

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2014 ANALYSIS AND RECOMMENDATIONS ILLINOIS

### 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.*

Pursuant to 720 Ill. Comp. Stat. Ann. 5/10-9(c),<sup>2</sup> a person can be convicted of involuntary sexual servitude of a minor under 18 regardless of whether “there is overt force or threat.” 720 Ill. Comp. Stat. Ann. 5/10-9(c)–(d) (Trafficking in persons, involuntary servitude, and related offenses) states in part,

<sup>1</sup> Unless otherwise specified, all references to Illinois statutes were taken from Illinois Compiled Statutes Annotated (LEXIS through Public Act 98-756 of the 2014 Legis. Sess.), 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> The text of 720 Ill. Comp. Stat. Ann. 5/10-9 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 3558 and Senate Bill 2640 during the 98th session of the Illinois Legislature and enacted through Public Acts 98-1013 and 98-0756, respectively (effective Jan. 1, 2015 and 7/16/2014, respectively).

(c) Involuntary sexual servitude of a minor. A person commits involuntary sexual servitude of a minor when he or she knowingly recruits, entices, harbors, transports, provides, or obtains<sup>3</sup> by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age, knowing that the minor will engage in commercial sexual activity,<sup>4</sup> a sexually-explicit performance,<sup>5</sup> or the production of pornography, or causes or attempts to cause a minor to engage in one or more of those activities and:

- (1) there is no overt force or threat and the minor is between the ages of 17 and 18 years;
- (2) there is no overt force or threat and the minor is under the age of 17 years; or
- (3) there is overt force or threat.

....

(d) Trafficking in persons. A person commits trafficking in persons when he or she knowingly:

- (1) recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to involuntary servitude<sup>6</sup>; or
- (2) benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act of . . . involuntary sexual servitude of a minor.

....

If the victim is 17 years of age and there was no overt force or threat, a conviction under subsection (c) is punishable as a Class 1 felony by imprisonment for 4–15 years<sup>7</sup> and a possible fine not to exceed \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b). If the victim is under the

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<sup>3</sup> 720 Ill. Comp. Stat. Ann. 5/10-9(a)(7) defines “obtain” as “in relation to labor or services, to secure performance thereof.”

<sup>4</sup> 720 Ill. Comp. Stat. Ann. 5/10-9(a)(2) defines “commercial sexual activity” as “any sex act on account of which anything of value is given, promised to, or received by any person.”

<sup>5</sup> 720 Ill. Comp. Stat. Ann. 5/10-9(a)(9) defines “sexually-explicit performance” as “a live, recorded, broadcast (including over the Internet), or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.”

<sup>6</sup> “A person commits the offense of involuntary servitude when he or she knowingly subjects, attempts to subject, or engages in a conspiracy to subject another person to forced labor or services obtained or maintained through any of the following means, or any combination of these means and:

- (1) causes or threatens to cause physical harm to any person;
- (2) physically restrains or threatens to physically restrain another person;
- (3) abuses or threatens to abuse the law or legal process;
- (4) knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport other immigration document, or any other actual or purported government identification document, of another person; or
- (5) uses intimidation, or uses or threatens to cause financial harm to or exerts financial control over any person; or
- (6) uses any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform the labor or services, that person or another person would suffer serious harm or physical restraint.

720 Ill. Comp. Stat. Ann. 5/10-9(b).

“‘Services’ means activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of activities that are “services” under this Section.” Comp. Stat. Ann. 5/10-9(a)(8).

<sup>7</sup> Pursuant to 730 Ill. Comp. Stat. Ann. 5/5-8-2(a), a judge may sentence any offender to an “extended term” if certain aggravating circumstances are present. These aggravating circumstances include the following: receipt of compensation for the crime, prior criminal history, offense caused or threatened harm, or the offender held a position of trust with the victim. 730 Ill. Comp. Stat. Ann. 5/5-5-3.2. Extended terms result in imprisonment as follows: Class X felony: 30–60 years; Class 1 felony: 15–30 years; Class 2 felony: 7–14 years; Class 3 felony: 5–10 years; and Class 4 felony: 3–6 years. 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-30(a), 5/5-4.5-35(a), 5/5-4.5-40(a), 5/5-4.5-45(a). Additionally, this report assumes no prior convictions or aggravating factors, and only addresses base penalties. However, the passage of Senate Bill 1005 during the 2013 regular session of the Illinois Legislature includes several aggravating factors for extended-term sentencing. These factors increase minor sex trafficking and commercial sexual exploitation of children sentences.

age of 17 or if there was no overt force or threat, however, a conviction is punishable as a Class X felony by imprisonment for 6–30 years and a possible fine not to exceed \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-50(b). A conviction under subsection (d) is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine not to exceed \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b).

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

The following state laws make CSEC a distinct crime in Illinois:

1. 720 Ill. Comp. Stat. Ann. 5/11-14.1(a)<sup>8</sup> (Solicitation of a sexual act) provides,

Any person who offers a person not his or her spouse any money, property, token, object, or article or anything of value for that person or any other person not his or her spouse to perform any act of sexual penetration<sup>9</sup> . . . or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification, commits solicitation of a sexual act.

A conviction under this statute, when the victim is under 18, is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.1(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b).

2. 720 Ill. Comp. Stat. Ann. 5/11-14.4(a) (Promoting juvenile prostitution) states,

Any person who knowingly performs any of the following acts commits promoting juvenile prostitution:

(1) advances prostitution as defined in Section 11-0.1 [720 ILCS 5/11-0.1 (Definitions)],<sup>10</sup> where the minor engaged in prostitution, or any person engaged in prostitution in the place, is under 18

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<sup>8</sup> The text of 720 Ill. Comp. Stat. Ann. 5/11-14.1 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 3558 during the 98th session of the Illinois Legislature and enacted by P.A. 98-1013, effective Jan. 1, 2014.

<sup>9</sup> 720 Ill. Comp. Stat. Ann. 5/11-0.1 (Definitions) defines “sexual penetration” as,

any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

<sup>10</sup> 720 Ill. Comp. Stat. Ann. 5/11-0.1 (Definitions) defines “advance prostitution” as,

(1) Soliciting for a prostitute by performing any of the following acts when acting other than as a prostitute or a patron of a prostitute:

- (A) Soliciting another for the purpose of prostitution.
- (B) Arranging or offering to arrange a meeting of persons for the purpose of prostitution.
- (C) Directing another to a place knowing the direction is for the purpose of prostitution.

(2) Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting other than as a prostitute or a patron of a prostitute:

- (A) Knowingly granting or permitting the use of the place for the purpose of prostitution.
- (B) Granting or permitting the use of the place under circumstances from which he or she could reasonably know that the place is used or is to be used for purposes of prostitution.
- (C) Permitting the continued use of the place after becoming aware of facts or circumstances from which he or she should reasonably know that the place is being used for purposes of prostitution.

- years of age . . . at the time of the offense;
- (2) profits from prostitution by any means where the prostituted person<sup>11</sup> is under 18 years of age . . . at the time of the offense;
- (3) profits from prostitution by any means where the prostituted person is under 13 years of age at the time of the offense;
- (4) confines a child under the age of 18 . . . against his or her will by the infliction or threat of imminent infliction of great bodily harm or permanent disability or disfigurement or by administering to the child . . . without his or her consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug [as defined by certain statutes] and:
  - (A) compels the child . . . to engage in prostitution;
  - (B) arranges a situation in which the child . . . may practice prostitution; or
  - (C) profits from prostitution by the child . . . .

A conviction under (a)(1) or (a)(2) of this statute is generally punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000.<sup>12</sup> 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b). A conviction under (a)(3) of this statute is generally punishable as a Class X felony by imprisonment for 6–30 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-50(b). A conviction under (a)(4) of this statute is punishable as a Class X felony by imprisonment for 6–60 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-50(b).<sup>13</sup>

3. 720 Ill. Comp. Stat. Ann. 5/11-18.1(a), (a-5) (Patronizing a minor engaged in prostitution) states,

- (a) Any person who engages in an act of sexual penetration<sup>14</sup> as defined in Section 11-0.1 of this Code [720 ILCS 5/11-0.1] with a person engaged in prostitution who is under 18 years of age . . . commits patronizing a minor engaged in prostitution.
- (a-5) Any person who engages in any touching or fondling, with a person engaged in prostitution who . . . is under 18 years of age . . . of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification, commits patronizing a minor engaged in prostitution.

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<sup>11</sup> 720 Ill. Comp. Stat. Ann. 5/11-14.4(f) (Promoting juvenile prostitution) defines “prostituted person” as “any person who engages in, or agrees or offers to engage in, any act of sexual penetration as defined in Section 11-0.1 [Definitions] of this Code for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification.”

<sup>12</sup> A conviction under (a)(1) is elevated to being punishable as a Class X felony if it occurs “within 1,000 feet of real property comprising a school.” 720 Ill. Comp. Stat. Ann. 5/11-14.4(d).

<sup>13</sup> Pursuant to 720 Ill. Comp. Stat. Ann. 5/11-14.4(d),

A second or subsequent violation of subdivision (a)(1), (a)(2), or (a)(3), or any combination of convictions under subdivision (a)(1), (a)(2), or (a)(3) and Sections 11-14 (prostitution), 11-14.1 (solicitation of a sexual act), 11-14.3 (promoting prostitution), 11-15 (soliciting for a prostitute) [Repealed], 11-15.1 (soliciting for a juvenile prostitute) [Repealed], 11-16 (pandering) [Repealed], 11-17 (keeping a place of prostitution) [Repealed], 11-17.1 (keeping a place of juvenile prostitution) [Repealed], 11-18 (patronizing a prostitute), 11-18.1 (patronizing a juvenile prostitute), 11-19 (pimping) [Repealed], 11-19.1 (juvenile pimping or aggravated juvenile pimping) [Repealed], or 11-19.2 (exploitation of a child) [Repealed] of this Code, is a Class X felony.

<sup>14</sup> See *supra* note 9 for the definition of “sexual penetration.”

A conviction under this statute is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000.<sup>15</sup> 720 Ill. Comp. Stat. Ann. 5/11-18.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).

4. 720 Ill. Comp. Stat. Ann. 5/11-9.1A(a), (f) (Permitting sexual abuse of a child) states,

(a) A person responsible for a child’s welfare<sup>16</sup> commits permitting sexual abuse of a child<sup>17</sup> if the person has actual knowledge<sup>18</sup> of and permits an act of sexual abuse<sup>19</sup> upon the child, or permits the child to engage in prostitution as defined in [720 Ill. Comp. Stat. Ann. 5/11-14].<sup>20</sup>

....

(f) A person may not be charged with the offense of permitting sexual abuse of a child under this Section until the person who committed the offense is charged with criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, aggravated criminal sexual abuse, or prostitution.

A conviction under this statute is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-9.1A(g); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b).

5. 720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming) states,

A person commits the offense of grooming when he or she knowingly uses a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child, a child’s guardian, or another person believed by the person to be a child or a child’s guardian, to commit any sex offense as defined in [730 Ill. Comp. Stat. Ann. 150/2]<sup>21</sup> or to otherwise engage in any unlawful sexual conduct<sup>22</sup> with a child or with another person believed by the person to be a child.

A conviction is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-25(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b).

6. 720 Ill. Comp. Stat. Ann. 5/11-26(a) (Traveling to meet a minor) states,

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<sup>15</sup> A conviction is elevated to being punishable as a Class 2 felony by imprisonment for 3–7 years and a possible fine up to \$25,000 if it occurs “within 1,000 feet of real property comprising a school.” 720 Ill. Comp. Stat. Ann. 5/11-18.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-35(a), 5/5-4.5-50(b).

<sup>16</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1A(b) defines “person responsible for the child’s welfare” as “the child’s parent, step-parent, legal guardian, or other person having custody of a child, who is responsible for the child’s care at the time of the alleged sexual abuse.”

<sup>17</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1A(b) defines “child” as “a minor under the age of 17 years.”

<sup>18</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1A(b) defines “actual knowledge” as “credible allegations made by the child.”

<sup>19</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1A(b) defines “sexual abuse” as “criminal sexual abuse or criminal sexual assault as defined in Section 11-1.20 [Criminal sexual assault], 11-1.30 [Aggravated criminal sexual assault], 11-1.40 [Predatory criminal sexual assault of a child], 11-1.50 [Criminal sexual abuse], or 11-1.60 [Aggravated criminal sexual abuse] of this Code.” 720 Ill. Comp. Stat. Ann. 5/11-9.1A(b) (citations omitted).

<sup>20</sup> Pursuant to 720 Ill. Comp. Stat. Ann. 5/11-14(a), “Any person who knowingly performs, offers or agrees to perform any act of sexual penetration . . . for anything of value, or any touching or fondling of the sex organs of one person by another person, for anything of value, for the purpose of sexual arousal or gratification commits an act of prostitution.” See *supra* note 9 for the definition of “sexual penetration.”

<sup>21</sup> See *infra* Section 2.10 for a full list of offenses classified as “sex offenses,” which includes juvenile prostitution.

<sup>22</sup> 720 Ill. Comp. Stat. Ann. 5/11-0.1 (Definitions) defines “sexual conduct” as “any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused.”

A person commits the offense of traveling to meet a minor when he or she travels any distance either within this State, to this State, or from this State by any means, attempts to do so, or causes another to do so or attempt to do so for the purpose of engaging in any sex offense as defined in [730 Ill. Comp. Stat. Ann. 150/2],<sup>23</sup> or to otherwise engage in other unlawful sexual conduct<sup>24</sup> with a child or with another person believed by the person to be a child after using a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or to attempt to seduce, solicit, lure, or entice, a child or a child's guardian, or another person believed by the person to be a child or a child's guardian, for such purpose.

A conviction is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-26(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).

Sexual offense laws that may apply in cases of commercial sexual exploitation of a child include the following:

1. 720 Ill. Comp. Stat. Ann. 5/11-9.1(a), (a-5) (Sexual exploitation of a child) states,

(a) A person commits sexual exploitation of a child if in the presence or virtual presence,<sup>25</sup> or both, of a child<sup>26</sup> and with knowledge that a child or one whom he or she believes to be a child would view his or her acts, that person:

(1) engages in a sexual act;<sup>27</sup> or

(2) exposes his or her sex organs, anus or breast for the purpose of sexual arousal or gratification of such person or the child or one whom he or she believes to be a child.

(a-5) A person commits sexual exploitation of a child who knowingly entices, coerces, or persuades a child to remove the child's clothing for the purpose of sexual arousal or gratification of the person or the child, or both.

A conviction under this statute is punishable as a Class A misdemeanor by less than 1 year imprisonment and a possible fine up to \$2,500. 720 Ill. Comp. Stat. Ann. 5/11-9.1(c)(1); 730 Ill. Comp. Stat. Ann. 5/5-4.5-55(a), (e). If the victim is under 13 or the offender has previously been convicted of a sex offense,<sup>28</sup> however, a conviction is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-9.1(c)(2), (3); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b).

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<sup>23</sup> See *infra* Section 2.10 for a full list of offenses classified as “sex offenses,” which includes juvenile prostitution.

<sup>24</sup> See *supra* note 22 for the definition of “sexual conduct.”

<sup>25</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1(b) defines “virtual presence” as

an environment that is created with software and presented to the user and or receiver via the Internet, in such a way that the user appears in front of the receiver on the computer monitor or screen or hand held portable electronic device, usually through a web camming program. “Virtual presence” includes primarily experiencing through sight or sound, or both, a video image that can be explored interactively at a personal computer or hand held communication device, or both.

<sup>26</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1(b) defines “child” as “a person under 17 years of age.”

<sup>27</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1(b) defines “sexual act” as “masturbation, sexual conduct or sexual penetration as defined in [720 Ill. Comp. Stat. Ann. 5/11-0.1].”

<sup>28</sup> 720 Ill. Comp. Stat. Ann. 5/11-9.1(b) defines “sex offense” as “any violation of Article 11 of this Code or Section 12-16.2 of this Code.” See *infra* Section 2.10 for a list of Article 11 offenses that are included within the classification of the term, “sex offense.”

2. 720 Ill. Comp. Stat. Ann. 5/11-1.40(a)<sup>29</sup> (Predatory criminal sexual assault of a child) states that “[a] person commits predatory criminal sexual assault of a child if that person commits an act of sexual penetration or an act of contact, however slight between the sex organ or anus of one person and the part of the body of another,<sup>30</sup> and the accused is 17 years of age or older, and . . . the victim is under 13 years of age.”

A conviction under this statute is generally punishable as a Class X felony by imprisonment for 6–60 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-1.40(b)(1); 730 Ill. Comp. Stat. Ann. 5/5-4.5-50(b). If the offender was “armed with a firearm,” 15 years will be added to the sentence; if the offender “personally discharges a firearm during the commission of the offense,” 20 years will be added to the sentence; if the offender permanently disables or causes life threatening injury to the victim, the sentence increases to 50 years to life imprisonment; and if a controlled substance is given without the victim’s consent, the sentence increases to imprisonment for 50–60 years. 720 Ill. Comp. Stat. Ann. 5/11-1.40(b)(1), (1.1). Finally, pursuant to 720 Ill. Comp. Stat. Ann. 5/11-1.40(1.2), “A person convicted of predatory criminal sexual assault of a child committed against 2 or more persons regardless of whether the offenses occurred as the result of the same act or of several related or unrelated acts shall be sentenced to a term of natural life imprisonment.”<sup>31</sup>

3. 720 Ill. Comp. Stat. Ann. 5/11-1.60(7)(c), (d) (Aggravated criminal sexual abuse) provides,

(c) A person commits aggravated criminal sexual abuse if:

(1) that person is 17 years of age or over and: (i) commits an act of sexual conduct<sup>32</sup> with a victim who is under 13 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person uses force or threat of force to commit the act; or

....

(d) A person commits aggravated criminal sexual abuse if that person commits an act of sexual penetration<sup>33</sup> or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is at least 5 years older than the victim.

A conviction is punishable as Class 2 felony by imprisonment for 3–7 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-1.60(7)(g); 730 Ill. Comp. Stat. Ann. 5/5-4.5-35(a), 5/5-4.5-50(b).

4. 720 Ill. Comp. Stat. Ann. 5/11-6(a), (a-5) (Indecent solicitation of a child) states,

(a) A person of the age of 17 years and upwards commits indecent solicitation of a child if the person, with the intent that the offense of aggravated criminal sexual assault, criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed, knowingly solicits<sup>34</sup> a child<sup>35</sup> or one whom he or she believes to be a child to perform an act of sexual penetration<sup>36</sup>

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<sup>29</sup> The text of 720 Ill. Comp. Stat. Ann. 5/11-1.40 included here and elsewhere in this report includes amendments made by the passage of House Bill 804 during the 98th session of the Illinois Legislature and enacted by P.A. 98-0370, effective Jan. 1, 2014.

<sup>30</sup> See *supra* note 9 for the definition of “sexual penetration.”

<sup>31</sup> An offender will also face natural life imprisonment if he has previously been convicted under 720 Ill. Comp. Stat. Ann. 5/11-1.20 (Criminal sexual assault), 5/11-1.30 (Aggravated criminal sexual assault), or any law in another state that is substantially equivalent. 720 Ill. Comp. Stat. Ann. 5/11-1.40(b)(2).

<sup>32</sup> See *supra* note 22 for the definition of “sexual conduct.”

<sup>33</sup> See *supra* note 9 for the definition of “sexual penetration.”

<sup>34</sup> 720 Ill. Comp. Stat. Ann. 5/11-6(b) defines “solicit” as “to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind.”

<sup>35</sup> 720 Ill. Comp. Stat. Ann. 5/11-6(b) defines “child” as “a person under 17 years of age.”

<sup>36</sup> See *supra* note 9 for the definition of “sexual penetration.”

or sexual conduct<sup>37</sup> as defined in [720 Ill. Comp. Stat. Ann. 5/11-0.1].

(a-5) A person of the age of 17 years and upwards commits indecent solicitation of a child if the person knowingly discusses an act of sexual conduct or sexual penetration with a child or with one whom he or she believes to be a child by means of the Internet with the intent that the offense of aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed.

A conviction under subsection (a) of this statute with the intent to commit predatory criminal sexual assault of a child or aggravated criminal sexual assault is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000; a conviction under subsection (a) with the intent to commit criminal sexual assault is punishable as a Class 2 felony by imprisonment for 3–7 years and a possible fine up to \$25,000; and a conviction under subsection (a) with the intent to commit aggravated criminal sexual abuse is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-6(c)(1)–(3); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-35(a), 5/5-4.5-40(a), 5/5-4.5-50(b). A conviction under subsection (a-5) of this statute is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-6(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b).

5. 720 Ill. Comp. Stat. Ann. 5/11-6.6(a) (Solicitation to meet a child) states,

A person of the age of 18 or more years commits the offense of solicitation to meet a child if the person while using a computer, cellular telephone, or any other device, with the intent to meet a child<sup>38</sup> or one whom he or she believes to be a child, solicits, entices, induces, or arranges with the child to meet at a location without the knowledge of the child’s parent or guardian and the meeting with the child is arranged for a purpose other than a lawful purpose under Illinois law.

A conviction under this statute is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine up to \$2,500, except that, where the offender “believes he or she is 5 or more years older than the child,” a conviction is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-6.6(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-55(a), (e), 5/5-4.5-45(a), 5/5-4.5-50(b).

6. 720 Ill. Comp. Stat. Ann. 5/11-6.5(a) (Indecent solicitation of an adult) states,

A person commits indecent solicitation of an adult if the person knowingly:

(1) Arranges for a person 17 years of age or over to commit an act of sexual penetration<sup>39</sup> as defined in [720 Ill. Comp. Stat. Ann. 5/11-0.1] with a person:

(i) Under the age of 13 years; or

(ii) Thirteen years of age or over but under the age of 17 years; or

(2) Arranges for a person 17 years of age or over to commit an act of sexual conduct as defined in Section 11-0.1 with a person:

(i) Under the age of 13 years; or

(ii) Thirteen years of age or older but under the age of 17 years.

A conviction under subsection (a)(1)(i) is punishable as a Class X felony by imprisonment for 6–30 years and a possible fine up to \$25,000; a conviction under subsection (a)(1)(ii) is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000; a conviction under subsection (a)(2)(i) is punishable as a Class 2 felony by imprisonment for 3–7 years and a possible fine up to \$25,000; and a conviction under subsection (a)(2)(ii) is punishable as a Class A misdemeanor by imprisonment up to 1 year

<sup>37</sup> See *supra* note 22 for the definition of “sexual conduct.”

<sup>38</sup> 720 Ill. Comp. Stat. Ann. 5/11-6.6(c) defines “child” as “any person under 17 years of age.”

<sup>39</sup> See *supra* note 9 for the definition of “sexual penetration.”



and a possible fine up to \$2,500. 720 Ill. Comp. Stat. Ann. 5/11-6.5(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-30(a), 5/5-4.5-35(a), 5/5-4.5-50(b), 5/5-4.5-55(a), (e).

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

The Illinois prostitution law does refer to the trafficking law. 720 Ill. Comp. Stat. Ann. 5/11-14(d)<sup>40</sup> (Prostitution) states,

[I]f it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of [705 Ill. Comp. Stat. Ann. 405/2-5 and 405/2-6]. Pursuant to the provisions of [705 Ill. Comp. Stat. Ann. 405/2-6], a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of [720 Ill. Comp. Stat. Ann. 5/10-9] to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours . . . .

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

The racketeering statute, 720 Ill. Comp. Stat. Ann. 5/33G-4 (Prohibited activities), states

(a) It is unlawful for any person, who intentionally participates in the operation or management of an enterprise, directly or indirectly, to:

- (1) knowingly do so, directly or indirectly, through a pattern of predicate activity;
- (2) knowingly cause another to violate this Article; or
- (3) knowingly conspire to violate this Article.

Notwithstanding any other provision of law, in any prosecution for a conspiracy to violate this Article, no person may be convicted of that conspiracy unless an overt act in furtherance of the agreement is alleged and proved to have been committed by him, her, or by a coconspirator, but the commission of the overt act need not itself constitute predicate activity underlying the specific violation of this Article.

(b) It is unlawful for any person knowingly to acquire or maintain, directly or indirectly, through a pattern of predicate activity any interest in, or control of, to any degree, of any enterprise, real property, or personal property of any character, including money.

720 Ill. Comp. Stat. Ann. 5/33G-3(f) (Definitions. As used in this Article) defines “pattern of predicate activity” as,

(1) at least 3 occurrences of predicate activity that are in some way related to each other and that have continuity between them, and that are separate acts. Acts are related to each other if they are not isolated events, including if they have similar purposes, or results, or participants, or victims, or are committed a similar way, or have other similar distinguishing characteristics, or are part of the affairs of the same enterprise. There is continuity between acts if they are ongoing over a substantial period, or if they are part of the regular way some entity does business or conducts its affairs; and

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<sup>40</sup> The text of 720 Ill. Comp. Stat. Ann. 5/11-14 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 1872 during the 98th session of the Illinois Legislature and enacted by P.A. 98-0538 (effective Aug. 23, 2013).

(2) which occurs after the effective date of this Article, and the last of which falls within 3 years (excluding any period of imprisonment) after the first occurrence of predicate activity.

720 Ill. Comp. Stat. Ann. 5/33G-3(e) defines “predicate activity” as

any act that is a Class 2 felony or higher and constitutes a violation or violations of any of the following provisions . . . :

(1) under the Criminal Code of 1961: . . . 10–1 (kidnapping), 10–2 (aggravated kidnapping), 10–3.1 (aggravated unlawful restraint), 10–4 (forcible detention), 10–5(b)(10) (child abduction), 10–9 (trafficking in persons, involuntary servitude, and related offenses), 11–1.20 (criminal sexual assault), 11–1.30 (aggravated criminal sexual assault), 11–1.40 (predatory criminal sexual assault of a child), 11–1.60 (aggravated criminal sexual abuse), 11–6 (indecent solicitation of a child), . . . 11–14.3(a)(2)(A) and (a)(2)(B) (promoting prostitution), 11–14.4 (promoting juvenile prostitution), 11–18.1 (patronizing a minor engaged in prostitution; patronizing a juvenile prostitute)<sup>41</sup> . . .

...

Violation of 720 Ill. Comp. Stat. Ann. 5/33G-4(a) is a Class X felony and is punishable by a prison term of 7-30 years “or the sentence applicable to the underlying predicate activity, whichever is higher, and the sentence imposed shall also include restitution, and or a criminal fine, jointly and severally, up to \$250,000 or twice the gross amount of any intended proceeds of the violation, if any, whichever is higher.” 720 Ill. Comp. Stat. Ann. 5/33G-5(a). Violation of 720 Ill. Comp. Stat. Ann. 5/33G-4(b) is also a Class X felony “and the sentence imposed shall also include restitution, and or a criminal fine, jointly and severally, up to \$250,000 or twice the gross amount of any intended proceeds of the violation, if any, whichever is higher.” Additionally, Illinois’s racketeering statute provides for disgorgement. 720 Ill. Comp. Stat. Ann. 5/33G-6 states,

(a) The circuit court shall have jurisdiction to prevent and restrain violations of this Article by issuing appropriate orders, including:

(1) ordering any person to disgorge illicit proceeds obtained by a violation of this Article or divest himself or herself of any interest, direct or indirect, in any enterprise or real or personal property of any character, including money, obtained, directly or indirectly, by a violation of this Article;

Additionally, 720 Ill. Comp. Stat. Ann. 5/33G-4 allows courts to stack convictions:

(e) Any person prosecuted under this Article may be convicted and sentenced either:

(1) for the offense of conspiring to violate this Article, and for any other particular offense or offenses that may be one of the objects of a conspiracy to violate this Article; or  
(2) for the offense of violating this Article, and for any other particular offense or offenses that may constitute predicate activity underlying a violation of this Article.

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<sup>41</sup>Since Illinois’s racketeering statute was recently passed, it is unclear whether inclusion of the patronizing offense as predicate activity indicates an intention to apply this statute to buyers and the courts have not yet had the opportunity to determine its applicability to buyers. For comparison, the federal anti-racketeering provision has been interpreted broadly, reaching “not just [individuals in] upper management but also . . . lower rung participants in the enterprise,” provided those “lower rung participants” have “participated in the operation or management of the enterprise itself.” *Reves v. Ernst & Young*, 507 U.S. 170, 183-184 (1993). However, the federal law has two components which encourage a broad reading. 18 U.S.C. § 1962(c) states, “It shall be unlawful for any person employed by or associated with any enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity . . .” The two broadest phrases in this statute are “associat[ing] with any enterprise” and “participat[ing] . . . in the conduct of such enterprise’s affairs,” yet neither of these phrases were incorporated into the Illinois statute, which limits its reach to those who “intentionally participate[] in the operation or management of an enterprise.” Courts may interpret the Illinois statute as a codification of the “operation or management test” embraced by the Supreme Court in *Reves*, but even with this broad reading, courts may hesitate to find that a buyer is involved in the “operation or management” of a trafficking enterprise because “some part in directing the enterprise’s affairs is required” under the Supreme Court’s analysis. *Reves*, 507 U.S. at 178 (emphasis in original).



***Legal Components:***

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

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***Legal Analysis:***

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

720 Ill. Comp. Stat. Ann. 5/10-9(c)<sup>42</sup> (Trafficking in persons, involuntary servitude, and related offenses) can apply directly to buyers of sex with minors through the term “causes” or following federal precedent through the term “obtain.”<sup>43</sup> Pursuant to 720 Ill. Comp. Stat. Ann. 5/10-9(c) (Trafficking in persons, involuntary servitude, and related offenses),

A person commits involuntary sexual servitude of a minor when he or she knowingly recruits, entices, harbors, transports, provides, or obtains<sup>44</sup> by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age, knowing that the minor will engage in

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<sup>42</sup> See *supra* note 2.

<sup>43</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>44</sup> 720 Ill. Comp. Stat. Ann. 5/10-9(a)(7) defines “obtain” as “in relation to labor or services, to secure performance thereof.”

commercial sexual activity,<sup>45</sup> a sexually-explicit performance,<sup>46</sup> or the production of pornography, or causes or attempts to cause a minor to engage in one or more of those activities and:

- (1) there is no overt force or threat and the minor is between the ages of 17 and 18 years;
  - (2) there is no overt force or threat and the minor is under the age of 17 years; or
- ....

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

Several Illinois CSEC laws include the crime of buying sex acts with a minor.

720 Ill. Comp. Stat. Ann. 5/11-18.1(a), (a-5) (Patronizing a minor engaged in prostitution) separately makes it a crime when a buyer “engages in an act of sexual penetration” or “engages in any touching or fondling” with a prostituted person under 18. A conviction under this statute is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000.<sup>47</sup> 720 Ill. Comp. Stat. Ann. 5/11-18.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).<sup>48</sup>

Additionally, 720 Ill. Comp. Stat. Ann. 5/11-14.1(a)<sup>49</sup> (Solicitation of a sexual act), Illinois’s age-neutral solicitation statute, imposes a heightened penalty where the person from whom a sexual act is solicited is under 18. As a Class 4 felony, a conviction under 720 Ill. Comp. Stat. Ann. 5/11-14.1(a), where the victim is a minor, is punishable by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.1(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b).

A buyer also may be prosecuted under 720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming) for soliciting a child to “engage in any unlawful sexual conduct.”<sup>50</sup> A conviction under this statute is punishable as a Class 4 felony by imprisonment for 1-3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-25(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b). If the buyer travels to meet a solicited child, the buyer also may be prosecuted under 720 Ill. Comp. Stat. Ann. 5/11-26(a) (Traveling to meet a minor). A conviction under this statute is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-26(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).

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

Illinois makes buying sex with an adult and buying sex with a minor separate crimes. 720 Ill. Comp. Stat. Ann. 5/11-14.1(a)<sup>51</sup> (Solicitation of a sexual act), Illinois’s age-neutral solicitation statute, states that it is an offense when someone “offers a person not his or her spouse any money, property, token, object, or article or anything of value for that person or any other person not his or her spouse to perform any act of sexual penetration<sup>52</sup> . . . or any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification.” A conviction under this statute, when the victim is under 18, is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.1(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b). In contrast, when the victim is 18 or over, a conviction is

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<sup>45</sup> 720 Ill. Comp. Stat. Ann. 5/10-9(a)(2) defines “commercial sexual activity” as “any sex act on account of which anything of value is given, promised to, or received by any person.”

<sup>46</sup> 720 Ill. Comp. Stat. Ann. 5/10-9(a)(9) defines “sexually-explicit performance” as “a live, recorded, broadcast (including over the Internet), or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.”

<sup>47</sup> See *supra* note 15.

<sup>48</sup> See *supra* note 13, except that the punishment for conviction is elevated to a Class 2 felony, not a Class X felony.

<sup>49</sup> See *supra* note 8.

<sup>50</sup> See *supra* note 22 for the definition of “sexual conduct.”

<sup>51</sup> See *supra* note 8.

<sup>52</sup> See *supra* note 9 for the definition of “sexual penetration.”

punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine up to \$2,500. 720 Ill. Comp. Stat. Ann. 5/11-14.1(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-55(a), (e).

Additionally, 720 Ill. Comp. Stat. Ann. 5/11-18.1(a), (a-5) (Patronizing a minor engaged in prostitution) separately makes it a crime when a buyer “engages in an act of sexual penetration” or “engages in any touching or fondling” with a prostituted person under 18. A conviction under this statute is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000.<sup>53</sup> 720 Ill. Comp. Stat. Ann. 5/11-18.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).<sup>54</sup>

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

Under 720 Ill. Comp. Stat. Ann. 5/10-9(c)<sup>55</sup> (Trafficking in persons, involuntary servitude, and related offenses), a conviction is punishable as a Class X felony by imprisonment for 6–30 years and a possible fine up to \$25,000, if the victim is under 17. 720 Ill. Comp. Stat. Ann. 5/10-9(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-50(b).<sup>56</sup>

A conviction under 720 Ill. Comp. Stat. Ann. 5/11-18.1(a), (a-5) (Patronizing a minor engaged in prostitution) is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000.<sup>57</sup> 720 Ill. Comp. Stat. Ann. 5/11-18.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).<sup>58</sup>

Buyers also may be prosecuted under 720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming), which is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-25(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b). Lastly, a conviction under 720 Ill. Comp. Stat. Ann. 5/11-26(a) (Traveling to meet a minor) is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-26(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).

Several sexual offenses could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of human trafficking under 720 Ill. Comp. Stat. Ann. 5/10-9.

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>59</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under

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<sup>53</sup> See *supra* note 15.

<sup>54</sup> See *supra* note 13, except that the punishment for conviction is elevated to a Class 2 felony, not a Class X felony.

<sup>55</sup> See *supra* note 2.

<sup>56</sup> See *supra* note 7.

<sup>57</sup> See *supra* note 15.

<sup>58</sup> See *supra* note 13, except that the punishment for conviction is elevated to a Class 2 felony, not a Class X felony.

<sup>59</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).

other federal CSEC laws,<sup>60</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>61</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.*

Several statutes make it a crime to use the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor. 720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming) makes it a crime when a buyer “knowingly uses a computer on-line service, Internet service . . . to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child . . . to commit any sex offense as defined in [730 Ill. Comp. Stat. Ann. 150/2]<sup>62</sup> or to otherwise engage in any unlawful sexual conduct.”<sup>63</sup> A conviction under this statute is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-25(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b).

720 Ill. Comp. Stat. Ann. 5/11-26(a) (Traveling to meet a minor) makes it a crime when a buyer travels to meet a child “for the purpose of engaging in any sex offense as defined in [730 Ill. Comp. Stat. Ann. 150/2],<sup>64</sup> or to otherwise engage in other unlawful sexual conduct<sup>65</sup> with a child . . . after using a computer on-line service, [or] Internet service.” A conviction under this statute is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-26(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).

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

Although 720 Ill. Comp. Stat. Ann. 5/10-9(c) (Trafficking in persons, involuntary servitude, and related offenses), 5/11-25 (Grooming), and 5/11-26 (Traveling to meet a minor) are silent regarding a defense of age mistake, several of Illinois’s CSEC laws expressly provide the defense of age mistake to a buyer. Specifically, 720 Ill. Comp. Stat. Ann. 5/11-14.1(b-5)<sup>66</sup> (Solicitation of a sexual act) and 5/11-18.1(b) (Patronizing a minor engaged in prostitution) provide that a buyer who “reasonably believed” the child was at least 18 may assert such belief as an affirmative defense.

For the offenses that are not applicable to buyers, a mistake of age defense is available for traffickers or facilitators who violate 720 Ill. Comp. Stat. Ann. 5/11-14.4 (Promoting juvenile prostitution). 720 Ill. Comp. Stat. Ann. 5/11-14.4(c).

2.6.1 Recommendation: Amend 720 Ill. Comp. Stat. Ann. 5/11-14.1(b-5) (Solicitation of a sexual act) and 5/11-18.1(b) (Patronizing a minor engaged in prostitution) to eliminate the defense of mistake of age.

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<sup>60</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>61</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>62</sup> *See infra* Section 2.10 for a list of offenses relevant to buyers that are classified as “sex offenses.”

<sup>63</sup> *See supra* note 22 for the definition of “sexual conduct.”

<sup>64</sup> *See infra* Section 2.10 for a list of offenses relevant to buyers that are classified as “sex offenses.”

<sup>65</sup> *See supra* note 22 for the definition of “sexual conduct.”

<sup>66</sup> *See supra* note 8.

2.6.2 Recommendation: Amend 720 Ill. Comp. Stat. Ann. 5/10-9(c) (Trafficking in persons, involuntary servitude, and related offenses), 5/11-25 (Grooming), and 5/11-26 (Traveling to meet a minor) to prohibit buyers of commercial sex with children from asserting an age mistake defense.

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

720 Ill. Comp. Stat. Ann. 5/10-9(c)<sup>67</sup> (Trafficking in persons, involuntary servitude, and related offenses) staggers its penalties based on the age of the victim and the presence of “overt force or threat” of force. If the minor is under 17 or in the presence of “overt force or threat” of force, a conviction under subsection (c) of this statute is punishable as a Class X felony by imprisonment for 6–30 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), (e), 5/5-4.5-50(b). If the minor is 17–18, however, and no force or threat of force is present, a conviction under subsection (c) is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), (e), 5/5-4.5-50(b).

Illinois CSEC laws do not stagger penalties based on the age of the minor involved.

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

Buyers of sex with minors may be subject to fines, asset forfeiture, restitution, and civil remedies. To the extent that 720 Ill. Comp. Stat. Ann. 5/10-9(c)<sup>68</sup> (Trafficking in persons, involuntary servitude, and related offenses) applies to a buyer, a convicted buyer may be required to pay a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-50(b). A buyer convicted under 720 Ill. Comp. Stat. Ann. 5/11-18.1(a), (a-5) (Patronizing a minor engaged in prostitution), 5/11-14.1(a)<sup>69</sup> (Solicitation of a sexual act), 5/11-25(a) (Grooming), or 5/11-26(a) (Traveling to meet a minor), all felonies, also may be required to pay a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-18.1(c), 5/11-14.1(b), 5/11-25(b), 5/11-26(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-50(b). Any fine collected for crimes included in 730 Ill. Comp. Stat. Ann. 5/11-14.1 will be specifically placed in the Specialized Services for Survivors of Human Trafficking Fund.

Additionally, pursuant to 720 Ill. Comp. Stat. Ann. 5/36-1(a),<sup>70</sup>

Any vessel, vehicle, or aircraft may be seized and impounded by the law enforcement agency if the vessel, vehicle, or aircraft is used with the knowledge and consent of the owner in the commission of, or in the attempt to commit as defined in Section 8-4 of this Code, an offense prohibited by: (1) . . . 11-1.20 (criminal sexual assault), 11-1.30 (aggravated criminal sexual assault), 11-1.40 (predatory criminal sexual assault of a child), subsection (a) of Section 11-1.50 (criminal sexual abuse), subsection (a), (c), or (d) of Section 11-1.60 (aggravated criminal sexual abuse), Section 11-6 (indecent solicitation of a child), 11-14.4 (promoting juvenile prostitution except for keeping a place of juvenile prostitution), 11-15.1, 11-19.1, 11-19.2, 11-20.1 (child pornography) . . . .

Buyers may also be subject to mandatory criminal asset forfeiture. Buyers convicted of trafficking or involuntary servitude are subject to asset forfeiture under three provisions. Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-10 (Applicability; offenses), the following offense is subject to forfeiture:

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<sup>67</sup> See *supra* note 2.

<sup>68</sup> See *supra* note 2.

<sup>69</sup> See *supra* note 8.

<sup>70</sup> The text of 720 Ill. Comp. Stat. Ann. 5/6-1 included here and elsewhere in this report includes amendments made by the passage of House Bill 5523 during the 98th session of the Illinois Legislature and enacted by P.A. 98-1020 (effective Jan. 25, 2014).



(1) A violation of Section 10-9 or 10A-10 [Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/10-09 or 720 ILCS 5/10A-10 (repealed)] (involuntary servitude; involuntary servitude of a minor; or trafficking in persons).

720 Ill. Comp. Stat. Ann. 5/10-9(j) also provides,

A person who commits involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons under subsection (b), (c), or (d) of this Section is subject to the property forfeiture provisions set forth in Article 124B [Forfeiture] of the Code of Criminal Procedure of 1963 [725 ILCS 5/124B-5 et seq.].

725 Ill. Comp. Stat. Ann. 5/124B-300<sup>71</sup> (Persons and property subject to forfeiture) states,

A person who commits the offense of involuntary servitude, involuntary servitude of a minor, or trafficking of persons . . . shall forfeit to the State of Illinois any profits or proceeds and any property he or she has acquired or maintained in violation of Section 10A-10 [Repealed] or Section 10-9<sup>72</sup> of the Criminal Code of 1961 or the Criminal Code of 2012, promoting juvenile prostitution, keeping a place of juvenile prostitution, or promoting prostitution that involves keeping a place of prostitution . . . that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of maintaining a person in involuntary servitude or participating in trafficking of persons for forced labor or services.

Buyers may also be subject to the forfeiture laws found under Article 124B (Forfeiture) for repeatedly offending child pornography laws. Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-10 (Applicability; offenses), forfeiture applies to violations of 720 Ill. Comp. Stat. Ann. 5/11-20.1 (Child pornography).<sup>73</sup> 725 Ill. Comp. Stat. Ann. 5/124B-500(3)<sup>74</sup> (Persons and property subject to forfeiture) states that a person who commits child pornography or aggravated child pornography must forfeit, among other things, “[a]ny computer that contains a depiction of child pornography in any encoded or decoded format.”

Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-150, “Upon application of the State, the circuit court presiding over the trial of the person or persons charged with the offense giving rise to forfeiture may enter a restraining order or injunction, or take other appropriate action, to preserve the availability of

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<sup>71</sup> The text of 725 Ill. Comp. Stat. Ann. 5/124B-300 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 3558 during the 98th session of the Illinois Legislature and enacted by P.A. 98-1018 (effective Jan. 1, 2014).

<sup>72</sup> Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-310 (Standard forfeiture provisions incorporated by reference), “All of the provisions of Part 100 of this Article are incorporated by reference into this Part 300.” Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-100 (Definition; “offense”), “For purposes of this Article, ‘offense’ is defined as follows: (1) In the case of forfeiture authorized under Section 10A-15 of the Criminal Code of 1961 or Section 10-9 of the Criminal Code of 2012, ‘offense’ means the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons in violation of Section 10-9 or 10A-10 of those Codes.”

<sup>73</sup> In *People v. Alexander*, the Supreme Court of Illinois held the definition of “child pornography” listed in 720 Ill. Comp. Stat. Ann. 5/11-20.1(f)(7) unconstitutional because the definition could include virtual images of children that the Supreme Court of the United States held in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2003) were protected under the First Amendment. 791 N.E.2d 506, 513-14 (Ill. 2003). The rest of the statute remains valid because subsection (f)(7) was held to be severable. *Id.* at 514.

<sup>74</sup> The text of 725 Ill. Comp. Stat. Ann. 5/124B-500 included here and elsewhere in this report includes amendments made by the passage of House Bill 3558 during the 98th session of the Illinois Legislature and enacted by P.A. 98-1018 (effective Jan. 1, 2014).

property for forfeiture under this Article.” Distribution of the property and sale proceeds is governed by 725 Ill. Comp. Stat. Ann. 5/124B-305<sup>75</sup> which states,

All moneys and the sale proceeds of all other property forfeited and seized under this Part 300 shall be distributed as follows:

- (1) 45% shall be divided equally between all State agencies and units of local government whose officers or employees conducted the investigation that resulted in the forfeiture.
- (2) 50% shall be deposited into the Specialized Services for Survivors of Human Trafficking Fund and disbursed in accordance with subsections (d), (e), and (f) of Section 5-9-1.21 of the Unified Code of Corrections.
- (3) 5% shall be paid to the Office of the State's Attorneys Appellate Prosecutor to train State's Attorneys on forfeiture proceedings and topics related to human trafficking.

Additionally, pursuant to 720 Ill. Comp. Stat. Ann. 5/36.5-5(a), (b)<sup>76</sup> (Vehicle impoundment),

- (a) In addition to any other penalty provided by law, a peace officer who arrests a person for a violation of Section 10-9 (Trafficking in persons, involuntary servitude, and related offenses), 11-14 (Prostitution), 11-14.1 (Solicitation of a sexual act), . . . 11-14.4 (Promoting juvenile prostitution), . . . or 11-18.1 (Patronizing a minor engaged in prostitution) . . . may tow and impound any vehicle used by the person in the commission of the offense. The person arrested for one or more such violations shall be charged a \$ 1,000 fee, to be paid to the unit of government that made the arrest. The person may recover the vehicle from the impound after a minimum of 2 hours after arrest upon payment of the fee.
- (b) \$ 500 of the fee shall be distributed to the unit of government whose peace officers made the arrest, for the costs incurred by the unit of government to tow and impound the vehicle. Upon the defendant's conviction of one or more of the offenses in connection with which the vehicle was impounded and the fee imposed under this Section, the remaining \$ 500 of the fee shall be deposited into the DHS State Projects Fund and shall be used by the Department of Human Services to make grants to non-governmental organizations to provide services for persons encountered during the course of an investigation into any violation of [the above listed offenses], provided such persons constitute prostituted persons or other victims of human trafficking.

Buyers convicted of trafficking in persons are required to make restitution to their victims. 720 Ill. Comp. Stat. Ann. 5/10-9(g) states,

Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) [29 U.S.C. § 201 et seq.] or the Minimum Wage Law [820 ILCS 105/1 et seq.], whichever is greater.

Furthermore, 730 Ill. Comp. Stat. Ann. 5/5-5-6 (Restitution) states that the court shall order restitution for all convictions for violations of its Criminal Code that result in injury to the victim's person or “damage to his or her real or personal property.” In addition, the offender may be required to pay the victim's long-term physical health care costs, which also includes mental health care costs. 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1). An offender may also be required to “meet all or any portion of the financial obligations of treatment, including but not limited to medical, psychiatric, or rehabilitative treatment or psychological counseling, prescribed for the victim or victims of the offense.” 730 Ill. Comp. Stat. Ann. 5/5-5-6(g).

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<sup>75</sup> The text of 725 Ill. Comp. Stat. Ann. 5/124B-305 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 3558 during the 98th session of the Illinois Legislature and enacted by P.A. 98-1018 (effective Jan. 1, 2014).

<sup>76</sup> The text of 720 Ill. Comp. Stat. Ann. 5/36.5-5 included here and elsewhere in this report includes amendments made by the passage of House Bill 2994 during the 98th session of the Illinois Legislature (effective Jan. 1, 2014).

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

Possessing child pornography portraying a minor 13–18 years of age is illegal under 720 Ill. Comp. Stat. Ann. 5/11-20.1(a)(6) (Child pornography),<sup>77</sup> which makes it a crime when any person

with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child . . . whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age . . . engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection;<sup>78</sup> . . .

A conviction under this statute that involves a “film, videotape, or other moving depiction” is punishable as a Class 2 felony by imprisonment for 3–7 years and a fine of \$1,000–\$100,000; otherwise, a conviction is punishable as a Class 3 felony by imprisonment for 2–5 years and a fine of \$1,000–\$100,000. 720 Ill. Comp. Stat. Ann. 5/11-20.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-35(a), 5/5-4.5-40(a).

Buyers who violate 720 Ill. Comp. Stat. Ann. 5/11-20.1(a)(6) will also be subject to the forfeiture provisions listed in Chapter 725, Article 124B (Forfeiture)<sup>79</sup> and will therefore be required to forfeit the child pornography in their possession. 720 Ill. Comp. Stat. Ann. 5/11-20.1(e).

In comparison, a federal conviction for possession of child pornography<sup>80</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>81</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>82</sup>

2.9.1 Recommendation: Amend 720 Ill. Comp. Stat. Ann. 5/11-20.1(a)(6) (Child pornography) to align penalties closer to federal penalties and reflect the seriousness of the offense.

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

Buyers convicted of certain offenses are required to register as sex offenders or sexual predators. 730 Ill. Comp. Stat. Ann. 150/3(a)<sup>83</sup> (Duty to register) states that “[a] sex offender, as defined in Section 2 of this Act

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<sup>77</sup> See *supra* note 73.

<sup>78</sup> See *infra* Section 3.2 for the provisions of 720 Ill. Comp. Stat. Ann. 5/11-20.1(a)(1)(i)–(vii).

<sup>79</sup> See *supra* Section 2.8 for a discussion of the applicable forfeiture provisions.

<sup>80</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>81</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>82</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).

<sup>83</sup> The text of 730 Ill. Comp. Stat. Ann. 150/3 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 1192 during the 98th session of the Illinois Legislature and enacted by P.A. 98-0558 (effective Jan. 1, 2014).

[730 ILCS 150/2], or sexual predator shall . . . register in person and provide accurate information as required by the Department of State Police.”

730 Ill. Comp. Stat. Ann. 150/2(A) (Definitions) defines “sex offender” as “any person who is . . . charged pursuant to Illinois law . . . with a sex offense set forth in subsection (B) of this Section or the attempt to commit an included sex offense, and . . . is convicted of such offense or an attempt to commit such offense.”

730 Ill. Comp. Stat. Ann. 150/2(B) defines “sex offense” as a violation of or attempt to commit a violation of, among others, 720 Ill. Comp. Stat. Ann. 5/11-20.1 (Child pornography), 5/11-18.1 (Patronizing a minor engaged in prostitution), 5/11-25 (Grooming), 5/11-26 (Traveling to meet a minor), or 5/11-1.40 (Predatory criminal sexual assault of a child).

730 Ill. Comp. Stat. Ann. 150/2(E) defines “sexual predator” as “any person who, after July 1, 1999, is . . . [c]onvicted of a violation or attempted violation of,” among others, 720 Ill. Comp. Stat. Ann. 5/11-20.1 or 5/11-1.40 (Predatory criminal sexual assault of a child).

***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.*

A conviction under subsection (c) of 720 Ill. Comp. Stat. Ann. 5/10-9<sup>84</sup> (Trafficking in persons, involuntary servitude, and related offenses),<sup>85</sup> if the victim is under 17 or in the presence of “overt force or threat” of force, is punishable as a Class X felony by imprisonment for 6–30 years and a possible fine up to \$25,000; if the victim is 17–18, with no force or threat, a conviction under subsection (c) is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-30(a), 5/5-4.5-50(b). A conviction under subsection (d) is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b).<sup>86</sup>

A trafficker who violates 720 Ill. Comp. Stat. Ann. 5/11-14.4(a) (Promoting juvenile prostitution) will be guilty of either a Class X felony or Class 1 felony. A conviction under (a)(1) or (a)(2) of this statute is generally punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000.<sup>87</sup> 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b). A conviction under (a)(3) of this statute is punishable as a Class X felony by imprisonment for 6–30 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-50(b). A conviction under (a)(4) of this statute is punishable as a Class X felony by imprisonment for 6–60 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-50(b).<sup>88</sup>

To the extent that the trafficker has custody of a child and is responsible for the child’s care, the trafficker may be convicted under 720 Ill. Comp. Stat. Ann. 5/11-9.1A(a), (f) (Permitting sexual abuse of a child), which is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-9.1A(g); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b).

720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming) and 5/11-26(a) (Traveling to meet a minor) may be used to prosecute traffickers who solicit or attempt to solicit a child for the purpose of committing a violation of 720 Ill. Comp. Stat. Ann. 5/11-14.4 (Promoting juvenile prostitution). A conviction under 720 Ill. Comp. Stat. Ann.

<sup>84</sup> See *supra* note 2.

<sup>85</sup> See *supra* Section 1.1 for the provisions of 720 Ill. Comp. Stat. Ann. 5/10-9(c), (d).

<sup>86</sup> See *supra* note 7.

<sup>87</sup> A conviction under (a)(1) is elevated to being punishable as a Class X felony if it occurs “within 1,000 feet of real property comprising a school.” 720 Ill. Comp. Stat. Ann. 5/11-14.4(d).

<sup>88</sup> See *supra* note 13.

5/11-25(a) is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-25(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b). A conviction under 720 Ill. Comp. Stat. Ann. 5/11-26(a) is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-26(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).

A trafficker may also be convicted under 720 Ill. Comp. Stat. Ann. 5/29B-1(a)(1), (1.5) (Money laundering), which provides,

A person commits the offense of money laundering:

(1) when, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, he or she conducts or attempts to conduct such a financial transaction which in fact involves criminally derived property:

(A) with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained; or

(B) where he or she knows or reasonably should know that the financial transaction is designed in whole or in part:

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property;<sup>89</sup> or

(ii) to avoid a transaction reporting requirement under State law; or

(1.5) when he or she transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument:

(A) with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained; or

(B) knowing, or having reason to know, that the financial transaction is designed in whole or in part:

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the criminally derived property; or

(ii) to avoid a transaction reporting requirement under State law; or

The felony classifications for violations of 720 Ill. Comp. Stat. Ann. 29B-1(a) vary based on the value of the laundered property. Specifically, 720 Ill. Comp. Stat. Ann. 29B-1(c) provides,

(1) Laundering of criminally derived property of a value not exceeding \$10,000 is a Class 3 felony;

(2) Laundering of criminally derived property of a value exceeding \$10,000 but not exceeding \$100,000 is a Class 2 felony;

(3) Laundering of criminally derived property of a value exceeding \$100,000 but not exceeding \$500,000 is a Class 1 felony;

...

(5) Laundering of criminally derived property of a value exceeding \$500,000 is a Class 1 non-probationable felony;

(6) In a prosecution under clause (a)(1.5)(B)(ii) of this Section, the sentences are as follows:

(A) Laundering of property of a value not exceeding \$10,000 is a Class 3 felony;

(B) Laundering of property of a value exceeding \$10,000 but not exceeding \$100,000 is a Class 2 felony;

(C) Laundering of property of a value exceeding \$100,000 but not exceeding \$500,000 is a Class 1 felony;

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<sup>89</sup> 720 Ill. Comp. Stat. Ann. 5/29B-1(b)(4) defines “criminally derived property” as

(A) any property, real or personal, constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law; or (B) any property represented to be property constituting or derived from proceeds obtained, directly or indirectly, from activity that constitutes a felony under State, federal, or foreign law.

(D) Laundering of property of a value exceeding \$500,000 is a Class 1 non-probationable felony.

Class 3 felonies are punishable by imprisonment for 2–5 years, Class 2 felonies are punishable by imprisonment for 3–7 years, Class 1 felonies are punishable by imprisonment for 4–15 years, and Class X felonies are punishable by imprisonment for 6–30 years. 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-35(a), 5/5-4.5-30(a), 5/5-4.5-25(a). In addition to terms of imprisonment, punishments for all felonies involve possible fines up to \$25,000. 730 Ill. Comp. Stat. Ann. 5/5-4.5-50(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA) for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>90</sup> against a minor.

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

720 Ill. Comp. Stat. Ann. 5/11-20.1 (Child pornography)<sup>91</sup> makes it illegal for a trafficker to create and distribute child pornography depicting a child 13–18 years old. 720 Ill. Comp. Stat. Ann. 5/11-20.1(a) states,

A person commits child pornography who:

(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or reasonably should know to be under the age of 18 and at least 13 years of age . . . where such child . . . is:

- (i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or
- (ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child . . . and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child . . . and the sex organs of another person or animal; or
- (iii) actually or by simulation engaged in any act of masturbation; or
- (iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or
- (v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or
- (vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or
- (vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or

(2) with the knowledge of the nature or content thereof, reproduces,<sup>92</sup> disseminates,<sup>93</sup> offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child . . . whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age . . . engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

<sup>90</sup> See *supra* note 59 for the definition of “federal sex offense.”

<sup>91</sup> See *supra* note 73.

<sup>92</sup> 720 Ill. Comp. Stat. Ann. 5/11-20.1(f)(3) defines “reproduce” as “to make a duplication or copy.”

<sup>93</sup> 720 Ill. Comp. Stat. Ann. 5/11-20.1(f)(1) defines “disseminate” as “(i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.”

(3) with knowledge of the subject matter or theme thereof, produces<sup>94</sup> any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age . . . engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

(4) solicits, uses, persuades, induces, entices, or coerces any child whom he or she knows or reasonably should know to be under the age of 18 and at least 13 years of age . . . to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child . . . is or will be depicted, actually or by simulation, in any act, pose or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or

. . .  
(7) solicits, or knowingly uses, persuades, induces, entices, or coerces, a person to provide a child under the age of 18 and at least 13 years of age . . . to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child . . . will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.

A conviction under any of the above provisions is punishable as a Class X felony by imprisonment for 6–30 years and a fine of \$2,000–\$100,000 in cases where “the violation involves a film, videotape, or other moving depiction.” 720 Ill. Comp. Stat. Ann. 5/11-20.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a). Otherwise, a conviction is punishable as a Class 1 felony by imprisonment for 4–15 years and a fine of \$2,000–\$100,000. 720 Ill. Comp. Stat. Ann. 5/11-20.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a). However, the minimum fine for convictions under subsection (a)(3) is \$1,500, and the minimum fine for convictions under subsection (a)(2) is \$1,000. 720 Ill. Comp. Stat. Ann. 5/11-20.1(c).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>95</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>96</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>97</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>98</sup>

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<sup>94</sup> 720 Ill. Comp. Stat. Ann. 5/11-20.1(f)(2) defines “produce” as “to direct, promote, advertise, publish, manufacture, issue, present or show.”

<sup>95</sup> See *supra* note 59 for the definition of “federal sex offense.”

<sup>96</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>97</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>98</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).



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.*

Several statutes make it a crime to use the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor. 720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming) makes it a crime when a person “knowingly uses a computer on-line service, Internet service . . . to seduce, solicit, lure or entice or attempt to seduce, solicit, lure, or entice, a child . . . to commit any sex offense as defined in [730 Ill. Comp. Stat. Ann. 150/2].”<sup>99</sup> A conviction under this statute is punishable as a Class 4 felony by imprisonment for 1–3 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-25(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-45(a), 5/5-4.5-50(b).

720 Ill. Comp. Stat. Ann. 5/11-26(a) (Traveling to meet a minor) makes it a crime when a person travels to meet a child “for the purpose of engaging in any sex offense as defined in [730 Ill. Comp. Stat. Ann. 150/2]<sup>100</sup> . . . after using a computer on-line service, [or] Internet service.” A conviction under this statute is punishable as a Class 3 felony by imprisonment for 2–5 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-26(b); 730 Ill. Comp. Stat. Ann. 5/5-4.5-40(a), 5/5-4.5-50(b).

3.4 *Financial penalties for traffickers, including asset forfeiture, are sufficiently high.*<sup>101</sup>

A trafficker who violates any of the felony trafficking or CSEC offenses, including 720 Ill. Comp. Stat. Ann. 5/10-9(c), (d)<sup>102</sup> (Trafficking in persons, involuntary servitude, and related offenses), 5/11-14.4(a) (Promoting juvenile prostitution), 5/11-9.1A(a), (f) (Permitting sexual abuse of a child), 5/11-25(a) (Grooming), 5/11-26(a) (Traveling to meet a minor), or 5/29B-1(a) (Money laundering) may be required to pay a fine up to \$25,000 for each felony offense. 720 Ill. Comp. Stat. Ann. 5/10-9(c), (d), 5/11-14.4(d), 5/11-9.1A(g), 5/11-25(b), 5/11-26(b), 5/29B-1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-50(b).

Traffickers may also be required to make restitution to their victims. Section 720 Ill. Comp. Stat. Ann. 5/10-9(g) requires a trafficker convicted of violating 720 Ill. Comp. Stat. Ann. 5/10-9(c), (d) to make restitution to the victim.<sup>103</sup> Furthermore, 730 Ill. Comp. Stat. Ann. 5/5-5-6 (Restitution)<sup>104</sup> requires the court to order a trafficker convicted of violating Illinois’s criminal laws to make restitution to a victim who suffered “any injury to his or her person or damage to his or her real or personal property as a result of the criminal act” of the trafficker.

Additionally, pursuant to 720 Ill. Comp. Stat. Ann. 5/36-1(a)<sup>105</sup>,

Any vessel, vehicle, or aircraft may be seized and impounded by the law enforcement agency if the vessel, vehicle, or aircraft is used with the knowledge and consent of the owner in the commission of, or in the attempt to commit as defined in Section 8-4 of this Code, an offense prohibited by: (1) . . . 11-1.20 (criminal sexual assault), 11-1.30 (aggravated criminal sexual assault), 11-1.40 (predatory criminal sexual assault of a child), subsection (a) of Section 11-1.50 (criminal sexual abuse), subsection (a), (c), or (d) of Section 11-1.60 (aggravated criminal sexual abuse), Section 11-6 (indecent solicitation of a child), 11-14.4 (promoting juvenile prostitution except for keeping a place of juvenile prostitution), 11-15.1, 11-19.1, 11-19.2, 11-20.1 (child pornography) . . . .

<sup>99</sup> See *infra* Section 3.5 for a list of offenses applicable to traffickers that are classified as “sex offenses.”

<sup>100</sup> See *infra* Section 3.5 for a list of offenses applicable to traffickers that are classified as “sex offenses.”

<sup>101</sup> Heightened penalties under the following statutes may apply: 730 Ill. Comp. Stat. Ann. 5/5-4.5-95 (General Recidivism Provisions), 5/5-9-1.7(b)(2) (Sexual assault fines) and 5/5-9-1.15(a) (Sex offender fines).

<sup>102</sup> See *supra* note 2.

<sup>103</sup> See *supra* Section 2.8 for the substantive provisions of 720 Ill. Comp. Stat. Ann. 5/10-9(g).

<sup>104</sup> See *supra* Section 2.8 for the substantive provisions of 730 Ill. Comp. Stat. Ann. 5/5-5-6.

<sup>105</sup> See *supra* note 70.

Traffickers are subject to mandatory criminal asset forfeiture for a variety of offenses. Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-10 (Applicability; offenses) the following offenses are subject to forfeiture:

- (1) A violation of Section 10-9 or 10A-10 [Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/10-09 or 720 ILCS 5/10A-10 (repealed)] (involuntary servitude; involuntary servitude of a minor; or trafficking in persons).
- (2) A violation of subdivision (a)(1) of Section 11-14.4 of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/11-14.4] (promoting juvenile prostitution) or a violation of Section 11-17.1 of the Criminal Code of 1961 (keeping a place of juvenile prostitution) [Repealed] .
- (3) A violation of subdivision (a)(4) of Section 11-14.4 of the Criminal Code of 1961 or the Criminal Code of 2012 (promoting juvenile prostitution) or a violation of Section 11-19.2 of the Criminal Code of 1961 (exploitation of a child) [Repealed].
- (4) A second or subsequent violation of Section 11-20 of the Criminal Code of 1961 or the Criminal Code of 2012 (obscenity).
- (5) A violation of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012 (child pornography).
- (6) A violation of Section 11-20.1B [Repealed] or 11-20.3 [Renumbered as Section 11-20.1B—Repealed] of the Criminal Code of 1961 (aggravated child pornography).

....

Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-150 (Protective order; probable cause), “[u]pon application of the State, the circuit court presiding over the trial of the person or persons charged with the offense giving rise to forfeiture may enter a restraining order or injunction, or take other appropriate action, to preserve the availability of property for forfeiture under this Article.”

Property subject to forfeiture pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-300 (Persons and property subject to forfeiture—Involuntary Servitude and Trafficking in Persons) for violations of involuntary servitude includes:

... any profits or proceeds and any property he or she has acquired or maintained in violation of Section 10A-10 [Repealed] or Section 10-9<sup>106</sup> of the Criminal Code of 1961 or the Criminal Code of 2012, promoting juvenile prostitution, keeping a place of juvenile prostitution, or promoting prostitution that involves keeping a place of prostitution . . . that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of maintaining a person in involuntary servitude or participating in trafficking of persons for forced labor or services.

Property subject to forfeiture pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-500<sup>107</sup> (Persons and property subject to forfeiture—Other Sex Offenses) includes the following:

- (1) Any profits or proceeds and any property the person has acquired or maintained in violation of Section 11-20.1 [Child pornography], 11-20.1B [Aggravated child pornography—Repealed], or 11-20.3 [Renumbered as Section 11-20.1B—Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012 that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of child pornography, or aggravated child pornography [Repealed].

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<sup>106</sup> Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-310 (Standard forfeiture provisions incorporated by reference), “All of the provisions of Part 100 of this Article are incorporated by reference into this Part 300.” Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-100 (Definition; “offense”), “For purposes of this Article, ‘offense’ is defined as follows: (1) In the case of forfeiture authorized under Section 10A-15 of the Criminal Code of 1961 or Section 10-9 of the Criminal Code of 2012, ‘offense’ means the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons in violation of Section 10-9 or 10A-10 of those Codes.”

<sup>107</sup> See *supra* note 74.

(2) Any interest in, securities of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled, or conducted in violation of Section 11-20.1 [Child pornography], 11-20.1B [Aggravated child pornography—Repealed], or 11-20.3 [Renumbered as Section 11-20.1B—Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012 that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of child pornography or aggravated child pornography [Repealed].

(3) Any computer that contains a depiction of child pornography in any encoded or decoded format in violation of Section 11-20.1 [Child pornography], 11-20.1B [Aggravated child pornography—Repealed], or 11-20.3 [Renumbered as Section 11-20.1B—Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012. For purposes of this paragraph (3), "computer" has the meaning ascribed to it in Section 17-0.5 of the Criminal Code 2012 [720 ILCS 5/17-0.5].

Distribution of the above property is governed by 725 Ill. Comp. Stat. Ann. § 5/124B-305<sup>108</sup> and § 5/124B-505, both of which state:

All moneys and the sale proceeds of all other property forfeited and seized under this Part . . . shall be distributed as follows:

- (1) 50% shall be divided equally between all State agencies and units of local government whose officers or employees conducted the investigation that resulted in the forfeiture.
- (2) 50% shall be deposited into the DHS State Projects Fund and targeted to services for victims of the offenses of involuntary servitude, involuntary sexual servitude of a minor, and trafficking in persons.

Under section 300, the funds deposited in the DHS State Projects Fund shall be targeted to services for victims of the offenses of involuntary servitude, involuntary sexual servitude of a minor, and trafficking in persons. 725 Ill. Comp. Stat. Ann. § 5/124B-305.

Pursuant to 725 Ill. Comp. Stat. Ann. § 5/124B-405, property subject to forfeiture for obscenity offenses shall include the following:

- (1) Any property constituting or derived from any proceeds that the person obtained, directly or indirectly, as a result of the offense.
- 2) Any of the person's property used in any manner, wholly or in part, to commit the offense.

Distribution of this property is governed by 725 Ill. Comp. Stat. Ann. §5/124B-420, which provides that the moneys and sale proceeds shall be distributed to units of government, the county in which the prosecution was instituted to be used for the “enforcement of laws governing obscenity and child pornography,” and to the Obscenity Profits Forfeiture Fund.

Also, some traffickers may face vehicle impoundment and a \$1000 fee for committing certain offenses, pursuant to 720 Ill. Comp. Stat. Ann. 5/36.5-5(a), (b) (Vehicle impoundment).<sup>109</sup>

Additionally, pursuant to 720 Ill. Comp. Stat. Ann. 5/10-9(g-5), “[i]f the court imposes a fine under subsection (b), (c), or (d) of this Section<sup>110</sup>, it shall be collected and distributed to the Specialized Services for Survivors of Human Trafficking Fund . . .”

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<sup>108</sup> See *supra* note 75.

<sup>109</sup> See *supra* Section 2.8 for the substantive provisions of 720 Ill. Comp. Stat. Ann. 5/36.5-5(a), (b).

<sup>110</sup> Sections (b), (c) and (d) cover acts of involuntary servitude, involuntary sexual servitude of a minor and trafficking in persons, respectively.

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

Traffickers convicted of certain offenses are required to registers as sex offenders or sexual predators. Persons convicted under 720 Ill. Comp. Stat. Ann. 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses) are not required to register as sex offenders. 730 Ill. Comp. Stat. Ann. 150/3(a) (Duty to register) requires sexual offenders,<sup>111</sup> who are persons convicted of sexual offenses, and sexual predators<sup>112</sup> to register. 730 Ill. Comp. Stat. Ann. 150/2(B) (Definitions) provides that a “sex offense” includes violations of 720 Ill. Comp. Stat. Ann. 11-9.1A (Permitting sexual abuse), 5/11-20.1 (Child pornography), 5/11-14.4 (Promoting juvenile prostitution), 5/11-25 (Grooming), or 5/11-26 (Traveling to meet a minor). A “sexual predator” is defined in 730 Ill. Comp. Stat. Ann. 150/2(E)(1) as a person who was convicted after July 1, 1999 of, among other things, 720 Ill. Comp. Stat. Ann. 5/11-14.4(a)(2)–(4), 5/11-20.1.

- 3.5.1 Recommendation: Amend 730 Ill. Comp. Stat. Ann. 150/2(B) (Definitions) to add 720 Ill. Comp. Stat. Ann. 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses) as a conviction for which registration is required.

### 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.*

Illinois law authorizes the termination of parental rights where a parent commits a violation of 720 Ill. Comp. Stat. Ann. 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses) or allows a minor to engage in prostitution. 705 Ill. Comp. Stat. Ann. 405/2-21(5) (Findings and adjudication) provides that the court can terminate parental rights if:

- (i) the original or amended petition contains a request for termination of parental rights and appointment of a guardian with power to consent to adoption; and
- (ii) the court has found by a preponderance of evidence, introduced or stipulated to at an adjudicatory hearing, that the child comes under the jurisdiction of the court as an abused, neglected, or dependent minor<sup>113</sup> under Section 2-18 [705 Ill. Comp. Stat. Ann. 405/2-18]; and
- (iii) the court finds, on the basis of clear and convincing evidence admitted at the adjudicatory hearing that the parent is an unfit person under subdivision D of Section 1 of the Adoption Act [750 ILCS 50/1]; and
- (iv) the court determines in accordance with the rules of evidence for dispositional proceedings, that:
  - (A) it is in the best interest of the minor and public that the child be made a ward of the court;
  - (A-5) reasonable efforts under subsection (1-1) of Section 5 of the Children and Family Services Act [20 ILCS 505/5] are inappropriate or such efforts were made and were unsuccessful; and
  - (B) termination of parental rights and appointment of a guardian with power to consent to adoption is in the best interest of the child pursuant to Section 2-29 [705 ILCS 405/2-29].

705 Ill. Comp. Stat. Ann. 405/2-3(2)(vi), (vii) (Neglected or abused minor) states that “abused” minors include

- (2) any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor’s welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor’s parent:

...

- (vi) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services defined in Section 10-9

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<sup>111</sup> See *supra* Section 2.10 for the definition of “sex offender” provided under 730 Ill. Comp. Stat. Ann. 150/2(A).

<sup>112</sup> See *supra* Section 2.10 for the substantive provisions of 730 Ill. Comp. Stat. Ann. 150/3(a).

<sup>113</sup> 705 Ill. Comp. Stat. Ann. 405/2-4 (Dependent minor) defines a “dependent minor” as including one who is under 18 and “without a parent, guardian or legal custodian.”

[720 Ill. Comp. Stat. Ann. 5/10-9] of the Criminal Code of 1961 or the Criminal Code of 2012, upon such minor; or  
(vii) allows, encourages or requires a minor to commit any act of prostitution, as defined in the Criminal Code of 1961 or the Criminal Code of 2012, and extending those definitions to include minors under 18 years of age.

**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 may be prosecuted under 720 Ill. Comp. Stat. Ann. 5/10-9(d)<sup>114</sup> (Trafficking in persons, involuntary servitude, and related offenses). 720 Ill. Comp. Stat. Ann. 5/10-9(d)(2) expressly makes it a crime when a person “benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act of . . . involuntary sexual servitude of a minor.” A conviction under this statute is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/10-9(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b).

A facilitator may also be prosecuted under 720 Ill. Comp. Stat. Ann. 5/11-14.4(a)(2), (3) (Promoting juvenile prostitution), which is committed when a person “profits from prostitution by any means.” When the victim is 13–18, a conviction under this statute is punishable as a Class 1 felony by imprisonment for 4–15 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a), 5/5-4.5-50(b). When the victim is under 13, a conviction is punishable as a Class X felony by imprisonment for 6–30 years and a possible fine up to \$25,000. 720 Ill. Comp. Stat. Ann. 5/11-14.4(d); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a), 5/5-4.5-50(b).<sup>115</sup>

A facilitator also may be prosecuted under 720 Ill. Comp. Stat. Ann. 5/29B-1(a) (Money laundering),<sup>116</sup> to the extent that “he or she conducts or attempts to conduct such a financial transaction which in fact involves criminally derived property” or “transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument” intending to promote criminal activity or disguise some aspect of criminally derived property. The felony classifications for a conviction under this statute range from a Class 3 felony to a Class X felony, based on the value of the property that is laundered. 720 Ill. Comp. Stat. Ann. 5/29B-1(c).<sup>117</sup> In addition to a possible fine up to \$25,000 for all felonies, Class 3 felonies are punishable by imprisonment for 2–5 years, Class 2 felonies are punishable by imprisonment for 3–7 years, Class 1 felonies are punishable by imprisonment for 4–15 years, and Class X felonies are punishable by imprisonment for 6–30 years. 730 Ill. Comp. Stat. Ann. 5/5-4.5-50(b), 5/5-4.5-40(a), 5/5-4.5-35(a), 5/5-4.5-30(a), 5/5-4.5-25(a).

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

Facilitators may be required to pay fines up to \$25,000 for convictions under 720 Ill. Comp. Stat. Ann. 5/10-

<sup>114</sup> See *supra* note 2.

<sup>115</sup> See *supra* note 13.

<sup>116</sup> See *supra* Section 3.1 for the provisions of 720 Ill. Comp. Stat. Ann. 5/29B-1(a).

<sup>117</sup> See *supra* Section 3.1 for the felony classifications listed in 720 Ill. Comp. Stat. Ann. 5/29B-1(c).

9(c), (d)<sup>118</sup> (Trafficking in persons, involuntary servitude, and related offenses), 5/11-14.4(a)(2), (3) (Promoting juvenile prostitution), or 5/29B-1(a) (Money laundering). 720 Ill. Comp. Stat. Ann. 5/10-9(c), (d), 5/11-14.4(d), 5/29B-1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-50(b).

Facilitators are subject to mandatory criminal asset forfeiture for a variety of offenses. Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-10<sup>119</sup> (Applicability; offenses) the following offenses are subject to forfeiture:

- (1) A violation of Section 10-9 or 10A-10 [Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/10-09 or 720 ILCS 5/10A-10 (repealed)] (involuntary servitude; involuntary servitude of a minor; or trafficking in persons).
- (2) A violation of subdivision (a)(1) of Section 11-14.4 of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/11-14.4] (promoting juvenile prostitution) or a violation of Section 11-17.1 of the Criminal Code of 1961 (keeping a place of juvenile prostitution) [Repealed] .
- (3) A violation of subdivision (a)(4) of Section 11-14.4 of the Criminal Code of 1961 or the Criminal Code of 2012 (promoting juvenile prostitution) or a violation of Section 11-19.2 of the Criminal Code of 1961 (exploitation of a child) [Repealed].
- (4) A second or subsequent violation of Section 11-20 of the Criminal Code of 1961 or the Criminal Code of 2012 (obscenity).
- (5) A second or subsequent violation of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012 (child pornography).

....

Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-150 (Protective order; probable cause), “Upon application of the State, the circuit court presiding over the trial of the person or persons charged with the offense giving rise to forfeiture may enter a restraining order or injunction, or take other appropriate action, to preserve the availability of property for forfeiture under this Article.”

Property seized pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-300<sup>120</sup> (Persons and property subject to forfeiture—Involuntary Servitude and Trafficking in Persons) for violations of involuntary servitude includes:

any profits or proceeds and any property he or she has acquired or maintained in violation of Section 10A-10 [Repealed] or Section 10-9<sup>121</sup> of the Criminal Code of 1961 or the Criminal Code of 2012, promoting juvenile prostitution, keeping a place of juvenile prostitution, or promoting prostitution that involves keeping a place of prostitution . . . that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of maintaining a person in involuntary servitude or participating in trafficking of persons for forced labor or services.

Property subject to forfeiture pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-500<sup>122</sup> (Persons and property subject to forfeiture—Other Sex Offenses) includes the following:

- (1) Any profits or proceeds and any property the person has acquired or maintained in violation of Section 11-20.1 [Child pornography], 11-20.1B [Aggravated child pornography—Repealed], or

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<sup>118</sup> See *supra* note 2.

<sup>119</sup> See *supra* note 71.

<sup>120</sup> See *supra* note 71.

<sup>121</sup> Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-310 (Standard forfeiture provisions incorporated by reference), “All of the provisions of Part 100 of this Article are incorporated by reference into this Part 300.” Pursuant to 725 Ill. Comp. Stat. Ann. 5/124B-100 (Definition; “offense”), “For purposes of this Article, ‘offense’ is defined as follows: (1) In the case of forfeiture authorized under Section 10A-15 of the Criminal Code of 1961 or Section 10-9 of the Criminal Code of 2012, ‘offense’ means the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons in violation of Section 10-9 or 10A-10 of those Codes.”

<sup>122</sup> See *supra* note 74.

11-20.3 [Renumbered as Section 11-20.1B—Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012 that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of child pornography, or aggravated child pornography [Repealed].

(2) Any interest in, securities of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled, or conducted in violation of Section 11-20.1 [Child pornography], 11-20.1B [Aggravated child pornography—Repealed], or 11-20.3 [Renumbered as Section 11-20.1B—Repealed] of the Criminal Code of 1961 or the Criminal Code of 2012 that the sentencing court determines, after a forfeiture hearing under this Article, to have been acquired or maintained as a result of child pornography or aggravated child pornography [Repealed].

(3) Any computer that contains a depiction of child pornography in any encoded or decoded format in violation of Section 11-20.1 [Child pornography], 11-20.1B [Aggravated child pornography—Repealed], or 11-20.3 [Renumbered as Section 11-20.1B—Repealed] of the Criminal Code of 1961. For purposes of this paragraph (3), "computer" has the meaning ascribed to it in Section 17-0.5 of the Criminal Code of 2012.

Also, some facilitators may face vehicle impoundment and a \$1000 fee for committing certain offenses, pursuant to 720 Ill. Comp. Stat. Ann. 5/36.5-5(a), (b) (Vehicle impoundment).<sup>123</sup>

Facilitators may be subject to mandatory orders of restitution under certain code sections. 720 Ill. Comp. Stat. Ann. 5/10-9(g) expressly requires a facilitator convicted of violating 720 Ill. Comp. Stat. Ann. 5/10-9(c), (d) to make restitution,<sup>124</sup> while 730 Ill. Comp. Stat. Ann. 5/5-5-6 (Restitution) requires facilitators of other crimes to make restitution.<sup>125</sup>

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

There is no specific provision in the Illinois code prohibiting child sex tourism.

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

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

Promoting or selling child pornography is illegal in Illinois. 720 Ill. Comp. Stat. Ann. 5/11-20.1(a)(2) (Child pornography) makes it unlawful when any person

with the knowledge of the nature or content thereof, reproduces,<sup>126</sup> disseminates,<sup>127</sup> offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child . . . whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age . . . engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; . . .

A conviction under this statute is punishable as a Class X felony by imprisonment for 6–30 years and a fine of \$1,000–\$100,000 in cases where “the violation involves a film, videotape, or other moving depiction.” 720 Ill. Comp. Stat. Ann. 5/11-20.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-25(a). Otherwise, a conviction is punishable

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<sup>123</sup> See *supra* Section 2.8 for the substantive provisions of 720 Ill. Comp. Stat. Ann. 5/36.5-5(a), (b).

<sup>124</sup> See *supra* Section 2.8 for the provisions of 720 Ill. Comp. Stat. Ann. 5/10-9(g).

<sup>125</sup> See *supra* Section 2.8 for the provisions of 730 Ill. Comp. Stat. Ann. 5/5-5-6.

<sup>126</sup> See *supra* note 92 for the definition of “reproduce.”

<sup>127</sup> See *supra* note 93 for the definition of “disseminate.”



as a Class 1 felony by imprisonment for 4–15 years and a fine of \$1,000–\$100,000. 720 Ill. Comp. Stat. Ann. 5/11-20.1(c); 730 Ill. Comp. Stat. Ann. 5/5-4.5-30(a).

**Legal Components:**

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

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**Legal Analysis:**

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

A commercially sexually exploited child is defined as a victim under several provisions of Illinois law. “Trafficking victim” is defined in 720 Ill. Comp. Stat. Ann. 5/10-9(a)(10)<sup>128</sup> as “a person subjected to the practices set forth in subsection (b), (c), or (d),” which includes involuntary sexual servitude of a minor.

For purposes of the civil cause of action provided in 740 Ill. Comp. Stat. Ann 128/15 (Cause of action) of Illinois’s Predator Accountability Act, 740 Ill. Comp. Stat. Ann 128/10 (Definitions) defines “victim of the sex trade” as

- (1) soliciting for a prostitute: the prostitute who is the object of the solicitation;
- (2) soliciting for a juvenile prostitute: the juvenile prostitute . . . who is the object of the solicitation;
- (3) promoting prostitution . . . or pandering: the person intended or compelled to act as a prostitute;
- (4) keeping a place of prostitution: any person intended or compelled to act as a prostitute, while present at the place, during the time period in question;
- (5) keeping a place of juvenile prostitution: any juvenile intended or compelled to act as a prostitute, while present at the place, during the time period in question;
- (6) promoting prostitution . . . or pimping: the prostitute from whom anything of value is received;

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<sup>128</sup> See *supra* note 2.

- (7) promoting juvenile prostitution as described in [720 Ill. Comp. Stat. Ann. 5/11-14.4(a)(2), (3)] or juvenile pimping and aggravated juvenile pimping: the juvenile . . . from whom anything of value is received for that person’s act of prostitution;
- (8) promoting juvenile prostitution as described in [720 Ill. Comp. Stat. Ann. 5/11-14.4(a)(4)] or exploitation of a child: the juvenile . . . intended or compelled to act as a prostitute or from whom anything of value is received for that person’s act of prostitution;
- (9) obscenity: any person who appears in or is described or depicted in the offending conduct or material;
- (10) child pornography or aggravated child pornography: any child . . . who appears in or is described or depicted in the offending conduct or material; or
- (11) trafficking of persons or involuntary servitude: a “trafficking victim” as defined in [720 Ill. Comp. Stat. Ann. 5/10-9].

For purposes of the Rights of Crime Victims and Witnesses Act, 725 Ill. Comp. Stat. Ann. 120/3(a) (Definitions) defines “crime victim” and “victim” as

- (1) a person physically injured in this State as a result of a violent crime perpetrated or attempted against that person or (2) a person who suffers injury to or loss of property as a result of a violent crime<sup>129</sup> perpetrated or attempted against that person or (3) a single representative who may be the spouse, parent, child or sibling of a person killed as a result of a violent crime perpetrated against the person killed or the spouse, parent, child or sibling of any person granted rights under this Act who is physically or mentally incapable of exercising such rights, except where the spouse, parent, child or sibling is also the defendant or prisoner or (4) any person against whom a violent crime has been committed . . . .

For purposes of eligibility to receive crime victims’ compensation, 740 Ill. Comp. Stat. Ann. 45/2(d) (Definitions) defines a “victim” in part as “a person killed or injured in this State as a result of a crime of violence perpetrated or attempted against him or her.” 740 Ill. Comp. Stat. Ann. 45/2(c) defines a “crime of violence” to include the offenses listed in 720 Ill. Comp. Stat. Ann. 5/11-1.40 (Predatory criminal sexual assault of a child), 5/11-1.60 (Aggravated criminal sexual abuse), 5/11-20.1 (Child pornography), and 5/11-14.4(a)(4) (Promoting juvenile prostitution).

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

The consent of a minor to a commercial sex act may constitute a defense to certain offenses. Many statutes do not expressly prohibit consent as a defense, including 720 Ill. Comp. Stat. Ann. 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses), 5/11-14.1<sup>130</sup> (Solicitation of a sexual act), 5/11-14.4 (Promoting juvenile prostitution), 5/11-18.1 (Patronizing a minor engaged in prostitution), 5/11-9.1A (Permitting sexual abuse of a child), 5/11-25 (Grooming), and 5/11-26 (Traveling to meet a minor).

In contrast, for the purpose of recovering civil damages from individuals who “recruited, harmed, profited from, or maintained” victims in the sex trade industry,<sup>131</sup> 740 Ill. Comp. Stat. Ann. 128/25(a) (Non-defenses) states,

- (a) It is not a defense to an action brought under this Act that:
  - (1) the victim of the sex trade and the defendant had a marital or consenting sexual relationship;
  - . . .

<sup>129</sup> 725 Ill. Comp. Stat. Ann. 120/3(c) defines a “violent crime” in part, as “any offense involving sexual exploitation . . . or a violation of Section 11-20.1 [Child pornography], [or] 11-20.1B [Aggravated child pornography] [Repealed].”

<sup>130</sup> See *supra* note 8.

<sup>131</sup> 740 Ill. Comp. Stat. Ann. 128/5 states that the act’s purpose is “to allow persons who have been or who are subjected to the sex trade to seek civil damages and remedies from individuals and entities that recruited, harmed, profited from, or maintained them in the sex trade.”

- (3) the victim of the sex trade was paid or otherwise compensated for sex trade activity;
- ...
- (5) the victim of the sex trade made no attempt to escape, flee, or otherwise terminate contact with the defendant;
- (6) the victim of the sex trade consented to engage in acts of the sex trade;
- ....

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

Illinois’s prostitution law does not apply to minors under 18. 720 Ill. Comp. Stat. Ann. 5/11-14(d)<sup>132</sup> (Prostitution) states,

[I]f it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of [705 Ill. Comp. Stat. Ann. 405/2-5 and 405/2-6]. Pursuant to the provisions of [705 Ill. Comp. Stat. Ann. 405/2-6], a law enforcement officer who takes a person under 18 years of age into custody under this Section shall immediately report an allegation of a violation of [720 Ill. Comp. Stat. Ann. 5/10-9] to the Illinois Department of Children and Family Services State Central Register, which shall commence an initial investigation into child abuse or child neglect within 24 hours . . . .

720 Ill. Comp. Stat. Ann. 5/11-14.3(a)(2)(C)<sup>133</sup> (Promoting prostitution) also clarifies that an offense for profiting from prostitution “does not apply to a person engaged in prostitution who is under 18 years of age.” As does 720 Ill. Comp. Stat. Ann. 5/11.14.1(c)<sup>134</sup> (Solicitation of a Sexual Act), which states that, “[t]his Section does not apply to a person engaged in prostitution who is under 18 years of age.”

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

**Child Identified as Abused/Neglected/Dependent**

Pursuant to 705 Ill. Comp. Stat. Ann. 405/2-3(1)(b),<sup>135</sup> a sexually exploited child is likely to be identified as abused or neglected. Illinois does not specifically use the term “caregiver” in its child welfare statutes, however if a child is identified as abused or neglected, the definition of “person responsible for the child’s welfare” under 325 Ill. Comp. Stat. Ann. 5/3(h)<sup>136</sup> is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

A domestic minor sex trafficking victim could be identified and referred to the Illinois Department of Children and Families Services (DCFS) through a report of abuse, which is defined to include commercial sexual exploitation of minors.

*I. Initial Custody:*

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<sup>132</sup> See *supra* note 40.

<sup>133</sup> The text of 720 Ill. Comp. Stat. Ann. 5/11-14.3 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 3558 during the 98th session of the Illinois Legislature and enacted by P.A. 98-1018 (effective Jan. 1, 2014).

<sup>134</sup> See *supra* note 8.

<sup>135</sup> See *infra* section 5.5 for a full analysis of the definition of “abuse” as it relates to identification of sexually exploited children.

<sup>136</sup> See *infra* section 5.6 for a full analysis of the definition of “caregiver.”

a. Authority for initial custody

The Abused and Neglected Child Reporting Act authorizes a child to be taken into temporary protective custody without a court order in certain situations. 325 Ill. Comp. Stat. Ann. 5/5 (Temporary protective custody) permits a law enforcement agency, employee of the Department, or doctor treating a child to

take or retain temporary protective custody of the child without the consent of the person responsible for the child's welfare, if (1) he has reason to believe that the child cannot be cared for at home or in the custody of the person responsible for the child's welfare without endangering the child's health or safety; and (2) there is not time to apply for a court order . . . .

In addition, 705 Ill. Comp. Stat. Ann. 405/2-5(1), (2) (Taking into custody) provides,

(1) A law enforcement officer may, without a warrant, take into temporary custody a minor (a) whom the officer with reasonable cause believes to be a person described in [705 Ill. Comp. Stat. Ann. 405/2-3 (Neglected or abused minor)<sup>137</sup> or 405/2-4 (Dependent minor)<sup>138</sup>]; (b) who has been adjudged a ward of the court and has escaped from any commitment ordered by the court under this Act; or (c) who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment or hospitalization.

(2) Whenever a petition has been filed under [705 Ill. Comp. Stat. Ann 405/2-13] and the court finds that the conduct and behavior of the minor may endanger the health, person, welfare, or property of himself or others or that the circumstances of his home environment may endanger his health, person, welfare or property, a warrant may be issued immediately to take the minor into custody.

b. Placement:

Pursuant to 705 Ill. Comp. Stat. Ann. 405/5-410(1) (Non-secure custody or detention), a minor arrested or taken into custody "who requires care away from his or her home but who does not require physical restriction shall be given temporary care in a foster family home or other shelter facility."

II. *Process following initial custody:*

The Department of Child and Family Services is required to "commence an initial investigation into child abuse or child neglect within 24 hours" of a report of a violation of a violation of 720 Ill. Comp. Stat. Ann 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses). 720 Ill. Comp. Stat. Ann. 5/11-14(d)<sup>139</sup>.

Under 325 Ill. Comp. Stat. Ann. 5/7.4(a-5) (Investigation procedures), the Department of Children and Family Services (Department) must "determine whether to conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for child abuse or neglect." Pursuant to 325 Ill. Comp. Stat. Ann. 5/8.2 (Service plan; report to General Assembly),

If the Child Protective Service Unit determines, following an investigation . . . that there is credible evidence that the child is abused or neglected,<sup>140</sup> the Department shall assess the family's need for services, and, as necessary, develop, with the family, an appropriate service plan for the family's voluntary acceptance or refusal. . . .

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<sup>137</sup> See *infra* Section 5.5 for the definition of "abused child" and "neglected child."

<sup>138</sup> See *supra* note 113 for the definition of "dependent minor."

<sup>139</sup> See *supra* note 40.

<sup>140</sup> See *infra* Section 5.5 for the definitions of "abused child" and "neglected child."

. . . Family preservation services shall be offered, where safe and appropriate, to prevent the placement of children in substitute care when the children can be cared for at home or in the custody of the person responsible for the children's welfare without endangering the children's health or safety, to reunite them with their families if so placed when reunification is an appropriate goal, or to maintain an adoptive placement. . . .

After a probation officer or other public officer completes an initial investigation and determines that the child should remain in custody, the officer must "cause a petition to be filed" under 705 Ill. Comp. Stat. Ann. 405/2-9(2). Pursuant to 705 Ill. Comp. Stat. 405/2-13(1), "Any adult person, any agency or association by its representative may file, or the court on its own motion, consistent with the health, safety and best interests of the minor may direct the filing through the State's Attorney of a petition in respect of a minor under this Act..."

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

When placed in temporary custody, 705 Ill. Comp. Stat. Ann. 405/2-9(1) (Setting of temporary custody hearing; notice; release) specifies that a minor "must be brought before a judicial officer within 48 hours . . . for a temporary custody hearing to determine whether" the child will be released or held further in custody. At the custody hearing, pursuant to 705 Ill. Comp. Stat. Ann. 405/2-10(2) (Temporary custody hearing), "If the court finds that there is probable cause to believe that the minor is abused, or neglected or dependent," the court may enter an order releasing the child to the child's parent, guardian, or custodian, or remove the child from the child's home and prescribe shelter care. 705 Ill. Comp. Stat. Ann. 405/2-10(2) further explains in part,

In determining the health, safety and best interests of the minor to prescribe shelter care, the court must find that it is a matter of immediate and urgent necessity for the safety and protection of the minor or of the person or property of another that the minor be placed in a shelter care facility<sup>141</sup> or that he or she is likely to flee the jurisdiction of the court, and must further find that reasonable efforts have been made or that, consistent with the health, safety and best interests of the minor, no efforts reasonably can be made to prevent or eliminate the necessity of removal of the minor from his or her home. . . .

. . . .  
Once the court finds that it is a matter of immediate and urgent necessity for the protection of the minor that the minor be placed in a shelter care facility, the minor shall not be returned to the parent, custodian or guardian until the court finds that such placement is no longer necessary for the protection of the minor.

705 Ill. Comp. Stat. Ann. 405/5-501(2) (Detention or shelter care hearing) states in part,

If the court finds that it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another that the minor be detained or placed in a shelter care facility or that he or she is likely to flee the jurisdiction of the court, the court may prescribe detention or shelter care and order that the minor be kept in a suitable place designated by the court or in a shelter care facility designated by the Department of Children and Family Services or a licensed child welfare agency; . . . .

### *IV. Adjudication:*

An adjudicatory hearing must be held within 90 days, unless an earlier date is required. 705 Ill. Comp. Stat. 405/2-14(b). Pursuant to 705 Ill. Comp. Stat. 405/2-18(1), "At the adjudicatory hearing, the court shall first consider only the question whether the minor is abused, neglected or dependent."

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<sup>141</sup> 705 Ill. Comp. Stat. Ann. 405/2-7(2) defines "shelter care" as "a physically unrestrictive facility designated by the Department of Children and Family Services or a licensed child welfare agency, or other suitable place designated by the court for a minor who requires care away from his or her home."

V. *Outcomes*

Under 705 Ill. Comp. Stat. Ann. 405/2-23(1)(a) (Kinds of dispositional orders), when a child is adjudicated abused, neglected, or dependent, the child may be

(1) continued in the custody of his or her parents, guardian or legal custodian; (2) placed in accordance with Section 2-27 [705 ILCS 405/2-27]; (3) restored to the custody of the parent, parents, guardian, or legal custodian, provided the court shall order the parent, parents, guardian, or legal custodian to cooperate with the Department of Children and Family Services and comply with the terms of an after-care plan or risk the loss of custody of the child and the possible termination of their parental rights; or (4) ordered partially or completely emancipated in accordance with the provisions of the Emancipation of Minors Act [750 ILCS 30/1 et seq.].

However, in any case in which a minor is found by the court to be neglected or abused under Section 2-3 [Neglected or abused minor] of this Act, custody of the minor shall not be restored to any parent, guardian or legal custodian whose acts or omissions or both have been identified . . . as forming the basis for the court's finding of abuse or neglect . . . .

705 Ill. Comp. Stat. Ann. 405/2-27 (Placement; legal custody or guardianship) authorizes the court to

- (a) place the minor in the custody of a suitable relative or other person as legal custodian or guardian; (a-5) with the approval of the Department of Children and Family Services, place the minor in the subsidized guardianship of a suitable relative or other person as legal guardian; . . .
- (b) place the minor under the guardianship of a probation officer;
- (c) commit the minor to an agency for care or placement, except an institution under the authority of the Department of Corrections or of the Department of Children and Family Services;
- (d) commit the minor to the Department of Children and Family Services for care and service . . . .

**Child Identified as Requiring Authoritative Intervention<sup>142</sup>**

A sexually exploited minor may be identified as a child requiring authoritative intervention under 705 Ill. Comp. Stat. 405/3-3(1) (Minor requiring authoritative intervention.) This section states that children who require authoritative intervention include any child who is :

- (a) absent from home without consent of parent, guardian or custodian, or
- (b) beyond the control of his or her parent, guardian or custodian, in circumstances which constitute a substantial or immediate danger to the minor's physical safety

*I. Initial Custody:*

a. Authority for initial custody

Pursuant to 705 Ill. Comp. Stat. 405/3-7 (Taking into temporary custody),

- (1) A law enforcement officer may, without a warrant, take into temporary custody a minor
  - (a) whom the officer with reasonable cause believes to be a minor requiring authoritative intervention;
  - (b) who has been adjudged a ward of the court and has escaped from any commitment ordered by the court under this Act;

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<sup>142</sup> Some domestic minor sex trafficking victims may be identified as addicted, directing them into a separate process. Pursuant to 705 ILCS 405/4-1 (Jurisdictional facts), “[p]roceedings may be instituted under the provisions of this Article concerning boys and girls who are addicted as defined in Section 4-3.”

## **Child Identified as Delinquent**

A victim of domestic minor sex trafficking might also be brought into custody and placed through delinquency procedures; however, this is less likely in Illinois as 720 Ill. Comp. Stat. Ann. 5/11-14(d) (Prostitution) makes minors under the age of 18 specifically immune from prosecution for prostitution.

### *I. Initial Custody:*

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

Under 705 Ill. Comp. Stat. Ann 405/5-401(1) (Arrest and taking into custody of a minor.), a law enforcement officer may arrest a child when the office has probable cause to believe that the minor is delinquent.

#### *b. Placement:*

Pursuant to 705 Ill. Comp. Stat. Ann. 405/5-410(1) (Non-secure custody or detention), a minor arrested or taken into custody “who requires care away from his or her home but who does not require physical restriction shall be given temporary care in a foster family home or other shelter facility.”

### *II. Process following initial custody:*

Once a child has been taken into custody, the arresting law enforcement officer must notify the child’s parents or guardian, and determine whether to refer the child to court, or offer the child a station adjustment, which would divert the child out of an adjudicatory hearing. 705 Ill. Comp. Stat. Ann 405/5-405 (Duty of officer; admissions by minor). If a child is not diverted, the state’s attorney will file a petition with the court alleging delinquency. 705 Ill. Comp. Stat. Ann. 405/5-520 (Petition; supplemental petitions).

### *III. Placement process pending adjudication:*

Pursuant to 705 Ill. Comp. Stat. Ann. 405/5-415 (Setting of detention or shelter care hearing; release), “a shelter hearing of detention hearing must be held within 40 hours of a child being taken into initial custody.”

705 Ill. Comp. Stat. Ann. 405/5-501(2) (Detention or shelter care hearing) states in part,

If the court finds that it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another that the minor be detained or placed in a shelter care facility or that he or she is likely to flee the jurisdiction of the court, the court may prescribe detention or shelter care and order that the minor be kept in a suitable place designated by the court or in a shelter care facility designated by the Department of Children and Family Services or a licensed child welfare agency; . . . .

### *IV. Adjudication or referral to alternate process:*

#### *a. Adjudication:*

An adjudicatory hearing must be held within 120 days of the filing of a petition. 705 Ill. Comp. Stat. Ann. 405/5-601(1) (Trial). Under 705 Ill. Comp. Stat. Ann. 405/5-620 (Findings), at the hearing, the court will determine whether or not the minor is guilty of the offenses alleged in the petition.

#### *b. Referral to Alternate Process:*

Victims of domestic minor sex trafficking encountered through arrest by law enforcement may receive a



protective response through 720 Ill. Comp. Stat. Ann. 5/11-14(d) (Prostitution), which states that “if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person . . . shall be subject to . . . temporary protective custody.”<sup>143</sup> The detaining officer is instructed to report to the Illinois Department of Children and Family Services State Central Register if someone alleges that there has been a violation of 720 Ill. Comp. Stat. Ann 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses). 720 Ill. Comp. Stat. Ann. 5/11-14(d). Pursuant to 705 Ill. Comp. Stat. Ann. 405/5-301 (Station Adjustments), a child arrested for an offense other than prostitution may be able to participate in a diversionary process, called a station adjustment. The station adjustment may allow the child to avoid an adjudicatory hearing, and detention. A station adjustment will include certain conditions that must be agreed to, and followed by the minor, including participation in services. 705 Ill. Comp. Stat. Ann. 405/5-301.

## V. *Outcomes*

In the event that a domestic minor sex trafficking victim is found to be a delinquent minor for having committed some crime other than 720 Ill. Comp. Stat. Ann. 5/11-14 (Prostitution), under 705 Ill. Comp. Stat. Ann. 405/5-710 (Kinds of sentencing orders), the court may order a minor to be

- (i) put on probation or conditional discharge and released to his or her parents, guardian or legal custodian . . .
- (ii) placed in accordance with Section 5-740 [705 ILCS 405/5-740], with or without also being put on probation or conditional discharge;  
. . .
- (iv) placed in the guardianship of the Department of Children and Family Services, but only if the delinquent minor is under 15 years of age or, pursuant to Article II [Abused, neglected or dependent minors] of this Act, a minor for whom an independent basis of abuse, neglect, or dependency exists. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency;
- (v) placed in detention for a period not to exceed 30 days, either as the exclusive order of disposition or, where appropriate, in conjunction with any other order of disposition issued under this paragraph, provided that any such detention shall be in a juvenile detention home and the minor so detained shall be 10 years of age or older. However, the 30-day limitation may be extended by further order of the court for a minor under age 15 committed to the Department of Children and Family Services if the court finds that the minor is a danger to himself or others. . . .  
. . .
- (viii) put on probation or conditional discharge and placed in detention under Section 3-6039 of the Counties Code [55 ILCS 5/3-6039] for a period not to exceed the period of incarceration permitted by law for adults found guilty of the same offense or offenses for which the minor was adjudicated delinquent, and in any event no longer than upon attainment of age 21; . . . [or]  
. . .
- (x) placed in electronic home detention under Part 7A of this Article [705 ILCS 405/5-7A-101 et seq.].

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<sup>143</sup> 705 Ill. Comp. Stat. Ann. 405/2-7 (Temporary custody) defines “temporary custody” as

- temporary placement of the minor out of the custody of his or her guardian or parent, and includes the following:
- (1) “Temporary protective custody” means custody within a hospital or other medical facility or a place previously designated for such custody by the Department of Children and Family Services, subject to review by the court, including a licensed foster home, group home, or other institution. However, such place shall not be a jail or other place for the detention of the criminal or juvenile offenders.
  - (2) “Shelter care” means a physically unrestrictive facility designated by the Department of Children and Family Services or a licensed child welfare agency, or other suitable place designated by the court for a minor who requires care away from his or her home.

- 5.4.1 Recommendation: Establish a mandatory response law directing any minor involved in prostitution, pornography or sexual performance into specialized services and shelter.

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

Commercial sexual exploitation is identified as a type of abuse under Illinois’s child protection and child abuse reporting laws. 705 Ill. Comp. Stat. Ann. 405/2-3(1)(b)<sup>144</sup> (Neglected or abused minor)<sup>145</sup> states that a neglected minor includes one “whose environment is injurious to his or her welfare.” 705 Ill. Comp. Stat. Ann. 405/2-3(2)(vi), (vii) provides that an abused minor includes

(2) any minor under 18 years of age whose parent or immediate family member, or any person responsible for the minor’s welfare, or any person who is in the same family or household as the minor, or any individual residing in the same home as the minor, or a paramour of the minor’s parent:

...

(vi) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services defined in Section 10-9 [720 Ill. Comp. Stat. Ann. 5/10-9] of the Criminal Code of 1961 or the Criminal Code of 2012, upon such minor; or

(vii) allows, encourages or requires a minor to commit any act of prostitution, as defined in the Criminal Code of 1961 or the Criminal Code of 2012, and extending those definitions to include minors under 18 years of age.

Similarly, 325 Ill. Comp. Stat. Ann. 5/3 (Definitions)<sup>146</sup> defines an “abused child” in part as one

whose parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent:

...

(h) commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons as defined in [720 Ill. Comp. Stat. Ann. 5/10-9] against the child.

Under 325 Ill. Comp. Stat. Ann. 5/3, a “neglected child” includes one

who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care . . . necessary for a child’s well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is subjected to an environment which is injurious insofar as (i) the child’s environment creates a likelihood of harm to the child’s health, physical well-being, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities . . .

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<sup>144</sup> See *infra* section 5.5 for a full analysis of the definition of “abuse” as it relates to identification of sexually exploited children.

<sup>145</sup> Under Juvenile Court Act of 1987, Article II. Abused, Neglected or Dependent Minors.

<sup>146</sup> Under the Abused and Neglected Child Reporting Act.

- 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.*

No definition of “caregiver” or “person responsible for the child’s welfare” is provided within Illinois’s child protection laws; however, 325 Ill. Comp. Stat. Ann. 5/3(h) (Definitions), Illinois’s child abuse reporting law, defines a “person responsible for the child’s welfare” as including “any other person responsible for the child’s welfare at the time of the alleged abuse or neglect.”

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

A domestic minor sex trafficking victim may be eligible to obtain crime victims compensation. 740 Ill. Comp. Stat. Ann. 45/2(d) defines a “victim” to include “a person killed or injured in this State as a result of a crime of violence perpetrated or attempted against him or her.” 740 Ill. Comp. Stat. Ann. 45/2(c) defines a “crime of violence” to include the offenses listed in 720 Ill. Comp. Stat. Ann. 5/11-1.40 (Predatory criminal sexual assault), 5/11-1.60 (Aggravated criminal sexual abuse), 5/11-20.1 (Child pornography), and 5/11-14.4(a)(4) (Promoting juvenile prostitution).

740 Ill. Comp. Stat. Ann. 45/6.1 (Right to compensation) specifies the requirements for receiving compensation under the Crime Victims Compensation Act, several of which could make prostituted victims of domestic minor sex trafficking ineligible to receive compensation. 740 Ill. Comp. Stat. Ann. 45/6.1(a) requires the victim to file a claim for compensation “[w]ithin 2 years of the occurrence of the crime, or within one year after a criminal charge of a person for an offense, upon which the claim is based,” unless the victim is under 18 or is under another “legal disability” at the time of the offense, in which case the victim may file an application for compensation “within 2 years after he attains the age of 18 years or the disability is removed . . . . Legal disability includes a diagnosis of posttraumatic stress disorder.” Similarly, under 740 Ill. Comp. Stat. Ann. 45/6.1(b), victims must report the crime to law enforcement within 72 hours of the crime’s commission, with later notice permissible only if “the applicant establishes that such notice was timely under the circumstances.” For certain non-CSEC sex offenses, 740 Ill. Comp. Stat. Ann. 45/6.1(b-1) provides an extended reporting period of 7 days after the perpetration of the crime, or longer if the “applicant establishes that the notice was timely under the circumstances.” No explanation is provided as to what constitutes “timely under the circumstances.”

Additionally, 740 Ill. Comp. Stat. Ann. 45/6.1(d) disqualifies an applicant if the applicant is the “offender or an accomplice of the offender and the award would . . . unjustly benefit the offender or his accomplice.” 740 Ill. Comp. Stat. Ann. 45/6.1(e) requires that the injury to the victim “was not substantially attributable to his own wrongful act and was not substantially provoked by the victim.” 740 Ill. Comp. Stat. Ann. 45/10.1(d) (Amount of compensation) further limits the amount a domestic minor sex trafficking victim may receive by stating,

An award shall be reduced or denied according to the extent to which the victim’s acts or conduct provoked or contributed to his or her injury or death, or the extent to which any prior criminal conviction or conduct of the victim may have directly or indirectly contributed to the injury or death of the victim.

However, funds are specifically available to minor trafficking victims for tattoo removal. Pursuant to 740 Ill. Comp. Stat. Ann. 45/2<sup>147</sup> (Definitions), a victim of trafficking may seek compensation under the Crime Victims Compensation Act, “for costs associated with trafficking tattoo removal by a person authorized or licensed to perform the specific removal procedure.”

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<sup>147</sup> The text of 740 Ill. Comp. Stat. Ann. 45/2 included here and elsewhere in this report includes amendments made by the passage of House Bill 2640 during the 98th session of the Illinois Legislature and enacted by P.A. 98-0435 (effective Jan.1 2014).

- 5.7.1 Recommendation: Amend 740 Ill. Comp. Stat. Ann. 45/6.1 (Right to compensation) to create exceptions for child victims of trafficking or commercial sexual exploitation from filing requirements and ineligibility factors.

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

Illinois law allows for privacy of child victims of certain offenses. Pursuant to 725 Ill. Comp. Stat. Ann. 5/111-3(a-5)<sup>148</sup> (Form of charge), in a charging document a child that is the victim of an illegal sexual act may be identified by, “name, initials, or description.”

725 Ill. Comp. Stat. Ann. 5/115-7(a) (Prior sexual activity or reputation of victim of sexual offense) makes evidence relating to the prior sexual activity or reputation of an alleged victim of a sexual offense inadmissible in any prosecution for specified sex offenses,<sup>149</sup> unless the evidence relates to “the past sexual conduct of the alleged victim . . . with the accused when . . . offered by the accused upon the issue of whether the alleged victim . . . consented to the sexual conduct to which the offense is alleged” or to the extent the evidence is “constitutionally required to be admitted.” 725 Ill. Comp. Stat. Ann. 5/115-11 (Closed trial during testimony of child victim of a sexual offense permitted) permits a child under 18, who is the victim of specified sex offenses, to have “all persons, who, in the opinion of the court, do not have a direct interest in the case, except the media,” excluded from the courtroom while giving testimony.

Additionally, 725 Ill. Comp. Stat. Ann. 5/106B-5(a)(2) (Testimony by a victim who is a child) authorizes a victim of specified sexual offenses who is under 18 years old to give testimony via closed circuit television if “the judge determines that testimony by the child victim . . . in the courtroom will result in the child . . . suffering serious emotional distress such that the child . . . cannot reasonably communicate or . . . will suffer severe emotional distress that is likely to cause the child . . . to suffer severe adverse effects.” Pursuant to 725 Ill. Comp. Stat. Ann. 5/106B-5(d), when a child provides testimony via closed circuit television, the prosecuting and defense attorneys, the judge, and “any person or persons whose presence, in the opinion of the court, contributes to the well-being of the child . . . including a person who has dealt with the child in a therapeutic setting concerning the abuse, [or] a parent or guardian of the child” may be present in the room with the child.

725 Ill. Comp. Stat. Ann. 190/3 (Confidentiality of Law Enforcement and Court Records) provides that in any investigation or proceeding pertaining to a criminal sexual offense, the identity of any child-victim must be excluded from the records and kept confidential.

Certain protections are available to domestic minor sex trafficking victims in dependency proceedings. For example, 750 Ill. Comp. Stat. Ann. 5/506(a) (Representation of child) permits the appointment of an attorney “[i]n any proceedings involving the support, custody, . . . parentage, . . . or general welfare of a minor or dependent child.” Also, a guardian ad litem may be appointed to “testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child.” 750 Ill. Comp. Stat. Ann. 5/506(a)(2). Finally, a child representative may be appointed to “advocate what the child representative

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<sup>148</sup> The text of 725 Ill. Comp. Stat. Ann. 5/111-3 included here and elsewhere in this report includes amendments made by the passage of House Bill 2471 during the 98th session of the Illinois Legislature and enacted by P.A. 98-0416 (effective Jan. 1, 2014).

<sup>149</sup> Pursuant to 725 Ill. Comp. Stat. Ann. 5/115-7(a) (Prior sexual activity or reputation of victim of sexual offense),

In prosecutions for predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, or criminal transmission of HIV; and in prosecutions for battery and aggravated battery, when the commission of the offense involves sexual penetration or sexual conduct as defined in Section 11-0.1 of the Criminal Code of 2012; and with the trial or retrial of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, and aggravated indecent liberties with a child, the prior sexual activity or the reputation of the alleged victim or corroborating witness under Section 115-7.3 of this Code is inadmissible . . . .”

finds to be in the best interests of the child after reviewing the facts and circumstances of the case.” 750 Ill. Comp. Stat. Ann. 5/506(a)(3).

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.*

720 Ill. Comp. Stat. Ann. 5/11-14(d)<sup>150</sup> (Prostitution) makes minors immune from prosecution for a prostitution violation; therefore, minors in Illinois should not be adjudicated as delinquents based on offenses perpetrated in the course of their commercial sexual exploitation. As a result, a domestic minor sex trafficking victim should be able to petition the court under 705 Ill. Comp. Stat. Ann. 405/5-915<sup>151</sup> (Expungement of juvenile law enforcement and court records) to have records relating to an arrest for 720 Ill. Comp. Stat. Ann. 5/11-14 expunged. 705 Ill. Comp. Stat. Ann. 405/5-915(1), (1.5) and (2) states,

(1) Whenever any person has attained the age of 18 or whenever all juvenile court proceedings relating to that person have been terminated, whichever is later, the person may petition the court to expunge<sup>152</sup> law enforcement records<sup>153</sup> relating to incidents occurring before his or her 18th birthday or his or her juvenile court records, or both, but only in the following circumstances:

- (a) the minor was arrested and no petition for delinquency was filed with the clerk of the circuit court; or
- (b) the minor was charged with an offense and was found not delinquent of that offense; or
- (c) the minor was placed under supervision pursuant to Section 5-615 [705 ILCS 405/5-615] [Continuance under supervision], and the order of supervision has since been successfully terminated; or
- (d) the minor was adjudicated for an offense which would be a Class B misdemeanor, Class C misdemeanor, or a petty or business offense if committed by an adult.

(1.5) Commencing 180 days after the effective date of this amendatory Act of the 98th General Assembly, the Department of State Police shall automatically expunge, on or before January 1 of each year, a person's law enforcement records relating to incidents occurring before his or her 18th birthday in the Department's possession or control and which contains the final disposition which pertain to the person when arrested as a minor if:

- (a) the minor was arrested for an eligible offense<sup>154</sup> and no petition for delinquency was filed with the clerk of the circuit court; and
- (b) the person attained the age of 18 years during the last calendar year; and
- (c) since the date of the minor's most recent arrest, at least 6 months have elapsed without an additional arrest, filing of a petition for delinquency whether related or not to a previous arrest, or filing of charges not initiated by arrest.

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<sup>150</sup> See *supra* note 40.

<sup>151</sup> The text of 705 Ill. Comp. Stat. Ann. 405/5-915 included here and elsewhere in this report includes amendments made by the passage of Senate Bill 978 during the 98th session of the Illinois Legislature and enacted by P.A. 98-0637 (effective Jan.1 2015).

<sup>152</sup> 705 Ill. Comp. Stat. Ann. 405/5-915 defines “expunge” as “to physically destroy the records and to obliterate the minor’s name from any official index or public record, or both. Nothing in this Act shall require the physical destruction of the internal office records, files, or databases maintained by a State’s Attorney’s Office or other prosecutor.”

<sup>153</sup> 705 Ill. Comp. Stat. Ann. 405/5-915 defines “law enforcement record” as including but not “limited to records of arrest, station adjustments, fingerprints, probation adjustments, the issuance of a notice to appear, or any other records maintained by a law enforcement agency relating to a minor suspected of committing an offense.”

<sup>154</sup> 705 Ill. Comp. Stat. Ann. 405/5-915(1.8) defines eligible offense as an act that if, “committed by an adult is not an offense classified as a Class 2 felony or higher offense.”

(2) Any person may petition the court to expunge all law enforcement records relating to any incidents occurring before his or her 18th birthday which did not result in proceedings in criminal court and all juvenile court records with respect to any adjudications except those based upon first degree murder and sex offenses which would be felonies if committed by an adult, if the person for whom expungement is sought has had no convictions for any crime since his or her 18th birthday and:

(a) has attained the age of 21 years; or

(b) 5 years have elapsed since all juvenile court proceedings relating to him or her have been terminated or his or her commitment to the Department of Juvenile Justice pursuant to this Act has been terminated;

whichever is later of (a) or (b). Nothing in this Section 5-915 precludes a minor from obtaining expungement under Section 5-622 [Expungement review].

....

Under 705 Ill. Comp. Stat. Ann. 405/5-622 (Expungement review), a minor charged for the first time with a misdemeanor offense generally “is eligible for expungement review by the court upon his or her 18th birthday or upon completion of the minor’s sentence or disposition of the charge against the minor, whichever is later.” The statute clarifies that the expungement may only be objected to in certain cases, including if the investigation or proceedings are still active, if the arrest was for a sex offense,<sup>155</sup> or if “the minor is a potential witness in an upcoming court proceeding and that such arrest record is relevant to that proceeding.” 705 Ill. Comp. Stat. Ann. 405/5-622.

For expungement of records other than delinquency proceedings, 705 Ill. Comp. Stat. Ann. 405/1-9(2) (Expungement of law enforcement and juvenile court records) states that, once a minor reaches age 18 and juvenile proceedings are over, “the person may petition the court to expunge law enforcement records relating to incidents occurring before his 18th birthday or his juvenile court records, or both if the minor was placed under supervision . . . and such order of supervision has since been successfully terminated.”

*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.*

720 Ill. Comp. Stat. Ann. 5/10-9(g)<sup>156</sup> (Trafficking in persons, involuntary servitude, and related offenses) requires the court to order a defendant convicted of sex trafficking to make restitution to the victim for the greater of:

(1) the gross income or value to the defendant of the victim’s labor or services or (2) the value of the victim’s labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) [29 U.S.C. § 201 et seq.] or the Minimum Wage Law [820 ILCS 105/1 et seq.], whichever is greater.

Furthermore, 730 Ill. Comp. Stat. Ann. 5/5-5-6 (Restitution) requires the court to order a defendant convicted of any offense under Illinois’s criminal laws to make restitution to a victim who “received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant.” Additionally, the offender may be required to pay the victim’s long-term physical health care costs, which also includes mental health care costs. 730 Ill. Comp. Stat. Ann. 5/5-5-6(f-1). For convictions under 720 Ill. Comp. Stat. Ann. 5/11-1.20 (Criminal sexual assault), 5/11-1.30 (Aggravated criminal sexual assault), 5/11-1.40 (Predatory criminal sexual assault of a child), 5/11-1.50 (Criminal sexual abuse), 5/11-1.60 (Aggravated criminal sexual abuse), 5/11-19.2 (Exploitation of a child) [Repealed], 5/11-20.1 (Child pornography), 5/11-20.1B (Aggravated child pornography) [Repealed] and 5/11-14.4(a)(4) (Promoting juvenile prostitution), an offender may also be required to “meet all or any portion of the financial obligations of treatment, including but

<sup>155</sup> See *supra* Sections 2.10 and 3.5 for a list of the relevant sex offenses.

<sup>156</sup> See *supra* note 2.

not limited to medical, psychiatric, or rehabilitative treatment or psychological counseling, prescribed for the victim or victims of the offense. 730 Ill. Comp. Stat. Ann. 5/5-5-6(g).

Civil remedies are available to victims of domestic minor sex trafficking in the Predator Accountability Act located in Chapter 740 (Civil liabilities). The Predator Accountability Act was enacted for the purpose of allowing “persons who have been or who are subjected to the sex trade to seek civil damages and remedies from individuals and entities that recruited, harmed, profited from, or maintained them in the sex trade.” 740 Ill. Comp. Stat. Ann. 128/5. Specifically, 740 Ill. Comp. Stat. Ann. 128/15 (Cause of action) provides a civil cause of action to victims of 720 Ill. Comp. Stat. Ann. 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses), 5/11-14.4(a)(2)–(4) (Promoting juvenile prostitution), 5/11-20.1(Child pornography).

*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.*

720 Ill. Comp. Stat. Ann. 5/3-5(b) (General Limitations) establishes the generally applicable statute of limitations for criminal offenses, which is 3 years for felonies and 1.5 years for misdemeanors, unless otherwise specified. 720 Ill. Comp. Stat. Ann. 5/3-5(a) eliminates the statute of limitations when the prosecution is for violations of 720 Ill. Comp. Stat. Ann. 5/11-20.1(a)(1) (Child pornography), or “any offense involving sexual conduct<sup>157</sup> or sexual penetration,<sup>158</sup> as defined by Section 11-0.1 of this Code in which the DNA profile of the offender is obtained and entered into a DNA database within 10 years after the commission of the offense,” so long as the offense is reported to law enforcement within 3 years of its commission, unless a longer time is provided.

Additionally, 720 Ill. Comp. Stat. Ann. 5/3-6(d) (Extended limitations) tolls the statute of limitations for certain CSEC offenses and trafficking offenses until at least 1 year after the victim turns 18. 720 Ill. Comp. Stat. Ann. 5/3-6states:

(b-5) When the victim is under 18 years of age at the time of the offense, a prosecution for involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons and related offenses under Section 10-9 of this Code may be commenced within one year of the victim attaining the age of 18 years. However, in no such case shall the time period for prosecution expire sooner than 3 years after the commission the offense.

...

(d) A prosecution for child pornography, aggravated child pornography, indecent solicitation of a child, soliciting for a juvenile prostitute, juvenile pimping, exploitation of a child, or promoting juvenile prostitution except for keeping a place of juvenile prostitution may be commenced within one year of the victim attaining the age of 18 years. However, in no such case shall the time period for prosecution expire sooner than 3 years after the commission of the offense. When the victim is under 18 years of age, a prosecution for criminal sexual abuse may be commenced within one year of the victim attaining the age of 18 years. However, in no such case shall the time period for prosecution expire sooner than 3 years after the commission of the offense.

Because both involve “sexual conduct or sexual penetration,” therefore, prosecutions for violations of 720 Ill. Comp. Stat. Ann. 5/11-14.1<sup>159</sup> (Solicitation of a sexual act) and 5/11-18.1 (Patronizing a minor engaged in prostitution) can be commenced at any time.

<sup>157</sup> See *supra* note 22 for the definition of “sexual conduct.”

<sup>158</sup> See *supra* note 9 for the definition of “sexual penetration.”

<sup>159</sup> See *supra* note 8.

Additionally, Illinois law allows for an elongated statute of limitations for certain criminal actions; pursuant to 720 Ill. Comp. Stat. Ann. 5/3-6(j)(1)<sup>160</sup> (Extended limitations),

When the victim is under 18 years of age at the time of the offense, a prosecution for criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or felony criminal sexual abuse may be commenced at any time when corroborating physical evidence is available or an individual who is required to report an alleged or suspected commission of any of these offenses under the Abused and Neglected Child Reporting Act fails to do so.

If the conditions above are not met, the statute of limitations to bring an action of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or felony criminal sexual abuse is 20 years. 720 ILCS 5/3-6(j)(2).

For civil causes of action arising under the Predator Accountability Act,<sup>161</sup> 735 Ill. Comp. Stat. Ann. 5/13-225(b) (Predator accountability) states,

[A]n action under the Predator Accountability Act must be commenced within 10 years of the date the limitation period begins to run under subsection (d) or within 10 years of the date the plaintiff discovers or through the use of reasonable diligence should discover both (i) that the sex trade<sup>162</sup> act occurred, and (ii) that the defendant caused, was responsible for, or profited from the sex trade act. The fact that the plaintiff discovers or through the use of reasonable diligence should discover that the sex trade act occurred is not, by itself, sufficient to start the discovery period under this subsection (b).

735 Ill. Comp. Stat. Ann. 5/13-225(d)–(f) provide that the statute of limitations is tolled until the minor reaches the age of 18, until the plaintiff is no longer “subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant,” and until “the expiration of all limitations periods applicable to the criminal prosecution of the plaintiff for any acts which form the basis of a cause of action.”

Other civil actions are subject to varying statutes of limitations; however, pursuant to 735 Ill. Comp. Stat. Ann. 5/13-211 (Minors and persons under legal disability), these otherwise applicable civil statutes of limitations may be extended up to 2 years after the minor turns 18.

735 Ill. Comp. Stat. Ann. 5/13-202.1(a) (No limitations on certain actions—Duties of Department of Corrections and State’s Attorneys) provides that civil actions for convictions of or conduct that amounts to a Class X or Class 1 felony at the time of filing have no statute of limitations. Also, 735 Ill. Comp. Stat. Ann. 5/13-202.3 (Actions arising out of injuries by sexual conduct or sexual penetration) states that for civil actions for violations involving sexual conduct or sexual penetration, the applicable statute of limitations is tolled while “the person injured is subject to threats, intimidation, manipulation, or fraud.”

735 Ill. Comp. Stat. Ann. 5/13-202 (Personal Injury—penalty) generally assigns a 2 year statute of limitations to civil actions involving injury to the person; however, if the offender is convicted of a Class X felony and causes injury to the person, the applicable statute of limitations is 10 years. 735 Ill. Comp. Stat. Ann. 5/13-214.1.

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<sup>160</sup> The text of 720 Ill. Comp. Stat. Ann. 5/3-6 included here and elsewhere in this report includes amendments made by the passage of House Bill 1063 and Senate Bill 1851 during the 98th session of the Illinois Legislature and enacted by P.A. 98-0379 and 98-0293, respectively (effective Jan. 1, 2014).

<sup>161</sup> See *supra* Section 2.8 for the offenses to which the Predator Accountability Act applies.

<sup>162</sup> 735 Ill. Comp. Stat. Ann. 5/13-225(a) defines “sex trade” and “victim of the sex trade” as having the meanings as set forth in 740 Ill. Comp. Stat. Ann. 128/10. See *supra* Section 5.1 for these definitions.



**Legal Components:**

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

**Legal Analysis:**

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

50 Ill. Comp. Stat. Ann. 705/7(a) (Rules and standards for schools) provides,

The Board shall adopt rules and minimum standards for such schools which shall include but not be limited to the following:

- a. The curriculum for probationary police officers which shall be offered by all certified schools . . . shall include specific training in techniques for immediate response to and investigation of cases of . . . sexual assault of adults and children. The curriculum shall include training in techniques designed to promote effective communication at the initial contact with crime victims and ways to comprehensively explain to victims and witnesses their rights under the Rights of Crime Victims and Witnesses Act and the Crime Victims Compensation Act. . . . The curriculum for permanent police officers shall include but not be limited to (1) refresher and in-service training in any of the courses listed above in this subparagraph, (2) advanced courses in any of the subjects listed above in this subparagraph, (3) training for supervisory personnel, and (4) specialized training in subjects and fields to be selected by the board. . . .

50 Ill. Comp. Stat. Ann. 705/10.1 (Additional training programs) allows the Board to “initiate, administer, and conduct training programs for permanent police officers and permanent county corrections officers in addition to the basic recruit training program.” 50 Ill. Comp. Stat. Ann. 705/10.10 (Training in child abduction and missing endangered senior alert system) further mandates that the Board conduct training programs for law enforcement personnel with regards to the “statewide coordinated child abduction alert system.”

- 6.1.1 Recommendation: Amend the Illinois Police Training Act to specifically include domestic minor sex trafficking training for law enforcement officers..

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

Illinois may permit single party consent to audiotaping. Illinois’ Eavesdropping Law, 720 ILCS 5/14-1 et seq., was found unconstitutional by the Illinois Supreme Court on March 20, 2014.<sup>163</sup> Prior to the Supreme Court’s ruling, 720 Ill. Comp. Stat. Ann. 5/14-2(a)(1) (Elements of the offense; affirmative defense) made it a crime when someone

<sup>163</sup> See *People v. Melongo*, 6 N.E.3d 120 (2014) and *People v. Clark*, 6 N.E.3d 154 (2014).

[k]nowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts, retains, or transcribes electronic communication unless he does so (A) with the consent of all of the parties to such conversation or electronic communication or (B) in accordance with Article 108A [Authorization for use of eavesdropping device] or Article 108B [Electronic criminal surveillance] . . .

Additionally, 720 Ill. Comp. Stat. Ann. 5/14-3(g), (g-6)<sup>164</sup> (Exemptions) made the following activities exempt from the criminal provisions of the Illinois Eavesdropping Law:

(g) With prior notification to the State’s Attorney of the county in which it is to occur, recording or listening with the aid of any device to any conversation where a law enforcement officer, or any person acting at the direction of law enforcement, is a party to the conversation and has consented to it being intercepted or recorded under circumstances where the use of the device is necessary for the protection of the law enforcement officer or any person acting at the direction of law enforcement, in the course of an investigation of a forcible felony, a felony offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons under Section 10-9 of this Code [720 ILCS 5/10-9 [Trafficking in persons, involuntary servitude, and related offenses], an offense involving prostitution, solicitation of a sexual act, or pandering, . . . Any recording or evidence derived as the result of this exemption shall be inadmissible in any proceeding, criminal, civil or administrative, except (i) where a party to the conversation suffers great bodily injury or is killed during such conversation, or (ii) when used as direct impeachment of a witness concerning matters contained in the interception or recording. The Director of the Department of State Police shall issue regulations as are necessary concerning the use of devices, retention of tape recordings, and reports regarding their use;

. . . .

(g-6) With approval of the State’s Attorney of the county in which it is to occur, recording or listening with the aid of any device to any conversation where a law enforcement officer, or any person acting at the direction of law enforcement, is a party to the conversation and has consented to it being intercepted or recorded in the course of an investigation of involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons, child pornography, aggravated child pornography, indecent solicitation of a child, child abduction, luring of a minor, sexual exploitation of a child, predatory criminal sexual assault of a child, aggravated criminal sexual abuse in which the victim of the offense was at the time of the commission of the offense under 18 years of age, criminal sexual abuse by force or threat of force in which the victim of the offense was at the time of the commission of the offense under 18 years of age, or aggravated criminal sexual assault in which the victim of the offense was at the time of the commission of the offense under 18 years of age. . . . Any recording or evidence obtained or derived in the course of an investigation of [any of the above listed offenses] . . . shall, upon motion of the State’s Attorney or Attorney General prosecuting any case involving [any of the above listed offenses] . . . be reviewed in camera with notice to all parties present by the court presiding over the criminal case, and, if ruled by the court to be relevant and otherwise admissible, it shall be admissible at the trial of the criminal case. Absent such a ruling, any such recording or evidence shall not be admissible at the trial of the criminal case;

- 6.2.1 Recommendation: Amend Illinois’ Eavesdropping Law or enact a law to clearly permit single party consent for law enforcement to use audiotaping in investigations of trafficking and CSEC offenses and use of the resulting evidence in prosecutions.

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<sup>164</sup> The text of 720 Ill. Comp. Stat. Ann. 5/14-3 included here and elsewhere in this report includes amendments made by the passage of House Bill 2994 during the 98th session of the Illinois Legislature and enacted by P.A. 0463 (effective Aug. 16, 2013).

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

Illinois specifically allows law enforcement to use wiretapping in investigations relating to 720 Ill. Comp. Stat. Ann. 5/10-9(c)-(f)<sup>165</sup> (Trafficking in persons, involuntary servitude, and related offenses).

725 Ill. Comp. Stat. Ann. 5/108B-2 (Request for application for interception) authorizes a State's Attorney to "apply for an order authorizing interception of private communications," as provided in Article 108B (Electronic criminal surveillance). 725 Ill. Comp. Stat. Ann. 5/108B-5(a) (Requirements for order of interception) permits a judge to enter an order

authorizing the interception of a private communication, if the chief judge determines on the basis of the application submitted by the applicant, that:

- (1) There is probable cause for belief that (A) the person whose private communication is to be intercepted is committing, has committed, or is about to commit an offense enumerated in [725 Ill. Comp. Stat. Ann. 5/108B-3],<sup>166</sup> or (B) the facilities from which, or the place where, the private communication is to be intercepted, is, has been, or is about to be used in connection with the commission of the offense, or is leased to, listed in the name of, or commonly used by, the person; and
- (2) There is probable cause for belief that a particular private communication concerning such offense may be obtained through the interception; and
- (3) Normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or too dangerous to employ; and
- (4) The electronic criminal surveillance officers to be authorized to supervise the interception of the private communication have been certified by the Department.

Furthermore, 725 Ill. Comp. Stat. Ann. 5/108A-2 (Authorized disclosure or use of information) and 5/108B-2a (Authorized disclosure or use of information) allow a law enforcement officer who "obtained knowledge of the contents of any conversation overheard or recorded by use of an eavesdropping device or evidence derived therefrom" to disclose such information to another law enforcement or prosecuting attorney if the eavesdropping was authorized.

725 Ill. Comp. Stat. Ann. 5/108B-3(a) (Authorization for the interception of private communication) permits a judge to authorize,

[T]he interception of a private communication when no party has consented to the interception and (i) the interception may provide evidence of, or may assist in the apprehension of a person who has committed, is committing or is about to commit, a violation of . . . 10-9 [720 ILCS 5/10-9] (involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons), paragraph (1), (2), or (3) of subsection (a) of Section 11-14.4 [720 ILCS 5/11-14.4] (promoting juvenile prostitution), subdivision (a)(2)(A) or (a)(2)(B) of Section 11-14.3 [720 ILCS 5/11-14.3] (promoting prostitution) 11-15.1 [720 ILCS 5/11-15.1] (soliciting for a minor engaged in prostitution) [Repealed], 11-16 [720 ILCS 5/11-17] (pandering) [Repealed], 11-17.1 [720 ILCS 5/11-17.1] (keeping a place of juvenile prostitution) [Repealed], 11-18.1 [720 ILCS 5/11-18.1] (patronizing a minor engaged in prostitution), 11-19.1 [720 ILCS 5/11-19.1] (juvenile pimping and aggravated juvenile pimping) [Repealed], . . .

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

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<sup>165</sup> See *supra* note 2.

<sup>166</sup> Offenses listed in 725 Ill. Comp. Stat. Ann. 5/108B-3 include violations of 720 Ill. Comp. Stat. Ann. 5/10-9 (Trafficking in persons, involuntary servitude, and related offenses), 5/11-18.1 (Patronizing a minor engaged in prostitution), and 5/29B-1 (Money laundering).

No law expressly permits the use of a decoy by law enforcement in the investigation of minor sex trafficking. However, certain sexual offense laws do provide that the involvement of law enforcement in the investigation of the crime is not a defense. For example, 720 Ill. Comp. Stat. Ann. 5/10-5.1(f)(3) (Luring of a minor) states that “[i]t shall not be a defense to the prosecution of any offense under this Section 10-5.1 if the person who is contacted by the offender is posing as a minor and is in actuality an adult law enforcement officer.”

720 Ill. Comp. Stat. Ann. 5/11-6(a), (a-5) (Indecent solicitation of a child) and 5/11-9.1(a) (Sexual exploitation of a child) state that the offenses can be committed against either a child or “one whom he or she believes to be a child,” leaving open the possibility of the use of a law enforcement decoy in these investigations.

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

720 Ill. Comp. Stat. Ann. 5/10-5.1(a)(3) (Luring of a minor) makes it a crime when a person “21 years of age or older . . . knowingly contacts or communicates electronically<sup>167</sup> to the minor: . . . for an unlawful purpose.<sup>168</sup> It expressly states, “It shall not be a defense to the prosecution of any offense under this Section 10-5.1 if the person who is contacted by the offender is posing as a minor and is in actuality an adult law enforcement officer.” 720 Ill. Comp. Stat. Ann. 5/10-5.1(f)(3).

Several laws permit law enforcement to use the Internet to investigate buyers and traffickers by stating that the offense can be committed against a person merely believed to be a child. 720 Ill. Comp. Stat. Ann. 5/11-6 (Indecent solicitation of a child), 5/11-6.6 (Solicitation to meet a child), and 5/11-9.1 (Sexual exploitation of a child) make it unlawful for any person to solicit “a child or one whom he or she believes to be a child” to engage in a sexual act, or to meet for an unlawful purpose through use of the Internet.<sup>169</sup> Also, 720 Ill. Comp. Stat. Ann. 5/11-25(a) (Grooming) makes it a crime when a person “knowingly uses a computer on-line service, [or] Internet service” to solicit or attempt to solicit “a child, a child’s guardian, or another person believed by the person to be a child or a child’s guardian” to commit CSEC offenses including: 720 Ill. Comp. Stat. Ann., 5/11-9.1 (Sexual exploitation of a child), 5/11-14.4 (Promoting juvenile prostitution), 5/11-18.1 (Patronizing a minor engaged in prostitution), and 5/11-26 (Traveling to meet a minor).

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

Under 325 Ill. Comp. Stat. Ann. 40/3 (State Missing Persons Clearinghouse; powers) “[t]he Department shall establish a State Missing Persons Clearinghouse as a resource to promote an immediate and effective community response to missing children.” 325 Ill. Comp. Stat. Ann. 40/3 authorizes state missing persons clearinghouses to do the following:

- (a) To establish and conduct programs to educate parents, children and communities in ways to prevent the abduction of children.
- (b) To conduct training programs and distribute materials providing guidelines for children when dealing with strangers, casual acquaintances, or non-custodial parents, in order to avoid abduction or kidnapping situations.
- (c) To compile, maintain and make available data upon the request of law enforcement agencies and other entities deemed appropriate by the Department<sup>170</sup> to assist enforcement agencies in recovering missing children, including but not limited to data regarding the places of shelter commonly used by runaway children in a requested geographical area.
- (d) To draft and implement plans for the most efficient use of available resources to publicize information regarding missing children.

<sup>167</sup> 720 Ill. Comp. Stat. Ann. 5/10-5.1(c)(3) defines “contacts or communicates electronically” as including “any attempt to make contact or communicate telephonically or through the Internet or text messages.”

<sup>168</sup> 720 Ill. Comp. Stat. Ann. 5/10-5.1(c)(7) defines “unlawful purpose” as “any misdemeanor or felony violation of State law or a similar federal or sister state law or local ordinance.”

<sup>169</sup> See *supra* Section 1.2 for the substantive provisions of 720 Ill. Comp. Stat. Ann. 5/11-6, 5/11-6.6, and 5/11-9.1.

<sup>170</sup> 325 Ill. Comp. Stat. Ann. 40/2 (Definitions) defines the “Department” as “the Department of State Police.”

- (e) To establish and maintain contacts with other state missing persons clearinghouses, law enforcement agencies, and non-profit organizations in order to increase the probability of locating and returning missing children, and to otherwise assist in the recovery and tracking of missing children.
- (f) To coordinate the tracking and recovery of children under the custody or guardianship of the Department of Children and Family Services whose disappearance has been reported and to produce an annual report indicating the number of children under the custody or guardianship of that Department who have been reported missing and the number who have been recovered.
- (g) To conduct other activities as may be necessary to achieve the goals established by this Act.

325 Ill. Comp. Stat. Ann. 40/6 (Department; powers and duties) mandates that the Department “[e]stablish and maintain a statewide Law Enforcement Agencies Data System (LEADS)” to respond to missing children reports, “exchange information regarding lost, missing or runaway children” with a national missing persons service, adopt a statewide or regional alert system for use in missing children cases, and keep information regarding missing children in a secure manner. Additionally, 325 Ill. Comp. Stat. Ann. 40/3.5 (Contact with Department of Children and Family Services) requires,

For each child reported missing and entered into the LEADS network, the Department shall, in the form and manner it determines, contact the Department of Children and Family Services to provide it with the name, age, and sex of the child, and the geographic area from which the child was reported missing so that the Department of Children and Family Services can determine if that child had been abandoned within the previous 2 months.

325 Ill. Comp. Stat. Ann. 40/7 (Law enforcement agencies; duties) further provides that, after receiving a report of a missing child, the recipient law enforcement agency must enter the report into LEADS, submit information regarding the missing or runaway children to the Department, make announcements over the radio with information about the missing child, and notify the State Missing Persons Clearinghouse personnel about the missing child.

Under both the Missing Children Records Act and the Missing Children Registration Law, the Department is required to notify the State Registrar of Vital Records about the disappearance and recovery of a child.<sup>171</sup> 325 Ill. Comp. Stat. Ann. 50/2 ( Department duties) states that “[u]pon entry of a report of a missing person born in Illinois into . . . (LEADS) . . . the Department shall notify the Registrar within 5 business days of the disappearance and shall provide the Registrar with information concerning the identity of the missing person.” 325 Ill. Comp. Stat. Ann. 50/2 also requires the Department to notify the last known school of a missing person and, upon finding a missing person, notify both the Registrar and the school. Similarly, 325 Ill. Comp. Stat. Ann. 55/2 (Department duties) requires that the Department, “[u]pon entry of a report of a missing child born in Illinois into [LEADS], . . . notify the Registrar of the disappearance and shall provide the Registrar with information concerning the identity of the missing child.” 325 Ill. Comp. Stat. Ann. 55/2 also requires the Department to notify the child’s last known school and, upon finding the child, notify both the Registrar and the school.

After being notified by the Department of a missing child, 325 Ill. Comp. Stat. Ann. 55/3 (Registrar duties) requires the Registrar to flag the missing child’s birth records, “in such a manner that whenever a copy of the birth certificate or information regarding the birth record is requested, the Registrar shall be alerted to the fact that the certificate is that of a missing child.” The Registrar is required to remove the flags if the Department notifies the Registrar that the missing child was recovered. 325 Ill. Comp. Stat. Ann. 55/3. Similarly, a school that is notified of a missing child will flag the child’s school records, and, if anyone makes a “request

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<sup>171</sup> For purposes of the Missing Children Records Act, the term “missing person” is used and refers to a “person 17 years old or younger reported to any law enforcement authority as abducted, lost or a runaway.” 325 Ill. Comp. Stat. Ann. 50/1(c). In contrast, the Missing Children Registration Law uses the term “missing child,” which refers to “a person under the age of 18 years, reported to any law enforcement authority as abducted, lost or a runaway, whose identity is entered into the Law Enforcement Agencies Data System.” 325 Ill. Comp. Stat. Ann. 55/1(c).

concerning flagged records,” the school will report the request “to the local law enforcement authority” or to the Department. 325 Ill. Comp. Stat. Ann. 55/5(a), 50/5(a).

Lastly, 325 Ill. Comp. Stat. Ann. 57/5(a), (b) (State agency webpage requirements) mandates every state agency that maintains an Internet website to have a hypertext link to the National Center For Missing and Exploited Children and to any website that posts AMBER alerts.

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