

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2014 ANALYSIS AND RECOMMENDATIONS DISTRICT OF COLUMBIA

### FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

#### *Legal Components:*

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*
- 1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*
- 1.3 *Prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*
- 1.4 *The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

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

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

The District of Columbia (D.C.) human trafficking law does not require force, fraud, or coercion for sex trafficking of minors. D.C. Code § 22-1834(a) states, “It is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act<sup>2</sup> knowing or in reckless disregard of the fact that the person has not

<sup>1</sup> Unless otherwise specified, all references to District of Columbia statutes were taken from the District of Columbia Code Annotated (LEXIS through May 19, 2014 and through D.C. Act 20-306) and all federal statutes were taken from United States Code (LEXIS through PL 113-165, approved 9/19/14). This report includes legislation enacted as of August 1, 2014.

<sup>2</sup> D.C. Code § 22-1831(4) defines “commercial sex act” as “any sexual act or sexual contact on account of which or for which anything of value is given to, promised to, or received by any person. The term ‘commercial sex act’ includes a violation of § 22-2701 [Engaging in prostitution or soliciting for prostitution] et seq.; § 22-2704 [Abducting or enticing child from his or her home for purposes of prostitution]; § 22-2705 [Pandering; inducing or

attained the age of 18 years.” If a court finds a person guilty of this crime, the person can be imprisoned up to 20 years, fined up to \$50,000, or both. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9)<sup>3</sup>.

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

The following laws criminalize CSEC in D.C.:

1. D.C. Code § 22-2704(a) (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child) makes it a crime “for any person, for purposes of prostitution, to: (1) Persuade, entice, or forcibly abduct a child under 18 years of age from his or her home or usual abode, or from the custody and control of the child’s parents or guardian; or (2) Secrete or harbor any child so persuaded, enticed, or abducted from his or her home or usual abode, or from the custody and control of the child’s parents or guardian.” This is a felony punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2704(b), 22-3571.01(b)(9)<sup>4</sup>.
2. D.C. Code § 22-2705(a) (Pandering; inducing or compelling an individual to engage in prostitution) makes it illegal to do the following:
  - (1) Place or cause, induce, entice, procure, or compel the placing of any individual in the charge or custody of any other person, or in a house of prostitution, with intent that such individual shall engage in prostitution;
  - (2) Cause, compel, induce, entice, or procure or attempt to cause, compel, induce, entice, or procure any individual:
    - (A) To reside with any other person for the purpose of prostitution;
    - (B) To reside or continue to reside in a house of prostitution; or
    - (C) To engage in prostitution; or
  - (3) Take or detain an individual against the individual’s will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person.

When the victim of this crime is under 18, the offender is guilty of a felony punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

3. D.C. Code § 22-2707(a) (Procuring; receiving money or other valuable thing for arranging assignation) makes it illegal for a person “to receive any money or other valuable thing for or on account of arranging for or causing any individual to engage in prostitution or a sexual act or contact.” If the victim is under 18, this felony is punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2707(b)(2), 22-3571.01(b)(9).

Although the following statutes are not specifically for commercial sexual exploitation cases, the following offenses may also be used to prosecute CSEC cases:

1. D.C. Code § 22-811(a)(5) (Contributing to the delinquency of a minor) makes it illegal for “an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (5) Violate any criminal law of the

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compelling an individual to engage in prostitution] et seq.; § 22-2713 [Premises occupied for lewdness, assignation, or prostitution declared nuisance] et seq.; and § 22-2722 [Keeping bawdy or disorderly houses].”

<sup>3</sup> The text of D.C. § 22-3571.01 included here and elsewhere in this report includes amendments made by the passage of D.C. Act 20-185 during Council Period 20 (effective May 19, 2014).

<sup>4</sup> See *supra* note 3.

District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience,” which would include D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution).<sup>5</sup>

2. D.C. Code § 22-3008 (First degree child sexual abuse) makes it a crime when a person “being at least 4 years older than a child, engages in a sexual act<sup>6</sup> with that child or causes that child to engage in a sexual act.” For purposes of the chapter on “sexual abuse,” “child” is defined as “a person who has not yet attained the age of 16 years” for those offenses classified as sex offenses and general sexual abuse. D.C. Code § 22-3001(3). This is a Class A felony punishable by up to life imprisonment and a possible fine up to \$250,000. D.C. Code § 22-3008. “However, the court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 [Aggravating circumstances] or § 24-403.01 (b-2) [Aggravating circumstances, one or more of which must exist for a sentence to exceed 30 years].” D.C. Code § 22-3008.
3. D.C. Code § 22-3009 (Second degree child sexual abuse) establishes a crime when a person “being at least 4 years older than a child, engages in sexual contact<sup>7</sup> with that child or causes that child to engage in sexual contact.” A convicted offender may be sentenced to imprisonment up to 10 years and a possible fine not to exceed \$25,000. D.C. Code §§ 22-3009, 22-3571.01(b)(7).
4. D.C. Code § 22-3009.01 (First degree sexual abuse of a minor) establishes a crime when a person “being 18 years of age or older, is in a significant relationship<sup>8</sup> with a minor,<sup>9</sup> and engages in a sexual act with that minor or causes that minor to engage in a sexual act.” If guilty, the individual may be imprisoned up to 15 years, fined up to \$37,500, or both. D.C. Code §§ 22-3009.01, 22-3571.01(b)(8).
5. D.C. Code § 22-3009.02 (Second degree sexual abuse of a minor) occurs when a person “being 18 years of age or older, is in a significant relationship with a minor and engages in a sexual contact with that minor or causes that minor to engage in a sexual contact.” If guilty, the individual may be sentenced to imprisonment up to 7.5 years, a fine not to exceed \$25,000, or both. D.C. Code § 22-3009.02, 22-3571.01(b)(7).
6. D.C. Code § 22-3010 (Enticing a child or minor) states in part,
  - (a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor, (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 [Sexual abuse in the first through fourth degrees and Misdemeanor sexual abuse] and 22-3008 to 22-3009.02 [First degree child sexual abuse, Second degree child sexual abuse, First degree sexual abuse of a minor, Second degree sexual abuse of a minor], or

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<sup>5</sup> D.C. Code § 22-811(a)(7) could also apply in the event that the solicited minor has been convicted of more than two prostitution offenses, as a third prostitution conviction appears to be punished as a felony.

<sup>6</sup> “Sexual act” is defined as “(A) The penetration, however slight, of the anus or vulva of another by a penis; (B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. (D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph.” D.C. Code § 22-3001(8).

<sup>7</sup> “Sexual contact” is defined as “the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.” D.C. Code § 22-3001(9).

<sup>8</sup> “Significant relationship” is defined as including “[a] legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim.” D.C. Code § 22-3001(10)(B).

<sup>9</sup> “Minor” is defined as “a person who has not yet attained the age of 18 years.” D.C. Code § 22-3001(5A).

(2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in [section 101 of the Criminal Fine Proportionality Amendment Act of 2012], or both.

- (b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts
- (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or
  - (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01<sup>10</sup>, or both.

7. Using the Internet to purchase commercial sex acts could potentially be charged under D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child).<sup>11</sup> D.C. Code § 22-3010.02(a) states, “It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.”

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

The District of Columbia’s prostitution law, D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution), does not refer to the human trafficking law when the person engaged in prostitution is a minor.

- 1.3.1 Recommendation: Amend D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) to refer to D.C. Code § 22-1834 (Sex trafficking of children) to ensure CSEC victims are identified as sex trafficking victims.

*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.*

District of Columbia has not enacted a racketeering statute. District of Columbia has enacted gang laws, but human trafficking and CSEC offenses are not predicate criminal activity under these laws. Pursuant to D.C. Code § 22-951 (Criminal street gangs),

- (a) (1) It is unlawful for a person to solicit, invite, recruit, encourage, or otherwise cause, or attempt to cause, another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang.

<sup>10</sup> Pursuant to D.C. Code § 22-3571.01, if a crime carries a maximum of 5 years of incarceration the proportional maximum fine is \$12,500. See *supra* note 3.

<sup>11</sup> According to the editor’s note below this statute on Lexis, “Section 209b of D.C. Law 10-257, as added by D.C. Law 18- (Act 18-722), § 11(a), was codified as this section by LexisNexis. If the act section is codified by the Codification Counsel, it may be placed elsewhere in the D.C. Code.”

- (2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01,<sup>12</sup> or imprisoned for not more than 6 months, or both.
- (b) (1) It is unlawful for any person who is a member of or actively participates in a criminal street gang to knowingly and willfully participate in any felony or violent misdemeanor committed for the benefit of, at the direction of, or in association with any other member or participant of that criminal street gang.
- (2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in [section 101 of the Criminal Fine Proportionality Amendment Act of 2012] or imprisoned for not more than 5 years, or both.
- (c) (1) It is unlawful for a person to use or threaten to use force, coercion, or intimidation against any person or property, in order to:
- (A) Cause or attempt to cause an individual to:
- (i) Join a criminal street gang;
- (ii) Participate in activities of a criminal street gang;
- (iii) Remain as a member of a criminal street gang; or
- (iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state; or
- (B) Retaliate against an individual for a refusal to:
- (i) Join a criminal street gang;
- (ii) Participate in activities of a criminal street gang;
- (iii) Remain as a member of a criminal street gang; or
- (iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state.
- (2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in [section 101 of the Criminal Fine Proportionality Amendment Act of 2012], or imprisoned for not more than 10 years, or both.
- (d) The penalties under this section are in addition to any other penalties permitted by law.
- (e) For the purposes of this section, the term:
- (1) “Criminal street gang” means an association or group of 6 or more persons that:
- (A) Has as a condition of membership or continued membership, the committing of or actively participating in committing a crime of violence, as defined by § 23-1331(4)<sup>13</sup>; or
- (B) Has as one of its purposes or frequent activities, the violation of the criminal laws of the District, or the United States, except for acts of civil disobedience.
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1.4.1 Recommendation: Enact a racketeering statute that includes human trafficking and CSEC offenses as predicate acts.

<sup>12</sup> Pursuant to D.C. Code § 22-3571.01, if a crime carries a maximum of 6 months of incarceration the proportional maximum fine is \$1,000. *See supra* note 3.

<sup>13</sup> Pursuant to D.C. Code § 23-1331(4) (Definitions),

The term “crime of violence” means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt or conspiracy to commit any of the foregoing offenses.

- 1.4.2 Recommendation: Amend the definition of “crime of violence” under D.C. Code § 23-1331(4) (Definitions) to include CSEC offenses under D.C. Code § 22-2704(a) (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child), § 22-2705(a) (Pandering; inducing or compelling an individual to engage in prostitution), § 22-2707(a) (Procuring; receiving money or other valuable thing for arranging assignation) and sex trafficking of children under § 22-1834(a)(Human trafficking) as predicate crimes so this offense may be used to prosecute trafficking enterprises.

**Legal Components:**

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

D.C. Code § 22-1834 (Sex trafficking of children) can apply to buyers of sex with domestic minor sex trafficking victims following federal precedent through the term “obtain.”<sup>14</sup> D.C. Code § 22-1834(a) states that “[i]t is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.”

Further support for the applicability of D.C. Code § 22-1834 (Sex trafficking of children) to buyers of commercial sex acts with minors is found in the definitions contained in D.C. Code § 22-1841 (Data collection and dissemination), which mandates the collection of certain data related to human trafficking and “human trafficking-related crimes.”<sup>15</sup> This statute defines for the purposes of this section, “persons engaged in human

<sup>14</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. *United States v. Jungers* establishes persuasive authority for state courts interpreting the same language used under state law to the extent such interpretation does not conflict with the state constitution.

<sup>15</sup> D.C. Code § 22-1841(2) defines “human trafficking-related crimes” as “pimping, pandering, procuring, operating a house of prostitution, keeping a bawdy or disorderly house, possessing a sexual performance by a minor, visa

trafficking or human trafficking-related crimes” as including “(A) Any person who attempts to recruit, entice, harbor, transport, provide, or obtain, or successfully recruits, entices, harbors, transports, provides, or obtains, by any means, another person, intending or knowing that the person will be subjected to forced labor or services; and (B) Any person who purchases or receives the benefits of commercial sex acts, sexual performance, labor, or services by victims of human trafficking or human trafficking-related crimes.” D.C. Code § 22-1841(a)(1). The reference to “[a]ny person who purchases or receives the benefits of commercial sex acts . . . by victims of human trafficking or human trafficking-related crimes” may indicate that D.C. Code § 22-1834 (Sex trafficking of children) was intended to prosecute the buyers of commercial sex acts with minors.

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

A buyer can be charged under D.C. Code § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution). This statute includes the crime of “[c]aus[ing], compel[ling], induc[ing], entic[ing], or procur[ing] or attempt[ing] to cause, compel, induce, entice, or procure any individual: . . . (C) To engage in prostitution.” D.C. Code § 22-2705(a)(2). Although it appears that no cases have applied this statute to buyers, the language is potentially broad enough that it could apply.

Additionally, a buyer of sex with a minor could be charged under D.C. Code § 22-811(a)(5) (Contributing to the delinquency of a minor), which makes it illegal for “an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to: . . . (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience,” which would include D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution). If convicted of this crime, a person could be sentenced to imprisonment up to 6 months, a fine not to exceed \$1,000, or both. D.C. Code §§ 22-811(b)(1), 22-3571.01(b)(4). For second and subsequent violations of this statute, a person could be sentenced to imprisonment up to 3 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-811(b)(2), 22-3571.01(b).

A buyer of sex with a minor could also be charged with soliciting under D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution), which states, “It is unlawful for any person to engage in prostitution or to solicit for prostitution.” D.C. Code § 22-2701(a). A first offense under this statute is punishable by imprisonment up to 90 days, a fine not to exceed \$500, or both. D.C. Code §§ 22-2701(b)(1)(A), 22-3571.01(b)(3). A second offense is punishable by imprisonment up to 180 days, a fine not to exceed \$1,000, or both. D.C. Code §§ 22-3571.01(b)(4), 22-2701(b)(1)(B). Subsequent offenses are punishable by imprisonment up to 2 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-2701(b)(2), 22-3571.01(b)(6).

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

Solicitation laws in D.C. do not differentiate between buying sex with an adult and buying sex with a minor. D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) is applicable to both those who buy sex with adults and those who buy sex with minors and merely states that “[i]t is unlawful for any person to engage in prostitution or to solicit for prostitution.” D.C. Code § 22-2701(a).

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fraud, document fraud, and assisting in unlawful entry into the United States, as well as violations of §§ 22-1832 [Forced labor], 22-1833 [Trafficking in labor or commercial sex acts], 22-1834 [Sex trafficking of children], 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], and 22-1836 [Benefitting financially from human trafficking].”



- 2.3.1 Recommendation: Amend D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) to provide heightened penalties when the offense involves buying or attempting to buy sex with a minor under 18.

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

A buyer convicted under D.C. Code § 22-1834(a) (Sex trafficking of children) can receive a sentence of imprisonment up to 20 years, a fine up to \$50,000, or both. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9). Additionally, the buyer could face asset forfeiture and lose “(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and (2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.” D.C. Code §§ 22-1838(a)(1)–(2).

A buyer convicted under D.C. Code § 22-2705(a)(2)(C) (Pandering; inducing or compelling an individual to engage in prostitution), when the victim is a minor under 18, is a felony punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

Buyers convicted for prostitution in spite of the victim being a minor, face up to 90 days, a fine up to \$500, or both for a first time conviction under D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution). D.C. Code § 22-2701(b)(1)(A). For a second offense, a buyer can be imprisoned up to 180 days, fined up to \$1,000, or both. D.C. Code §§ 22-2701(b)(1)(B), 22-3571.01(b)(3). If a buyer has 2 or more prior convictions, then the buyer can be sentenced to imprisonment for up to 2 years, fined up to \$12,500, or both. D.C. Code §§ 22-2701(b)(2), 22-3571.01(b)(4). Additionally, a buyer’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.” D.C. Code § 22-2724(a).

Additionally, for a conviction under D.C. Code § 22-811 (Contributing to the delinquency of a minor), a buyer could be imprisoned up to 6 months, fined up to \$1,000, or both. D.C. Code §§ 22-811(b)(1), 22-3571.01(b)(4). For subsequent offenses of this statute, the buyer can be imprisoned up to 3 years, fined up to \$12,500, or both. D.C. Code §§ 22-811(b)(2), 22-3571.01(b)(5).

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

<sup>16</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>17</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).

federal CSEC laws,<sup>18</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>19</sup>

2.5 *Using the Internet to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*

No statute specifically criminalizes using the Internet for purchasing commercial sex acts. However, D.C. Code § 22-3010 (Enticing a child or minor) could potentially apply to these crimes. That section states in part,

- (a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor,
  - (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 [Sexual abuse in the first through fourth degrees and Misdemeanor sexual abuse] and 22-3008 to 22-3009.02 [First degree child sexual abuse, Second degree child sexual abuse, First degree sexual abuse of a minor, Second degree sexual abuse of a minor], or
  - (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01<sup>20</sup>, or both.
- (b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts
  - (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or
  - (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01<sup>21</sup>, or both.

...

Additionally, using the Internet to purchase commercial sex acts could potentially be charged under D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child). D.C. Code § 22-3010.02(a) states,

It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

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<sup>18</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>19</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both.); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>20</sup> Pursuant to D.C. Code § 22-3571.01, if a crime carries a maximum of 5 years of incarceration the proportional maximum fine is \$12,500. *See supra* note 3.

<sup>21</sup> *See supra* note 20.

If guilty of violating this statute, a person faces imprisonment up to 5 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-3010.02(b), 22-3571.01(b)(6).

2.5.1 Recommendation: Amend D.C. Code § 22-3010 (Enticing a child or minor) and § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child) to specifically criminalize using the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor under 18 and include enhanced penalties for the same.

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

D.C. Code § 22-1834 (Sex trafficking of children) requires that the defendant committed the crime “knowing or in reckless disregard of the fact that the person has not attained the age of 18 years,” and “[i]n a prosecution under subsection (a) of this section in which the defendant had a reasonable opportunity to observe the person recruited, enticed, harbored, transported, provided, obtained, or maintained, the government need not prove that the defendant knew that the person had not attained the age of 18 years.” D.C. Code § 22-1834(a). This leaves open an argument by the defendant that he was merely negligent regarding the victim’s age.

Neither D.C. Code § 22-811 (Contributing to the delinquency of a minor) nor § 22-2705(a)(2) (Pandering; inducing or compelling an individual to engage in prostitution) mentions a mistake of age defense.

D.C. Code § 22-3011(a) (Defenses to child sexual abuse and sexual abuse of a minor) prohibits a mistake of age defense (and consent defense) in a prosecution under “§§ 22-3008 to 22-3010.01 [First and second degree child sexual abuse, first and second degree sexual abuse of a minor, first and second degree sexual abuse of a secondary education student, enticing a child or minor, and misdemeanor sexual abuse of a child or minor], prosecuted alone or in conjunction with charges under § 22-3018 [Attempts to commit sexual offenses] or § 22-403 [Assault with intent to commit any other offense].”

2.6.1 Recommendation: Amend D.C. Code § 22-3011(a) (Defenses to child sexual abuse and sexual abuse of a minor) to prohibit a mistake of age defense in prosecutions of sex trafficking of children and CSEC offenses.

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

D.C. Code § 22-1834(a) (Sex trafficking of children) and § 22-2705(a)(2) (Pandering; inducing or compelling an individual to engage in prostitution) apply to all minors under 18. If convicted of violating D.C. Code § 22-811 (Contributing to the delinquency of a minor), the convicted buyer of sex with a minor of any age under 18 can be sentenced to imprisonment up to 6 months, a fine not to exceed \$1,000, or both. D.C. Code §§ 22-811(b)(1), 22-3571.01(b)(4). A second conviction could result in imprisonment up to 3 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-811(b)(2), 22-3571.01(b)(5). In neither case are the penalties staggered for a lesser penalty when the victim is an older minor, although the penalties provided for the more clearly applicable crime of contributing to the delinquency of a minor are not sufficiently high in cases of commercial sexual exploitation of a minor. D.C. Code § 22-811(b)(1).

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.*

A buyer convicted under D.C. Code § 22-1834(a) (Sex trafficking of children) could receive a fine up to \$50,000. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9). A buyer convicted of sex trafficking of children would also face mandatory criminal asset forfeiture and lose “(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and (2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained,

directly or indirectly, as a result of the violation.” D.C. Code § 22-1838(a). This statute does not provide specific seizure or distribution provisions.

D.C. Code § 22-2705(a)(2) (Pandering; inducing or compelling an individual to engage in prostitution) carries a possible fine not to exceed \$50,000. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

For a first time conviction for soliciting a prostitute, a buyer could face a fine up to \$500. D.C. Code § 22-2701(b)(1)(A). For a second offense, the buyer could receive a fine up to \$1,000. D.C. Code § 22-2701(b)(1)(B). Subsequent offenses lead to a possible fine up to \$12,500. D.C. Code § 22-2701(b)(2). Additionally, a buyer’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.” D.C. Code § 22-2724(a).

A first conviction for violating D.C. Code § 22-811 (Contributing to the delinquency of a minor) can result in a fine not to exceed \$1,000, while a second conviction could result in a fine not to exceed \$12,500. D.C. Code §§ 22-811(b)(1)–(2), 22-3571.01(b)(4)-(5).

A buyer’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.” D.C. Code § 22-2724(a). Buyers of commercial sex charged with prostitution offenses may also be subject to discretionary, civil asset forfeiture pursuant to D.C. Code § 22-2723 (Property subject to seizure and forfeiture). Subsection (a) makes the following property subject to forfeiture:

- (1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense, provided that:
  - (A) No conveyance used by any person as a common carrier in the course of transacting business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of a prostitution-related offense;
  - (B) No conveyance is subject to forfeiture under this section by reason of any act or omission that the owner establishes was committed or omitted without the owner’s knowledge or consent;
  - (C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; or
  - (D) Where the conveyance is not being driven by the owner of the conveyance, there is a presumption that the owner is without knowledge of the illegal act, and therefore the conveyance should not be forfeited.
- (2) All money, coins, and currency which has been used, or was intended for use, in violation of a prostitution-related offense.

Seizure under this section shall be pursuant to D.C. Code §48-905.02(b), which states, “[p]roperty subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.”

Pursuant to D.C. Code §22-2723(b), distribution of forfeited property (other than monies) is governed by D.C. Code §48-905.02(4), which states in relevant part,

- (4) When property, other than controlled substances, is forfeited under this chapter, the Mayor shall:
  - (A) Retain it for official use;

(B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;

(C) Remove the property for disposition in accordance with law; or

Pursuant to D.C. Code §22-2723(b), money, coins and currency “shall be deposited as provided in subchapter IIA of Chapter 5 of Title 23 of the District of Columbia Code,” which states in relevant part,

(a) (1) Seized currency shall be promptly deposited in an interest-bearing escrow account in a federal insured financial institution in the District of Columbia . . .

(2) Deposited seized currency, with any accrued interest, shall be divided and deposited as provided in section 48-907.02 . . .

D.C. Code §48-907.02 states,

Any funds from whatever source derived shall be deposited as soon as practicable into the Fund. Any deposit of funds shall be secured in a manner consistent with deposit of revenues by the District of Columbia government. The Fund shall be distributed in the following descending order of priority:

(1) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

(2) To fund substance abuse education, prevention, and treatment activities of the Alcohol and Drug Abuse Administration.

Finally, a buyer may be required to pay restitution. D.C. Code § 16-711 (Restitution or reparation) allows the court, at its discretion, to award restitution to victims of any offense. D.C. Code § 16-711 states,

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant’s ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant’s ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

....

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

D.C. Code § 22-3102(b) (Prohibited acts) states, “It shall be unlawful in the District of Columbia for a person, knowing the character and content thereof, to attend, transmit, or possess a sexual performance by a minor.”

For a first violation, a person can be sentenced to a fine not to exceed \$25,000, imprisonment not more than 10 years, or both. D.C. Code §§ 22-3103(1), 22-3571.01(b)(7). Subsequent offenses result in a fine not to exceed \$50,000, imprisonment up to 20 years, or both. D.C. Code §§ 22-3103(2), 22-3571.01(b)(9).

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

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

The D.C. sex offender registration law requires registration of those convicted of a range of commercial sexual exploitation laws as buyers of sex with a minor. D.C. Code § 22-4002. Specifically, a “registration offense,” as defined in D.C. Code § 22-4001(8)(C), includes “[a]ny of the following offenses where the victim is a minor: acts proscribed by § 22-1312 (lewd, indecent, or obscene acts), acts proscribed by § 22-2201 (obscenity), acts proscribed by § 22-3102 (sexual performances using minors), acts proscribed by § 22-1901 (incest), acts proscribed by § 22-2001 (kidnapping), and acts proscribed by §§ 22-2701 [Engaging in or soliciting for prostitution], 22-2701.01 [Definitions], 22-2703, 22-2704 [Abducting or enticing child from his or her home for purposes of prostitution; harboring such child], 22-2705 [Pandering; inducing or compelling an individual to engage in prostitution] to 22-2712 [Operating house of prostitution], 22-2713 [Premises occupied for lewdness, assignation, or prostitution declared nuisance] to 22-2720, 22-2722 [Keeping bawdy or disorderly houses] and 22-2723 (prostitution; pandering).” The registration law does not include violations of D.C. Code § 22-1834 (Sex trafficking of children) as a crime requiring sex offender registration.

- 2.10.1 Recommendation: Amend D.C. Code § 22-4001(8)(C) to include a violation of D.C. Code § 22-1834 (Sex trafficking of children) as an offense requiring registration.

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

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

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

**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.

When convicted of violating D.C. Code § 22-1834 (Sex trafficking of children), a trafficker can receive a sentence of imprisonment up to 20 years, a fine up to \$50,000, or both. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9).

A trafficker may also be convicted of D.C. Code § 22-2704 (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child). This statute makes it “unlawful for any person, for purposes of prostitution, to: (1) Persuade, entice, or forcibly abduct a child under 18 years of age from his or her home or usual abode, or from the custody and control of the child’s parents or guardian; or (2) Secrete or harbor any child so persuaded, enticed, or abducted from his or her home or usual abode, or from the custody and control of the child’s parents or guardian.” D.C. Code § 22-2704(a). For violating this statute, a person can receive a prison sentence of not more than 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2704(b), 22-3571.01(b)(9).

Similarly, a trafficker may be charged with violating D.C. Code § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution). D.C. Code § 22-2705 provides enhanced penalties for this crime when the victim is under 18 years of age, imposing a sentence of imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

A trafficker may also be convicted under D.C. Code § 22-2707 (Procuring; receiving money or other valuable thing for arranging assignation). If the victim is under 18 years of age, then the crime is punishable by imprisonment not to exceed 20 years, a fine up to \$50,000, or both. D.C. Code §§ 22-2707(b)(2), 22-3571.01(b)(9).

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>25</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17 a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment however, if the trafficker has a prior conviction for a federal sex offense<sup>26</sup> against a minor.

<sup>25</sup> See *supra* note 16.

<sup>26</sup> See *supra* note 17.

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

Under D.C. Code § 22-3102(a) (Prohibited acts), knowingly creating and promoting child pornography is unlawful. D.C. Code § 22-3102(a) states,

It shall be unlawful in the District of Columbia for a person knowingly to use a minor in a sexual performance or to promote a sexual performance by a minor.

(1) A person is guilty of the use of a minor in a sexual performance if knowing the character and content thereof, he or she employs, authorizes, or induces a person under 18 years of age to engage in a sexual performance or being the parent, legal guardian, or custodian of a minor, he or she consents to the participation by a minor in a sexual performance.

(2) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 18 years of age.

The definition of “promote” includes “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish or distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.” D.C. Code § 22-3101(4).

A first offense of this statute results in imprisonment up to 10 years, a fine not to exceed \$25,000, or both. D.C. Code §§ 22-3103(1), 22-3571.01(b)(7). Second and subsequent offenses result in imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-3103(2), 22-3571.01(b)(9).

In contrast, if the victim is under the age of 14, a conviction under the TVPA<sup>27</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>28</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>29</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>30</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>31</sup>

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<sup>27</sup> See *supra* note 16.

<sup>28</sup> See *supra* note 17.

<sup>29</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3)(B), (4)(A) (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) (Obscene visual representations of the sexual abuse of children).

<sup>30</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) or (a)(3) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>31</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (b)(1), 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 (b)(1), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).



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.*

No D.C. statute specifically criminalizes using the Internet for recruiting or enticing the purchase of commercial sex acts with a minor. However, D.C. Code § 22-3010.02(a) (Arranging for a sexual contact with a real or fictitious child) could potentially apply to these crimes. It states,

It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

If guilty of this statute, a person will be sentenced to imprisonment not more than 5 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-3010.02(b), 22-3571.01(b)(6).

Additionally, D.C. Code § 22-3010 (Enticing a child or minor) could potentially apply to these crimes and states in part,

- (a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor,
  - (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 [Sexual abuse in the first through fourth degrees and Misdemeanor sexual abuse] and 22-3008 to 22-3009.02 [First degree child sexual abuse, Second degree child sexual abuse, First degree sexual abuse of a minor, Second degree sexual abuse of a minor], or
  - (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$ 50,000, or both.
- (b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts
  - (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or
  - (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$ 50,000, or both.

....

- 3.3.1 Recommendation: Amend D.C. Code § 22-3010.02(a) (Arranging for a sexual contact with a real or fictitious child) and § 22-3010 (Enticing a child or minor) to expressly apply to use of the Internet lure, entice, recruit, or sell commercial sex acts with a minor under 18.

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

A conviction under D.C. Code § 22-1834 (Sex trafficking of children) can result in a fine up to \$50,000. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9). Additionally, a trafficker will face mandatory criminal asset forfeiture for conviction of violating of the human trafficking statute, including D.C. Code § 22-1834 (Sex trafficking of children). Under D.C. Code § 22-1838,

(a) In imposing sentence on any individual or business convicted of a violation of this chapter, the court shall order, in addition to any sentence imposed, that the individual or business shall forfeit to the District of Columbia:

- (1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and
- (2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.

(b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them:

- (1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.
- (2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

Other crimes for which traffickers could be charged also carry fines. A court may impose a fine not to exceed \$1,000 for any violation of D.C. Code §§ 22-2710, 22-3571.01(b)(4) (Procuring for house of prostitution), § 22-2711 (Procuring for third persons), and § 22-2712 (Operating house of prostitution). A trafficker could face a fine not to exceed \$50,000 for violating D.C. Code § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution) or § 22-2707 (Procuring; receiving money or other valuable thing for arranging assignation). D.C. Code §§ 22-2705(c)(2), 22-2707(2), 22-3571.01(b)(9).

A trafficker's vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of "[a]ny vehicle used in furtherance of a violation of a prostitution-related offense." D.C. Code § 22-2724(a).

Also, traffickers charged with prostitution offenses may be subject to discretionary, civil asset forfeiture pursuant to D.C. Code § 22-2723 (Property subject to seizure and forfeiture). Subsection (a) makes the following subject to forfeiture:

- (1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense, provided that:
  - (A) No conveyance used by any person as a common carrier in the course of transacting business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of a prostitution-related offense;
  - (B) No conveyance is subject to forfeiture under this section by reason of any act or omission that the owner establishes was committed or omitted without the owner's knowledge or consent;
  - (C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; or
  - (D) Where the conveyance is not being driven by the owner of the conveyance, there is a presumption that the owner is without knowledge of the illegal act, and therefore the conveyance should not be forfeited.
- (2) All money, coins, and currency which has been used, or was intended for use, in violation of a prostitution-related offense.
  - (a-1)(1) A lien in favor of the District of Columbia is hereby created in an amount equal to the costs of towing, storing, and administrative processing of a conveyance seized and subject to forfeiture pursuant to §§ 22-2701, 22-2703, and this section.

Seizure under this section shall be pursuant to D.C. Code §48-905.02(b), which states, "[p]roperty subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior

Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.”

Pursuant to D.C. Code §22-2723(b), distribution of forfeited property (other than monies) is governed by D.C. Code §480905.02(4) which states in relevant part,

- (4) When property, other than controlled substances, is forfeited under this chapter, the Mayor shall:
  - (A) Retain it for official use;
  - (B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;
  - (C) Remove the property for disposition in accordance with law; or

Pursuant to D.C. Code §22-2723(b), money, coins and currency “shall be deposited as provided in subchapter IIA of Chapter 5 of Title 23 of the District of Columbia Code” which states in relevant part,

- (a) (1) Seized currency shall be promptly deposited in an interest-bearing escrow account in a federal insured financial institution in the District of Columbia . . .
- (2) Deposited seized currency, with any accrued interest, shall be divided and deposited as provided in section 48-907.02 . . .

D.C. Code §48-907.02 states,

Any funds from whatever source derived shall be deposited as soon as practicable into the Fund. Any deposit of funds shall be secured in a manner consistent with deposit of revenues by the District of Columbia government. The Fund shall be distributed in the following descending order of priority:

- (1) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and
- (2) To fund substance abuse education, prevention, and treatment activities of the Alcohol and Drug Abuse Administration.

Finally, a trafficker may be required to pay restitution. D.C. Code § 16-711 (Restitution or reparation) allows the court, at its discretion, to award restitution to victims of any offense. D.C. Code § 16-711 states,

- (a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.
- (b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant’s ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant’s ability to make restitution or reparation.
- (c) The court shall fix the manner of performing restitution or reparation.

....

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

The D.C. sex offender registration law requires registration of those convicted of a range of commercial sexual exploitation laws as traffickers of sex with a minor. D.C. Code § 22-4002. Specifically, a “registration offense,” as defined in D.C. Code § 22-4001(8)(C), includes “[a]ny of the following offenses where the victim is a minor: acts proscribed by § 22-1312 (lewd, indecent, or obscene acts), acts proscribed by § 22-2201 (obscenity), acts proscribed by § 22-3102 (sexual performances using minors), acts proscribed by § 22-1901 (incest), acts proscribed by § 22-2001 (kidnapping), and acts proscribed by §§ 22-2701 [Engaging in or soliciting for prostitution], 22-2701.01 [Definitions], 22-2703, 22-2704 [Abducting or enticing child from his or her home for purposes of prostitution; harboring such child], 22-2705 [Pandering; inducing or compelling an individual to engage in prostitution] to 22-2712 [Operating house of prostitution], 22-2713 [Premises occupied for lewdness, assignation, or prostitution declared nuisance] to 22-2720, 22-2722 [Keeping bawdy or disorderly houses] and 22-2723 (prostitution; pandering).” The registration law does not include violations of D.C. Code § 22-1834 (Sex trafficking of children) as a crime requiring sex offender registration.

3.5.1 Recommendation: Amend D.C. Code § 22-4001(8)(C) to include a violation of D.C. Code § 22-1834 (Sex trafficking of children) as an offense requiring registration.

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

Under D.C. Code § 16-2353(a) (Grounds for termination of parent and child relationship), “A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving due consideration to the interests of all parties, that the termination is in the best interests of the child.” Under subsection (b), in making his decision, the judge is instructed to consider these factors:

- (1) the child’s need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
- (2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;
- (3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;
- ...
- (4) to the extent feasible, the child’s opinion of his or her own best interests in the matter; and
- (5) evidence that drug-related activity continues to exist in a child’s home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; § 4-1301.06(a)). Evidence of continued drug-activity shall be given great weight.

D.C. Code § 16-2354(b)(3)(C) outlines the grounds for filing a motion to terminate the parental relationship. Grounds exist if “[a] court of competent jurisdiction has determined that the parent has: (i) Committed murder of a child sibling or another child; (ii) Committed voluntary manslaughter of a child sibling or another child; (iii) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or (iv) Committed a felony assault that has resulted in serious bodily injury to the child who is the subject of the petition, a child sibling, or another child.”

3.6.1 Recommendation: Add D.C. Code § 22-1834 (Sex trafficking of children) to the list of crimes constituting grounds enumerated in D.C. Code § 16-2354(b)(3)(C) for petitioning to terminate parental rights.

**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.*

Facilitators of human trafficking can be charged under D.C. Code § 22-1836 (Benefitting financially from human trafficking), which states, “It is unlawful for an individual or business knowingly to benefit, financially or by receiving anything of value, from voluntarily participating in a venture which has engaged in any act in violation of § 22-1832 [Forced labor], § 22-1833 [Trafficking in labor or commercial sex acts], § 22-1834 [Sex trafficking of children], or § 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], knowing or in reckless disregard of the fact that the venture has engaged in the violation.” Under D.C. Code § 22-1837(c) (Penalties), “Whoever violates § 22-1836 shall be fined or imprisoned up to the maximum fine or term of imprisonment for a violation of each referenced section.” Additional facilitators could fall under D.C. Code § 22-1834(a), which includes those who “harbor” or “transport . . . by any means a person who will be caused as a result to engage in a commercial sex act . . . .”

A facilitator may also be charged under D.C. Code § 22-2711 (Procuring for third persons), which states, “Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of procuring and placing in the charge or custody of another person for sexual intercourse, prostitution, debauchery, or other immoral purposes any individual shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years . . . .” Additionally a fine not exceeding \$12,500 may be imposed in addition to the imprisonment. D.C. Code §§ 22-2711, 22-3571.01(b)(7)<sup>32</sup>.

Similarly, a facilitator could also be charged with D.C. Code § 22-2712 (Operating house of prostitution), which criminalizes when an individual knowingly “accept[s], receive[s], lev[ies], or appropriate[s] any money or other valuable thing, without consideration other than the furnishing of a place for prostitution or the servicing of a place for prostitution, from the proceeds or earnings of any individual engaged in prostitution.” If guilty of this crime, a facilitator faces possible imprisonment up to 5 years and a fine not to exceed \$12,500. D.C. Code §§ 22-2712, 22-3571.01(b)(6).

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

Convicted facilitators are subject to mandatory, criminal asset forfeiture for violating D.C. Code § 22-1836 (Benefitting financially from human trafficking). Under D.C. Code § 22-1838,

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

(a) In imposing sentence on any individual or business convicted of a violation of this chapter, the court shall order, in addition to any sentence imposed, that the individual or business shall forfeit to the District of Columbia:

(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and

(2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.

(b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them:

(1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

A facilitator's vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of "[a]ny vehicle used in furtherance of a violation of a prostitution-related offense." D.C. Code § 22-2724(a). In addition, facilitators of child sex trafficking charged with prostitution offenses may be subject to discretionary, civil asset forfeiture pursuant to D.C. Code § 22-2723 (Property subject to seizure and forfeiture). Subsection (a) makes the following subject to forfeiture:

(1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense, provided that:

(A) No conveyance used by any person as a common carrier in the course of transacting business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of a prostitution-related offense;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission that the owner establishes was committed or omitted without the owner's knowledge or consent;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; or

(D) Where the conveyance is not being driven by the owner of the conveyance, there is a presumption that the owner is without knowledge of the illegal act, and therefore the conveyance should not be forfeited.

(2) All money, coins, and currency which has been used, or was intended for use, in violation of a prostitution-related offense.

(a-1)(1) A lien in favor of the District of Columbia is hereby created in an amount equal to the costs of towing, storing, and administrative processing of a conveyance seized and subject to forfeiture pursuant to §§ 22-2701, 22-2703, and this section.

Seizure under this section shall be pursuant to D.C. Code §48-905.02(b), which states, "[p]roperty subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law."

Pursuant to D.C. Code §22-2723(b), distribution of forfeited property (other than monies) is governed by D.C. Code §480905.02(4), which states in relevant part,

(4) When property, other than controlled substances, is forfeited under this chapter, the Mayor shall:

(A) Retain it for official use;

(B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;

(C) Remove the property for disposition in accordance with law; or

Pursuant to D.C. Code §22-2723(b), money, coins and currency “shall be deposited as provided in subchapter IIA of Chapter 5 of Title 23 of the District of Columbia Code,” which states in relevant part,

(a) (1) Seized currency shall be promptly deposited in an interest-bearing escrow account in a federal insured financial institution in the District of Columbia . . .

(2) Deposited seized currency, with any accrued interest, shall be divided and deposited as provided in section 48-907.02 . . . .

D.C. Code §48-907.02 states,

Any funds from whatever source derived shall be deposited as soon as practicable into the Fund. Any deposit of funds shall be secured in a manner consistent with deposit of revenues by the District of Columbia government. The Fund shall be distributed in the following descending order of priority:

(1) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

(2) To fund substance abuse education, prevention, and treatment activities of the Alcohol and Drug Abuse Administration.

Finally, a facilitator may be required to pay restitution. D.C. Code § 16-711 (Restitution or reparation) allows the court, at its discretion, to award restitution to victims of any offense. D.C. Code § 16-711 states,

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant’s ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant’s ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

. . . .

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

D.C. does not have a specific sex tourism statute.

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

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

D.C. Code § 22-3102(a)(2) (Prohibited acts) criminalizes knowingly promoting child pornography and states, “A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 18 years of age.” The definition of “promote” includes “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish or distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.” D.C. Code § 22-3101(4). A first time offense results in a fine up to \$25,000, imprisonment not to exceed 10 years, or both. D.C. Code §§ 22-3103(1), 22-3571.01(b)(9). Second and subsequent offenses result in a fine up to \$50,000, imprisonment up to 20 years, or both. D.C. Code §§ 22-3103(2), 22-3571.01(b)(9)<sup>33</sup>.

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<sup>33</sup> *See supra* note 3.



**Legal Components:**

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

**Legal Analysis:**

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

Under D.C. Code § 22-1841(a)(3) (Data collection and dissemination), “victim” is defined as “any person who has suffered a physical, mental, or emotional injury as a direct or indirect result of human trafficking or a human trafficking-related crime.” “Human trafficking-related crimes” is defined as “pimping, pandering, procuring, operating a house of prostitution, keeping a bawdy or disorderly house, possessing a sexual performance by a minor, visa fraud, document fraud, and assisting in unlawful entry into the United States, as well as violations of §§ 22-1832 [Forced labor], 22-1833 [Trafficking in labor or commercial sex acts], 22-1834 [Sex trafficking of children], 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], and 22-1836 [Benefitting financially from human trafficking].” D.C. Code § 22-1841(a)(2).

Furthermore, under the Victim’s Bill of Rights, “victim” or “crime victim” is defined as including “a person who or entity which has suffered direct physical, emotional, or pecuniary harm: (i) As a result of the commission of any felony or misdemeanor in violation of any criminal statute in the District of Columbia.” D.C. Code § 23-1905(2)(A)(i) (Definitions—Crime Victims’ Rights).

For purposes of victim compensation D.C. Code § 4-501(14) (Definitions) defines victim as

a person who suffers personal injury or death in the District of Columbia . . . or a person who is a resident of the District of Columbia and who suffers personal injury or death outside the District of Columbia in a state that does not have a crime victims compensation program that is eligible for funding under the Victims of Crime Act of 1984 (98 Stat. 2170; 42 U.S.C. § 10601 et seq.), as a direct result of:

- (A) A crime;
- (B) Assisting lawfully to apprehend a person reasonably suspected of committing or attempting to commit a crime;
- (C) Assisting a person against whom a crime has been committed or attempted, if the assistance was rendered in a reasonable manner;
- (D) Attempting to prevent the commission of a crime . . . .

D.C. Code § 4-502(a), excludes from this definition a victim if they “knowingly or willingly participated in the commission of the crime which forms the basis for the claim; provided, that a claimant who was a minor and a victim of sex trafficking of children, may be awarded compensation . . . .” Thus domestic minor trafficking victims and CSEC victims are explicitly included as victims for purposes of crime victim compensation.

On the other hand, victims of trafficking offenses committed by other minors are considered victims in proceedings related to “delinquency, neglect, or need of supervision” for crimes committed by minors. D.C. Code § 16-2301(41)(A) defines “victim” as:

- any person, organization, partnership, business, corporation, agency or governmental entity:
- (i) against whom a crime, delinquent act, or an attempted crime or delinquent act has been committed;
  - (ii) who suffers any physical or mental injury as a result of a crime, delinquent act, or an attempted crime or delinquent act;
  - (iii) who may have been exposed to the HIV/AIDS virus as a result of a crime, delinquent act, or an attempted crime or delinquent act; or
  - (iv) who suffers any loss of property, including pecuniary loss, as a result of a crime, delinquent act, or an attempted crime or delinquent act.

However, for the purposes of these “delinquency, neglect, or need of supervision” statutes, the definition of “victim” excludes “any person who committed or aided or abetted in the commission of the crime, delinquent act, or attempted crime or delinquent act.” D.C. Code § 16-2301(41)(B) (Definitions—Proceedings Regarding Delinquency, Neglect, or Need of Supervision). As a result, some domestic minor sex trafficking victims may forfeit victim status (for purposes of § 16-2301(41)(A)) if they are seen to aid their own victimization through violating prostitution statutes.

## 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.*

D.C. Code § 22-1834 (Sex trafficking of children), § 22-1833 (Trafficking in labor or commercial sex acts), § 22-2704 (Abducting or enticing child from his or her home for purposes of prostitution), and § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution) do not refer to a defense based on the minor’s consent to the commercial sex act. However, the code does not specifically prohibit a defendant from raising such a defense.

In contrast, D.C. Code § 22-3011 (Defenses to child sexual abuse and sexual abuse of a minor) specifically prohibits a consent defense (and a mistake of age defense) “to a prosecution under §§ 22-3008 to 22-3010.01 [First and second degree child sexual abuse, first and second degree sexual abuse of a minor, first and second degree sexual abuse of a secondary education student, enticing a child or minor, and misdemeanor sexual abuse of a child or minor], prosecuted alone or in conjunction with charges under § 22-3018 [Attempts to commit sexual offenses] or § 22-403 [Assault with intent to commit any other offense].” D.C. Code § 22-3011(a).

5.2.1 Recommendation: Enact a provision specifically prohibiting a defense to any commercial sexual crime against a minor under 18 based on consent of the child to the sex act.

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

Prostitution laws do not make minors immune from prosecution for violations of D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution). D.C. Code § 22-2701(a) makes it “unlawful for any person to engage in prostitution” and does not provide any exceptions to prosecution. If convicted, for a first offense, a minor could be fined up to \$500, imprisonment up to 90 days, or both. D.C. Code §§ 22-2701(b)(1)(A), 22-3571.01(b)(3)<sup>34</sup>. A second conviction could result in a fine up to \$1,000, imprisonment up to 180 days, or both. D.C. Code §§ 22-2701(b)(1)(B), 22-3571.01(b)(4). For subsequent convictions, a person can be imprisoned up to 2 years, fined up to \$12,500, or both. D.C. Code §§ 22-2701(b)(2), 22-3571.01(b)(6).

5.3.1 Recommendation: Amend D.C. Code § 22-2701(Engaging in prostitution or soliciting for prostitution) to make the law inapplicable to minors.

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.*

The human trafficking laws and the CSEC laws do not refer to a specific protective response for child victims of these crimes. However, the domestic minor sex trafficking victim could enter the child protective system through various avenues.

### **Child identified as abused/neglected**

A commercially sexually exploited child could fall within multiple categories allowing for intervention, including “delinquent child,” “child in need of supervision,” or “neglected child.” Pursuant to D.C. Code § 16-2301(9)(A), a “neglected child” is defined as a minor:

- (i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term “reasonable efforts” includes filing a petition for civil protection from intrafamily violence pursuant to § 16-1003 [Petition for civil protection];
- (ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;
- ...
- (v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;
- (vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;
- ....

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

- a. Authority for initial custody

D.C. Code § 16-2309 outlines the ways a child can be taken into custody:

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<sup>34</sup> See *supra* note 3.

- (a) A child may be taken into custody –
- (1) pursuant to order of the Division under section 16-2306 [Service of summons and petition] or 16-2311 [Release or delivery to Family Division];
  - ...
  - (3) by any employee of the Agency authorized to do so, or a law enforcement officer, when he or she has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary;
  - (4) by any employee of the Agency authorized to do so, or a law enforcement officer, after he or she has consulted with the Director of the Agency, or his or her designee, pursuant to § 4-1301.07(b) [Removal of children]<sup>35</sup> when the employee or the officer has reasonable grounds to believe that the child is suffering from illness or injury or otherwise is endangered and that the child’s removal from his or her surroundings is necessary;
  - (5) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian, or other custodian;
  - ...
  - (8) by the Director of Social Services, pursuant to section 16-2337 [Additional Powers of the Director of Social Services]
  - ....

Additionally the Police Department or the Child and Family Services Agency may receive a report from medical personnel that may form reasonable grounds for removal of the child. D.C. Code § 4-1321.02(a) (Persons required to make reports; procedure) states, “Notwithstanding § 14-307 [Physicians and mental health professionals], any person specified in subsection (b)<sup>36</sup> of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been or is in immediate danger of being a mentally or physically abused or neglected child, as defined in § 16-2301(9), shall immediately report or have a report made of such knowledge or suspicion to either the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.” Subsection (e) states in part, “Notwithstanding § 14-307, any person specified in subsection (b) of this section who knows or has

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<sup>35</sup> D.C. Code § 4-1301.07(b) states that, “[i]n all cases for which the police are responsible for the initial investigation but which do not involve an immediate danger to a child, the police shall seek from the Agency and the Agency shall provide assistance in the determination of whether the child can be protected by the provision of services or resources or whether removal is necessary. Whenever possible the Agency shall dispatch a worker to the scene to provide assistance in this determination.”

<sup>36</sup> D.C. Code § 4-1321.02 (b) states,

Persons required to report such abuse or neglect shall include Child and Family Services Agency employees, agents, and contractors, and every physician, psychologist, medical examiner, dentist, chiropractor, registered nurse, licensed practical nurse, person involved in the care and treatment of patients, law-enforcement officer, humane officer of any agency charged with the enforcement of animal cruelty laws, school official, teacher, athletic coach, Department of Parks and Recreation employee, public housing resident manager, social service worker, day care worker, human trafficking counselor as defined in § 14-311(2), and domestic violence counselor as defined in § 14-310(a)(2), and mental health professional as defined in § 7-1201.01(11). Such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation. Whenever a person is required to report in his or her capacity as a member of the staff of a hospital, school, social agency or similar institution, he or she shall immediately notify the person in charge of the institution or his or her designated agent who shall then be required to make the report. The fact that such a notification has been made does not relieve the person who was originally required to report from his or her duty under subsection (a) of this section of having a report made promptly to the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.

reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been, or is in immediate danger of being, the victim of ‘sexual abuse’ or ‘attempted sexual abuse’ prohibited by § 22-3001 et seq.; or that the child was assisted, supported, caused, encouraged, commanded, enabled, induced, facilitated, or permitted to become a prostitute, as that term is defined in § 22-2701.01(3) [Definitions]; . . . shall immediately report or have a report made of such knowledge, information, or suspicion to the Metropolitan Police Department or the Child and Family Services Agency.”

b. Placement: Where are the victims placed upon initial custody (immediate placement)?

Pursuant to D.C. Code § 16-2310 (Criteria for detaining children), with all reasonable speed, whoever took the child into custody must:

(1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division. . . ;

. . .

(3) bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical or evidentiary purposes and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Director of the Agency, or the Superior Court of the District of Columbia; or

. . . .

## II. Process following initial custody

In the District of Columbia, the process following the initial custody is dictated by internal process within the Juvenile Justice System and not a statutory scheme.<sup>37</sup>

## III. Placement process pending adjudication/investigation

Under D.C. Code § 16-2313 (Place of detention or shelter),

A child who is alleged to be neglected and who is in custody may be placed at any time prior to disposition, only in --

(1) a foster home;

(2) a group home, youth shelter, or other appropriate home for nondelinquent children; or

(3) another facility for shelter care designated by the Division, including an appropriate facility operated by the District of Columbia.

## IV. Adjudication or referral to alternate process:

Pursuant to D.C. Code § 16-2316 (Conduct of hearings; evidence), “[t]he Division shall, without a jury, hear and adjudicate cases involving delinquency, need of supervision, or neglect.”

The timing of adjudication hearings is dictated by D.C. Code § 16-2310 (Criteria for detaining children). If a child is detained in a secure setting pending the hearing it must commence. . . . “not later than 30 days from the date at which the Family Court ordered the child to be detained. . . .” D.C. Code § 16-2313(e)(1)(A). However, if a child is detained in shelter care, the hearing must be held . . . “not later than 45 days from the date at which the Family Court ordered the child to be placed in shelter care.” D.C. Code § 16-2313(e)(1)(C).

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<sup>37</sup> The Juvenile Justice System website has a chart, which describes this internal system.  
<http://dysr.dc.gov/page/juvenile-arrest-process>

## V. Outcomes

When a dispositional hearing is held, and after a child is found to be neglected, delinquent, or in need of supervision, the court will determine the actions taken in relation to the child pursuant to D.C. Code § 16-2320 (Disposition of child who is neglected, delinquent, or in need of supervision) and considering the “best interest of the child.” If the court finds that the child is neglected, the court may decide whether it is in the best interest of the child to, among other things, remain in the custody of the child’s parents or other relatives, enter protective supervision, or transfer custody to an agency responsible for the care of neglected children or a child placement agency. D.C. Code § 16-2320(a).

### **Child identified as in need of supervision**

A commercially sexually exploited child could fall within multiple categories allowing for intervention, including “delinquent child,” “child in need of supervision,” or “neglected child.” A “child in need of supervision” is defined as a child who is “(A)(i) subject to compulsory school attendance and [is] habitually truant from school without justification; (ii) has committed an offense committable only by children; or (iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and (B) is in need of care or rehabilitation.” D.C. Code § 16-2301(8).

#### I. Initial Custody

##### a. Authority for initial custody

D.C. Code § 16-2309 outlines the ways a child can be taken into custody:

##### (a) A child may be taken into custody –

(1) pursuant to order of the Division under section 16-2306 [Service of summons and petition] or 16-2311 [Release or delivery to Family Division];

...

(5) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian, or other custodian;

...

(7) by a law enforcement officer when the officer has reasonable grounds to believe that the child, who is not in school on a day when school is in session, is of compulsory school age as required by section 1(a) of An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; § 38-202);

(8) by the Director of Social Services, pursuant to section 16-2337 [Additional Powers of the Director of Social Services]

(9) by a law enforcement officer when the officer has reasonable grounds to believe that the child has violated a court order;

....

##### b. Placement: Where are the victims placed upon initial custody (immediate placement)?

Pursuant to D.C. Code § 16-2310 (Criteria for detaining children), with all reasonable speed, whoever took the child into custody must:

- (1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division. . . ;
- (2) bring a child alleged in need of supervision or delinquent before the Director of Social Services; or
- (3) bring the child to a medical facility if the child appears to require prompt treatment or to require

prompt diagnosis for medical or evidentiary purposes and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Director of the Agency, or the Superior Court of the District of Columbia;

....

## II. Process following initial custody

In the District of Columbia, the process following the initial custody is dictated by internal process within the Juvenile Justice System and not a statutory scheme.<sup>38</sup>

## III. Placement process pending adjudication/investigation

Under D.C. Code § 16-2310(a) (Criteria for detaining children), a child cannot be placed into detention before a “factfinding hearing or a dispositional hearing unless he is alleged to be delinquent or in need of supervision and unless it appears from available information that detention is required—(1) to protect the person or property of others or of the child, or (2) to secure the child’s presence at the next court hearing.” D.C. Code § 16-2310(a). At the detention or shelter care hearing, the court uses the circumstances listed in § 16-2310(b) (Criteria for detaining children) to evaluate whether the child should receive detention or shelter care. D.C. Code § 16-2312(d)(1). Under D.C. Code § 16-2310(b), “A child shall not be placed in shelter care prior to a factfinding hearing or a dispositional hearing unless it appears from available information that shelter care is required—(1) to protect the person of the child, or (2) because the child has no parent, guardian, custodian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself and that (3) no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.” D.C. Code § 16-2310(b).

Pursuant to D.C. Code § 16-2313(b) (Place of detention or shelter), “[a] child who is alleged to be in need of supervision . . . and who is in custody may be detained at any time prior to disposition only in—(1) a foster home; (2) a group home, youth shelter, or other appropriate home for allegedly delinquent children; or (3) a detention home for allegedly delinquent children or children alleged to be in need of supervision, designated by the Division, including an appropriate facility operated by the District of Columbia.” However, “Unless the Division shall by order so authorize, no child may be detained in a facility described in paragraph (3) if it would result in his commingling with children who have been adjudicated delinquent and committed by order of the Division.” D.C. Code § 16-2313(b).

## IV. Adjudication or referral to alternate process

Pursuant to D.C. Code § 16-2316 (Conduct of hearings; evidence), “[t]he Division shall, without a jury, hear and adjudicate cases involving delinquency, need of supervision, or neglect.”

The timing of adjudication hearings is dictated by D.C. Code § 16-2310 (Criteria for detaining children). If a child is detained in a secure setting pending the hearing it must commence. . . . “not later than 30 days from the date at which the Family Court ordered the child to be detained. . . .” D.C. Code § 16-2313(e)(1)(A). However, if a child is detained in shelter care, the hearing must be held. . . . “not later than 45 days from the date at which the Family Court ordered the child to be placed in shelter care.” D.C. Code § 16-2313(e)(1)(C).

## V. Outcomes

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<sup>38</sup> The Juvenile Justice System website has a chart, which describes this internal system. <http://dyrs.dc.gov/page/juvenile-arrest-process>

When a dispositional hearing is held, and after a child is found to be neglected, delinquent, or in need of supervision, the court will determine the actions taken in relation to the child pursuant to D.C. Code § 16-2320 (Disposition of child who is neglected, delinquent, or in need of supervision) and considering the “best interest of the child.” If at the dispositional hearing, the court finds the child is in need of supervision, but not a delinquent, the child may not be placed in an institution for delinquent children. D.C. Code § 16-2320(d). As a child in need of supervision, the child may be permitted to remain in the custody of the child’s parents or other relatives, enter protective supervision, a child placement agency, or have legal custody transferred “to a public agency for the care of delinquent children.” D.C. Code §§ 16-2320(a)–(c).

### **Child identified as delinquent**

A commercially sexually exploited child could fall within multiple categories allowing for intervention, including “delinquent child,” “child in need of supervision,” or “neglected child.” A “delinquent child” is one “who has committed a delinquent act and is in need of care or rehabilitation.” D.C. Code § 16-2301(6). A delinquent act includes “an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law.” D.C. Code § 16-2301(7).<sup>39</sup> Therefore, a minor could be deemed a delinquent for committing a violation of D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution).

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

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

D.C. Code § 16-2309 outlines the ways a child can be taken into custody:

##### **(a) A child may be taken into custody –**

(1) pursuant to order of the Division under section 16-2306 [Service of summons and petition] or 16-2311 [Release or delivery to Family Division];

(2) by a law enforcement officer when he has reasonable grounds to believe that the child has committed a delinquent act;

...

(5) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian, or other custodian;

...

(7) by a law enforcement officer when the officer has reasonable grounds to believe that the child, who is not in school on a day when school is in session, is of compulsory school age as required by section 1(a) of An Act To provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, approved February 4, 1925 (43 Stat. 806; § 38-202);

(8) by the Director of Social Services, pursuant to section 16-2337 [Additional Powers of the Director of Social Services]

(9) by a law enforcement officer when the officer has reasonable grounds to believe that the child has violated a court order; or

....

##### **b. Placement: Where are the victims placed upon initial custody (immediate placement)?**

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<sup>39</sup> Pursuant to the definition, “Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.” D.C. Code § 16-2301(7).



Pursuant to D.C. Code § 16-2310 (Criteria for detaining children), with all reasonable speed, whoever took the child into custody must:

- (1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division. . . ;
  - (2) bring a child alleged in need of supervision or delinquent before the Director of Social Services; or
  - (3) bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical or evidentiary purposes and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Director of the Agency, or the Superior Court of the District of Columbia;
- . . . .

## II. Process following initial custody

In the District of Columbia, the process following the initial custody is dictated by internal process within the Juvenile Justice System and not a statutory scheme.<sup>40</sup>

## III. Placement process pending adjudication/investigation

Under D.C. Code § 16-2310(a) (Criteria for detaining children), a child cannot be placed into detention before a “factfinding hearing or a dispositional hearing unless he is alleged to be delinquent and unless it appears from available information that detention is required—(1) to protect the person or property of others or of the child, or (2) to secure the child’s presence at the next court hearing.” D.C. Code § 16-2310(a). At the detention or shelter care hearing, the court uses the circumstances listed in § 16-2310(b) (Criteria for detaining children) to evaluate whether the child should receive detention or shelter care. D.C. Code § 16-2312(d)(1). Under D.C. Code § 16-2310(b), “A child shall not be placed in shelter care prior to a factfinding hearing or a dispositional hearing unless it appears from available information that shelter care is required—(1) to protect the person of the child, or (2) because the child has no parent, guardian, custodian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself and that (3) no alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal.” D.C. Code § 16-2310(b).

Pursuant to D.C. Code § 16-2313(b) (Place of detention or shelter), “[a] child who is alleged to be . . . alleged to be delinquent and who is in custody may be detained at any time prior to disposition only in—(1) a foster home; (2) a group home, youth shelter, or other appropriate home for allegedly delinquent children; or (3) a detention home for allegedly delinquent children or children alleged to be in need of supervision, designated by the Division, including an appropriate facility operated by the District of Columbia.” However, “Unless the Division shall by order so authorize, no child may be detained in a facility described in paragraph (3) if it would result in his commingling with children who have been adjudicated delinquent and committed by order of the Division.” D.C. Code § 16-2313(b). However, in a few instances some minors could be held in an adult detention facility. Pursuant to D.C. Code § 16-2313,

- . . . .
- (d) Except as provided in subsection (e), no child under eighteen years of age may be detained in a jail or other facility for the detention of adults, unless transferred as provided in section 16-2307 [Transfer for criminal prosecution]. The appropriate official of a jail or other facility for the detention of adults shall inform the Superior Court immediately when a child under the age of eighteen years is received there (other than by transfer) and shall

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<sup>40</sup> The Juvenile Justice System website has a chart, which describes this internal system.  
<http://dyrs.dc.gov/page/juvenile-arrest-process>

- (1) deliver him to the Director of Social Services upon request, or
  - (2) transfer him to a detention facility described in subsection (b)(3).
  - (e) A child sixteen years of age or older who is alleged to be delinquent and who is in detention, whose conduct constitutes a menace to other children, and who cannot be controlled, may on order of the Division be transferred to a place of detention for adults, but shall be kept separate from adults.
- ....

IV. Adjudication or referral to alternate process

Pursuant to D.C. Code § 16-2316 (Conduct of hearings; evidence), “[t]he Division shall, without a jury, hear and adjudicate cases involving delinquency, need of supervision, or neglect.”

The timing of adjudication hearings is dictated by D.C. Code § 16-2310 (Criteria for detaining children). If a child is detained in a secure setting pending the hearing it must commence. . . . “not later than 30 days from the date at which the Family Court ordered the child to be detained. . . .” D.C. Code § 16-2313(e)(1)(A). However, if a child is detained in shelter care, the hearing must be held. . . . “not later than 45 days from the date at which the Family Court ordered the child to be placed in shelter care.” D.C. Code § 16-2313(e)(1)(C).

Diversion or alternate process may be possible if certain criteria are met. Pursuant to D.C. Code § 16-2305.02 (Preliminary probation conferences; adjustment process), if the Department of Social Services determines a finding of delinquency for a child is not in the best of interest of the child or the public, “. . . the Director of Social Services shall so recommend to the Office of the Corporation Counsel, and the Corporation Counsel shall make a determination of the suitability of the case for adjustment, which may include diversion.” D.C. Code § 16-2305.02(b). To make the determination, the court is to consider:

- (1) The age of the child;
- (2) Whether the conduct allegedly involved:
  - (A) An act or acts causing or threatening to cause death, substantial pain, or serious physical injury to another;
  - (B) The use or knowing possession of a dangerous instrument or deadly weapon;
  - (C) The use or threatened use of violence to compel a person to engage in sexual intercourse, deviant sexual intercourse, or sexual contact;
  - (D) The use or threatened use of violence to obtain property;
  - (E) The use or threatened use of deadly physical force with the intent to restrain the liberty of another;
  - (F) The intentional starting of a fire or the causing of an explosion which resulted in damage to a building;
  - (G) A serious risk to the welfare and safety of the community; or
  - (H) An act which seriously endangered the safety of the child or another person;
- (3) Whether there is a substantial likelihood that the child will not appear at scheduled conferences with the Social Services Division or with an agency to which he or she may be referred;
- (4) Whether there is a substantial likelihood that the child will not participate in the diversion programs or services developed and recommended by the Social Services Division or cooperate during the adjustment process;
- (5) Whether there is a substantial likelihood that in order to adjust the case successfully, the child would require services that could not be administered effectively in less than 6 months;
- (6) Whether there is a substantial likelihood that the child will, during the adjustment process:
  - (A) Commit an act which, if committed by an adult, would be a crime; or
  - (B) Engage in conduct that endangers the physical or emotional health of the child or a member of the child's family or household; or
  - (C) Harass the complainant, victim, or person seeking to have a delinquency petition filed, or a member of that person's family or household, where demonstrated by prior conduct or threats;

- (7) Whether there is pending another proceeding to determine whether the child is a child in need of supervision or a delinquent;
- (8) Whether there have been prior adjustments or adjournments in contemplation of dismissal in other delinquency proceedings;
- (9) Whether there has been a prior adjudication of the child as a delinquent child or child in need of supervision;
- (10) Whether there is a substantial likelihood that the adjustment process would not be successful unless the child is temporarily removed from his or her home and that such removal could not be accomplished without invoking the court process;
- (11) Whether a proceeding has been or will be instituted against another person for acting jointly with the child; and
- (12) Whether the juvenile case would otherwise have been petitioned by the Office of the Corporation Counsel.

The adjustment process may include drug testing, parenting classes, and counseling and has an initial period of up to 6 months, and may be extended for an additional 6 months. D.C. Code §§ 16-2305.02(d)(1)&(4).

Pursuant to D.C. Code § 16-2314 (Consent decree), a consent decree may be entered prior to the hearing but after the filing of a petition, in which the adjudication will be suspended and the child will be supervised without the possibility of commitment. The supervision may have conditions attached and lasts for up to 6 months. D.C. Code §§ 16-2314(a)&(b).

## V. Outcomes

When a dispositional hearing is held, and after a child is found to be neglected, delinquent, or in need of supervision, the court will determine the actions taken in relation to the child pursuant to D.C. Code § 16-2320 (Disposition of child who is neglected, delinquent, or in need of supervision) and considering the “best interest of the child.” When found to be delinquent, the child may be permitted to, among other things, remain in the custody of the child’s parents or other relatives, enter protective supervision, a child placement agency, or have legal custody transferred “to a public agency for the care of delinquent children.” D.C. Code §§ 16-2320(a)–(c).

Additionally, pursuant to D.C. Code § 16-2307, the case may be transferred for criminal prosecution if requested by the Attorney General and, among other things, the minor is between 16 and 18 and is already “under commitment to an agency or institution as a delinquent child.” D.C. Code § 16-2307(a)(2).

- 5.4.1 Recommendation: Enact a law directing that any minor involved in prostitution under D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) or who is a victim of trafficking of persons for commercial sexual exploitation under D.C. Code § 22-1834 (Sex trafficking of children) be routed to a mandatory protective process, including specialized services and housing, instead of the criminal justice system.

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

The term “abused” for the purpose of abused child, means “(i) infliction of physical or mental injury upon a child; (ii) sexual abuse or exploitation of a child; or (iii) negligent treatment or maltreatment of a child.” D.C. Code § 16-2301(23)(A) (Definitions) [Proceedings regarding delinquency, neglect, or need of supervision]. Sexual exploitation occurs when “a parent, guardian, or other custodian allows a child to engage in prostitution as defined in . . . [now D.C. Code § 22-2701.01(3) (Definitions)], or means a parent, guardian, or other custodian engages a child or allows a child to engage in obscene or pornographic photography, filming, or other forms of illustrating or promoting sexual conduct as defined in . . . ( . . . D.C. Code § 22-3101(5) [Definitions-- Sexual performances using minors]).” D.C. Code § 16-2301(25). Therefore, by the inclusion of both D.C.

Code § 22-2701.01(3) (Definitions) [Prostitution; pandering] and D.C. Code § 22-3101(5) (Definitions) [Sexual performances using minors], domestic minor sex trafficking victims are included within the definition of an abused child.

Additionally, under D.C. Code § 16-2301(9)(A) (Definitions) [Proceedings regarding delinquency, neglect, or need of supervision], “neglected child” is defined as a child

(i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term “reasonable efforts” includes filing a petition for civil protection from intrafamily violence pursuant to § 16-1003;

(ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;

...

(v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;

(vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;

....

- 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.*

“Custodian” is defined as “a person or agency, other than a parent or legal guardian: (A) to whom the legal custody of a child has been granted by the order of a court; (B) who is acting in loco parentis;<sup>41</sup> or (C) who is a day care provider or an employee of a residential facility, in the case of the placement of an abused or neglected child.” D.C. Code § 16-2301(12).

- 5.6.1 Recommendation: Amend the definition of “custodian” in D.C. Code § 16-2301(12) to include persons in control of a child in order to reach a trafficker and allow CPS to remove the child.

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

D.C. Code § 4-501 (Definitions), provides the definitions for the chapter on “compensation of victims of violent crime.” That section defines “victim” for the purposes of crime victims’ compensation to include “a person who suffers personal injury or death in the District of Columbia . . . as a direct result of: (A) A crime; (B) Assisting lawfully to apprehend a person reasonably suspected of committing or attempting to commit a crime; (C) Assisting a person against whom a crime has been committed or attempted, if the assistance was rendered in a reasonable manner; (D) Attempting to prevent the commission of a crime . . .” D.C. Code § 4-501(14). D.C. Code § 4-501(6) defines both “crime of violence” and “crime” in part as “the offense of, or the attempt to commit the offense of . . . sexual abuse, kidnapping, . . . cruelty to children, . . . benefitting financially from human trafficking, using a minor in a sexual performance, promoting a sexual performance by a minor,

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<sup>41</sup> The term “in loco parentis” is not statutorily defined. However, various cases provide definitions for in loco parentis. The District of Columbia Court of Appeals has stated, “The term “*in loco parentis*,” according to its generally accepted common law meaning, refers to a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption. It embodies the two ideas of assuming the parental status and discharging the parental duties.” Fuller v. Fuller, 247 A.2d 767, 770 (D.C. 1968) (quoting Niewiadomski v. United States, 159 F.2d 683, 686 (6th Cir. 1947)).

attending or possessing a sexual performance by a minor, trafficking in labor or commercial sex acts, sex trafficking of children, a felony violation of an act codified in Chapter 27 of Title 22 of the District of Columbia Code, where a person was compelled to engage in prostitution or was a minor . . . . These terms include an offense where the perpetrator and victim are members of the same family or household, an offense whether prosecuted under the District of Columbia Code or the United States Code . . . . A crime occurs whether or not any person is identified, arrested, prosecuted, or convicted. Unless an application for rehearing, appeal, or petition for certiorari is pending or a new trial or hearing has been ordered, the conviction of a person whose acts gave rise to the claim is conclusive evidence that a crime was committed.”

However, several eligibility requirements might inhibit a domestic minor sex trafficking victim’s ability to receive funds through this program. First, a claim must be filed “within 1 year after the crime occurred or 1 year after learning of the Program with an adequate showing that the delay in learning of the Program was reasonable.” D.C. Code § 4-506(a)(2). Additionally, the crime must be reported to law enforcement “within 7 days of its occurrence,” and “[i]f the crime cannot be reasonably reported within that time period, the crime must be reported within 7 days from the time a report can reasonably be made.” D.C. Code § 4-506(a)(3). Many victims of domestic minor sex trafficking are slow to come forward and thus may become ineligible for crime victims’ compensation due to this requirement. It is possible that “[t]he time limit requirements of this section may be waived for good cause shown, including compelling health or safety concerns.” D.C. Code § 4-506(d). Through this subsection, it may be determined that a domestic minor sex trafficking victim did have good cause for delay, but no clarification exists to guarantee this protection for victims.

Domestic minor sex trafficking victims are specifically protected from disqualification and reductions in awards under D.C. Code § 4-508(a)(1) (Disqualification and reductions), which states “The Court shall not award compensation if the: (1) Claimant knowingly or willingly participated in the commission of the crime which forms the basis for the claim; provided, that a claimant who was a minor and a victim of sex trafficking of children, may be awarded compensation.” Therefore, if the victims meet the other eligibility requirements, their participation in activities such as prostitution will not inhibit their ability to recover funds.

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

Domestic minor sex trafficking victims are protected from the introduction of certain evidence at trial. Pursuant to D.C. Code § 22-1839 (Reputation or opinion evidence),

In a criminal case in which a person is accused of trafficking in commercial sex, as prohibited by § 22-1833, sex trafficking of children, as prohibited by § 22-1834, or benefitting financially from human trafficking, as prohibited by § 22-1836, reputation or opinion evidence of the past sexual behavior of the alleged victim is not admissible. Evidence of an alleged victim’s past sexual behavior other than reputation or opinion evidence also is not admissible, unless such evidence other than reputation or opinion evidence is admitted in accordance with § 22-3022(b), and is constitutionally required to be admitted.

The D.C. Code does not codify additional protections for domestic minor sex trafficking victims or child victims in general, such as the ability to testify via closed circuit television. However, under D.C. Code § 23-1903(d) (Crime victim privacy and security),

In a proceeding in which a child is called to give testimony, on motion by the attorney for the government or the victim’s legal or court-appointed representative, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must be involved with the criminal justice system. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child’s well-being. The court

shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child witness.

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.*

Juvenile criminal records may be sealed in D.C. after “two years have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervision; and (2) [the juvenile] has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.” D.C. Code § 16-2335(a)(1)(B), (2).

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.*

Under D.C. Code § 22-1840, civil remedies are expressly allowed. D.C. Code § 22-1840(a) states,

An individual who is a victim of an offense prohibited by § 22-1832 [Forced labor], § 22-1833 [Trafficking in labor or commercial sex acts], § 22-1834 [Sex trafficking of children], § 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], or § 22-1836 [Benefitting financially from human trafficking] may bring a civil action in the Superior Court of the District of Columbia. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages shall be awarded on proof of actual damages where a defendant’s acts were willful and malicious.

A domestic minor sex trafficking victim could receive restitution under D.C. Code § 16-711 (Restitution or reparation), which allows the court to award restitution to victims of any offense. D.C. Code § 16-711 states,

- (a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.
- (b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant’s ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant’s ability to make restitution or reparation.
- (c) The court shall fix the manner of performing restitution or reparation.

....

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.*

For the purposes of civil actions, “[a]ny statute of limitation imposed for the filing of a civil suit under this section shall not begin to run until the plaintiff knew, or reasonably should have known, of any act constituting a violation of § 22-1832 [Forced labor], § 22-1833 [Trafficking in labor or commercial sex acts], § 22-1834 [Sex trafficking of children], § 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], or § 22-1836 [Benefitting financially from human trafficking], or until a minor plaintiff has reached the age of majority, whichever is later.” D.C. Code § 22-1840(b). Additionally D.C. Code § 22-1840 (Civil action) provides protection and states that “[a] defendant is estopped to assert a defense of the statute of

limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action.” D.C. Code § 22-1840(d).

Criminal actions related to domestic minor sex trafficking have a 10-year statute of limitations. D.C. Code § 23-113(a)(3)(H), (J), (K), (L), (M). Furthermore, this statute of limitations does not begin to run until the minor has reached 21. D.C. Code § 23-113(d)(2)(D), (H), (I), (J). D.C. Code § 23-113(a)(3) states, in part,

A prosecution for the following crimes and any offense that is properly joinable with any of the following crimes is barred if not commenced within ten (10) years after it is committed:

...

(H) using a minor in a sexual performance or promoting a sexual performance by a minor (§ 22-3102);

...

(J) Trafficking in labor or commercial sex and sex trafficking of children as prohibited by sections 103 and 104 [§§ 22-1833 and 22-1834], respectively, of the Prohibition Against Human Trafficking Amendment Act of 2010, passed on 2nd reading on June 1, 2010 (Enrolled version of Bill 18-70)(“Human Trafficking Act”);

(K) Section 813 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Code § 22-2704 [Abducting or enticing child from his or her home for purposes of prostitution; harboring such child]);

(L) Section 1 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof, approved June 25, 1910 (36 Stat. 833; D.C. Code § 22-2705 [Pandering; inducing or compelling an individual to engage in prostitution]); and

(M) Sections 2 and 4 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof, approved June 25, 1910 (36 Stat. 833; D.C. Code §§ 22-2706 [Compelling an individual to live life of prostitution against his or her will] and 22-2708 [Causing spouse to live in prostitution]).

Additionally, under D.C. Code § 23-113(d)(2),

The period of limitation shall not begin to run until the victim reaches 21 years of age for the following offenses:

(A) first degree child sexual abuse (§ 22-3008);

(B) second degree child sexual abuse (§ 22-3009);

(C) enticing a child for the purpose of committing felony sexual abuse (§ 22-3010);

(D) using a minor in a sexual performance or promoting a sexual performance by a minor (§ 22-3102);

(E) incest (§ 22-1901);

(F) Sections 208a and 208b of the Anti-Sexual Abuse Act of 1994, effective April 24, 2007 (D.C. Law 16-306; D.C. Code § 22-3009.01 and § 22-3009.02);

(G) Section 813 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Code § 22-2704);

(H) Section 1 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof, approved June 25, 1910 (36 Stat. 833; D.C. Code § 22-2705);

(I) Section 2 of An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof, approved June 25, 1910 (36 Stat. 833; D.C. Code § 22-2706), where the victim is a minor; and

(J) Forced labor, trafficking in labor or commercial sex, sex trafficking of children, and benefitting financially from human trafficking as prohibited by the Human Trafficking Act [§ 22-1831 et seq.], where the victim is a minor.

Similarly, under D.C. Code § 23-113(d)(5) the statute of limitations is tolled until the victim is no longer in the trafficking situation. D.C. Code § 23-113(d)(5) states, “The period of limitation shall not begin to run for forced labor, trafficking in labor or commercial sex, sex trafficking of children, and benefitting financially from human trafficking until the victim is no longer subject to the means used to obtain or maintain his or her labor or services or commercial sex acts.”



**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.*

Training on domestic minor sex trafficking is not mandated or authorized under D.C. law. However, training on domestic violence issues is mandated for law enforcement officers under D.C. Code § 16-1034. D.C. Code § 16-1034(a) requires training on

- (1) The nature, dimension, and causes of intrafamily offenses;
- (2) The legal rights and remedies available to a victim or perpetrator of an intrafamily offense;
- (3) The services and facilities available to a victim or perpetrator of an intrafamily offense;
- (4) The legal duties imposed on a police officer to enforce the provisions of this subchapter and to offer protection and assistance to a victim of an intrafamily offense; and
- (5) Techniques for handling an intrafamily offense that minimize the likelihood of injury to the officer and promote the safety of the victim.

- 6.1.1 Recommendation: Mandate or authorize the development of human trafficking curriculum for law enforcement officers or training on domestic minor sex trafficking situations, similar to or in combination with D.C. requirements for training on domestic violence under D.C. Code § 16-1034.

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

Single party consent for audiotaping in law enforcement investigations is permitted under D.C. law. Under D.C. Code § 23-542 (Interception, disclosure, and use of wire or oral communications prohibited), it is generally illegal for one to intercept wire communications. However, exceptions exist under D.C. Code § 23-542(b), which states, in part,

It shall not be unlawful under this section for—

...

- (2) a person 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; or
- (3) 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, any State, or the District of Columbia, or for the purpose of committing any other injurious act.

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

Human trafficking is not included in the enumerated offenses permitting wiretapping as an investigative tool.

- 6.3.1 Recommendation: Amend D.C. Code § 23-546(c) to allow wiretapping in investigations for the offenses of D.C. Code § 22-1834 (Sex trafficking of children), and § 22-1836 (Benefitting financially from human 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.*

D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child) allows for the prosecution of those who arrange for sexual contact with a real or fictitious child. The statute states in subsection (a),

It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

Additionally, D.C. Code § 22-3010 (Enticing a child or minor) may allow for decoys in subsection (b), which states, “Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years . . . .” Additionally, a fine not exceeding \$12,500 can be imposed as well as a 5 year imprisonment term. D.C. Code §§ 22-3010, 22-3571.01(b)(6)<sup>42</sup>.

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

No D.C. statute specifically addresses the use of the Internet to investigate buyers and traffickers. D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child) could be utilized potentially although it does not expressly relate to Internet use to arrange for sexual contact.<sup>43</sup>

- 6.5.1 Recommendation: Amend trafficking in children and CSEC offenses to allow law enforcement to use the Internet to investigate these offenses, or enact a separate law authorizing use of the Internet for investigations of these offenses.

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

D.C. does not statutorily mandate the reporting of missing children and rescued domestic minor sex trafficking victims. However under General Order 304.3 (Missing Person Reports), the Metropolitan Police Department

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<sup>42</sup> See *supra* note 3.

<sup>43</sup> D.C. Code § 22-3010.02, enacted in 2011, currently has no precedent case law to demonstrate applicability to situations involving the Internet.

must follow specific procedures. When the missing person is a juvenile then, pursuant to section (IV)(E)(1), the Metropolitan Police Department must take numerous actions, including,

- a. Prepare and immediately transmit a general broadcast by radio; . . .  
...
- f. Provide a copy of the PD Form 251, 252, and 899 (Critical Missing Person Investigation Checklist) to the station clerk to be forwarded to the YPSD [Youth and Preventative Services Division] with the morning mail run. . . .  
...
- h. Notify the Missing Persons Section, YPSD immediately when a juvenile missing from out-of-state is located.
- i. Forward all information concerning juveniles to the Missing Persons Section, YPSD.

Additionally, when a missing child is found, the law enforcement “who locate a lost child(ren) shall immediately notify a YPSD member and request assistance.”<sup>44</sup>

- 6.6.1 Recommendation: Enact a missing and rescued child reporting system specifically for the District of Columbia to ensure full protection of the District’s children and provide a localized tool for law enforcement.

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<sup>44</sup> GO-OPS-304.3, 304.4(IV)(K)(1) (Missing Person Reports), January 30, 2004, [https://go.mpdconline.com/GO/304\\_03re.pdf](https://go.mpdconline.com/GO/304_03re.pdf).