

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2014 ANALYSIS AND RECOMMENDATIONS MARYLAND

### 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.*

Maryland law directly addresses sex trafficking, without the need to show force, fraud, or coercion, through Md. Code Ann., Crim. Law § 11-303 (Human trafficking). Under Md. Code Ann., Crim. Law § 11-303(a)(1), it is illegal for a person to knowingly

- (i) take or cause another to be taken to any place for prostitution;<sup>2</sup>
- (ii) place, cause to be placed, or harbor another in any place for prostitution;

<sup>1</sup> Unless otherwise specified, all references to Maryland statutes were taken from the Maryland Code Annotated (LEXIS through 2014 Gen. Assemb.) 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> “Prostitution” is defined as “the performance of a sexual act, sexual contact, or vaginal intercourse for hire.” Md. Code Ann., Crim. Law § 11-301(c).

- (iii) persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- (iv) receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;<sup>3</sup>
- (v) engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance,<sup>4</sup> the other or a third person would suffer physical restraint or serious physical harm . . .

. . . .

If the victim of the conduct described in Md. Code Ann., Crim. Law § 11-303(a)(1) is a minor,<sup>5</sup> the defendant is guilty of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000, or both. Md. Code Ann., Crim. Law § 11-303(b), (c)(2).

Pursuant to Md. Code Ann., Crim. Law § 11-303(e), “A person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in subsection (a) or (b) of this section is subject to the same penalties that would apply if the person had violated that subsection.” If the offense involves a minor, that person also will be guilty, without regard to the use of force, fraud, or coercion, of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000 or both. Md. Code Ann., Crim. Law § 11-303(e)(1), (c)(2).

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

The following Maryland laws specifically criminalize CSEC.

1. Md. Code Ann., Crim. Law § 11-305(a)<sup>6</sup> (Child kidnapping for the purpose of committing a sexual crime) states,

For purposes of prostitution or committing a crime under Title 3, Subtitle 3 of this article [Sexual crimes, including sexual solicitation of minor], a person may not:

- (1) persuade or entice or aid in the persuasion or enticement of an individual under the age of 16 years from the individual’s home or from the custody of the individual’s parent or guardian; or
- (2) knowingly secrete or harbor or aid in the secreting or harboring of an individual under the age of 16 years who has been persuaded or enticed in a manner described in item (1) of this subsection.

A conviction under this statute is a felony conviction punishable by imprisonment up to 25 years, a fine not to exceed \$5,000, or both. Md. Code Ann., Crim. Law § 11-305(b).

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<sup>3</sup> “Assignation” means “the making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement.” Md. Code Ann., Crim. Law § 11-301(b).

<sup>4</sup> “Sexually explicit performance” is defined as “a public or private, live, photographed, recorded, or videotaped act or show in which the performer is wholly or partially nude, and which is intended to sexually arouse or appeal to the prurient interest of patrons or viewers.” Md. Code Ann., Crim. Law § 11-301(f).

<sup>5</sup> The term “minor” is not defined in Md. Code Ann., Crim. Law § 11-301 (Definitions), but “minor” is defined under Md. Crim. Code Ann. § 1-101(g) (Definitions) as “an individual under the age of 18 years.” Md. Code Ann., Crim. Law § 1-101 contains general definitions used throughout Maryland’s Criminal Code.

<sup>6</sup> Here and elsewhere in this report that Md. Code Ann., Crim. Proc. § 11-305 is quoted or cited, it has been amended by the passage of House Bill 701. 2014 Md. Laws 701, (effective October 1, 2014).

2. Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) makes it a crime for a person to “with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article.” As used within Md. Code Ann., Crim. Law § 3-324(b), “solicit” is not defined in an expressly commercial way, but Md. Code Ann., Crim. Law § 3-324(a) defines “solicit” as the following:

[T]o command, authorize, urge, entice, request, or advise a person by any means, including:

- (1) in person;
- (2) through an agent or agency;
- (3) over the telephone;
- (4) through any print medium;
- (5) by mail;
- (6) by computer or Internet; or
- (7) by any other electronic means.

A conviction under this statute is a felony punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

3. Md. Code Ann., Crim. Law § 11-207(a) (Child pornography) makes it a crime for a person to

- (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;
- (2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (4) knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:
  - (i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or
  - (ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or
- (5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

A first conviction under this statute is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Several other laws, while non-commercial in nature or not limited in application to minors, may also apply in cases involving the commercial sexual exploitation of a child. Those statutes are as follows:

1. Md. Code Ann., Crim. Law § 3-602(b) (Sexual abuse of a minor) prohibits a “parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor,” a “household member,”<sup>7</sup> or a “family member”<sup>8</sup> from “caus[ing] sexual abuse to a minor.” “Sexual abuse” is defined as “an act that involves sexual molestation or exploitation of a minor whether physical injuries are sustained or not.” Md. Code Ann., Crim. Law § 3-602(a)(4)(i). Sexual abuse “includes: 1. incest; 2. rape; 3. sexual offense in any degree; 4. sodomy; and 5. unnatural or perverted sexual practices.” Md. Code Ann., Crim. Law § 3-602(a)(4)(ii). A conviction under this statute is a felony conviction punishable by imprisonment up to 25 years.<sup>9</sup> Md. Code Ann., Crim. Law § 3-602(c).
2. Md. Code Ann., Crim. Law § 3-304(a)(3) (Rape in the second degree) prohibits a person from engaging in vaginal intercourse with a child who is younger than 14 “and the person performing the act is at least 4 years older than the victim.” A conviction under this statute is a felony conviction punishable by imprisonment up to 20 years. Md. Code Ann., Crim. Law § 3-304(c)(i). However, if the defendant has a prior conviction under Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree), § 3-306 (Rape in the second degree), § 3-305 (Sexual offense in the first degree), or § 3-306 (Sexual offense in the second degree), a conviction is punishable by a sentence not to exceed life imprisonment.<sup>10</sup> Md. Code Ann., Crim. Law § 3-313(a).
3. Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) makes it illegal for a person to use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

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<sup>7</sup> “Household member” is defined as “a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse.” Md. Code Ann., Crim. Law §§ 3-601(a)(4), 3-602(a)(3).

<sup>8</sup> “Family member” is defined as a “relative of a minor by blood, adoption, or marriage.” Md. Code Ann., Crim. Law §§ 3-601(a)(3), 3-602(a)(2).

<sup>9</sup> Pursuant to Md. Code Ann., Crim. Law § 14-101(a)(16) (Mandatory sentences for crimes of violence), if “the victim is under the age of 13 and the offender is an adult at the time of the offense,” sexual abuse of a minor is considered a “crime of violence” if any of the following are involved in the offense:

1. vaginal intercourse, as defined in § 3-301 of this article;
2. a sexual act, as defined in § 3-301 of this article;
3. an act in which a part of the offender’s body penetrates, however slightly, into the victim’s genital opening or anus; or
4. the intentional touching, not through the clothing, of the victim’s or the offender’s genital, anal, or other intimate area for sexual arousal, gratification, or abuse.

Upon a second conviction of a crime of violence, an offender shall receive a prison sentence of at least 10 years. Md. Code Ann., Crim. Law § 14-101(e). Upon a third conviction, when the “convictions do not arise from a single incident,” of a “crime of violence,” an offender shall serve a prison sentence of at least 25 years, and upon a fourth separate conviction of a “crime of violence,” an offender shall be sentenced to life imprisonment without the possibility of parole. Md. Code Ann., Crim. Law § 14-101(c), (d).

<sup>10</sup> Rape is a “crime of violence” as defined in Md. Code Ann., Crim. Law § 14-101(a)(8). *See supra* note 9 for the minimum sentences applicable to repeat offenders of crimes of violence.

A first conviction under this statute is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

4. Md. Code Ann., Crim. Law § 3-306(a)(3) (Sexual offense in the second degree) prohibits a defendant from engaging in a sexual act with a victim under 14 where the defendant is at least 4 years older than the victim. A conviction under this statute is a felony conviction punishable by imprisonment up to 20 years. Md. Code Ann., Crim. Law § 3-306(c)(1).<sup>11</sup> However, if the defendant has a prior conviction under Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree), § 3-306 (Rape in the second degree), § 3-305 (Sexual offense in the first degree), or § 3-306 (Sexual offense in the second degree), a conviction is punishable by a sentence not to exceed life imprisonment. Md. Code Ann., Crim. Law § 3-313(a).
5. Md. Code Ann., Crim. Law § 3-307(a)(3)–(5) (Sexual offense in the third degree) makes it a crime for a person to
  - (3) engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual act is at least 4 years older than the victim; or
  - (4) engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or
  - (5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

A conviction under this statute is a felony conviction punishable by imprisonment up to 10 years. Md. Code Ann., Crim. Law § 3-307(b). However, if the defendant has a prior conviction under Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree), § 3-306 (Rape in the second degree), § 3-305 (Sexual offense in the first degree), or § 3-306 (Sexual offense in the second degree), a conviction is punishable by a sentence not to exceed life imprisonment. Md. Code Ann., Crim. Law § 3-313(a).

6. Md. Code Ann., Crim. Law § 3-308(b)(2), (3) (Sexual offense in the fourth degree) states,

A person may not engage in:

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- (2) except as provided in § 3-307(a)(4) [prohibiting a defendant who is at least 21 years old from engaging in a sexual act with a victim 14 or 15 years of age] of this subtitle, a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or
- (3) except as provided in § 3-307(a)(5) [prohibiting a defendant who is at least 21 years old from engaging in vaginal intercourse with a victim 14 or 15 years of age] of this subtitle, vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim.

A conviction under this statute is a misdemeanor conviction punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Md. Code Ann., Crim. Law § 3-308(1). However, if the defendant has a prior conviction under Md. Code Ann., Crim. Law §§ 3-303–3-312 (Rape in the first

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<sup>11</sup> Sexual offense in the second degree is a “crime of violence” as defined in Md. Crim. Code § 14-101(a)(13). *See supra* note 9 for the minimum sentences applicable to repeat offenders of crimes of violence.

or second degree; Sexual offense in the first through fourth degree; Attempted rape in the first or second degree; Attempted sexual offense in the first or second degree), § 3-315 (Continuing course of conduct with child), or § 3-602 (Sexual abuse of a minor), a conviction is punishable by imprisonment up to 3 years, a fine not to exceed \$1,000, or both. Md. Code Ann., Crim. Law § 3-308(d)(2)(i).

7. Md. Code Ann., Crim. Law § 3-315(a) (Continuing course of conduct with child) makes it a separate crime for a person to “engage in a continuing course of conduct which includes three or more acts that would constitute violations of § 3-303 [Rape in the first degree], § 3-304 [Rape in the second degree], § 3-305 [Sexual offense in the first degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle over a period of 90 days or more, with a victim who is under the age of 14 years at any time during the course of conduct.” A conviction under this statute is a felony conviction punishable by imprisonment up to 30 years, which “may be separate from and consecutive to or concurrent with a sentence under § 3-602 [Sexual abuse of a minor] of this title.”<sup>12</sup> Md. Code Ann., Crim. Law § 3-315(b).

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

Md. Code Ann., Crim. Law § 11-306(a)(1) (House of prostitution) does not refer to § 11-303 when the person engaged in prostitution is a minor.

- 1.3.1 Recommendation: Amend Md. Code Ann., Crim. Law § 11-306(a)(1) (House of prostitution) when the person engaged in prostitution is a minor to refer to Md. Code Ann., Crim. Law § 11-303(b) (Human trafficking) in order to identify CSEC victims as domestic minor sex trafficking victims.

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

Although Maryland does not have a crime that pertains to racketeering offenses, it does criminalize participation in a criminal gang. Md. Code Ann., Crim. Law § 9-804(a) (Participation in criminal gang prohibited) makes it unlawful for a person to

- (1) participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity; and
- (2) knowingly and willfully direct or participate in an underlying crime, or act by a juvenile that would be an underlying crime if committed by an adult, committed for the benefit of, at the direction of, or in association with a criminal gang.

Pursuant to Md. Code Ann., Crim. Law § 9-801(c) (Definitions), a “criminal gang<sup>13</sup>” is defined as

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<sup>12</sup> Continuing course of conduct with child is a “crime of violence” as defined in Md. Code Ann., Crim. Law § 14-101(a)(18). See *supra* note 9 for the minimum sentences applicable to repeat offenders of crimes of violence.

<sup>13</sup> Md. Code Ann., Crim. Law § 9-802(a) (Criminal gang activity) makes it illegal for a person to “threaten an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang.” A conviction under Md. Code Ann., Crim. Law § 9-802(a) is a misdemeanor conviction punishable by imprisonment up to 2 years, a possible fine not to exceed \$1,000, or both. Md. Code Ann., Crim. Law § 9-802(b).

a group or association of three or more persons whose members:

- (1) individually or collectively engage in a pattern of criminal gang activity;
- (2) have as one of their primary objectives or activities the commission of one or more underlying crimes, including acts by juveniles that would be underlying crimes if committed by adults; and
- (3) have in common an overt or covert organizational or command structure.

A “pattern of criminal gang activity” is defined as “the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.” Md. Code Ann., Crim. Law § 9-801(d). The definition of “underlying crime” includes “a violation of . . . § 11-303 (human trafficking), § 11-304 (receiving earnings of prostitute), or § 11-306 (a)(2), (3), or (4) (house of prostitution) . . . .” and “a crime of violence,” which is defined under § 14-101 to include “abduction.” Md. Code Ann., Crim. Law § 9-801(f)(1), (2).

A conviction under Md. Code Ann., Crim. Law § 9-804(a) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$100,000, or both. Md. Code Ann., Crim. Law § 9-804(c)(1)(i). However, if the commission of the underlying crime results in the victim’s death, a conviction is punishable by imprisonment up to 20 years, a fine not to exceed \$100,000, or both. Md. Code Ann., Crim. Law § 9-804(c)(1)(ii). Lastly, persons who “organize, supervise, finance, or manage a criminal gang” are guilty of a felony punishable by imprisonment up to 20 years, a fine not to exceed \$100,000, or both. Md. Code Ann., Crim. Law § 9-805(a), (b).<sup>14</sup>

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<sup>14</sup> “A sentence imposed under this section shall be separate from and consecutive to a sentence for any crime based on the act establishing a violation of this section.” Md. Code Ann., Crim. Law § 9-805(c).

***Legal Components:***

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

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***Legal Analysis:***

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

The plain language of Md. Code Ann., Crim. Law § 11-303 (Human trafficking) does not clearly apply to buyers of sex with minors, as it does not refer to obtaining a person for sex, purchasing sex or engaging another for the purpose of prostitution.<sup>15</sup>

- 2.1.1 *Recommendation: Amend Md. Code Ann., Crim. Law § 11-303 (Human trafficking) to expressly criminalize the purchasing of sex with a minor for commercial sexual activity.*

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

Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) makes it a crime for a person “with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, [to] knowingly solicit<sup>16</sup> a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of

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<sup>15</sup> See discussion of relevant provision *supra* Section 1.1.

<sup>16</sup> See *supra* Section 1.2 for discussion of the definition of “solicit.”



committing a sexual crime], or § 11-306 [House of prostitution] of this article.” Additionally, Md. Code Ann., Crim. Law § 11-306(a)(5) (House of prostitution) likely includes buyers of commercial sex with minors as it makes it illegal for a person to knowingly “procure or solicit or offer to procure or solicit for prostitution or assignation.” A conviction under Md. Code Ann., Crim. Law § 3-324(b) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

Additionally, Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) states it is illegal for a person to

use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

A conviction under Md. Code Ann., Crim. Law § 11-207 is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207 (b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Several sexual offenses could be used to prosecute a buyer of commercial sex acts with a minor, but these statutes do not specifically criminalize the commercial sexual exploitation of a child or refer to the human trafficking statute to bring these criminal offenses within the reach of human trafficking under Md. Code Ann., Crim. Law § 11-303 (Human trafficking).<sup>17</sup>

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

Maryland law differentiates between buying sex with an adult and buying sex with a minor. Specifically, Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) makes it a crime for a person to “with the intent to commit a violation of . . . § 11-306 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under . . . § 11-306 [House of prostitution] . . .”<sup>18</sup> A conviction under this statute is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

In contrast, lower penalties apply to buyers convicted under Maryland’s general solicitation law. Md. Code Ann., Crim. Law § 11-306(a)(5) (House of prostitution) states that it is illegal for a person to knowingly “procure or solicit or offer to procure or solicit for prostitution or assignation.”<sup>19</sup> As defined under Md. Code Ann., Crim. Law § 11-301(g), “solicit” does not expressly include the act of buying, but instead is defined as “urging, advising, inducing, encouraging, requesting, or commanding another.” Despite the failure to specifically include the act of buying within the definition of “solicit,” Md. Code Ann., Crim. Law § 11-306(a)(5) has been used to convict buyers who solicit sex from an adult.<sup>20</sup> Regardless of the age of the person

<sup>17</sup> See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

<sup>18</sup> See *supra* Section 1.2 for discussion of the definition of “solicit.”

<sup>19</sup> See *supra* note 3.

<sup>20</sup> In *McNeil v. State*, 739 A.2d 80, 93 (Md. 1999) (citing *In re Appeal No. 180*, 365 A.2d 540, 543–45 (1976)), the court stated that “the Legislature intended the word ‘solicit’ to be read broadly. . . . It would necessarily include the conduct of the potential customer in soliciting the prostitute.” The court in *In re Areal B.*, 938 A.2d 43, 47 (Md. Ct. Spec. App. 2007) further explained that the different subsections of Md. Code Ann., Crim. Law § 11-306(a) “punish

from whom the buyer purchases sex, a conviction under Md. Code Ann., Crim. Law § 11-306(a)(5) is a misdemeanor conviction punishable by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-306(b).

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

Buyers of commercial sex with minors may be prosecuted for crimes ranging from misdemeanors, punishable by imprisonment up to 1 year, to felonies punishable by life imprisonment without the possibility of parole. Specifically, convictions under Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) or Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) are punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law §§ 3-324(d), 11-207(b)(1). Subsequent convictions under Md. Code Ann., Crim. Law § 11-207(a)(5) are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Buyers convicted under Md. Code Ann., Crim. Law § 3-304(a)(3) (Rape in the second degree) or Md. Code Ann., Crim. Law § 3-306(a)(3) (Sexual offense in the second degree), which involves a child under 14 and a buyer at least 4 years older than the child, are guilty of a felony punishable by imprisonment up to 20 years.

Buyers convicted under Md. Code Ann., Crim. Law § 3-307(a)(3)–(5) (Sexual offense in the third degree) are guilty of a felony punishable by imprisonment up to 10 years. Md. Code Ann., Crim. Law § 3-307(b). Buyers convicted under Md. Code Ann., Crim. Law § 3-308(b)(2), (3) (Sexual offense in the fourth degree) are guilty of a misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. However, if the buyer has a prior conviction under Md. Code Ann., Crim. Law §§ 3-303–3-312 (Rape in the first or second degree; Sexual offense in the first through fourth degree; Attempted rape in the first or second degree; Attempted sexual offense in the first or second degree), § 3-315 (Continuing course of conduct with child), or § 3-602 (Sexual abuse of a minor), a conviction is punishable by imprisonment up to 3 years, a fine not to exceed \$1,000, or both. Md. Code Ann., Crim. Law § 3-308(d)(2)(i). Lastly, buyers convicted under Md. Code Ann., Crim. Law § 3-315(a) (Continuing course of conduct with child) are guilty of a felony punishable by imprisonment up to 30 years, which “may be separate from and consecutive to or concurrent with a sentence under § 3-602 [Sexual abuse of a minor] of this title.” Md. Code Ann., Crim. Law § 3-315(b).

Additionally, Md. Code Ann., Crim. Law § 3-313(a) (Prior conviction—Sentencing) states, “On conviction of a violation of § 3-304, § 3-306, § 3-307, § 3-310, or § 3-312 of this subtitle, a person who has been convicted on a prior occasion not arising from the same incident of any violation of §§ 3-303 through 3-306 of this subtitle is subject to imprisonment not exceeding life.”

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>21</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>22</sup> against a minor. 18

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altogether different behavior” and “each offense [prostitution and solicitation] can be committed without committing the act that defines the other.”

<sup>21</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>22</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

U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>23</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>24</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.*

Using the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor is not a separate crime and does not result in enhanced penalties for buyers. However, using of the Internet to “command, authorize, urge, entice, request, or advise” a minor to engage in Md. Code Ann., Crim. Law § 11-306 (House of prostitution), among other crimes, is prohibited under Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor). Pursuant to Md. Code Ann., Crim. Law § 3-324(b),

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

“Solicit,” however, is not defined in an expressly commercial way.<sup>25</sup> A conviction under Md. Code Ann., Crim. Law § 3-324(b) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

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

Crim. Law § 11-303(f) (Human trafficking) prohibits a mistake of age defense: “It is not a defense to a prosecution under subsection (b)(1) of this section that the person did not know the age of the victim.” However, Crim. Law § 11-303(f) does not explicitly include the acts of buyers of commercial sex acts, and may not be applicable against them.<sup>26</sup>

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contact), 2245 [18 USCS § 2245] (relating to sexual abuse resulting in death), 2251 [18 USCS § 2251] (relating to sexual exploitation of children), 2251A [18 USCS § 2251A] (relating to selling or buying of children), 2422(b) [18 USCS § 2422(b)] (relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).

<sup>23</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>24</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>25</sup> *See supra* Section 1.2 for discussion of the definition of “solicit.”

<sup>26</sup> *See supra* Section 2.1 for a further discussion.

- 2.6.1 Recommendation: Amend Md. Code Ann., Crim. Law § 11-303 (Human trafficking) to expressly criminalize the purchasing of sex with a minor for commercial sexual activity so that it's clear that buyer's may not use mistake of age as a defense for their actions.
- 2.6.2 Amend Maryland's CSEC laws to prohibit the use of a mistake of age defense when the victim of the crime is a minor.

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

Maryland's CSEC laws that are applicable to buyers, Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) and Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography), apply the same penalties when the commission of the crime involves any minor under 18.

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 commercial sex with minors may be required to pay fines ranging from \$500 to \$25,000, in the case of a first offense, and \$50,000, for repeat offenders. Md. Code Ann., Crim. Law §§ 11-306(b), 11-207(b).

Specifically, buyers convicted under Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) or Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) are subject to a possible fine not to exceed \$25,000; however, buyers with a prior conviction under Md. Code Ann., Crim. Law § 11-207(a)(5) are subject to a possible fine not to exceed \$50,000. Md. Code Ann., Crim. Law §§ 3-324(d), 11-207(b). Buyers convicted under Md. Code Ann., Crim. Law § 11-208(a) (Possession of visual representation of child under 16 engaged in certain sexual acts) are subject to a possible fine not to exceed \$2,500 for first convictions, and a possible fine not to exceed \$10,000 for subsequent convictions. Md. Code Ann., Crim. Law § 11-208(b). Lastly, a buyer convicted under Md. Code Ann., Crim. Law § 11-306(a)(5) (House of prostitution) is subject to a possible fine not to exceed \$500. Md. Code Ann., Crim. Law § 11-306(b).

Although Maryland law provides for asset forfeiture in conjunction with violations of Md. Code. Ann., Crim. Law. § 11-303 [Human trafficking], because Md. Code. Ann., Crim. Law. § 11-303 does not clearly apply to buyers, buyers are subject to more limited asset forfeiture laws than traffickers or facilitators. Buyers may be subject to asset forfeiture based on violations of the "human trafficking law" which, as defined under Md. Code. Ann., Crim. Proc. § 13-501(g), includes not only the human trafficking statute in § 11-303, but also "section 3-324 [Sexual solicitation of minor], section 11-207 [Child pornography]" and "section 11-304 [Receiving earnings of prostitute], and section 11-305 [Child kidnapping for the purpose of committing a sexual crime] of the criminal law article."

Specifically, money is subject to forfeiture if it is used in connection with a violation of and conviction under the trafficking law, or if it is "found in close proximity to or at the scene of the arrest for a violation of the any of the above statutes. Md. Code. Ann., Crim. Proc. § 13-502(2). Further, pursuant to Md. Code. Ann., Crim. Proc. § 13-503(b)(1) (Forfeiture of property or interest in property) "[a] motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire" may be seized or forfeited if "the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the human trafficking law."

However, provisions of the asset forfeiture law that include more broad powers of asset forfeiture for real property and motor vehicles<sup>27</sup> apply only to violations of Md. Code. Ann., Crim. Proc. § 11-303 and therefore do not apply to buyers.

In addition to those more targeted statutes, Md. Code Ann., Crim. Proc. § 11-603(a) (Restitution determination) may require a buyer to make restitution if any of the following circumstances exist:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
  - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
  - (ii) direct out-of-pocket loss;
  - (iii) loss of earnings; or
  - (iv) expenses incurred with rehabilitation;
- (3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;
- (4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;
- (5) the Criminal Injuries Compensation Board paid benefits to a victim; or
- (6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

If the court orders the buyer to pay restitution, the court also may enter “an immediate and continuing earnings withholding order” and specify an amount the buyer’s employers must withhold and pay to the appropriate governmental entity. Md. Code. Ann., Crim. Proc. § 11-617(a)(1), (d)(1).

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

The possession of child pornography is prohibited under Md. Code Ann., Crim. Law § 11-208(a) (Possession of visual representation of child under 16 engaged in certain sexual acts). Md. Code Ann., Crim. Law § 11-208(a) makes it a crime for a person to

knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child under the age of 16 years:

- (1) engaged as a subject of sadomasochistic abuse;
- (2) engaged in sexual conduct;<sup>28</sup> or
- (3) in a state of sexual excitement.<sup>29</sup>

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<sup>27</sup> See sections 3.4 and 4.2 for more detailed discussion of these provisions.

<sup>28</sup> Md. Code Ann., Crim. Law § 11-101(d) defines “sexual conduct” as the following:

- (1) human masturbation;
- (2) sexual intercourse; or
- (3) whether alone or with another individual or animal, any touching of or contact with:
  - (i) the genitals, buttocks, or pubic areas of an individual; or
  - (ii) breasts of a female individual.

<sup>29</sup> Md. Code Ann., Crim. Law § 11-101(e) defines “sexual excitement” as the following:

A conviction under Md. Code Ann., Crim. Law § 11-208 is a misdemeanor conviction punishable by imprisonment up to 5 years, a fine not to exceed \$2,500, or both. Md. Code Ann., Crim. Law § 11-208(b)(1). Subsequent convictions, however, are felony convictions punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Md. Code Ann., Crim. Law § 11-208(b)(2).<sup>30</sup>

In comparison, a federal conviction for possession of child pornography<sup>31</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>32</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>33</sup>

- 2.9.1 Recommendation: Amend Md. Code Ann., Crim. Law § 11-208(a) (Possession of visual representation of child under 16 engaged in certain sexual acts) to apply to all minors under 18 and impose substantial penalties to 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.*

Pursuant to Md. Code Ann., Crim. Proc. § 11-704(a) (Registration required), sex offender registration is required for tier I, II, and III sex offenders, and “a sex offender who is required to register by another jurisdiction” who moves to Maryland to live, work, attend school, or be a transient.

According to Md. Code Ann., Crim. Proc. § 11-701(o), a “tier I sex offender” includes a person convicted of any the following:

- (1) conspiring to commit, attempting to commit, or committing a violation of § 3-308 [Sexual offense in the fourth degree] . . . ;

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- (1) the condition of the human genitals when in a state of sexual stimulation;  
(2) the condition of the human female breasts when in a state of sexual stimulation; or  
(3) the sensual experiences of individuals engaging in or witnessing sexual conduct or nudity.

<sup>30</sup> However, pursuant to subsection (d), “It is an affirmative defense to a charge of violating this section that the person promptly and in good faith: (1) took reasonable steps to destroy each visual representation; or (2) reported the matter to a law enforcement agency.”

<sup>31</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>32</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>33</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).

- (2) conspiring to commit, attempting to commit, or committing a violation of . . . § 11-208 [Possession of visual representation of child under 16 engaged in certain sexual acts] . . . if the victim is a minor;
- (3) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection;
- (4) any of the following federal offenses:

- . . .
- (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591;
- (vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);
- . . . .

A “tier II sex offender,” according to Md. Code Ann., Crim. Proc. § 11-701(p), includes a person convicted of

- (1) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(4) or (5) [Sexual offense in the third degree where the victim is 14 or 15 years old and the defendant is at least 21], § 3-324 [Sexual solicitation of minor], [or] § 11-207 [Child pornography] . . . ;
- (2) conspiring to commit, attempting to commit, or committing a violation of § 11-303 [Human trafficking], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] . . . , if the intended prostitute or victim is a minor;
- (3) conspiring to commit, attempting to commit, or committing a violation of . . . § 3-603 [Sale of Minor] . . . , if the victim is a minor who is at least 14 years old;
- (4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender;
- (5) a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection . . .
- . . . .

Similarly, Md. Code Ann., Crim. Proc. § 11-701(q) defines “tier III sex offender” as including persons convicted of any of following:

- (1) conspiring to commit, attempting to commit, or committing a violation of:
  - . . .
  - (ii) § 3-303 [Rape in the first degree], § 3-304 [Rape in the second degree], § 3-305 [Sexual offense in the first degree], § 3-306 [Sexual offense in the second degree] . . . § 3-315 [Continuing course of conduct with child] . . . or § 3-602 [Sexual abuse of minor] . . .
  - . . .
- (2) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(3) [Sexual offense in the third degree where the victim is under 14 and the defendant is at least 4 years older than the victim] . . . if the victim is under the age of 14 years;
- . . .
- (4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;
- (5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection . . .
- . . . .

## FRAMEWORK ISSUE 3: CRIMINAL PROVISIONS FOR TRAFFICKERS

### *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.*

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### *Legal Analysis:*

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*<sup>34</sup>

Traffickers convicted under Md. Code Ann., Crim. Law § 11-303(a)(1) (Human trafficking), if their victim is a minor, are guilty of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000, or both. Md. Code Ann., Crim. Law § 11-303(c)(2).

Traffickers may also be prosecuted under Md. Code Ann., Crim. Law § 11-305(a) (Child kidnapping for the purpose of committing a sexual crime), a felony punishable by imprisonment up to 25 years, a fine not to exceed \$5,000, or both. Md. Code Ann., Crim. Law § 11-305(b).<sup>35</sup>

Traffickers convicted under Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of a minor)<sup>36</sup> are guilty of a felony punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

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<sup>34</sup> See discussion of relevant Maryland provisions listed in this Section *supra* Sections 1.1 and 1.2.

<sup>35</sup> See *supra* note 6.

<sup>36</sup> See *supra* Section 1.2 for discussion of the definition of “solicit.”



In addition, although not specifically applicable to sexual exploitation, a trafficker may be guilty of Md. Code Ann., Crim. Law § 3-603(a) (Sale of minor), a misdemeanor punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Md. Code Ann., Crim. Law § 3-603(b).

Although not specific to trafficking minors for commercial sexual exploitation, Md. Code Ann., Crim. Law § 11-306(a) (House of prostitution) could be used to prosecute a trafficker. This statute makes it a crime for a person to knowingly

- (2) keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation;
- (3) allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation;
- (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or
- (5) procure or solicit or offer to procure or solicit for prostitution or assignation.

A trafficker convicted under this statute is guilty of a misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-306(b).

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

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

Md. Code Ann., Crim. Law § 11-207(a) (Child pornography) prohibits the distribution, promotion, and sale of child pornography. Specifically, Md. Code Ann., Crim. Law § 11-207(a) makes it illegal for a person to

- (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;
- (2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (4) knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:
  - (i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or
  - (ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or
- (5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying

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<sup>37</sup> See *supra* note 21.

<sup>38</sup> See *supra* note 22.

information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

A trafficker's first conviction under Md. Code Ann., Crim. Law § 11-207(a) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2). In contrast, 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).

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>39</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>40</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>41</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>42</sup>

### 3.3 *Using the Internet to lure, entice, recruit, or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.*

Using the Internet to lure, entice, recruit or purchase commercial sex acts with a minor is not a separate crime and does not result in enhanced penalties for traffickers. However, using the Internet to “command, authorize, urge, entice, request, or advise” a minor to engage in a violation of Md. Code Ann., Crim. Law § 11-306 (House of prostitution), among other crimes, is prohibited under Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor). Pursuant to Md. Code Ann., Crim. Law § 3-324(b),

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, knowingly solicit a minor or law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to

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<sup>39</sup> See *supra* note 22.

<sup>40</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>41</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>42</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).

engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

As used within Md. Code Ann., Crim. Law § 3-324(b), “solicit” is not defined in an expressly commercial way, but Md. Code Ann., Crim. Law § 3-324(a) defines “solicit” as the following:

[T]o command, authorize, urge, entice, request, or advise a person by any means, including:

- (1) in person;
- (2) through an agent or agency;
- (3) over the telephone;
- (4) through any print medium;
- (5) by mail;
- (6) by computer or Internet; or
- (7) by any other electronic means.

A conviction under Md. Code Ann., Crim. Law § 3-324(b) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

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

Traffickers convicted under Maryland laws for crimes related to the trafficking of domestic minor sex victims are subject to possible fines ranging from \$500 to \$100,000. Specifically, traffickers convicted under Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor) or Md. Code Ann., Crim. Law § 11-207 (Child pornography) are subject to a possible fine not to exceed \$25,000. Md. Code Ann., Crim. Law §§ 9-804(c), 3-324(d), 11-207(b)(1). Subsequent convictions under Md. Code Ann., Crim. Law § 11-207 (Child pornography) are subject to a possible fine not to exceed \$50,000. Md. Code Ann., Crim. Law § 11-207(b)(2). Traffickers convicted under Md. Code Ann., Crim. Law § 11-303(b) (Human trafficking) are subject to a possible fine not to exceed \$15,000, while traffickers convicted under either Md. Code Ann., Crim. Law § 3-603 (Sale of minor) or Md. Code Ann., Crim. Law § 11-304 (Receiving earnings of prostitute) are subject to a possible fine not to exceed \$10,000. Md. Code Ann., Crim. Law §§ 11-303(c)(2), 3-603(b), 11-304(b). Traffickers convicted under Md. Code Ann., Crim. Law § 11-305 (Child kidnapping for the purpose of committing a sexual crime) are subject to a possible fine not to exceed \$5,000. Md. Code Ann., Crim. Law §§ 11-305(b).<sup>43</sup> Lastly, traffickers convicted under Md. Code Ann., Crim. Law § 11-306 (House of prostitution) are subject to a possible fine not to exceed \$500. Md. Code Ann., Crim. Law § 11-306(b).

Maryland law provides for asset forfeiture of motor vehicles, real property, and money used by traffickers in conjunction with commercial exploitation and sex trafficking of minors. Specifically, under Md. Code Ann., Crim. Proc. § 13-502(1), (3) motor vehicles and real property are subject to forfeiture if used in connection with a violation of and conviction under Md. Code Ann., Crim. Law. § 11-303 [Human trafficking].<sup>44</sup> Money is subject to forfeiture not merely for violations of § 11-303, but more broadly if it is used in connection with a violation of and conviction under the “human trafficking law,” or if it is “found in close proximity to or at the scene of the arrest for a violation of the human trafficking law. Md. Code Ann. Crim. Proc. § 13-502(2). For purposes of subtitle 5, Md. Code Ann., Crim. Proc. § 13-501(G) defines “human trafficking law” as “section 3-324 [Sexual solicitation of minor], section 11-207 [Child pornography], section 11-303 [Human trafficking],

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<sup>43</sup> See *supra* note 6.

<sup>44</sup> However, real property used as the principal family residence may only be forfeited if one of the owners of the real property is convicted of violating, attempting to violate, or conspiring to violate Md. Code Ann., Crim. Law § 11-303. Md. Code Ann., Crim. Proc. § 13-503(c).

section 11-304 [Receiving earnings of prostitute], and section 11-305 [Child kidnapping for the purpose of committing a sexual crime] of the criminal law article.”<sup>1</sup>

Pursuant to Md. Code. Ann., Crim. Proc. § 13-503(b)(1) “[a] motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire” may be seized or forfeited if “the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the human trafficking law.” Furthermore, Md. Code Ann., Crim. Proc. § 13-507 states that a motor vehicle used in violation of Md. Code. Ann., Crim. Law § 11-303 may be seized and forfeited when justified. In determining whether a seizure is justified, the seizing authority should consider the following circumstances: “(1) evidence that the motor vehicle was acquired by use of proceeds from a transaction involving a violation of section 11-303 of the criminal law article; (2) the circumstances of the arrest; and (3) the way in which the motor vehicle was used” Md. Code Ann., Crim. Proc. § 13-507(b).

Under Md. Code. Ann., Crim. Proc. §13-522 an owner’s interest in real property may be forfeited if the owner is convicted of violating, attempting to violate, or conspiring to violate Md. Code. Ann., Crim. Law § 11-303 (Human trafficking). This provision does not require that the real property have been used to commit human trafficking. If the real property is held by the husband and wife as tenants by the entirety and is used as the primary residence, it may only be forfeited if both the husband and wife are convicted of Md. Code. Ann. Crim. Law § 11-303 and the property was used in connection with attempting to violate, or conspiring to violate Md. Code. Ann. Crim. Law § 11-303. Md. Code. Ann., Crim. Proc. § 13-503(D).

Md. Code Ann., Crim. Proc. § 13-525(a) creates a rebuttable presumption that property or an owner’s interest in property is subject to forfeiture if the state establishes by clear and convincing evidence that:

- (i) the person was convicted of violating section 11-303 of the criminal law article or attempting or conspiring to violate section 11-303 of the criminal law article;
- (ii) the property was acquired by the person during the violation or within a reasonable time after the violation; and
- (iii) there was no other likely source for the property.

Pursuant to Md. Code. Ann., Crim. Pro. §13-514 forfeiture proceedings shall be filed promptly when there is probable cause to believe that the seized property is “directly or indirectly dangerous to health or safety and that the property was or will be used to violate section 11-303 of the criminal law article.”

Md. Code Ann., Crim. Proc. § 11-603(a) (Restitution determination) may, however, require a trafficker to make restitution if any of the following circumstances exist:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
  - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
  - (ii) direct out-of-pocket loss;
  - (iii) loss of earnings; or
  - (iv) expenses incurred with rehabilitation;
- (3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;
- (4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;
- (5) the Criminal Injuries Compensation Board paid benefits to a victim; or

(6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

If the court orders the trafficker to make restitution, the court also may enter “an immediate and continuing earnings withholding order” and specify an amount the trafficker’s employer must withhold and pay to the appropriate governmental entity. Md. Code. Ann., Crim. Proc. § 11-617(a)(1), (d)(1).

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

Pursuant to Md. Code Ann., Crim. Proc. § 11-704(a) (Registration required), sex offender registration is required for tier I, II, and III sex offenders, and “a sex offender who is required to register by another jurisdiction” who moves to Maryland to live, work, attend school, or be a transient.

According to Md. Code Ann., Crim. Proc. § 11-701(o), a “tier I sex offender” includes a person convicted of any the following:

(4) any of the following federal offenses:

- ...
- (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591; or
- (vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);
- ....

A “tier II sex offender,” according to Md. Code Ann., Crim. Proc. § 11-701(p), includes a person convicted of

- (1) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(4) or (5) [Sexual offense in the third degree where the victim is 14 or 15 years old and the defendant is at least 21], § 3-324 [Sexual solicitation of minor], [or] § 11-207 [Child pornography] . . . ;
- (2) conspiring to commit, attempting to commit, or committing a violation of § 11-303 [Human trafficking], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] . . . , if the intended prostitute or victim is a minor;
- (3) conspiring to commit, attempting to commit, or committing a violation of . . . § 3-603 [Sale of Minor] . . . , if the victim is a minor who is at least 14 years old;
- (4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender;
- (5) a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection . . .
- ....

Similarly, Md. Code Ann., Crim. Proc. § 11-701(q) defines “tier III sex offender” as including persons convicted of any of following:

- (1) conspiring to commit, attempting to commit, or committing a violation of:
  - ...
  - (ii) § 3-303 [Rape in the first degree], § 3-304 [Rape in the second degree], § 3-305 [Sexual offense in the first degree], § 3-306 [Sexual offense in the second degree] . . . § 3-315 [Continuing course of conduct with child] . . . or § 3-602 [Sexual abuse of minor] . . .
  - ...
- (2) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(3) [Sexual offense in the third degree where the victim is under 14 and the defendant is at least 4 years older than the victim] . . . if the victim is under the age of 14 years;

- ...
- (4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;
- (5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection . . .
- ....

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

Under Md. Code Ann., Fam. Law § 5-323(b) (Grant of guardianship—Nonconsensual), the court has the authority to terminate parental rights if, after considering a number of factors (discussed below), it “finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child . . . .”

In determining whether to terminate parental rights, pursuant to Md. Code Ann., Fam. Law § 5-323(d),

a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent’s rights is in the child’s best interests, including:

- ...
- (3) whether:
  - (i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;
  - ...
  - (iii) the parent subjected the child to:
    1. chronic abuse;
    2. chronic and life-threatening neglect;
    3. sexual abuse; or
    4. torture;
  - (iv) the parent has been convicted, in any state or any court of the United States, of:
    1. a crime of violence<sup>45</sup> against:

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<sup>45</sup> Pursuant to Md. Code Ann., Crim. Law § 14-101(a) (Mandatory sentences for crimes of violence), a “crime of violence” includes the following:

- (3) kidnapping;
- ...
- (8) rape;
- ...
- (12) sexual offense in the first degree;
- (13) sexual offense in the second degree;
- (14) use of a handgun in the commission of a felony or other crime of violence;
- (15) child abuse in the first degree under § 3-601 of this article;
- (16) sexual abuse of a minor under § 3-602 of this article if:
  - (i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and (ii) the offense involved:

- A. a minor offspring of the parent;
- B. the child; or
- C. another parent of the child; or
- 2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and
- (v) the parent has involuntarily lost parental rights to a sibling of the child;

....

The court may terminate parental rights without considering any of these factors, however, if the child’s parent has not come forward within 60 days of the “child’s adjudication as a child in need of assistance,” and “the identities of the child’s parents are unknown.” Md. Code Ann., Fam. Law § 5-323(c). “Child in need of assistance,” or “CINA,” is defined as a person under 18 “who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(e)–(g). “Abuse” is defined to include “[s]exual abuse of a child, whether a physical injury is sustained or not,” as well as “[p]hysical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by: (i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or (ii) A household or family member.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(b).

- 3.6.1 Recommendation: Amend Md. Code. Ann., Fam. Law § 5-323(d) (Grant of guardianship—Nonconsensual) to expressly provide that a court may terminate the parental rights of a parent convicted under Md. Code Ann., Crim. Law § 11-303(b) (Human trafficking), § 11-305 (Child kidnapping for the purpose of committing a sexual crime), § 3-603(a) (Sale of minor), § 11-304 (Receiving earnings of prostitute), § 9-802(a) (Criminal gang activity), § 9-804(a) (Participation in criminal gang prohibited), § 3-324(b) (Sexual solicitation of minor), or § 11-207(a) (Child pornography) when the victim is a minor.

- 
- 1. vaginal intercourse, as defined in § 3-301 of this article;
  - 2. a sexual act, as defined in § 3-301 of this article;
  - 3. an act in which a part of the offender’s body penetrates, however slightly, into the victim’s genital opening or anus; or
  - 4. the intentional touching, not through the clothing, of the victim’s or the offender’s genital, anal, or other intimate area for sexual arousal, gratification, or abuse;
  - (17) an attempt to commit any of the crimes described in items (1) through (16) of this subsection;
  - (18) continuing course of conduct with a child under § 3-315 of this article;

....

***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.*
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***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.*

Md. Code Ann., Crim. Law § 11-303(e) (Human trafficking) provides that “[a] person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in [Md. Code Ann., Crim. Law § 11-303(a) or (b)]<sup>46</sup> . . . is subject to the same penalties that would apply if the person had violated that subsection.” Thus, if the victim of the conduct described in Md. Code Ann., Crim. Law § 11-303(a)(1) is a minor,<sup>47</sup> a facilitator convicted under Md. Code Ann., Crim. Law § 11-303(e) is guilty of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000, or both . Md. Code Ann., Crim. Law § 11-303(c)(2).

The conduct of some facilitators may fall under Md. Code Ann., Crim. Law § 11-304(a) (Receiving earnings of prostitute),<sup>48</sup> which is a misdemeanor punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Also, facilitators convicted under Md. Code Ann., Crim. Law § 11-306(a) (House of prostitution)<sup>49</sup> are guilty of a misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-306(b).

Facilitators may also be prosecuted under Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) if they “use a computer to knowingly . . . transmit, . . . sell, . . . exchange, or disseminate any notice, statement, advertisement, or minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of . . . facilitating [or] encouraging . . . unlawful sadomasochistic abuse or sexual conduct of or with a minor.” A conviction under this statute is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Facilitators who are corporate entities or individuals responsible for managing corporations may have their corporate charters or their corporation’s charters terminated pursuant to Md. Code Ann., Corps. & Assocs. § 1-405(b) (Forfeiture of charter, revocation of permit, or injunction against business other than corporation for

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<sup>46</sup> See discussion of relevant provisions *supra* Section 1.1.

<sup>47</sup> See *supra* note 5.

<sup>48</sup> See discussion of relevant provisions *supra* Section 3.1.

<sup>49</sup> See discussion of relevant provisions *supra* Section 1.2.



illegal conduct connected with organized crime). Specifically, Md. Code Ann., Corps. & Assocs. § 1-405(b) states,

The Attorney General may institute a civil proceeding in the courts to forfeit the charter of any Maryland corporation and to revoke the authority of any foreign corporation to do business in this State, if:

- (1) (i) A corporate officer or any person controlling the management or operation of the corporation, with the knowledge of the president and a majority of the board of directors or under circumstances where the president and a majority of the directors should have knowledge, is a person engaged in organized crime or connected directly or indirectly with an organization or criminal society engaged in organized crime; or  
(ii) A director, officer, employee, agent, or stockholder acting for, through, or on behalf of a corporation in conducting its affairs purposely engages in a persistent course of organized crime or other criminal conduct with the knowledge of the president and a majority of the board of directors or under circumstances where the president and a majority of the directors should have knowledge, with the intent to compel or induce any person to deal with the corporation or to engage in organized crime; and
- (2) For the prevention of future illegal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the authorization to be revoked.

As used in Md. Corps. & Assocs. Code Ann. § 1-405, “organized crime” includes “any combination or conspiracy . . . to violate, aid or abet the violation of criminal laws related to prostitution . . . .” Md. Corps. & Assocs. Code Ann. § 1-405(a)(2).

Additionally, if a facilitator engages in some other business that is not a corporation, Md. Corps. & Assocs. Code Ann. § 1-405(c) provides,

The Attorney General may institute a civil proceeding in the courts to enjoin the operation of any business other than a corporation, including a partnership, limited partnership, unincorporated association, joint venture, or sole proprietorship, if:

- (1) Any person in control of the business, who may be a partner in a partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any of these businesses, or a person who, in fact, exercises control over the operations of the business in conducting its business affairs, purposely engages in a persistent course of organized crime or other illegal conduct with the intent to compel or induce any person to deal with the business or engage in organized crime; and
- (2) For the prevention of future illegal conduct of the same character, the public interest requires the operation of the business to be enjoined.

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

Facilitators convicted under Maryland laws for crimes related to the trafficking of domestic minor sex victims are subject to possible fines ranging from \$500 to \$100,000. Specifically, facilitators convicted under Md. Code Ann., Crim. Law § 9-804(a), (b) (Participation in criminal gang prohibited) are subject to a possible fine not to exceed \$100,000, and facilitators convicted under Md. Code Ann., Crim. Law § 11-207 (Child pornography) are subject to a possible fine not to exceed \$25,000. Md. Code Ann., Crim. Law §§ 9-804(c), 11-207(b)(1). Subsequent convictions under Md. Code Ann., Crim. Law § 11-207 (Child pornography) are subject to a possible fine not to exceed \$50,000. Md. Code Ann., Crim. Law § 11-207(b)(2). Facilitators convicted

under Md. Code Ann., Crim. Law § 11-303(b) (Human trafficking) are subject to a possible fine not to exceed \$15,000, while facilitators convicted under Md. Code Ann., Crim. Law § 11-304 (Receiving earnings of prostitute) are subject to a possible fine not to exceed \$10,000. Md. Code Ann., Crim. Law §§ 11-303(c)(2), 11-304(b). Facilitators convicted under Md. Code Ann., Crim. Law § 9-802 (Criminal gang activity) are subject to a possible fine not to exceed \$1,000. Md. Code Ann., Crim. Law §9-802(b). Lastly, facilitators convicted under Md. Code Ann., Crim. Law § 11-306 (House of prostitution) are subject to a possible fine not to exceed \$500. Md. Code Ann., Crim. Law §11-306(b).

Maryland law provides for asset forfeiture of motor vehicles, real property, and money used by facilitators in conjunction with commercial exploitation and sex trafficking of minors. Specifically, under Md. Code. Ann., Crim. Proc. § 13-502(1), (3), motor vehicles and real property are subject to forfeiture if used in connection with a violation of and conviction under Md. Code. Ann., Crim. Law. § 11-303.<sup>50</sup> Money is more broadly subject to forfeiture if it is used in connection with a violation of and conviction under “the human trafficking law,” or if it is “found in close proximity to or at the scene of the arrest for a violation of the human trafficking law.” Md. Code. Ann., Crim. Proc. § 13-502(2). For purposes of subtitle 5, Md. Code. Ann., Crim. Proc. § 13-501(G) defines “human trafficking law” as “section 3-324 [Sexual solicitation of minor], section 11-207 [Child pornography], section 11-303 [Human trafficking], section 11-304 [Receiving earnings of prostitute], and section 11-305 [Child kidnapping for the purpose of committing a sexual crime] of the criminal law article.”

Pursuant to Md. Code. Ann., Crim. Proc. § 13-503(b)(1) “[a] motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire” may be seized or forfeited if “the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the human trafficking law.” Md. Code. Ann., Crim. Proc. § 13-501(G) defines “human trafficking law” for purposes of the subtitle 5 as “section 3-324 [Sexual solicitation of minor], section 11-207 [Child pornography], section 11-303 [Human trafficking], section 11-304 [Receiving earnings of prostitute], and section 11-305<sup>51</sup> [Child kidnapping for the purpose of committing a sexual crime] of the criminal law article.” Furthermore, Md. Code Ann., Crim. Proc. § 13-507 states that a motor vehicle used in violation of Md. Code. Ann., Crim. Law § 11-303 may be seized and forfeited when justified. In determining whether a seizure is justified, the seizing authority should consider the following circumstances: “(1) evidence that the motor vehicle was acquired by use of proceeds from a transaction involving a violation of section 11-303 of the criminal law article; (2) the circumstances of the arrest; and (3) the way in which the motor vehicle was used”

Under Md. Code. Ann., Crim. Proc. § 13-522 an owner’s interest in real property may be forfeited if the owner is convicted of violating, attempting to violate, or conspiring to violate Md. Code. Ann., Crim. Law § 11-303. This provision does not require that the real property have been used to commit human trafficking. If the real property is held by the husband and wife as tenants by the entirety and is used as the primary residence, it may only be forfeited if both the husband and wife are convicted of Md. Code. Ann. Crim. Law § 11-303 and the property was used in connection with attempting to violate, or conspiring to violate Md. Code. Ann. Crim. Law § 11-303. Md. Code. Ann., Crim. Proc. § 13-503(D).

Md. Code Ann., Crim. Proc. § 13-525(a) creates a rebuttable presumption that property or an owner’s interest in property is subject to forfeiture “if the state establishes by clear and convincing evidence that:

- (i) the person was convicted of violating section 11-303 of the criminal law article or attempting or conspiring to violate section 11-303 of the criminal law article;

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<sup>50</sup> See *supra* note 44 for further discussion on forfeiture of principal family residence.

<sup>51</sup> See *supra* note 6.

- (ii) the property was acquired by the person during the violation or within a reasonable time after the violation; and
- (iii) there was no other likely source for the property.

Pursuant to Md. Code. Ann., Crim. Pro. §13-514 forfeiture proceedings shall be filed promptly when there is probable cause to believe that the seized property is “directly or indirectly dangerous to health or safety and that the property was or will be used to violate section 11-303 of the criminal law article.”

Md. Code Ann., Crim. Proc. § 11-603(a) (Restitution determination) may, however, require a facilitator to make restitution if any of the following circumstances exist:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
  - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
  - (ii) direct out-of-pocket loss;
  - (iii) loss of earnings; or
  - (iv) expenses incurred with rehabilitation;
- (3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;
- (4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;
- (5) the Criminal Injuries Compensation Board paid benefits to a victim; or
- (6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

If the court orders the facilitator to make restitution, the court also may enter “an immediate and continuing earnings withholding order” and specify an amount the facilitator’s employer must withhold and pay to the appropriate governmental entity. Md. Code. Ann., Crim. Proc. § 11-617(a)(1), (d)(1).

- 4.2.1 Recommendation: Amend existing asset forfeiture laws or enact an asset forfeiture law to include forfeiture of tangible and intangible personal property for violations by facilitators of human trafficking and CSEC offenses.
- 4.2.2 Recommendation: Amend Md. Code Ann., Crim. Proc. § 11-603 to provide mandatory minimum fines for human trafficking and CSEC offenses.

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

Maryland has no specific provision prohibiting promoting or selling child sex tourism in Maryland.

- 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.

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

Md. Code Ann., Crim. Law § 11-207 (Child pornography) prohibits promoting and selling child pornography. Specifically, Md. Code Ann., Crim. Law § 11-207(a)(4) makes it a crime for a person to

(4) knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:

- (i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or
- (ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct.

A conviction under Md. Code Ann., Crim. Law § 11-207(a) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Md. Code Ann., Crim. Law § 11-208.1 (Removal of child pornography from Internet) may also be used to prosecute a facilitator who “provides a service that provides or enables computer access via the Internet by multiple users to a computer server or similar device used for the storage of graphics, video, or images” and does not remove an “item of child pornography that is the subject of [a court] order within 5 business days after receiving the court order.” Md. Code Ann., Crim. Law § 11-208.1(a)(4), (f). Pursuant to subsection (h), such facilitators must also

report the location of an item of child pornography to the State Police if the item of child pornography:

1. resides on a server or storage device that is:
  - A. controlled or owned by the interactive computer service provider; and
  - B. located in the State; or
2. based on information apparent to the provider at the time of the report or discovery of an item of child pornography, pertains to a subscriber or user of the interactive computer service who resides in the State.<sup>52</sup>

....

A facilitator who willfully refuses to remove the item of child pornography pursuant to Md. Code Ann., Crim. Law § 11-208.1(f) or who knowingly and willfully refuses to make reports as required under Md. Code Ann., Crim. Law § 11-208.1(h) is, upon conviction, guilty of a misdemeanor punishable by a fine not to exceed \$5,000 for a first conviction, \$20,000 for a second conviction, or \$30,000 for each subsequent conviction. Md. Code Ann., Crim. Law § 11-208.1(i), (h)(2).

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<sup>52</sup> Interactive computer service providers do not have to report the location of an item of child pornography to the State Police if “1. federal law expressly provides for or permits the referral of a report of an item of child pornography to a State or local law enforcement agency; and 2. the interactive computer service provider complies with the federal law.” Md. Crim. Law § 11-208.1(h)(1)(ii).

**Legal Components:**

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

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**Legal Analysis:**

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

For purposes of Maryland’s Criminal Injuries Compensation Board in Md. Code Ann., Crim. Proc. § 11-801(f), “victim” is defined as a person:

- (1) who suffers physical injury or death as a result of a crime<sup>53</sup> or delinquent act;

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<sup>53</sup> Md. Code Ann., Crim. Proc. Law § 11-801(d) states,

- (1) “Crime” means:
  - (i) except as provided in paragraph (2) of this subsection, a criminal offense under state, federal, or common law that is committed in:
    1. this State; or
    2. another state against a resident of this State; or

- (2) who suffers psychological injury as a direct result of:
  - (i) a fourth degree sexual offense or a delinquent act that would be a fourth degree sexual offense if committed by an adult;
  - (ii) a felony or a delinquent act that would be a felony if committed by an adult; or
  - (iii) physical injury or death directly resulting from a crime or delinquent act; or
- (3) who suffers physical injury or death as a direct result of:
  - (i) trying to prevent a crime or delinquent act or an attempted crime or delinquent act from occurring in the person's presence;
  - (ii) trying to apprehend an offender who had committed a crime or delinquent act in the person's presence or had committed a felony or a delinquent act that would be a felony if committed by an adult; or
  - (iii) helping a law enforcement officer in the performance of the officer's duties or helping a member of a fire department who is being obstructed from performing the member's duties.

Under this definition, a sexually exploited child who suffers physical injury or death as the result of a crime under Maryland laws or suffers psychological injury as a result of a fourth degree sexual offense or a felony committed by an adult, is a victim.

5.1.1 Recommendation: Enact a law defining "victim" for purposes of victim services as a person who is a victim of Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor), § 11-207 (Child pornography), § 11-303 (Human trafficking), and § 11-305 (Child kidnapping for the purpose of committing a sexual crime).

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.*

Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor), § 11-207 (Child pornography), § 11-303 (Human trafficking), or § 11-305 (Child kidnapping for the purpose of committing a sexual crime) do not expressly bar a defense based on the minor's consent to a commercial sex act.<sup>54</sup>

5.2.1 Recommendation: Amend Md. Code Ann., Crim. Law § 3-324, § 11-207, § 11-303, and § 11-305 to expressly provide that the minor's consent to a commercial sex act is not a defense to the crime.

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

Md. Code Ann., Crim. Law § 11-306(a)(1) (House of prostitution) states, "A person may not knowingly . . . engage in prostitution or assignation by any means," making it possible for a minor to be convicted of a misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-306(b).

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(ii) an act of international terrorism as defined in Title 18, § 2331 of the United States Code that is committed outside of the United States against a resident of this State.

- (2) "Crime" does not include an act involving the operation of a vessel or motor vehicle unless the act is:
  - (i) a violation of § 20-102, § 20-104, § 21-902, or § 21-904 of the Transportation Article; or
  - (ii) operating a motor vehicle or vessel that results in an intentional injury.

<sup>54</sup> Other crimes under Maryland law, however, do expressly provide that the alleged victim's consent to an act is not a defense to the crime. For example, Md. Code Ann., Crim. Law § 3-607 (c) (Hazing) states, "The implied or express consent of a student to hazing is not a defense under this section." In contrast, a consent is an element of the offense under Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree) and Md. Code Ann., Crim. Law § 3-305 (Sexual offense in the first degree).

- 5.3.1 Recommendation: Amend Md. Code Ann., Crim. Law § 11-306(a)(1) (House of prostitution) to make minors expressly immune from prosecution for prostitution and identify all minors engaged in prostitution as victims of human trafficking under Md. Code Ann., Crim. Law § 11-303(b) (Human trafficking).

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 CINA**

Maryland a child that is found to be abused or neglected may be designated a “child in need of assistance”<sup>55</sup> (CINA). Md. Code Ann., Cts. & Jud. Proc. § 3-801(f) (Definitions),

- (f) . . . . "Child in need of assistance" means a child who requires court intervention because:
- (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and
  - (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

As used within Maryland’s provisions regarding CINA, “abuse” is defined in Md. Code Ann., Cts. & Jud3-801(b) as the following:

- (1) Sexual abuse of a child<sup>56</sup>, whether a physical injury is sustained or not; or
- (2) Physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by: A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or
- (ii) A household or family member.

“Neglect” is defined in Md. Code Ann., Cts. & Jud. Proc. § 3-801(s) as:

[T]he leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

### *I. Initial Custody*

#### *a. Authority for Initial Custody*

Md. Code Ann., Cts. & Jud. Proc. § 3-814(a) (Taking child into custody), a child may be taken into custody as a possible CINA by a court order, under the provisions of Md. Code Ann., Fam. Law 5-709 (Temporary removal

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<sup>55</sup> Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-801, a sexually exploited child is likely to be identified as CINA. If identified as CINA under Md. Code Ann., Cts. & Jud. Proc. § 3-801(b)(2)(i), the definition of caregiver as an, “individual who has permanent or temporary care or custody or responsibility for supervision of the child” is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

<sup>56</sup> Sexual abuse includes human trafficking. Md. Code Ann., Cts. & Jud. Proc. § 3-801(x)(2)(ii).

of child from home without court approval), or by a law enforcement officer who “has reasonable grounds to believe that the child is in immediate danger from the child’s surroundings and that the child’s removal is necessary for the child’s protection.” Under Md. Code Ann., Fam. Law § 5-709(c), a representative of a local department “may remove the child [from a household] temporarily, without prior approval by the juvenile court, if the representative believes that the child is in serious, immediate danger.”

Md. Code Ann., Cts. & Jud. Proc. § 3-814 (Taking child into custody), if a child is taken into custody as a potential CINA, law enforcement officers are mandated to keep the child in custody, “unless the officer determines it is safe to return the child to the child’s parent, custodian or guardian.”

#### b. Placement

In emergency situations when the child is in custody, Md. Code Ann., Cts. & Jud. Proc. § 3-815(b) (Shelter care for child alleged to be in need of assistance) provides that

A local department may place a child in emergency shelter care before a hearing if:

- (1) Placement is required to protect the child from serious immediate danger;
- (2) There is no parent, guardian, custodian, relative, or other person able to provide supervision; and
- (3) (i) 1. The child’s continued placement in the child’s home is contrary to the welfare of the child; and  
2. Because of an alleged emergency situation, removal from the home is reasonable under the circumstances to provide for the safety of the child; or  
(ii) 1. Reasonable efforts have been made but have been unsuccessful in preventing or eliminating the need for removal from the child’s home; and  
2. As appropriate, reasonable efforts are being made to return the child to the child’s home.

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

After a child is placed in emergency shelter care, the local department must immediately file a petition to continue shelter care, and the court must hold a hearing on the petition. Md. Code Ann., Cts. & Jud. Proc. § 3-815(c)(1), (c)(2) (Shelter care for child alleged to be in need of assistance).

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

The court may not order that shelter care be continued more than 30 days unless the court finds that continued shelter care is necessary for the child’s safety. In that case, the court may extend shelter care for an additional 30 days. Md. Code Ann., Cts. & Jud. Proc. § 3-815(c)(4) (Shelter care for child alleged to be in need of assistance). A child alleged to be a CINA may not be placed in detention or a mental health facility, unless the child has been involuntarily committed, but a child alleged to be a CINA due to a mental disorder or developmental disability may be placed “in a shelter care facility maintained or licensed by the Department of Health and Mental Hygiene or, if no such facility is available, in a private home or shelter care facility approved by the court.” Md. Code Ann., Cts. & Jud. Proc. § 3-815(f)(1), (2).

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

Md. Code Ann., Cts. & Jud. Proc. § 3-817(a) (Adjudicatory hearing), “After a CINA petition is filed under this subtitle, the court shall hold an adjudicatory hearing.” A petition must be filed to begin the adjudication process. Specifically, Md. Code Ann., Cts. & Jud. Proc. § 3-809(a) (Filing of petition; notice for decision not to file; request for review) provides that



On receipt of a complaint from a person or agency having knowledge of facts which may cause a child to be subject to the jurisdiction of the court under this subtitle [Children in Need of Assistance], the local department shall file a petition under this subtitle if it concludes that the court has jurisdiction<sup>57</sup> over the matter and that the filing of a petition is in the best interests of the child. Md. Rule 11-112 (Detention or shelter care), if a child is detained or sheltered pending adjudication, the detention cannot last more than thirty days. If a child is not detained pending the proceeding, the hearing may be scheduled within sixty days of the filing of the petition pursuant to Md. Rule 11-114 (Adjudicatory hearing).

Unless the petition is dismissed, “the court shall hold a separate disposition hearing after an adjudicatory hearing to determine whether the child is a CINA.” Md. Code Ann., Cts. & Jud. Proc. § 3-819(a) (Disposition hearing). Md. Code Ann., Cts. & Jud. Proc. § 3-819(b)(1)(iii)(2), if the court determines that the child is a CINA it may decide not to change the child’s custody status or it may:

Commit the child on terms the court considers appropriate to the custody of:

- A. A parent;
- B. Subject to § 3-819.2 [Custody and guardianship to individual] of this subtitle, a relative, or other individual; or
- C. A local department, the Department of Health and Mental Hygiene, or both, including designation of the type of facility where the child is to be placed.

However, a CINA may not be committed to a correctional facility or one used to confine delinquent children, and must be “placed in accommodations that are separate from adults who are confined to that facility or institution.” Md. Code Ann., Cts. & Jud. Proc. § 3-825(a)-(c)(1) (Limitations regarding commitment facilities).

## V. *Outcomes*

When a DMST victim found to be a CINA, the court has options regarding long-term and on-going services. Within 11 months “after a child committed under § 3-819 (Disposition hearing) of this subtitle or continued in a voluntary placement under § 3-819.1(b) (Voluntary placement hearing) of this subtitle enters an out-of-home placement; or . . . [w]ithin 30 days after the court finds that reasonable efforts to reunify a child with the child’s parent or guardian are not required based on a finding that a circumstance enumerated in § 3-812 of this subtitle has occurred” the court must hold a permanency planning hearing for the child, at which the court must determine whether to reunite the child with the parent, place the child with a relative for adoption or custody,

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<sup>57</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-803(a), (b) (Jurisdiction of the court) states,

(a) Exclusive original jurisdiction.—In addition to the jurisdiction specified in Subtitle 8A of this title, the court has exclusive original jurisdiction over:

- (1) Voluntary placement hearings;
- (2) Proceedings arising from a petition alleging that a child is a CINA;
- (3) Proceedings arising under the Interstate Compact on the Placement of Children;
- (4) Proceedings to terminate parental rights after a CINA proceeding;
- (5) Guardianship review proceedings after a TPR proceeding; and
- (6) Adoption proceedings, if any, after a TPR proceeding.

(b) Concurrent jurisdiction.—

(1) The court has concurrent jurisdiction over:

- (i) Custody, visitation, support, and paternity of a child whom the court finds to be a CINA; and
- (ii) Custody of a child alleged to be a CINA under the circumstances described in § 3-819(d) of this subtitle.

place the child for adoption or custody by a nonrelative, or place the child in another “planned permanent living arrangement that . . . [a]ddresses the individualized needs of the child . . . .” Md. Code Ann., Cts. & Jud. Proc. § 3-823(b)(1), (e) (Permanency plan for out-of-state placement).

### **Child Identified as in Need of Supervision / Delinquent**

The provisions of subtitle 8A of Md. Code Ann., Cts. & Jud. Proc. tit. 3, apply to both delinquent children and children in need of supervision. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-03(a)(1) (Jurisdiction of the court). Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(e) (Definitions), a “child in need of supervision” is one who,

[R]equires guidance, treatment, or rehabilitation and:

- (1) Is required by law to attend school and is habitually truant;
- (2) Is habitually disobedient, ungovernable, and beyond the control of the person having custody of him;
- (3) Deports himself so as to injure or endanger himself or others; or
- (4) Has committed an offense applicable only to children.<sup>58</sup>

Under Md. Code Ann., Cts. & Jud. Proc. § 3-8A-01(m), a “delinquent child” is one “who has committed a delinquent act and requires guidance, treatment, or rehabilitation.” Under subsection (l), a “delinquent act” is “an act which would be a crime if committed by an adult.” A child charged with Md. Code Ann., Crim. Law § 11-306(a)(1) (House of prostitution), a criminal act when committed by an adult, therefore could be considered a delinquent child.

- 5.4.1 Recommendation: Establish a mandatory response law directing any minor involved in prostitution or who is a victim of human trafficking under Md. Code Ann., Crim. Law § 11-303(a)(1) (Human trafficking) away from the criminal justice system and into a child protective services system.

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

For purposes of Maryland’s child abuse and neglect laws, “abuse” is defined in Md. Code Ann., Fam. Law § 5-701(b) (Definitions) as the following:

- (1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed; or
- (2) sexual abuse of a child, whether physical injuries are sustained or not.

Pursuant to Md. Code Ann., Fam. Law § 5-701(x),

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<sup>58</sup> Md. Code Ann., Cts. & Jud. Proc. § 3-8A-10.1 (Child in Need of Services Pilot Program) establishes a Pilot Program for providing services to children in need of supervision; however, the Pilot Program currently is limited to Baltimore County, Cecil County, Montgomery County, and Prince George’s County.

(1) “Sexual abuse” means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.

(2) “Sexual abuse” includes:

(i) Allowing or encouraging a child to engage in:

(1) Obscene photography, films, poses, or similar activity;

(2) Pornographic photography, films, poses, or similar activity; or

(3) Prostitution

(ii) Human trafficking;

(iii) Incest;

(iv) Rape;

(v) Sexual offense in any degree;

(vi) Sodomy; and

(vii) Unnatural or perverted sexual practices.”

“Neglect” is defined in Md. Code Ann., Fam. Law § 5-701(s) as the following:

[T]he leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

(1) that the child’s health or welfare is harmed or placed at substantial risk of harm; or

(2) mental injury to the child or a substantial risk of mental injury.

As used within Maryland’s provisions regarding Children in Need of Assistance,<sup>59</sup> “abuse” is defined in Md. Code Ann., Cts. & Jud. Proc. § 3-801(b) as the following:

(1) Sexual abuse of a child, whether a physical injury is sustained or not; or

(2) Physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by:

(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or

(ii) A household or family member.

Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-801(x) (Definitions),

(1) “Sexual abuse” means an act that involves sexual molestation or sexual exploitation of a child by:

(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or

(ii) A household or family member.”

(2) “Sexual abuse” includes:

(I) Allowing or encouraging a child to engage in:

(1) Obscene photography, films, poses, or similar activity;

(2) Pornographic photography, films, poses, or similar activity; or

(3) Prostitution

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<sup>59</sup>As used within Md. Code Ann., Cts. & Jud. Proc. § 3-801(b), a “child in need of assistance” is defined as “a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(f).

- (II) Human trafficking;
- (III) Incest;
- (IV) Rape;
- (V) Sexual offense in any degree;
- (VI) Sodomy; and
- (VII) Unnatural or perverted sexual practices.”

“Neglect” is defined in Md. Code Ann., Cts. & Jud. Proc. § 3-801(s) as the following:

[T]he leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

The definitions of “abuse” and “neglect” under Md. Code Ann., Fam. Law § 5-701 (Definitions) and Md. Code Ann., Cts. & Jud. Proc. § 3-801 (Definitions), cover substantially the same conduct. Most notably, both definitions of “sexual abuse” expressly include human trafficking and “[a]llowing a child to engage in . . . [p]rostitution.”

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

For purposes of Maryland’s child abuse and neglect provisions, Md. Code Ann., Fam. Law § 5-701(b) defines “abuse” as “(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed; or (2) sexual abuse of a child, whether physical injuries are sustained or not.” Md. Code Ann., Fam. Law § 5-701(k) (Definitions) defines a “household member” as “a person who lives with, or is a regular presence in, a home of a child at the time of the alleged abuse or neglect.” Additionally, “household” is defined as “the location: (1) in which the child resides; (2) where the abuse or neglect is alleged to have taken place; or (3) where the person suspected of abuse or neglect resides.” Pursuant to Md. Code Ann., Fam. Law § 5-709(c) (Temporary removal of child from home without court approval), child protection personnel investigating child abuse and neglect “may remove the child temporarily [from the household], without prior approval by the juvenile court, if the representative believes that the child is in serious, immediate danger.”

However, for purposes of Maryland’s provisions regarding “Children in Need of Assistance,” a “custodian” is more narrowly defined as “a person or governmental agency to whom custody of a child has been given by order of court, including a court other than the juvenile court,” and “custody” is defined as “the right and obligation, unless otherwise determined by the court, to provide ordinary care for a child and determine placement.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(j), (k).

- 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.*

Generally, victims<sup>60</sup> are eligible to receive an award from the Criminal Injuries Compensation Board. Md. Code Ann., Crim. Proc. § 11-808(a)(1)(i). Several additional requirements for compensation may, however, present difficulties for victims of domestic minor sex trafficking. Specifically, “A person who commits the crime or delinquent act that is the basis of a claim, or an accomplice of the person, is not eligible to receive an award with respect to the claim.” Md. Code Ann., Crim. Proc. § 11-808(a)(2). Additionally, the Criminal Injuries Compensation Board will not award compensation to a victim unless it finds that “the crime or delinquent act or the discovery of child abuse was reported to the proper authorities within 48 hours after the occurrence of the crime or delinquent act or the discovery of the child abuse; and . . . the victim has cooperated fully with all law enforcement units,” unless “good cause” is shown for the victim’s failure to meet those requirements. Md. Code Ann., Crim. Proc. § 11-810(a)(1)(iii)-(iv), (2). Claims for compensation must be filed within 3 years of the crime’s occurrence, except “[i]n a case of child abuse, a claimant may file a claim up to 3 years after the claimant knew or should have known of the child abuse.” Md. Code Ann., Crim. Proc. § 11-809(a).

Additionally, Md. Code Ann., Crim. Proc. § 11-810(d)(1)(i) states in part that “the Board shall determine whether the victim’s conduct contributed to the infliction of the victim’s injury, and, if so, reduce the amount of the award or reject the claim.” Pursuant to Md. Code Ann., Crim. Proc. § 11-810(d)(1)(ii), however, the Criminal Injuries Compensation Board may

disregard the responsibility of the victim for the victim’s own injury if that responsibility is attributable to efforts by the victim:

1. to prevent a crime or delinquent act or an attempted crime or delinquent act from occurring in the victim’s presence; or
2. to apprehend an offender who had committed a crime or delinquent act in the victim’s presence or had committed a felony or delinquent act that would be a felony if committed by an adult.

Nothing expressly exempts domestic minor sex trafficking victims from these requirements or award reduction factors, or explains what constitutes good cause for the failure to report the crime or cooperate with law enforcement.

5.7.1 Recommendation: Amend Md. Code Ann., Crim. Proc. § 11-808(a) (Eligibility for Awards), Md. Code Ann., Crim. Proc. § 11-809(a) (Filing of claims), and Md. Code Ann., Crim. Proc. § 11-810(a), (d) (Conditions for awards on claims) to expressly provide that victims of domestic minor sex trafficking are exempt from all ineligibility and award reduction factors, and that victims of commercial sexual exploitation and sex trafficking are eligible for a good cause exception under Md. Code Ann., Crim. Proc. § 11-810(a)(1)(iv).

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

Maryland law provides special protections for children who are victims of abuse as defined and outlined under Md. Code Ann., Fam. Law § 5-701(b), Md. Code Ann., Crim. Law § 3-601 (Child abuse), or Md. Code Ann., Crim. Law § 3-602 (Sexual abuse of minor). Md. Code Ann., Crim. Proc. § 11-303(a). Specifically, Md. Code

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<sup>60</sup> See *supra* Section 5.1 for the relevant definition of “victim.” “Crime” is defined in Md. Code Ann., Crim. Proc. § 11-801(d)(1)(i) as including, “except as provided in paragraph (2) of this subsection, a criminal offense under state, federal, or common law that is committed in: 1. this State; or 2. another state against a resident of this State.” Subsection (2) states, “‘Crime’ does not include an act involving the operation of a vessel or motor vehicle unless the act is: (i) a violation of § 20-102, § 20-104, § 21-902, or § 21-904 of the Transportation Article; or (ii) operating a motor vehicle or vessel that results in an intentional injury.”

Ann., Crim. Proc. § 11-303(b) (Testimony of child victim by closed circuit television) provides that such a child victim may give testimony outside the courtroom via closed circuit television in the following circumstances:

- (1) the court determines that testimony by the child victim in the presence of a defendant or a child respondent will result in the child victim's suffering serious emotional distress such that the child victim cannot reasonably communicate; and
- (2) the testimony is taken during the proceeding.

When the court determines that the child may provide testimony via closed circuit television, only certain people may be in the room, including "subject to the Maryland Rules, any person whose presence, in the opinion of the court, contributes to the well-being of the child victim, including a person who has dealt with the child victim in a therapeutic setting concerning the abuse." Md. Code Ann., Crim. Proc. § 11-303(d)(v).

The out of court statements of a child under 13 years old who is the victim of Md. Code Ann., Crim. Law § 3-601, Md. Code Ann., Crim. Law § 3-602, Md. Code Ann., Crim. Law §§ 3-303–3-307 (first or second degree rape or first, second, or third degree sexual offense), Md. Code Ann., Crim. Law §§ 3-309–3-312 (attempted first or second degree rape or attempted first, second, or third degree sexual offense), or who has been abused or neglected as defined under Md. Code Ann., Fam. Law § 5-701, may be admitted in court "only if the statement was made to and is offered by a person acting lawfully in the course of the person's profession when the statement was made [to a person] who is: (1) a physician; (2) a psychologist; (3) a nurse; (4) a social worker;" a specified school employee, therapist, or counselor. Md. Code Ann., Crim. Proc. § 11-304(a)–(c).

Regardless of the victim's age, pursuant to Md. Code Ann., Crim. Law § 3-319(a) (Rape and sexual offense—Admissibility of evidence),

Evidence relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence may not be admitted in a prosecution for:

- (1) a crime specified under this subtitle or a lesser included crime;
- (2) the sexual abuse of a minor under § 3-602 of this title or a lesser included crime; or
- (3) the sexual abuse of a vulnerable adult under § 3-604 of this title or a lesser included crime.

Pursuant to Md. Code Ann., Crim. Law § 3-319(b),

Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution described in subsection (a) of this section only if the judge finds that:

- (1) the evidence is relevant;
  - (2) the evidence is material to a fact in issue in the case;
  - (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value;
- and
- (4) the evidence:
    - (i) is of the victim's past sexual conduct with the defendant;
    - (ii) is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
    - (iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime;or
    - (iv) is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue.

Human trafficking victims who testify in a prosecution under Md. Code Ann., Crim. Law § 11-303 (Human trafficking) are not provided the protection of Md. Code Ann., Crim. Law § 3-319(a) as it is not within subtitle

3 (Sexual crimes) of title 3 (Other crimes against the person). Also, Md. Code Ann., Crim. Law § 3-602 (Sexual abuse of minor) does not refer to Md. Code Ann., Crim. Law § 11-303.

Pursuant to Md. Code Ann., St. Govt. §§ 7-301 through 7-312,<sup>61</sup> regardless of the age of the victim and upon application, the State Department of the state will allow a victim of trafficking to substitute their actual address with that of the State Department for all state and local government agencies.

5.8.1 Recommendation: Amend Md. Code Ann., Crim. Law § 3-319(a) (Rape and sexual offense—Admissibility of evidence) to allow the rape shield law to apply to testimony by minor victims of sex trafficking in a prosecution under Md. Code Ann., Crim. Law § 11-303 (Human trafficking).

5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*

Pursuant to Md. Code Ann., Cts. & Jud.Proc. § 3-8A-27(c),

The court on its own motion or on petition, and for good cause shown, may order the court records of a child sealed, and, upon petition or on its own motion, shall order them sealed after the child has reached 21 years of age. If sealed, the court records of a child may not be opened, for any purpose, except by order of the court upon good cause shown.

Also, under Md. Code Ann., Crim. Proc. § 10-106(b) (Expungement of criminal charge transferred to juvenile court), “A person may file, and a court shall grant, a petition for expungement of a criminal charge transferred to the juvenile court under § 4-202 [Transfer of criminal cases to juvenile court] or § 4-202.2 [Transfer of case involving detained child—at sentencing] of this article.”

Additionally, pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(a)(1) (Confidentiality of records (Abrogation of amendment effective September 30, 2011)), police records concerning children are “confidential and shall be maintained separate from those of adults. [Their] contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown or as otherwise provided in § 7-303 of the Education Article [Arrest for reportable offense].” Also, a child’s court records “may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown or as provided in Sections 7-303 and 22-309 [Cooperation] of the Education Article.” Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(b)(1).

5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*

Pursuant to Md. Code Ann., Crim. Proc. § 11-603(b) (Restitution determination), “A victim is presumed to have a right to restitution under subsection (a) of this section if: (1) the victim or the State requests restitution; and (2) the court is presented with competent evidence of any item listed in subsection (a) of this section.” However, a restitution order is not mandatory. Md. Code Ann., Crim. Proc. § 11-603(a) provides that a court *may* order restitution if any of the following circumstances exist:

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<sup>61</sup> Here and elsewhere in this report that Md. Code Ann., St. Govt. §§ 7-301 through 7-312 is quoted or cited, it has been enacted by the passage of House Bill 559 and Senate Bill 818. 2014 Md. Laws 559, (effective October 1, 2014).

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
  - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
  - (ii) direct out-of-pocket loss;
  - (iii) loss of earnings; or
  - (iv) expenses incurred with rehabilitation;
- ...

If the court orders the defendant to pay restitution, the court may also enter “an immediate and continuing earnings withholding order” and specify an amount employers of the defendant must withhold and pay to the appropriate governmental entity. Md. Code Ann., Crim. Proc. § 11-617(a)(1), (d).

5.10.1 Recommendation: Amend Md. Code Ann., Crim. Proc. § 11-603 to provide for mandatory restitution for victims of human trafficking or CSEC offenses.

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.*

Maryland law does not require prosecutions for felony offenses to be commenced within any designated time period.<sup>62</sup> Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-106(a) (Prosecutions for misdemeanors; manslaughter by automobile, motorboat, etc.; homicide by motor vehicle), however, prosecutions for misdemeanors must be commenced within 1 year of the crime’s occurrence, except, pursuant to subsection (b), “if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to this subsection [Md. Code Ann., Cts. & Jud. Proc. § 5-106(b)] . . . [t]he State may institute a prosecution for the misdemeanor at any time.” Md. Code Ann., Cts. & Jud. Proc. § 5-106(b). Statutes subject to this exception include the following: Md. Code Ann., Crim. Law § 11-303(a) (Human trafficking), Md. Code Ann., Crim. Law § 11-304 (Receiving earnings of prostitute), Md. Code Ann., Crim. Law § 11-305 (Child kidnapping for the purpose of committing a sexual crime),<sup>63</sup> and Md. Code Ann., Crim. Law § 3-603 (Sale of minor). Md. Code Ann., Crim. Law §§ 11-303(c)(1)(ii), 11-304(c), 11-305(c), 3-603(c). Prosecution under Md. Code Ann., Crim. Law § 11-208 (Possession of visual representation of child under 16 engaged in certain sexual acts), however, must be brought within two years of the alleged crime. Md. Code Ann., Cts. & Jud. Proc. § 5-106(bb).

Prosecutions or suits for a “fine, penalty, or forfeiture” must be commenced within 1 year of the commission of the crime. Md. Code Ann., Cts. & Jud. Proc. § 5-107.

Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-117(b) (Actions arising from alleged sexual abuse), “[a]n action for damages arising out of an alleged incident . . . of sexual abuse that occurred while the victim was a minor” must be commenced within 7 years from “the date that the victim attains the age of majority.” Other civil actions generally are subject to a 3 year statute of limitations. Md. Code Ann., Cts. & Jud. Proc. § 5-101.

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<sup>62</sup> Clark v. State, 774 A.2d 1136, 1144 n.8 (Md. 2001) (“Maryland has no statute of limitations on felonies or penitentiary misdemeanors beyond that imposed by the life of the offender.”).

<sup>63</sup> See *supra* note 6.



**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.*
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**Legal Analysis:**

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

Maryland has established a Police Training Commission. Md. Code Ann., Pub. Safety § 3-202. Under Md. Code Ann., Pub. Safety § 3-207(5), the Police Training Commission has the authority

- (5) to establish the following for police training schools:
  - (i) curriculum;
  - (ii) minimum courses of study;
  - (iii) attendance requirements;
  - (iv) eligibility requirements;
  - (v) equipment and facilities;
  - (vi) standards of operation; and
  - (vii) minimum qualifications for instructors.

While Maryland law does not specifically mandate training on human trafficking and domestic minor sex trafficking, Maryland's Department of Public Safety & Correctional Services have previously instituted training regarding domestic violence and victims' issues.<sup>64</sup> Furthermore, training regarding "the criminal laws concerning rape and sexual offenses, including the sexual abuse and exploitation of children and related evidentiary procedures" and the treatment of victims and victims' services is mandated pursuant to Md. Code Ann., Pub. Safety § 3-207(6)(i). Although Maryland law enforcement officers must complete minimum training requirements as specified in Md. Code Regs. 12.04.01.09(A) (Minimum Standards for Entrance-Level Training for Police Officers) to be certified as police officers, nothing in the entrance-level program mandates law enforcement to receive training regarding human trafficking, domestic minor sex trafficking, or the sexual abuse or exploitation of children. Md. Code Regs. 12.04.01.09(A), (C)(1).

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

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<sup>64</sup> See *Victim Services*, DEPT. OF PUB. SAFETY & CORRECTIONAL SERVS., [http://www.dpscs.state.md.us/initiatives/bhc/index\\_BHC\\_vs-new.shtml#one](http://www.dpscs.state.md.us/initiatives/bhc/index_BHC_vs-new.shtml#one) (last visited Aug. 11, 2011).

Md. Code Ann., Cts. & Jud. Proc. § 10-402(a)(1) (Interception of communications generally; divulging contents of communications; violations of subtitle) states that “[e]xcept as otherwise specifically provided in this subtitle it is unlawful for any person to: (1) Willfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.” A conviction is a felony punishable by imprisonment up to 5 years, a fine not to exceed \$ 10,000, or both. Md. Code Ann., Cts. & Jud. Proc. § 10-402(b).

However, a law enforcement officer is allowed to use “body wires” to intercept an oral communication where “there is reasonable cause to believe that a law enforcement officer’s safety may be in jeopardy;” however, such communications “may not be recorded, and may not be used against the defendant in a criminal proceeding.” Md. Code Ann., Cts. & Jud. Proc. § 10-402(c)(6).

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

Md. Code Ann., Cts. & Jud. Proc. § 10-402 (Interception of communications generally; divulging contents of communications; violations of subtitle) makes it unlawful, unless an exception is provided in the statute, for a person to “[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication” without the consent of both parties. Md. Code Ann., Cts. & Jud. Proc. § 10-402(a)(1), (c)(3). A conviction under this statute is a felony punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Md. Code Ann., Cts. & Jud. Proc. § 10-402(b).

However, Md. Code Ann., Cts. & Jud. Proc. § 10-406 (Attorney General, State Prosecutor or State’s Attorney may apply for order authorizing interception) provides that a court may enter an order allowing law enforcement to intercept communications of non-consenting parties in investigating certain enumerated crimes. Specifically, Md. Code Ann., Cts. & Jud. Proc. § 10-406(a) states,

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction, and the judge, in accordance with the provisions of Md. Code Ann., Cts. & Jud. Proc. § 10-408 of this subtitle, may grant an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of:

- ...
- (2) Kidnapping;
- (3) Rape;
- (4) A sexual offense in the first or second degree;
- (5) Child abuse in the first or second degree;
- (6) Child pornography under § 11-207, § 11-208, or § 11-208.1 of the Criminal Law Article;
- ...
- (15) A human trafficking offense under § 11-303 of the Criminal Law Article;
- (16) Sexual solicitation of a minor under § 3-324 of the Criminal Law Article;
- ...
- (18) Sexual abuse of a minor under § 3-602 of the Criminal Law Article; [or]
- ....
- (20) A conspiracy or solicitation to commit an offense listed in items (1) through (19) of this subsection.

Md. Code Ann., Cts. & Jud. Proc. § 10-406(b) provides that “[n]o application or order shall be required if the interception is lawful under the provisions of Md. Code Ann., Cts. & Jud. Proc. § 10-402(c) of this subtitle.” Md. Code Ann., Cts. & Jud. Proc. § 10-402(c)(2) permits interceptions when “[t]he investigative or law enforcement officer or other person is a party to the communication; or . . . [o]ne of

the parties to the communication has given prior consent to the interception,” and the officer is investigating certain criminal activity.

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

The use of a decoy by law enforcement in the investigating prostitution or sex trafficking is not a defense under Maryland law. Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) states,

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, knowingly solicit<sup>65</sup> a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

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

Using of the Internet to investigate buyers and traffickers appears to be a permissible investigative technique under Maryland law. Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) states,

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], or § 11-306 [House of prostitution] of this article, knowingly solicit a . . . law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

The definition of “solicit” includes “to command, authorize, urge, entice, request, or advise a person by any means, including: . . . (6) by computer or Internet.” Md. Code Ann., Crim. Law § 3-324(a)(6).

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

Maryland does not mandate the reporting of rescued domestic minor sex trafficking victims. However, pursuant to Md. Code Ann., Fam. Law § 9-402(a) (Determinations of law enforcement agency upon receipt of report), law enforcement agencies that receive a report of a missing child are required to determine immediately whether the following has occurred:

- (1) the missing child has not been the subject of a prior missing persons report;
- (2) the missing child suffers from a mental or physical handicap or illness;
- (3) the disappearance of the missing child is of a suspicious or dangerous nature;
- (4) the person filing the report of a missing child has reason to believe that the missing child may have been abducted;
- (5) the missing child has ever previously been the subject of a child abuse report filed with the State or local law enforcement agency; or

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<sup>65</sup> See *supra* Section 1.2 for discussion of the definition of “solicit.”

(6) the missing child is under 17 years of age.

When conditions listed in subsection (a) are present, Md. Code Ann., Fam. Law § 9-402(b) specifies that the law enforcement agency must immediately,

- (1) enter all necessary and available information into the Maryland Interagency Law Enforcement System (MILES) and the National Crime Information Center (NCIC) computer networks;
- (2) institute appropriate intensive search procedures, including the coordination of volunteer search teams;
- (3) notify the National Center for Missing and Exploited Children and forward to the State Clearinghouse for Missing Children a copy of the missing persons report involving the missing child;
- (4) notify the appropriate local department and, to the extent possible, obtain any information that may assist in the locating of the missing child; and
- (5) enlist the aid of the Department of State Police, when appropriate, in locating the missing child.

When a condition from subsection (a) is not present, law enforcement shall do the following pursuant to subsection (c): “(1) immediately seek to determine the circumstances surrounding the disappearance of the missing child; and (2) implement the procedures set forth in subsection (b) of this section within 12 hours of the filing of a report regarding a missing child, if the missing child has not been located.” Md. Code Ann., Fam. Law § 9-402(c). Subsection (d) also provides, “Notwithstanding any provision of law to the contrary, if a missing child has not been located within 24 hours of the filing of a missing persons report and either the local law enforcement agency or the Department of State Police have reason to believe that the missing child may be located in a jurisdiction other than the jurisdiction where the missing persons report was filed, the Department of State Police shall enter the investigation and, in cooperation with the appropriate local law enforcement agencies, assist State and national efforts to locate the missing child.” Md. Code Ann., Fam. Law § 9-402(d). Pursuant to subsection (f), “Every person filing a report of a missing child shall be required to notify the local law enforcement agency and the Department of State Police immediately upon the locating of the missing child if it is unlikely that the local law enforcement agency or the Department of State Police have knowledge that the missing child has been located.”

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