14:85<sup>87</sup> (Letting premises for prostitution) is punishable by a possible fine of \$50,000 if

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<sup>81</sup> See *supra* note 9.

<sup>82</sup> See *supra* note 11.

<sup>83</sup> See *supra* note 12.

<sup>84</sup> See *supra* note 11.

<sup>85</sup> See *supra* note 13.

<sup>86</sup> See *supra* note 19.

<sup>87</sup> See *supra* note 18.

the purpose of the offense is prostitution of a person under 18, or if under 14 years old punishable by a \$75,000 fine. La. Rev. Stat. Ann. §§ 14:104(B)(2), (3), 14:105(B)(2), (3), 14:282(B)(2), (3), 14:85(B)(2), (3).

Convicted traffickers of certain crimes face asset forfeiture. The “personal property used in the commission of” La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) shall be “seized and impounded” and, after conviction, sold at public sale or public auction. La. Rev. Stat. Ann. § 14:46.3(D)(3)(a). Traffickers convicted under La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution), § 14:81.3 (Computer-aided solicitation of a minor) or § 14:81.1 (Pornography involving juveniles) are also subject to mandatory, criminal asset forfeiture and shall have any “personal property used in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale or public auction.” La. Rev. Stat. Ann. §§ 14:86(B)(2), 14:81.1(E)(5)(c). Property that is forfeitable pursuant to La. Rev. Stat. Ann. § 14:46.3C(3)(a), § 14:81.3(B)(4)(a) and § 14:86(B)(2) may be seized, impounded and sold following a court order and distribution of the forfeited property is governed by La. Rev. Stat. Ann. § 15:539.1 (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property) which states,

(A) When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (Human trafficking), R.S. 14:46.3 (Trafficking of children for sexual purposes), R.S. 14:80 (Felony carnal knowledge of a juvenile), R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.2 (Molestation of a juvenile), R.S. 14:81.3 (Computer-aided solicitation of a minor), and R.S. 14:86 (Enticing persons into prostitution), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public.

.....

(E) Notwithstanding Subsection D of this section, when the property to be forfeited is related to human trafficking under R.S. 14:46:2 or trafficking of children for sexual purposes under R.S. 14:46.3, the proceeds of the public sale or public auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining proceeds shall be distributed in the following manner:

- (1) Twenty-five percent to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) Twenty-five percent to the prosecution agency.
- (3) Fifty percent to the Exploited Children’s Special Fund pursuant to R.S. 15:538.2.

Additionally, when a buyer is found or pleads guilty of trafficking children for sexual purposes as stated under R.S. 14:63:3 (Trafficking of children), R.S. 14:82.1 (Prostitution with a minor under 17 years of age), or R.S. 14:86 (Enticing persons into prostitution) they will be ordered to pay a mandatory fine of \$2,000 to the victim in addition to other mandatory restitutions. La. Rev. Stat. Ann. § 15:539.2<sup>88</sup>.

Any person convicted of trafficking a minor under R.S. 15:539.3<sup>89</sup> will pay mandatory restitution to the victim. La. Rev. Stat. Ann. § 15:539.3 states;

A person convicted of violation of R.S. 14:46.2 (Human trafficking) or R.S. 14:46.3 (Trafficking of children for sexual purposes) shall be ordered to pay mandatory restitution to the victim

.....

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<sup>88</sup> See *supra* note 44.

<sup>89</sup> See *supra* note 38.

Restitution under this Section shall include any of the following:

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. . . .

....

Fines for convictions under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by a possible fine of \$1,000; if the value is \$3,000–\$19,999.99, a conviction is punishable by a possible fine of \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E). Lastly, those traffickers convicted under La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) may be required to pay a possible fine of \$1,000,000 or up to “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred.” La. Rev. Stat. Ann. § 15:1354(A), (B).

To the extent that a victim suffers “an actual pecuniary loss” or incurs costs “in connection with a criminal prosecution,” a trafficker will also be subject to a mandatory order of restitution to the victim pursuant to La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim).<sup>90</sup>

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

Traffickers convicted under Louisiana’s human trafficking and CSEC laws are required to register as sex offenders under La. Rev. Stat. Ann. § 15:542<sup>91</sup> (Registration of sex offenders and child predators). La. Rev. Stat. Ann. § 15:542(A)(1) states,

A. The following persons shall be required to register and provide notification as a sex offender or child predator in accordance with the provisions of this Chapter:

(1) Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or any conspiracy to commit either of the following:

(a) A sex offense as defined in R.S. 15:541 [Definitions],<sup>92</sup> with the exception of those convicted of felony carnal knowledge of a juvenile as provided in Subsection F of this Section;

(b) A criminal offense against a victim who is a minor as defined in R.S. 15:541.<sup>93</sup>

<sup>90</sup> See *infra* section 5.10 for the provisions of La. Code Crim. Proc. Art. 883.2(A) and La. Rev. Stat. Ann. § 46:1844 (Basic rights for victim and witness).

<sup>91</sup> See *supra* note 53.

<sup>92</sup> See *supra* note 54.

<sup>93</sup> See *supra* note 55.

Therefore, traffickers convicted under La. Rev. Stat. Ann. § 14.46.2(B)(3) (Human trafficking), § 14:46.3 (Trafficking of children for sexual purposes), § 14:81.1 (Pornography involving juveniles), § 14:81.3 (Computer-aided solicitation of a minor), or § 14:86(A) (Enticing persons into prostitution), La. Rev. Stat. Ann. §§ 14:83.2 (Promoting prostitution), § 14:83 (Soliciting for prostitutes), § 14:83.1 (Inciting prostitution), § 14:84 (Pandering), and § 14:282 (Operation of places of prostitution prohibited; penalty) will be required to register as required in La. Rev. Stat. Ann. § 15:542 (Registration of sex offenders and child predators). La. Rev. Stat. Ann. §§ 15:541(12), (24), (25) (Definitions), 15:542(A)(1).

Additionally, traffickers required to register as sex offenders are prohibited from the unlawful use of a social networking websites. La. Rev. Stat. Ann. § 14:91.5(A)(1) (Unlawful use of a social networking website), makes unlawful “the intentional use of a social networking website<sup>94</sup> by a person who is required to register as a sex offender and who was convicted of R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.3 (Computer-aided solicitation of a minor), or R.S. 14:283 (Video voyeurism) or was previously convicted of a sex offense as defined in R.S. 15:541 in which the victim of the sex offense was a minor.<sup>95</sup>” Traffickers that “commit the crime of unlawful use of a social networking website” are subject to a possible fine of \$10,000 and imprisonment at hard labor for up to 10 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:91.5(C)(1).

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 La. Rev. Stat. Ann. § 14.46.2 (Human trafficking), § 14:46.3(A)(1), (2), (4), or (5) (Trafficking of children for sexual purposes) or any of Louisiana’s CSEC laws are expressly provided as grounds for terminating parental rights under La. Child. Code Ann. art. 1015 (Grounds). The grounds provided in La. Child. Code Ann. art. 1015 include, in part,

(3) Misconduct of the parent toward this child or any other child of the parent or any other child in his household which constitutes extreme abuse,<sup>96</sup> cruel and inhuman treatment,<sup>97</sup> or grossly negligent behavior<sup>98</sup> below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

....

(h) A felony that has resulted in serious bodily injury.<sup>99</sup>

(i) Abuse<sup>100</sup> or neglect<sup>101</sup> which is chronic, life threatening, or results in gravely disabling physical or psychological injury or disfigurement.

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<sup>94</sup> See *supra* note 56 for the definition of “social networking website.”

<sup>95</sup> See *supra* note 57 for the definition of “sexual offense against a minor.”

<sup>96</sup> “Extreme abuse” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>97</sup> “Cruel and inhuman treatment” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>98</sup> “Grossly negligent behavior” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>99</sup> “Serious bodily injury” is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>100</sup> “Abuse” is defined in La. Child. Code Ann. art. 1003(1) (Definitions) as

any of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:



(j) Abuse or neglect after the child is returned to the parent's care and custody while under department supervision, when the child had previously been removed for his safety from the parent pursuant to a disposition judgment in a child in need of care proceeding.

.....

(l) Sexual exploitation or abuse, which shall include, but is not limited to acts which are prohibited by R.S. 14: 43.1 [Sexual battery], 43.2 [Second degree sexual battery], 46.3 [Trafficking of children for sexual purposes], 80 [Felony carnal knowledge of a juvenile], 81 [Indecent behavior with juveniles], 81.1 [Pornography involving juveniles], 81.2 [Molestation of a juvenile], 82.1(A)(2) [Prostitution; persons under eighteen; additional offenses], 89 [Crime against nature] and 89.1 [Aggravated crime against nature].

(m) Human trafficking when sentenced pursuant to the provisions of R.S. 14:46(B)(2) or (3) [Human trafficking].

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(a) The infliction or attempted infliction, or, as a result of inadequate supervision, the allowance or toleration of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.

(b) The exploitation or overwork of a child by a parent or any other person.

(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

<sup>101</sup> "Neglect" is defined in La. Child. Code Ann. art. 1003(10) (Definitions) in part as "the refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired."

**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.*

La. Rev. Stat. Ann. § 14:46.3(A)(2), (4) (Trafficking of children for sexual purposes) makes it unlawful to “knowingly benefit from” trafficking or “to knowingly facilitate . . . by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.”<sup>102</sup> A conviction under this statute is punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both; however, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor, 25 years of which must be “served without benefit of probation, parole, or suspension of sentence,” and a possible fine of \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b).

In addition, a facilitator could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking), which makes it unlawful for a person to knowingly “benefit from activity prohibited by the provisions of this Section” or “facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.” La. Rev. Stat. Ann. § 14:46.2(A)(2), (3). A conviction “when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Also, a conviction when the victim is under 18 is punishable by imprisonment for 5–25 years at hard labor, “which shall be without the benefit of parole, probation, or suspension of sentence” for 5 years, and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Facilitators also may face penalties for convictions under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity).<sup>103</sup> Punishments under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by imprisonment up to 6 months, a possible fine of \$1,000, or both; if the value is \$3,000–\$19,999.99, a conviction is punishable by imprisonment for 2–10 years and a possible fine of \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by imprisonment for 2–20 years and a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by imprisonment for 5–99 years and a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E).

<sup>102</sup> See *supra* section 1.1 for the substantive provisions of La. Rev. Stat. Ann. § 14:46.3.

<sup>103</sup> See *supra* section 3.1 for the substantive provisions of La. Rev. Stat. Ann. § 14:230.

Finally, facilitators could be convicted under La. Rev. Stat. Ann. § 14:104(A)<sup>104</sup> (Keeping a disorderly place) which is “the intentional maintaining of a place to be used habitually for any illegal purpose.” A facilitator who violates La. Rev. Stat. Ann. § 14:104 for the purpose of prostitution of persons under eighteen shall be fined up to \$50,000, imprisoned at hard labor for 15–50 years, or both, and if the person is under 14 the facilitator shall be fined up to \$75,000, imprisoned at hard labor 25–50 years, or both. La. Rev. Stat. Ann. § 14:104(B)(2), (3). Similarly, a facilitator could be convicted of La. Rev. Stat. Ann. § 14:105(A) (Letting a disorderly place), which is “the granting of the right to use any premises knowing that they are to be used as a disorderly place, or allowing the continued use of the premises with such knowledge.” A facilitator who violates La. Rev. Stat. Ann. § 14:105 for the purpose of prostitution of persons under eighteen shall be fined up to \$50,000, imprisoned at hard labor for 15–50 years, or both, and if the person is under 14 the facilitator shall be fined up to \$75,000, imprisoned at hard labor for 25–50 years, or both. La. Rev. Stat. Ann. § 14:105(B)(2), (3).

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 face fines ranging from \$15,000–\$1,000,000. A facilitator convicted under La. Rev. Stat. Ann. § 14:46.3(A)(2), (4) (Trafficking of children for sexual purposes), if the victim is 14–17, may be required to pay a possible fine of \$50,000, and if the victim is under 14, a facilitator will be required to pay a possible fine of \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). If force, fraud, or coercion is involved in commission of the offense, a facilitator convicted under La. Rev. Stat. Ann. § 14:46.2 faces up a possible fine of \$15,000 when the services include “commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” and a possible fine of \$25,000 when the victim is under 18. La. Rev. Stat. Ann. § 14:46.2(B)(2), (3).

Similarly, penalties related to facilitating CSEC offenses pursuant to La. Rev. Stat. Ann. § 14:83.1 (Inciting prostitution), § 14:85 (Letting premises for prostitution),<sup>105</sup> § 14:84 (Pandering),<sup>106</sup> and § 14:282 (Operation of places of prostitution prohibited; penalty)<sup>107</sup> include up to a \$50,000 fine if the person is under 18 years or up to \$75,000 if the person is under 14. La. Rev. Stat. Ann. §§ 14:83.1(B)(2), (3), 14:85(B)(2), (3), § 14:84(B)(2), (3), 14:282(B)(2), (3). Furthermore, a facilitator convicted under La. Rev. Stat. Ann. § 14:104(A) (Keeping a disorderly place) or La. Rev. Stat. Ann. § 14:105(A) (Letting a disorderly place) shall be fined \$50,000 if the purpose of keeping or letting the disorderly place is for the purpose of prostitution of persons under 18, and the fine increases to \$75,000 when the purpose of keeping or letting the disorderly place is prostitution of a person under 14 years of age. La. Rev. Stat. Ann. § 14:104(B)(2) (3), 105(B)(2), (3). Fines applicable to facilitators convicted under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by a possible fine of \$1,000; if the value is \$3,000–\$19,999.99, a conviction is punishable by a fine of up to \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E). Lastly, a facilitator convicted under La. Rev. Stat. Ann. § 15:1353 may be required to pay a possible fine of \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred.” La. Rev. Stat. Ann. § 15:1354(A), (B).

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<sup>104</sup> See *supra* note 13.

<sup>105</sup> See *supra* note 18.

<sup>106</sup> See *supra* note 12.

<sup>107</sup> See *supra* note 19.

Facilitators also are subject to mandatory, criminal asset forfeiture for committing certain crimes. Specifically, “personal property used in the commission of” La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) may be “seized and impounded,” and, after conviction, sold to the public. La. Rev. Stat. Ann. § 14:46.3(D)(3)(a). A facilitator convicted under La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution) or § 14:81.1 (Pornography involving juveniles) is also subject to mandatory, criminal asset forfeiture and, following a conviction, shall have any “personal property used in the commission of the offense . . . seized and impounded, and after conviction, sold at public sale.” La. Rev. Stat. Ann. §§ 14:86(B)(2), 14:81.1(E)(5)(c). The distribution of the forfeited property is governed by La. Rev. Stat. Ann. § 15:539.1(A) (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property) which states,

(A) When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (Human trafficking), R.S. 14:46.3 (Trafficking of children for sexual purposes), R.S. 14:80 (Felony carnal knowledge of a juvenile), R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.2 (Molestation of a juvenile), R.S. 14:81.3 (Computer-aided solicitation of a minor), and R.S. 14:86 (Enticing persons into prostitution), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public.

. . . .

(E) Notwithstanding Subsection D of this section, when the property to be forfeited is related to human trafficking under R.S. 14:46:2 or trafficking of children for sexual purposes under R.S. 14:46.3, the proceeds of the public sale or public auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining proceeds shall be distributed in the following manner:

- (1) Twenty-five percent to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) Twenty-five percent to the prosecution agency.
- (3) Fifty percent to the Exploited Children’s Special Fund pursuant to R.S. 15:538.2.

Additionally, to the extent that a victim suffers “an actual pecuniary loss” or incurs costs “in connection with a criminal prosecution,” a facilitator will be required to make restitution to the victim pursuant to La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim).<sup>108</sup>

La. Rev. Stat. Ann. § 15:539.2<sup>109</sup> (Exploited children’s fund) states “Any person who is convicted or pleads guilty or nolo contendere to an offense involving trafficking of children for sexual purposes . . .” will have to pay a fine of \$2,000 in addition to other mandatory restitutions. Thus any person that assists in any manner and is found guilty or pleas guilt to trafficking children for sexual purposes as stated under R.S. 14:63:3 (Trafficking of children), R.S. 14:82.1 (Prostitution with a minor under 17 years of age), or R.S. 14:86 (Enticing persons into prostitution) will deposit \$2,000 into the Exploited Children’s Special Fund. La. Rev. Stat. Ann. § 15:539.1.

Additionally, Stat. Ann. § 15:539.3<sup>110</sup> mandates that any person:

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<sup>108</sup> See *supra* section 2.8.

<sup>109</sup> See *supra* note 44.

<sup>110</sup> See *supra* note 38.

... convicted of violation of R.S. 14:46.2 (Human trafficking) or R.S. 14:46.3 (Trafficking of children for sexual purposes) shall be ordered to pay mandatory restitution to the victim

....

Restitution under this Section shall include any of the following;

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. . . .

....

Lastly, La. Rev. Stat. Ann. §§ 26:96(A)<sup>111</sup> (Revocation and Suspensions) and §15:541.1<sup>112</sup>(Posting of the National Human Trafficking Resource Center Hotline) provides that civil penalties can be assessed for violations regarding posting National Human Trafficking Resource Center information. Certain establishments such as “full service fuel facility adjacent to an interstate highway or highway rest stop” and “every massage parlor, spa, or hotel that has been found to be a public nuisance for prostitution...” will post information regarding Human trafficking Resource center hotlines. La. Rev. Stat. Ann. §§ 24:01.1, 15:541.1. If they do not comply they face fines depending upon the offense. If it is a first offense than the fine ranges from \$50-500, a second offense that occurs within three years of the first offense will receive a fine ranging between \$250-1000. A third offense occurring within three years of the first offense will receive a fine ranging from \$500-2500. La. Rev. Stat. Ann. § 26:96(A).

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

La. Rev. Stat. Ann. § 14:46.3(A)(6) (Trafficking of children for sexual purposes) makes it unlawful “for any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section.” Additionally, La. Rev. Stat. Ann. § 14:46.3(A)(5) (Trafficking of children for sexual purposes) makes it unlawful “[f]or any person to knowingly advertise any of the activities prohibited by this Section.”

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

Promoting or selling child pornography is illegal in Louisiana. La. Rev. Stat. Ann. § 14:81.1(A)(1) (Pornography involving juveniles) states, “It shall be unlawful for a person to produce, promote, advertise, distribute,<sup>113</sup> possess, or possess with the intent to distribute pornography involving juveniles.” A conviction under this statute for distributing or possessing with intent to distribute is punishable by imprisonment for 5–20 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$50,000. On a second conviction for distributing child pornography the offender shall be fined up to \$75,000

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<sup>111</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 26:96(A) is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 126. 2013 La. Acts. 430 (effective August 1, 2013).

<sup>112</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 15:541.1 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 126. 2013 La. Acts. 430 (effective August 1, 2013).

<sup>113</sup> See *supra* note 73.

and imprisoned at hard labor up to 40 years, “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(2)(a), (b). However, if the victim is under 13, and the facilitator is at least 17, a conviction is punishable “by imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment” otherwise provided, which results in a sentence of 10–40 years. La. Rev. Stat. Ann. § 14:81.1(E)(5)(a), (E)(2).

Additionally, La. Rev. Stat. Ann. § 14:73.8(A) (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) makes the “[u]nauthorized use of a wireless router system . . . for the purposes of . . . selling . . . pornography involving juveniles” unlawful. If the victim is 13–17 years old, a conviction under this statute is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:73.8(C). However, if the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 25–99 years at hard labor, and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(D).

**Legal Components:**

- 5.1 *Statutorily-mandated victim services define “victim” to specifically include victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) to ensure prompt identification and access to victims’ rights and services.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from raising consent of the minor to the commercial sex acts as a defense.*
- 5.3 *Prostitution laws apply only to adults, making minors under 18 specifically immune from this offense.*
- 5.4 *Child victims of sex trafficking or commercial sexual exploitation are provided with a child protection response, including specialized shelter and services, and are not detained in juvenile detention facilities.*
- 5.5 *Commercial sexual exploitation or sex trafficking 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 the 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.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

**Legal Analysis:**

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

Pursuant to La. Child. Code Ann. art. 116 (9.1) (Definitions), a “juvenile crime victim” is defined as “a person, under the age of seventeen, against whom a felony offense<sup>114</sup> against the person has been committed.” La. Child. Code Ann. art. 811.3(1) (Definitions),<sup>115</sup> defines a “victim” as “a person against whom an offense that is a felony-grade delinquent act<sup>116</sup> has been committed.”

<sup>114</sup> Pursuant to La. Code Crim. Proc. Ann. art. 933(3) (Offenses), a “felony” is defined as “an offense that may be punished by death or by imprisonment at hard labor.”

<sup>115</sup> Chapter 3-A (Rights of the Victim).

<sup>116</sup> La. Child. Code Ann. art. 804(5) (Definitions) defines “felony-grade delinquent act” as “an offense that if committed by an adult, may be punished by death or by imprisonment at hard labor.”

For the purposes of Title 46, Chapter 21-B (Rights of crime victims and witnesses), La. Rev. Stat. Ann. § 46:1842 (Definitions) defines the following:

(1.1) “Crime victim who is a minor” means a person under the age of eighteen against whom any of the following offenses have been committed:

- (a) Any homicide or any felony offense defined or enumerated in R.S. 14:2(B) [Definitions].<sup>117</sup>
- (b) Any sexual offense.

....

(9) “Victim” means a person against whom any of the following offenses have been committed:

- (a) Any homicide, or any felony offense defined or enumerated in R.S. 14:2(B) [Definitions].
- (b) Any sexual offense.

....

The inclusion of the offenses enumerated in La. Rev. Stat. Ann. § 14:2(B) in the definitions of “crime victim who is a minor” and “victim” clarifies that trafficked children are defined as victims for purposes of the rights afforded under La. Rev. Stat. Ann. Title 46, Chapter 21-B (Rights of crime victims and witnesses).

For purposes of victim compensation, a “victim” includes “[a]ny person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by this Chapter.” La. Rev. Stat. Ann. § 46:1802(10)(a).

Under the Victims Compensation and Assistance Act of 1984<sup>118</sup>,

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including -

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court.

## 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.*

La. Rev. Stat. Ann. § 14:46.3(C)(1) (Trafficking of children for sexual purposes) expressly states that the “[c]onsent of the minor shall not be a defense to a prosecution pursuant to the provisions of this Section.”

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<sup>117</sup> La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) is one of the offenses enumerated. La. Rev. Stat. Ann. § 14:2(B)(42). *See supra* note 10.

<sup>118</sup> Victims Compensation and Assistance Act of 1984, Pub. L. 98-473, Title II, Chapter XIV, Sec. 10607, as amended.



Furthermore La. Rev. Stat. Ann. § 14:42(A) (Aggravated rape), § 14:80.1(A) (Misdemeanor carnal knowledge of a juvenile), § 14:81.1 (Pornography involving juveniles), § 14:82:1 (Prostitution; persons under eighteen; additional offenses), § 14:89.2(A) (Crime against nature by solicitation), § 14:81.3 (Computer-aided solicitation of a minor) and § 14:80(A)(1) (Felony carnal knowledge of a juvenile) provide that “[i]t shall not be a defense to prosecution for a violation of this Section that [the minor victim] consented to participation in the activity prohibited by this Section.”

However, La. Rev. Stat. Ann. § 14:86(A) (Enticing persons into prostitution), § 14:282<sup>119</sup> (Operation of places of prostitution prohibited; penalty), § 14:83.2<sup>120</sup> (Promoting prostitution), § 14:84<sup>121</sup> (Pandering), § 14:104<sup>122</sup> (Keeping a disorderly place), § 14:105 (Letting a disorderly place), § 14:83 (Soliciting for prostitutes), § 14:83.1 (Inciting Prostitution) and § 14:85<sup>123</sup> (Letting premises for prostitution) are silent on the materiality of the minor’s consent to the commercial sex act. While it is unlikely that consent would be a defense to prosecutions under these statutes, specifically prohibiting any consent defense would make it clear that consent is not a defense.

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

La. Rev. Stat. Ann. § 14:82(G)<sup>124</sup> (Prostitution; definition; penalties; enhancement) does not specifically make the offense of prostitution inapplicable to minors, however § 14:82 does provide an affirmative defense from prosecution for prostitution offenses if “during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes” as provided in La. Rev. Stat. Ann. § 14:46.3(A), (B) (Trafficking of children for sexual purposes). Additionally, La. Rev. Stat. Ann. § 14:46.3(E) (Trafficking of children for sexual purposes) states that “[n]o victim of trafficking as defined by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked.”

5.3.1 Recommendation: Amend La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement) to specifically make it inapplicable to minors under 18.

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

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

Pursuant to La. Child. Code Ann. art. 502(1), (5)<sup>125</sup> (Definitions) and art. 603(1), (16) (Definitions) a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under La. Child. Code Ann. art. 502(1), (5)<sup>126</sup> (Definitions) and art. 603(1), (16) (Definitions), the definition of caretaker under La. Child Code. Ann. art. 728(1) & 603(3) is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

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<sup>119</sup> See *supra* note 19.

<sup>120</sup> See *supra* note 11.

<sup>121</sup> See *supra* note 12.

<sup>122</sup> See *supra* note 13.

<sup>123</sup> See *supra* note 18.

<sup>124</sup> See *supra* note 5.

<sup>125</sup> Title 5 (Services to families).

<sup>126</sup> Title 5 (Services to families).

La. Rev. Stat. Ann. § 14:403 (Abuse of children; reports; waiver of privilege) makes reporting the abuse, neglect, or sexual abuse of a child mandatory in Louisiana and imposes criminal penalties for failure to report. “Any person who . . . is required to report<sup>1</sup> the sexual abuse of a child, or the abuse or neglect of a child which results in the serious bodily injury,<sup>1</sup> neurological impairment, or death of the child, and the person knowingly and willfully fails to so report shall be fined not more than \$3,000, imprisoned, with or without hard labor, for not more than 3 years, or both.” Additionally, “any person who is 18 years of age or older who witnesses the sexual abuse of a child and knowingly and willfully fails to report the sexual abuse to law enforcement or to the Department of Children and Family Services . . . shall be fined not more than \$10,000, imprisoned with or without hard labor for not more than 5 years, or both. La. Rev. Stat. Ann. § 14:403(A)(4)(a). Pursuant to La. Rev. Stat. Ann. § 14:403(A)(4)(b), “For purposes of [subsection (4)(b)], ‘sexual abuse’ shall include but is not limited to the perpetration or attempted perpetration of R.S. . . . 46.2 [Human trafficking], 46.3 [Trafficking of children for sexual purposes] . . . 81.1 [Pornography involving juveniles] . . . 86 [Enticing persons into prostitution], 89 [Crime against nature], or 89.1 [Aggravated crime against nature].” Once child abuse, neglect, or sexual abuse is reported, “the department shall promptly communicate abuse or neglect cases not involving a parent, caretaker, or occupant of the household to the appropriate law enforcement agency . . . .” La. Child. Code Ann. art. 610(E)(2).

## I. Initial Custody

### a) authority for initial custody

Under Louisiana Children’s Code, Title 6 (Child in need of care), children can be taken into custody with a court order pursuant to La. Child. Code Ann. art. 619 (Instant orders of custody). La. Child. Code Ann. art. 619(A)(1) states, “A peace officer, district attorney, or employee of the local child protection unit of the department may file a verified complaint alleging facts showing that there are reasonable grounds to believe that the child is in need of care and that emergency removal is necessary to secure the child’s protection.”

Children also can be taken into custody without a court order under La. Child. Code Ann. art. 621(A) (Taking child into custody without a court order), which states, “A peace officer or probation officer of the court may take a child into custody without a court order if he has reasonable grounds to believe that the child’s surroundings are such as to endanger his welfare and immediate removal appears to be necessary for his protection.”

Following an encounter with a suspected trafficking victim, law enforcement and state prosecutors are required to make a preliminary assessment as to whether the person is a victim of human trafficking. La. Rev. Stat. Ann. § 46:2162<sup>127</sup> (Assistance to victims of human trafficking) states that

(a) If it is determined that the victim or possible victim appears to meet such criteria, then the agency or office shall report the finding to the victim and shall refer the child victim to appropriate services available, including legal services providers.

(b) If the victim or possible victim is under the age of eighteen . . . the agency or office shall also notify the appropriate protective service agency.

### b) placement

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<sup>127</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 46:2162 is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate Bill 88. 2013 La. Acts. 429 (effective June 24, 2013).

If, “[u]pon presentation of the verified complaint,” the court determines that removal is absolutely necessary, the court must immediately direct the child to the “custody of a suitable relative or other individual capable of protecting the health and safety of the child or taken into the custody of the state.” La. Child. Code Ann. art. 619(C).

A child who is taken into custody will, in order of preference, be placed “[i]n the home of a suitable relative” of majority age or otherwise in the home of a suitable individual of majority age, or in foster care “until further orders of the court.” La Child. Code Ann. art. 622(B).

## II. Placement Process pending Adjudication/Investigation

The court must hold a hearing within 3 days to determine whether there is “a ground for continued custody pursuant to Article 626 [Grounds for continued custody; reasonable efforts].” La. Child. Code Ann. art. 624(A), (D). After the continued custody hearing the court may return the child to his or her parents or “place the child in the custody of a suitable relative, other suitable individual, or the department.” La. Child. Code Ann. art. 627(A).

## III. Adjudication

### a) adjudicatory/dispositional hearing

In some cases involving a child in custody, an informal process may be used that avoids a formal adjudication of the child as in need of care. La. Child Code Ann. art. 628, art. 630. La. Child. Code Ann. art. 630(B) (Effect of an agreement) explains,

An informal adjustment agreement suspends the proceedings on the acts alleged in the child in need of care petition. If any of the terms of the agreement are violated, the case may proceed to an adjudication hearing on the allegations. If the parent satisfies the terms of the agreement, he shall be discharged from further supervision, and the pending complaint or petition shall be dismissed with prejudice.

When no informal adjustment agreement is entered, and a child is in continued custody pursuant to La. Child. Code Ann. art. 627 (Continued custody order; special provisions; appointments), an adjudication hearing must begin within 45 days of filing the petition. La. Child. Code Ann. art. 659(A). If the child is not in continued custody, an adjudication hearing must begin within 105 days. La. Child. Code Ann. art. 659(A).

La. Child. Code Ann. art. 606(A) (Grounds; child in need of care) explains that a child will be deemed a “child in need of care” when

(1) The child is the victim of abuse<sup>128</sup> perpetrated, aided, or tolerated by the parent or caretaker, by a person who maintains an interpersonal dating or engagement relationship with the parent or caretaker,

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<sup>128</sup> La. Child. Code Ann. art. 603(1) (Definitions) defines “abuse” as

any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

- (a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.
- (b) The exploitation or overwork of a child by a parent or any other person.

or by a person living in the same residence with the parent or caretaker as a spouse whether married or not, and his welfare is seriously endangered if he is left within the custody or control of that parent or caretaker.

.....

(4) As a result of a criminal prosecution, the parent has been convicted of a crime against the child<sup>129</sup> who is the subject of this proceeding, or against another child of the parent, and the parent is now unable to retain custody or control or the child's welfare is otherwise endangered if left within the parent's custody or control.

(5) The conduct of the parent, either as principal or accessory, constitutes a crime against the child or against any other child of that parent.

(6) The child is a victim of human trafficking or trafficking of children for sexual purposes.

#### IV. Outcomes

La. Child. Code Ann. art. 681 (Dispositional alternatives) provides that if the court determines a child to be in need of care, the court may

(1) Place the child in the custody of a parent or such other suitable person on such terms and conditions as deemed in the best interest of the child including but not limited to the issuance of a protective order pursuant to Article 618.

(2) Place the child in the custody of a private or public institution or agency.

(3) Commit a child found to be mentally ill to a public or private institution for the mentally ill.

(4) Grant guardianship of the child to a nonparent.

(5) Make such other disposition or combination of the above dispositions as the court deems to be in the best interest of the child.

Additionally, La. Child. Code Ann. art. 681(B) provides that “[a] child in need of care shall not be committed to the Department of Public Safety and Corrections, nor shall such department accept a child in need of care.”

### **Child Identified as in Need of Services**

#### I. Adjudication

a) adjudicatory/dispositional hearing

Pursuant to La. Child. Code Ann. art. 730<sup>130</sup> (Grounds), a trafficked child's family may be deemed in need of services if the court finds

(1) That a child is truant or has willfully and repeatedly violated lawful school rules.

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(c) The involvement of the child in any sexual act with a parent or any other person, the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

<sup>129</sup> Pursuant to La. Child. Code Ann. art. 603 as amended by House Bill No. 49 during the 2012 Louisiana General Assembly, “crime against the child” includes the commission of or the attempted commission of human trafficking and trafficking of children for sexual purposes. 2012 La. Acts 446. (Effective August 1, 2012).

<sup>130</sup> The text of La. Child. Code Ann. art. 730 included here and elsewhere in this report includes amendments made by the passage of Senate Bill No. 88 during the 2013 Louisiana General Assembly. 2013 La. Acts 83.

- (2) That a child is ungovernable.
- (3) That a child is a runaway.
- (4) That a child has repeatedly possessed or consumed intoxicating beverages, or that he has misrepresented or deceived his age for the purpose of purchasing or receiving such beverages from any person, or has repeatedly loitered around any place where such beverages are the principal commodities sold or handled.
- ...
- (6) That a child under ten years of age has committed any act which if committed by an adult would be a crime under any federal, state, or local law.
- (7) That a caretaker has caused, encouraged, or contributed to the child's behaviors enumerated in this Article or to the commission of delinquent acts as defined in Title VIII.
- ...
- (12) That a child is a sexually exploited child<sup>131</sup>.

## II. Outcomes

Special provisions may apply to some domestic minor sex trafficking victims under Louisiana's Runaway and Homeless Youth Law,<sup>132</sup> which gives some runaway minors the option to seek shelter in an approved runaway and homeless youth facility. La. Rev. Stat. Ann. § 46:1354(A) (Powers and duties of approved program or facility; alternative living arrangements) authorizes approved runaway programs or facilities to

- (1) Provide assistance to any runaway<sup>133</sup> or homeless youth.<sup>134</sup>
- (2) Attempt to determine the cause for the youth's runaway or homeless status.
- (3) Explain to the runaway or homeless youth the rights, options of services, or other assistance available to the youth.
- (4) Work towards reuniting such runaway or homeless youth with his parent, guardian, or legal custodian as soon as practicable.
- (5) Assist in arranging services for runaway or homeless youth, and where appropriate, their families, including but not limited to food, shelter, clothing, medical care, and individual and family counseling.
- (6) Consent, through the director or his designee, for the delivery of medical, assessment, or social services to any runaway youth in the program or facility.

La. Rev. Stat. Ann. § 46:1353 further provides, in part,

(D) A runaway youth over the age of eleven admitted to an approved runaway and homeless youth residential program or facility licensed by the Department of Children and Family Services shall be provided seventy-two hours of safe harbor unless otherwise designated by order of a court exercising juvenile jurisdiction regarding custody of the runaway youth, or unless the child is in the custody of a state agency which may elect to remove the child earlier without a court order.

....

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<sup>131</sup> "Sexually exploited child" is defined as a child that is, "a victim of trafficking of children for sexual purposes. . . a victim of sex trafficking. . . or engages in prostitution."

<sup>132</sup> La. Rev. Stat. 46:1351 et. seq.

<sup>133</sup> "Runaway youth" is defined in La. Rev. Stat. Ann. § 46:1352(5) as "a person under the age of eighteen years who is absent from his legal residence without the consent of his parent, guardian, or legal custodian."

<sup>134</sup> "Homeless youth" is defined in La. Rev. Stat. Ann. § 46:1352(4) as "a person under the age of twenty-one who is without a place of shelter where supervision and care are available."

(F) In instances where the parent, guardian, or legal custodian cannot be located within seventy-two hours following a runaway youth's admission into the facility or program, the staff shall continue to make reasonable efforts to contact the parent, guardian, or legal custodian. The facility or program is authorized to provide care for the youth, for a period not to exceed twenty-one days, until the parent, guardian, or legal custodian is contacted and gives oral or written consent . . . .

(G) Whenever a report has been filed by the facility or program in accordance with the provisions in R.S. 14:403 [Abuse of children; reports; waiver of privilege], the facility or program shall be legally authorized to provide care for the runaway youth pending a determination by the Department of Children and Family Services or a court exercising juvenile jurisdiction regarding custody of the runaway youth.

## **Child Identified as Delinquent**

### I. Initial Custody

#### a) authority for initial custody

Despite protective provisions, in some cases, commercially sexually exploited children may be taken into custody and detained for committing “a delinquent act.” La. Child. Code Ann. art. 804(3) (Definitions) defines a “delinquent act” as “an act committed by a child of ten years of age or older which if committed by an adult is designated an offense under the statutes or ordinances of this state, or of another state if the offense occurred there, or under federal law, except traffic violations.” Under this definition, a commercially sexually exploited child would not be considered delinquent for participating in a commercial sex act.

However, a “[d]elinquent act” shall not include a violation of R.S. 14:82 [Prostitution; definition; penalties; enhancement], § 83.3 [Prostitution by massage], § 83.4 [Massage; sexual conduct prohibited], § 89 [Crime against nature] or § 89.2 [Crime against nature by solicitation] for a child who, during the time of the alleged commission of the offense, was a victim of trafficking of children for sexual purposes pursuant to R.S. § 14:46.3(E).”

La. Child. Code Ann. art. 813(A)(1) (Taking child into custody with a court order; filing of verified complaint; execution) permits the court to issue an order authorizing that a child be taken into custody if there is “a written statement of facts . . . alleging facts showing that there is probable cause to believe . . . that: (1) The child has committed a delinquent act.” A child also may be taken into custody without a court order if “a peace officer or probation officer . . . has probable cause to believe that the child has committed a delinquent act.” La. Child. Code Ann. art. 814(A).

#### b) placement

Once the child is taken into custody, the officer must “[c]ounsel and release the child to the care of his parents upon their written promise to bring the child to court” or take the child to a juvenile detention center if taken into custody for a “felony-grade delinquent act”<sup>135</sup> or a “misdemeanor-grade delinquent act”<sup>136</sup> based upon an offense against the person of another.”

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<sup>135</sup> A second or subsequent conviction under La. Rev. Stat. Ann. § 14:82 would be considered a felony-grade delinquent act.

<sup>136</sup> La. Child. Code Ann. art. 804(8) (Definitions) defines a “misdemeanor-grade delinquent act” as “any offense which if committed by an adult is other than a felony and includes the violation of an ordinance providing a penal

La. Child. Code Ann. art. 804(5) (Definitions) defines a “felony-grade delinquent act” as “an offense that if committed by an adult, may be punished by death or by imprisonment at hard labor. ‘Felony-grade delinquent act’ does not include a violation of R.S. 14:82 [Prostitution; definition; penalties; enhancement], 83.3 [Prostitution by massage], 83.4 [Massage; sexual conduct prohibited], 89 [Crime against nature] or 89.2 [Crime against nature by solicitation] for a child who, during the time of the alleged commission of the offense, was a victim of trafficking of children for sexual purposes pursuant to R.S. § 14:46.3(E).” Under this definition, a commercially sexually exploited child cannot be charged with a “felony-grade delinquent act” for acts that would constitute one of these prostitution offenses.

If the child has been taken into custody for “any other misdemeanor-grade delinquent act, the officer may take the child to either a shelter care facility or a juvenile detention center.” La. Child. Code Ann. arts. 814(B), 815(B), (C). La. Child. Code Ann. art. 815(D) reiterates,

Notwithstanding any other provision of this Code or other provision of law to the contrary, no judge shall order that a youth taken into custody for a felony-grade delinquent act or for a misdemeanor-grade delinquent act based upon an offense against the person of another be placed in a shelter care facility.

## II. Placement Process pending Adjudication/Investigation

A hearing must be held within 3 days of the child’s detention. La. Child. Code Ann. art. 819. After the hearing, “the court may order a child . . . continued in custody in a licensed public or private facility for juveniles . . . or in a private home subject to the supervision of the court or in a juvenile detention center.” La. Child. Code Ann. art. 822(A). La. Child. Code Ann. art. 822(B) (Place of continued custody prior to adjudication) prohibits the court from placing “a child alleged to be delinquent in the custody of either the department of Children and Family Services or the department of Public Safety and Corrections prior to adjudication,” and La. Child. Code Ann. art. 822(C) further provides that “[n]o child subject to the jurisdiction of the juvenile court shall be held in an adult jail or lockup.”

## III. Adjudication

### a) adjudicatory/dispositional hearing

Similar to the informal adjustment proceedings provided under Title 6 (Child in need of care), an informal adjustment agreement is available under La. Child. Code Ann. art. 841 (Effect of agreement) La. Child. Code Ann. art. 841(B) (Effect of agreement) explains that

[a]n informal adjustment agreement suspends the proceedings on the delinquent acts charged in the complaint or petition. If any of the terms of the agreement are violated, the case may proceed to an adjudication hearing on the charges. If the child satisfies the terms of the agreement, he shall be discharged from further supervision, and the pending complaint or petition shall be dismissed with prejudice.

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sanction.” A first conviction under La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement) would be considered a “misdemeanor-grade delinquent act.”

b) diversion or alternate process

Additionally, pursuant to La. Rev. Stat. Ann. §§ 14:82(H), 83.3(E), 83.4(D), 89.2(E)<sup>137</sup>, if a child is a suspect of or charged with prostitution, there is a presumption, “that the person is a victim of child sex trafficking and should be treated as a child in need of care. . . .” Further, if a petition is filed and it involves, “a violation of R.S. § 14.82, 14.83.3, R.S. 14.83.4, or 14.89.2 and it is the respondent’s first offense,” the child may be eligible for a family in need of services petition to be filed in lieu of the delinquency petition, and, “the court may order specialized services for the child.” La. Child. Code Ann. art. 839<sup>138</sup> (Availability of an informal adjustment agreement). Pursuant to subsection (3), the specialized services may include, “safe and stable housing; comprehensive on-site case management; integrated mental health and chemical dependency services, including specialized trauma recovery services; education and employment training; and referrals to off-site specialized services . . . .”

#### IV. Outcomes

Pursuant to La. Child. Code Ann. art. 886 (Continued custody pending disposition; bail; places of detention), when a hearing is held to determine if the child is delinquent,

(A) At the conclusion of the hearing if the child has been adjudicated delinquent, the court shall consider whether the child should be released or held in custody pending a disposition hearing.

. . . .

(D) If the child is held in custody, the court may place him in a juvenile detention center, in a public or private facility for juveniles, in a private home subject to the supervision of the court, or in any other suitable facility for juveniles authorized by the court.

In entering a dispositional order for a child adjudicated delinquent, La. Child. Code Ann. art. 901 (Disposition guidelines; generally) states in part,

A. In considering dispositional options, the court shall not to remove a child from the custody of his parents unless his welfare or the safety and protection of the public cannot, in the opinion of the court, be adequately safeguarded without such removal.

B. The court should impose the least restrictive disposition authorized by Articles 897 through 900 of this Title<sup>139</sup> consistent with the circumstances of the case, the needs of the child, and the best interest of society.

C. Commitment of the child to the custody of the Department of Public Safety and Corrections may be appropriate if any of the following exists:

(1) There is an undue risk that during the period of a suspended commitment or probation the child will commit another crime.

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<sup>137</sup> The text of La. Rev. Stat. Ann. §§ 14:82, 83.3, 83.4, 89.2 included here and elsewhere in this report includes amendments made by the passage of House Bill No. 261 during the 2013 Louisiana General Assembly. 2013 La. Acts 83. (effective August 1, 2013).

<sup>138</sup> Here and elsewhere in this report that La. Child Code Ann. Art. 839 is quoted or cited, it has been updated to reflect the amendments added by the passage of Senate Bill 88. 2013 La. Acts. 83 (effective June 24, 2013).

<sup>139</sup> This includes La. Child Code Ann. art. 897 (Disposition after adjudication of a felony-grade delinquent act), art. 897.1 (Disposition after adjudication of certain felony-grade delinquent acts), art. 898 (Duration of a disposition based on a felony-grade adjudication), art. 899 (Disposition after adjudication of a misdemeanor-grade delinquent act), and art. 900 (Duration of a disposition based on a misdemeanor-grade adjudication).



- (2) The child is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment.
- (3) A lesser disposition will deprecate the seriousness of the child’s delinquent act.
- (4) The delinquent act involved the illegal carrying, use, or possession of a firearm.

....

5.4.1 Recommendation: Enact a law mandating specialized services and housing for minors identified as commercially sexually exploited through either the child in need of care or delinquency process.

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

The definitions of the terms “abuse” and “neglect” are identical in La. Child. Code Ann. art. 502(1), (5)<sup>140</sup> (Definitions) and art. 603(1), (16) (Definitions).<sup>141</sup> Both definitions of “abuse” include some forms of commercial sexual exploitation of a child. La. Child. Code Ann. art. 502(1)<sup>142</sup> states,

“Abuse” means any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child<sup>143</sup>:

- (a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.
- (b) The exploitation or overwork of a child by a parent or any other person.
- (c) The involvement of the child in any sexual act with a parent or any other person, the aiding or toleration by the parent or the caretaker of the child’s sexual involvement with any other person, the child’s involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

La. Child. Code Ann. art. 502(5)<sup>144</sup> states, “‘Neglect’ means the unreasonable refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child’s physical, mental, or emotional health and safety is substantially threatened or impaired. . . .”

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

As used in Title 6 (Child in need of care), La. Child. Code Ann. art. 603(3) (Definitions) defines “caretaker” as “any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, an operator or employee of a registered family child day care home, or other person providing a residence for the child.”

<sup>140</sup> Title 5 (Services to families).

<sup>141</sup> Title 6 (Child in Need of Care).

<sup>142</sup> An identical definition of “abuse” is found in La. Child. Code Ann. art. 603(1).

<sup>143</sup> La. Child. Code Ann. art. 502(2) (Definitions) defines a “child” as “a person under the age of eighteen years who has not been judicially emancipated by marriage as provided by law.” La. Child. Code Ann. art. 603(5) defines child very similarly.

<sup>144</sup> Identical definition of “neglect” is found in La. Child. Code Ann. art. 603(16).

Additionally, as used in Title 7 (Families in need of services), a “caretaker” is “any person providing a residence for the child or any person legally obligated to provide or secure adequate care for the child, including a parent, tutor, guardian, or legal custodian.” La. Child. Code Ann. art. 728(1).

The definition of caregiver under La. Child Code. Ann. art. 728(1) applies to persons who provide a residence for a child or those legally obligated to care for the child. Thus, La. Child Code. Ann. art. 728(1) may be sufficiently broad to cover a trafficker who has custody or control of a child. The definition of caregiver in La. Child. Code Ann. art. 603(3) could be read in the same way, although it is not as clear.

5.6.1 Recommendation: Amend the definition of caregiver in La. Child. Code Ann. art. 603(3) and art. 728(1) to also include persons in control of a minor, which would allow child protective services to act on allegations of criminal conduct perpetrated by a trafficker.

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.*

Domestic minor sex trafficking victims may be eligible to receive compensation under Louisiana’s Crime Victims Reparations Act. La. Rev. Stat. Ann. § 46:1804 (Eligibility to apply for reparations) states,

A person who believes he is a victim of a crime enumerated in R.S. 46:1805 [Crimes to which chapter applies],<sup>145</sup> or his legal representative, or in the case of death, a dependent or the legal representative of a dependent, or the rightful claimant as defined in R.S. 46:1802(4) [Definitions], shall be eligible to make application to the board for reparations and shall be eligible for an award of reparations in accordance with the provisions of this Chapter.

As used in La. Rev. Stat. Ann. § 46:1804, a “victim” includes “[a]ny person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by this Chapter.” La. Rev. Stat. Ann. § 46:1802(10)(a). However, certain requirements under La. Rev. Stat. Ann. § 46:1806 (Application; requirements; confidentiality) may hinder the ability of commercially sexually exploited children to obtain compensation. Under La. Rev. Stat. Ann. § 46:1806(A), an application for compensation

shall be valid only if the act resulting in the personal injury, death, or catastrophic property loss was reported to the appropriate law enforcement officers within seventy-two hours after the date of the personal injury . . . or within such longer period as the board determines is justified by the circumstances.

Also, La. Rev. Stat. Ann. § 46:1809(B)(3), (4) (Criteria for making awards; prohibitions; authority to deny or reduce awards) states,

- (3) No award of reparations shall be made if the board finds that:
- (a) The crime was not reported within the time specified by R.S. 46:1806(A) [Application; requirements; confidentiality].
  - (b) The claimant failed or refused to cooperate substantially with the reasonable requests of

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<sup>145</sup> La. Rev. Stat. Ann. § 46:1805(A) (Crimes to which Chapter applies) allows the board to award reparations for pecuniary loss for “personal injury, death, or catastrophic property loss resulting from any act or omission to act that is defined as a misdemeanor under any local ordinance or as a crime under state or federal law and involves the use of force or the threat of the use of force.”

appropriate law enforcement officials.

....

(d) The claimant was the offender or an accessory, or that an award to the claimant would unjustly benefit any of them. However, such ineligibility shall not apply if the claimant is a victim of human trafficking or trafficking of children for sexual purposes.

(e) The claim was not filed timely, as provided by R.S. 46:1806(A).

....

(4) The board may deny or reduce an award:

(a) If it finds that the behavior of the victim at the time of the crime giving rise to the claim was such that the victim bears some measure of responsibility for the crime that caused the physical injury, death, or catastrophic property loss or for the physical injury, death, or catastrophic property loss. However, such ineligibility shall not apply if the claimant is a victim of human trafficking or trafficking of children for sexual purposes.

....

5.7.1 Recommendation: Amend La. Rev. Stat. Ann. § 46:1809 (Criteria for making awards; prohibitions; authority to deny or reduce awards) to expand the exception for victims of human trafficking, sex trafficking of children, and commercial sexual exploitation of children to all ineligibility factors.

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

Child victim witnesses are provided with certain protections through the trial process. La. Rev. Stat. Ann. § 14:46.3(F) (Trafficking of children for sexual purposes) specifically provides that “the multidisciplinary team approach” applies to child victims of trafficking.

La. Child. Code Ann. art. 507 (Purpose) explains that the purpose of the multidisciplinary team approach

is to protect children whose physical or mental health and welfare is substantially at risk of harm by sexual abuse, other physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing a formal, comprehensive, integrated, multidisciplinary response to the investigation and disposition of cases of child abuse; by expediting and improving the validation or invalidation of such allegations for the benefit of the child, his family and any accused perpetrator; by encouraging the use of collaborative decision making and case management thereby reducing to a minimum the number of times a child victim is questioned and examined, thus preventing further trauma to the child; by coordinating a therapeutic services program thereby providing safety and treatment for a child victim and his family; by developing communication and case coordination among community professionals and agencies who are involved in child protection; by collecting data needed to continually improve cooperative interagency investigations; and, by maintaining the confidentiality of agency records, to ensure the protection of the privacy of the child, his family and any accused perpetrator.

La. Child. Code Ann. art. 510(A) (Contents of protocols; formal requirements) mandates certain protocols for the “multidisciplinary investigation of allegations of child abuse,” including,

(4) Procedures for ensuring that interviews of the child victim are conducted in a neutral, legally sound manner and by a qualified forensic interviewer, except when the circumstances of the particular case justify the assignment of another interviewer.

(5) Procedures for reducing the risk of harm to child victims, including ensuring that the child is in a

safe surrounding, and when necessary the removal of the alleged perpetrator.

(6) Procedures for reducing the number of interviews of the child victim and the use, if available, of a child advocacy center.

(7) Procedures for developing a service and treatment plan for the child victim and his family.

(8) Procedures for respecting the confidentiality of agency records and information, and a policy identifying the conditions for the sharing of information.

....

(10) Any other procedures to avoid duplication of fact-finding efforts and interviews of the child.

Additionally, under La. Rev. Stat. Ann. § 15:283 (Protected person; testimony taken outside courtroom), victims of La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) and Louisiana’s CSEC laws who are under 17 years of age, may give testimony via closed circuit television. Specifically, La. Rev. Stat. Ann. § 15:283 states in part,

A. On its own motion or on the motion of the attorney for any party, a court may order that the testimony of a protected person<sup>146</sup> who may have been a witness to or victim of a crime be taken in a room other than the courtroom and be simultaneously televised by closed circuit television to the court and jury, when the court makes a specific finding of necessity based upon both of the following:

(1) Expert testimony that the protected person would be likely to suffer serious emotional distress if forced to give testimony in open court.

(2) Expert testimony that, without such simultaneous televised testimony, the protected person cannot reasonably communicate his testimony to the court or jury.

B. The court shall ensure that the protected person cannot see or hear the accused unless such viewing or hearing is requested for purposes of identification. However, the court shall ensure that the accused is afforded the ability to consult with his attorney during the testimony of the protected person.

C. The only persons who may be present in the room with the protected person are the person or persons operating the audio-video equipment, the presiding judge, the attorneys for the state, the attorneys for the defendant, and any person, other than a relative of the protected person, whose presence is determined by the court to be necessary to the welfare and well-being of the protected person during his testimony. . . .

D. Only the attorneys, or the presiding judge as authorized by law, may question the protected person.

....

La. Rev. Stat. Ann. § 15:469.1 (Receipt of testimony from victims of certain crimes who are fifteen years of age or younger; closed session of court or in chambers; procedure) provides,

In cases of simple rape, attempted simple rape, aggravated rape, attempted aggravated rape, forcible rape, attempted forcible rape, or carnal knowledge of a juvenile in which the victim is a child of fifteen years of age or younger, the court, upon its own motion or that of the defendant or state, may order that the testimony of such victim be heard either in closed session of court or in the judge's chambers, in the presence of the judge or jury, the defendant, counsel for the defendant, the family of the defendant, the parents or parent of the victim, the attorney for the state, a reasonable but limited number of members of the public which the court may allow in its discretion under these circumstances, and any other party which the court determines has a valid interest in the proceedings.

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<sup>146</sup> Pursuant to La. Rev. Stat. Ann. § 15:283(E)(1), “protected person” is defined as “a person who is the victim of a crime or a witness in a criminal prosecution who is . . . [u]nder the age of seventeen years.”

Additional protections apply to domestic minor sex trafficking victims for cases involving sexual assault. Specifically, La. Code Evid. Ann. art. 412(A) (Victim’s past sexual behavior in sexual assault cases) states that “[w]hen an accused is charged with a crime involving sexually assaultive behavior, reputation or opinion evidence of the past sexual behavior of the victim is not admissible.” Exceptions under La. Code Evid. Ann. art. 412(B) include evidence “upon the issue of whether or not the accused was the source of semen or injury” and “upon the issue of whether or not the victim consented to the sexually assaultive behavior.”

Under La. Rev. Stat. Ann. § 46:1844(W)(2) (Basic rights for victim and witness), which protects the confidentiality of crime victims who are minors and victims of sex offenses, “sex offense” is defined to “include the perpetration or attempted perpetration of . . . any offense listed in R.S. 15:541(24) [Definitions—Registration of sex offenders and child predators].”

La. Code Crim. Proc. Ann. art. 718.1(A) (Evidence of obscenity, video voyeurism, or pornography involving juveniles) affords special protection for children used in child pornography, video voyeurism, or obscenity. Pursuant to art. 718.1(A), “In any criminal proceeding, any property or material that is alleged to constitute evidence of obscenity as defined in R.S. 14:106(A)(2)<sup>147</sup> that is unlawfully possessed, video voyeurism as defined in R.S. 14:283,<sup>148</sup> or pornography involving juveniles as defined in R.S. 14:81.1<sup>149</sup> shall remain in the care, custody, and control of the court or the district attorney.” Additionally, “the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that is alleged to constitute evidence of obscenity. . . that is unlawfully possessed, video voyeurism . . . or pornography involving juveniles . . . provided that the district attorney makes the property or material reasonably available<sup>150</sup> to the defendant.” La. Code Evid. Ann. art. 718.1(B).

For child victims who are involved in dependency cases, La. Child. Code Ann. art. 424.1(A) (CASA; appointment) authorizes the court in a child in need of care proceeding to appoint a special advocate.

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.*

Louisiana provides that if a minor can prove that his or her violation of R.S. 14:82 (Prostitution), R.S. 14:83.3 or 83.4 (Prostitution by massage) or R.S. 14:89.2 (Crime against nature by solicitation) was committed as a result of being a victim of human trafficking pursuant to R.S. 14:46.2 or under the federal Trafficking Victims Protection Act, the court will grant the minor’s motion to expunge his or her record. La. Child Code Ann. Art. 923<sup>151</sup> (Expungement of adjudications involving human trafficking victims) states,

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<sup>147</sup> See *supra* Section 1.2 for the definition of “obscenity.”

<sup>148</sup> Video voyeurism is defined under La. Rev. Stat. Ann. § 14:283 as “The use of any camera, videotape, photo-optical, photo-electric, or any other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping a person where that person has not consented to the observing, viewing, photographing, filming, or videotaping and it is for a lewd or lascivious purpose; or the transfer of an image obtained by activity described in Paragraph (1) of this Subsection by live or recorded telephone message, electronic mail, the Internet, or a commercial online service.”

<sup>149</sup> See *supra* note 47.

<sup>150</sup> Under La. Code Evid. Ann. art. 718.1(C), “the property or material shall be deemed reasonably available to the defendant if the district attorney provides ample opportunity for the inspection, viewing, and examination at the office of the district attorney of the property or material by the defendant, the defendant’s attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.”

<sup>151</sup> Here and elsewhere in this report that La. Ch. C. Art. 923. is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 88. 2013 La. Acts. 429 (effective June 24, 2013).

D. The court shall grant the motion if the court finds by a preponderance of the evidence that the violation was a result of the child having been a victim of human trafficking. Documentation of a child's status as a victim of human trafficking provided by a federal, state, or local government agency shall create a presumption that the child's adjudication was obtained as a result of having been a victim of human trafficking. However, such documentation shall not be required to grant a motion under this Section.

E. If the motion is granted, the court shall order the expungement of the record of the delinquency proceedings including but not limited to all records and files related to the child's arrest, citation, investigation, charge, delinquency proceedings, adjudication, and probation for the defense.

Additionally, pursuant to La. Child. Code Ann. art. 917 (Expungement; generally), "A person seventeen years of age or older may move for expungement of records of juvenile criminal conduct pursuant to this Chapter [Expungement]." La. Child. Code Ann. art. 918 (Grounds) sets out the grounds for expungement, stating,

A. Records concerning conduct or conditions that did not result in adjudication may be expunged.

B. Records concerning conduct or conditions that resulted in a misdemeanor adjudication may be expunged only if two or more years have elapsed since the person satisfied the most recent judgment against him.

C. Records concerning conduct or conditions that resulted in a felony adjudication may be expunged only if:

(1) The adjudication was not for murder, manslaughter, any sexual crime, kidnapping, or armed robbery.

(2) Five or more years have elapsed since the person satisfied the most recent judgment against him.

(3) The person has no criminal court felony convictions and no criminal court convictions for misdemeanors involving a weapon.

(4) The person has no outstanding indictment or bill of information charging him.

D. Records concerning conduct or conditions that results in a misdemeanor or felony adjudication for La. Rev. Stat. Ann. §§ 14:82 [Prostitution; definition; penalties; enhancement], § 83.3 [Prostitution by massage], § 83.4 [Massage; sexual conduct prohibited], 89 [Crime against nature] or § 89.2 [Crime against nature by solicitation] may be expunged upon petition to the court and upon a showing that, during the time of the commission of the offense, the person seeking the expungement was a victim of trafficking of children for sexual purposes pursuant to R.S. § 14:46.3(E) provided that person has no outstanding indictment or bill of information charging him.

According to La. Child. Code Ann. art. 922 (Expungement order; effect), "Except for the limited purposes stated in Articles 920 [Order of expungement; court records]<sup>152</sup> and 921 [Order of expungement; agency

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<sup>152</sup> La. Child. Code Ann. art. 920 states,

A. An order for the expungement of juvenile court records must be in writing and, except as hereinafter provided, must require that the clerk of court destroy all records relating to the conduct or conditions referred to in the motion for expungement, including but not limited to pleadings, exhibits, reports, minute entries, correspondence, and all other documents.

B. References, documents, recordings, or other materials that cannot be destroyed may be maintained. Under no circumstances may any undestroyed information be released.

C. The court may maintain a confidential record, such as a minute entry, of the fact of an adjudication. This information may be released only upon written motion of a court exercising criminal jurisdiction over

records],<sup>153</sup> upon an order of expungement, the conduct and conditions expunged are considered nonexistent and are to be treated as such upon inquiry.”

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.*

In Louisiana, trafficking victims have a civil cause of action. La. Rev. Stat. Ann. §46:2163<sup>154</sup> provides that,

An individual who is a victim of human trafficking shall have a civil cause of action in district court for injunctive relief and to recover actual damages, compensatory damages, punitive damages, and for any other appropriate relief. A prevailing plaintiff shall also be awarded court costs and attorney fees. Treble damages shall be awarded on proof of actual damages where the defendant’s actions were willful and malicious.

Additionally, victims can pursue civil remedies against persons convicted under the Louisiana Racketeering Act.<sup>155</sup> Specifically, civil remedies are available pursuant to La. Rev. Stat. Ann. § 15:1356 (Civil remedies), which states in part,

(A) (1) All property, immovable or movable, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of R.S. 15:1353 [Prohibited activities] is subject to civil forfeiture to the state. Any injured person shall have an in rem right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds. . . .

. . . .

E. Any person who is injured by reason of any violation of the provisions of R.S. 15:1353 [Prohibited activities] shall have a cause of action against any person engaged in racketeering activity who violates a provision of R.S. 15:1353. Such injured person shall be entitled to recover three times the actual damages sustained or ten thousand dollars, whichever is greater. Such person shall also recover attorney fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

La. Rev. Stat. Ann. § 15:1356(I) provides that this civil remedy will not preclude the application of other remedies.

Victims also have the right to seek restitution under La. Rev. Stat. Ann. § 46:1844(M)(1)–(3) (Basic rights for victim and witness), which states,

(1) If the defendant is found guilty, the court or parole board shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the

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the person whose record is sought and then only for the purposes authorized by the Code of Criminal Procedure.

<sup>153</sup> La. Child. Code Ann. art. 921(D) states, “A copy of the judgment ordering destruction may be maintained by the custodian of reports and records of the agency or office. However, the custodian must not disclose the fact that such judgment is maintained or that the destroyed reports or records previously existed to anyone except upon written order of the court.”

<sup>154</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 46:2163 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 88. 2013 La. Acts. 429 (effective June 24, 2013).

<sup>155</sup> See *supra* Section 3.1 for the provisions of the Louisiana Racketeering Act.

court or parole board may require the defendant to perform community service work in an amount and according to a schedule determined by the court.

(2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the parole board. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.

(3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.

Additionally, La. Code Crim. Proc. Ann. art. 883.2 (Restitution to victim) provides,

A. In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.

B. Additionally, if the defendant agrees as a term of a plea agreement, the court shall order the defendant to provide restitution to other victims of the defendant's criminal conduct, although those persons are not the victim of the criminal charge to which the defendant pleads. Such restitution to other persons may be ordered pursuant to Article 895 [Conditions of probation] or 895.1 [Probation; restitution; judgment for restitution; fees] or any other provision of law permitting or requiring restitution to victims.

C. The court shall order that all restitution payments be made by the defendant to the victim through the court's designated intermediary, and in no case shall the court order the defendant to deliver or send a restitution payment directly to a victim, unless the victim consents.

Finally, Stat. Ann. § 15:539.3<sup>156</sup> mandates that any person:

Convicted of violation of R.S. 14:46.2 (Human trafficking) or R.S. 14:46.3 (Trafficking of children for sexual purposes) shall be ordered to pay mandatory restitution to the victim

....

Restitution under this Section shall include any of the following;

(1) Costs of medical and psychological treatment.

(2) Costs of necessary transportation and temporary housing.

(3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.

(4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.

(5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. . . .

....

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<sup>156</sup> See *supra* note 38.



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.*

La. Civ. Code Ann. art. 3499 (Personal actions) states, “Unless otherwise provided by legislation, a personal action is subject to a liberative prescription<sup>157</sup> of ten years.”

For various sexual offenses, La. Code Crim. Proc. Ann. art. 571.1 (Time limitation for certain sex offenses) states,

Except as provided by Article 572 of this Chapter, the time within which to institute prosecution of the following sex offenses, regardless of whether the crime involves force, serious physical injury, death, or is punishable by imprisonment at hard labor shall be thirty years: sexual battery (R.S. 14:43.1), second degree sexual battery (R.S. 14:43.2), oral sexual battery (R.S. 14:43.3), human trafficking (R.S. 14:46:2(B)(2) or (3)), trafficking of children for sexual purposes (R.S. 14:46.3), felony carnal knowledge of a juvenile (R.S. 14:80), indecent behavior with juveniles (R.S. 14:81), pornography involving juveniles (R.S. 14:81.1), molestation of a juvenile . . . (R.S. 14:81.2), prostitution of persons under eighteen (R.S. 14:82.1), enticing persons into prostitution (R.S. 14:86), crime against nature (R.S. 14:89), aggravated crime against nature (R.S. 14:89.1), crime against nature by solicitation (R.S. 14:89.2(B)(3)), incest (R.S. 14:78), or aggravated incest (R.S. 14:78.1) which involves a victim under seventeen years of age. This thirty-year period begins to run when the victim attains the age of eighteen.

For noncapital offenses, La. Code Crim. Proc. Ann. art. 572 (Limitation of prosecution of noncapital offenses) sets out the time frames for commencing criminal prosecutions. La. Code Crim. Proc. Ann. art. 572(A) states,

Except as provided in Articles 571 and 571.1, no person shall be prosecuted, tried, or punished for an offense not punishable by death or life imprisonment, unless the prosecution is instituted within the following periods of time after the offense has been committed:

- (1) Six years, for a felony necessarily punishable by imprisonment at hard labor.
- (2) Four years, for a felony not necessarily punishable by imprisonment at hard labor.
- (3) Two years, for a misdemeanor punishable by a fine, or imprisonment, or both.
- (4) Six months, for a misdemeanor punishable only by a fine or forfeiture.

No general tolling applies to offenses against minors; however, La. Code Crim. Proc. Ann. art. 573 (Running of time limitations; exception) specifies that the time limitations found in La. Code Crim. Proc. Ann. art. 572 will not start to run “until the relationship or status involved has ceased to exist when: . . . [t]he offense charged is aggravated battery (R.S. 14:34) and the victim is under seventeen years of age.”

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<sup>157</sup> Pursuant to La. Civ. Code Ann. art. 3447, a “[l]iberative prescription is a mode of barring of actions as a result of inaction for a period of time.”

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

**Legal Analysis:**

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

La. Rev. Stat. Ann. § 46:2162<sup>158</sup> states:

As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency...to be a victim of human trafficking, such agency or office shall:

(1) Notify the Crime Victims Services Bureau of the Department of Public Safety and Corrections that such person may be eligible for services under this Chapter.

(2) Make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in the federal Trafficking Victims Protection Act (22 U.S.C. 7101 et seq.) or appears to be otherwise eligible for any federal, state, or local benefits and services.

(a) if it is determined that the victim or possible victim appears to meet such criteria, then the agency or office shall report the finding to the victim and shall refer the child victim to appropriate services available, including legal services providers.

(b) If the victim or possible victim is under the age of eighteen or is a vulnerable adult, the agency or office shall also notify the appropriate protective service agency.

....

Thus, it can be inferred by the language of La. Rev. Stat. Ann. § 46:2162, that law enforcement agencies may have had some training on human trafficking.

However, La. Rev. Stat. Ann. § 40:2405(A)(1) (Peace officer training requirements; reimbursement by peace officer) requires law enforcement to “successfully complete a certified training program approved by the council and successfully pass a council-approved comprehensive examination within one calendar year from the date of initial employment.”

- 6.1.1 Recommendation: Amend La. Rev. Stat. Ann. § 40:2405 (Peace officer training requirements; reimbursement by peace officer) to specifically require or authorize domestic minor sex

<sup>158</sup> Here and elsewhere in this report that La. Rev. Stat. Ann. § 46:2162 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 88. 2013 La. Acts. 429 (effective June 24, 2013).

trafficking training for law enforcement officers.

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

Louisiana allows single party consent to audiotaping. La. Rev. Stat. Ann. § 15:1303(C)(4) (Interception and disclosure of wire, electronic, or oral communications) states,

It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the state or for the purpose of committing any other injurious act.

6.3 *Domestic minor sex trafficking investigations may use wiretapping and resulting evidence.*

La. Rev. Stat. Ann. § 15:1303(A)(1) (Interception and disclosure of wire, electronic, or oral communications) makes it illegal to “[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire or oral communication.” La. Rev. Stat. Ann. § 15:1308(A) (Authorization for interception of wire or oral communications) allows a judge to issue an order authorizing wiretapping for the investigation of specified crimes, including in part, aggravated kidnapping and money laundering, human trafficking when prosecuted under La. Rev. Stat. Ann. § 14:46.2(B)(3), and trafficking of children for sexual purposes. La. Rev. Stat. Ann. § 15:1308(A)(2)(b), (m), (q), (r). La. Rev. Stat. Ann. § 15:1308(A) does not allow wiretapping in investigating violations of any of Louisiana’s CSEC laws.

6.3.1. Recommendation: Amend La. Rev. Stat. Ann. § 15:1308(A) (Authorization for interception of wire or oral communications) to allow wiretaps, and make resulting evidence admissible in investigations of Louisiana’s CSEC offenses.

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

Several statutes permit the use of a decoy by law enforcement. Pursuant to La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) and § 14:46.3 (Trafficking of children for sexual purposes), it shall not be a defense “that the person being recruited, harbored, transported, provided, solicited, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.” La. Rev. Stat. Ann. § 14:46.2(D), 46.3(A)(3).

Additionally, pursuant to La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution) “it shall not be a defense to prosecution “that the person being enticed is actually a law enforcement officer or peace officer acting in his official capacity” and similarly under La. Rev. Stat. Ann. § 14:89.2 (Crime against nature by solicitation) it shall not be a defense “that the person being solicited is actually a law enforcement officer or peace officer acting within the scope of his duties.” La. Rev. Stat. Ann. § 14:86(C), 89.2 (D)(4).

Finally, under La. Rev. Stat. Ann. § 14:82.1<sup>159</sup> (Prostitution; persons under eighteen; additional offenses), it shall not be a defense that the person practicing prostitution who is believed to be under the age of eighteen is actually a law enforcement officer or peace officer acting within the official scope of his duties. La. Rev. Stat. Ann. § 14:82.1(E).

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<sup>159</sup> See *supra* note 5.

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

The use of the Internet to investigate buyers and traffickers appears to be permissible under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor). The language in the statute specifically carves out an exception allowing law enforcement to use the Internet to investigate buyers and traffickers by disallowing a defense based on the fact that the “victim” was actually a law enforcement officer using the Internet as an investigative tool. La. Rev. Stat. Ann. § 14:81.3(C)(1).

La. Rev. Stat. Ann. § 14:81.3(C) expressly states, “It shall not constitute a defense to a prosecution brought pursuant to this Section that the person reasonably believed to be under the age of seventeen is actually a law enforcement officer or peace officer acting in his official capacity.” Additionally, because La. Rev. Stat. Ann. § 14:81.3 applies when a person “knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen . . . or a person reasonably believed to have not yet attained the age of seventeen . . . for the purpose of or with the intent to persuade, induce, entice or coerce the person to engage or participate in sexual conduct,” it appears to contemplate and permit the use of the Internet in investigations. La. Rev. Stat. Ann. § 14:81.3(A)(1).

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

La. Rev. Stat. Ann. § 46:1431(A), (B) (Missing and Exploited Children Information Clearinghouse; establishment; definitions) creates “a Missing and Exploited Children Information Clearinghouse within the Department of Public Safety and Corrections, office of state police” to serve “as a central repository of information regarding missing and/or exploited children.” La. Rev. Stat. Ann. § 46:1431(B) expressly requires that information regarding missing or exploited children “be collected and disseminated to assist in the location of missing children and the reporting of exploited children to the proper agency.”

La. Rev. Stat. Ann. § 46:1432(A) (Duties of the clearinghouse) requires the clearinghouse to

- (1) Establish a system of intrastate communication of information relating to children determined, by the parent, guardian, or legal custodian of the child, or by a law enforcement agency, to be missing and/or exploited.
- (2) Provide a centralized file for the exchange of information on missing children within the state.
- (3) Interface with the National Crime Information Center for the exchange of information on children suspected of interstate travel.

Furthermore, the clearinghouse also must “collect, process, maintain, and disseminate information on missing and/or exploited children and shall strive to maintain or disseminate only accurate and complete information.” La. Rev. Stat. Ann. § 46:1432(C).

La. Rev. Stat. Ann. § 40:2521 (Law enforcement agency receiving report of missing or recovered child; duty) requires the law enforcement agency that receives an initial report of a missing child or the recovery of a missing child to

immediately report the missing or recovered child to national law enforcement agencies and the state law enforcement agencies of neighboring states. This notification shall include entry of the name of the child into the National Crime Information Center registry. These reports shall be made for each reported missing child without regard to whether the child is believed to be missing due to stranger abduction, parental abduction, or any other cause.

La. Rev. Stat. Ann. § 14:403.3(A) (Reports of missing children; procedures; false reports or communications; penalties) similarly requires,

(1) Any state or local law enforcement agency receiving a report of a missing child, or the recovery of a missing child, and having reasonable grounds to believe such report is accurate shall within forty-eight hours after the date of receipt of the report notify each of the following of the fact and contents of such report:

(a) The Department of Health and Human Resources.

(b) The Department of Public Safety and Corrections, if it did not originally receive the report.

(c) The office of the sheriff for the parish in which such report was received, if it did not originally receive the report.

(d) The office of the sheriff for all parishes adjacent to the parish in which such report was received.

(e) The National Crime Information Computer System.

(2) The law enforcement agency may also notify any other appropriate local, state, or federal agency of the fact and contents of such report.

Under the Missing Children Identification Act, La. Rev. Stat. Ann. Title 40 (Public health and safety), Chapter 24 (Missing children identification act), schools must maintain identification cards “to assist with the finding and identification of missing children and only with parental permission.” La. Rev. Stat. Ann. §§ 40:2512, 40:2515(3). In the event a child is suspected to be missing, the principal “may release the child identification card of any child to a law enforcement agency or other public agency or entity” with the written permission of the parents, or without the parents’ permission “for good cause shown,” after a hearing. La. Rev. Stat. Ann. § 40:2518(D).

La. Rev. Stat. Ann. § 46:1433(A) (Notification of location of missing and/or exploited child) requires a “parent, guardian, or legal custodial responsible for notifying the clearinghouse or a law enforcement agency of a missing or exploited child” to “immediately notify such agency or the clearinghouse of any child whose location has been determined.” Additionally, law enforcement agencies are required to “transmit information of the recovery of a missing child to the clearinghouse, which shall maintain the information in the central repository . . . .” La. Rev. Stat. Ann. § 46:1433(B).

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