

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2014 ANALYSIS AND RECOMMENDATIONS MICHIGAN

### 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.*

Michigan's human trafficking laws, Mich. Comp. Laws Ann. §§ 750.462a (Definitions)–750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), criminalize sex trafficking of minors without regard to proof of the use of force, fraud, or coercion. Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) states that “[a] person shall not knowingly recruit, entice, harbor, transport, provide, or obtain<sup>2</sup> by any means, or attempt to recruit, entice, harbor, provide, or obtain by

<sup>1</sup> Unless otherwise noted, all references are from Michigan Compiled Laws Annotated (LEXIS through 2014 P.A. 195. 197-216. 218-266. 268-270. 272-279), and all federal statutes were taken from United States Code (LEXIS through PL 113-165, approved 9/19/2014). This report includes legislation enacted as of August 1, 2014.

<sup>2</sup> Mich. Comp. Laws Ann. § 750.462a(i) (Definitions) defines “obtain” as “to secure performance of labor or services.” Mich. Comp. Laws Ann. § 750.462a(f) defines “labor” as “work of economic or financial value.” Mich. Comp. Laws Ann. § 750.462a(j) defines “services” as “an ongoing relationship between a person and another person

any means, a minor knowing that the minor will be used for child sexually abusive activity.”<sup>3</sup> A violation of Mich. Comp. Laws Ann. § 750.462g is a felony punishable by imprisonment up to 20 years.<sup>4</sup> Mich. Comp. Laws Ann. § 750.462g. Mich. Comp. Laws Ann. § 750.462a(h) (Definitions) defines a “minor” as “a person under 18 years of age.”

Also applicable to domestic minor sex trafficking crimes, Mich. Comp. Laws Ann. § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) requires proof of force. Mich. Comp. Laws Ann. § 750.462j(1) makes it a crime to “knowingly provide or obtain the labor or services of another person by force,<sup>5</sup> fraud,<sup>6</sup> or coercion,”<sup>7</sup> and “[i]f the violation involves the forced labor of a minor or a commercial sex act, . . . the person is guilty of a felony punishable by imprisonment for not more than 20 years

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in which the other person performs activities under the supervision of or for the benefit of the person, including, but not limited to, commercial sexual activity and sexually explicit performances.”

<sup>3</sup> “Child sexually abusive activity” is defined in Mich. Comp. Laws Ann. § 750.462a(a) (Definitions) as “that phrase as defined in section 145c.” Mich. Comp. Laws Ann. § 750.145c(1)(l) (Definitions; child sexually abusive activity or material) defines “child sexually abusive activity” as “a child engaging in a listed sexual act,” and Mich. Comp. Laws Ann. § 750.145c(1)(h) defines “listed sexual act” as “sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.” Mich. Comp. Laws Ann. § 750.145c(1) provides the definitions for these acts as follows:

(f) “Erotic fondling” means touching a person’s clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(g) “Erotic nudity” means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, “lascivious” means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

....

(j) “Passive sexual involvement” means an act, real or simulated, that exposes another person to or draws another person’s attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

....

(o) “Sexual excitement” means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(p) “Sexual intercourse” means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

<sup>4</sup> See *infra* Appendix A for further discussion of sentencing guidelines.

<sup>5</sup> Mich. Comp. Laws Ann. § 750.462j(6)(d) states, “‘Force’ includes, but is not limited to, physical violence or actual physical restraint or confinement, but injury is not required.”

<sup>6</sup> Mich. Comp. Laws Ann. § 750.462j(6)(e) states, “‘Fraud’ includes, but is not limited to, a false or deceptive offer of employment or marriage.”

<sup>7</sup> Mich. Comp. Laws Ann. § 750.462j(6)(a) states,

“Coercion” includes, but is not limited to, any of the following:

(i) A threat to harm or physically restrain any person or the creation of any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in harm to or physical restraint against any person.

(ii) The confiscation of documents without regard to whether the documents are fraudulent or fraudulently obtained; and the abuse or threatened abuse of the legal system, including threats of arrest or deportation without regard to whether the person being threatened is subject to arrest or deportation under the laws of this state or the United States.

or a fine of not more than \$20,000.00, or both.” Mich. Comp. Laws Ann. § 750.462j(1)(b). Mich. Comp. Laws Ann. § 750.462j(2) also makes it a crime to “knowingly recruit, harbor, transport, provide, or obtain a person for labor or services for the purpose of holding that person in involuntary servitude<sup>8</sup> or debt bondage. . . . If the violation involves the trafficking of a minor or a commercial sex act, . . . the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.” Mich. Comp. Laws Ann. § 750.462j(2)(b). Mich. Comp. Laws Ann. § 750.462j(6)(b) states,

“Commercial sex act” means either of the following:

- (i) Any act of sexual penetration or sexual contact as defined in section 520a [Definitions]<sup>9</sup> for which anything of value is given to, or is received by, any person.
- (ii) Any sexually explicit performance as defined in section 3 of 1978 PA 33, MCL 722.673 [Definitions],<sup>10</sup> for which anything of value is given to, or is received by, any person.
- (iii) A violation of section 145c(2) or (3)<sup>11</sup> involving any child sexually abusive activity or material.

If a conviction under Mich. Comp. Laws Ann. § 750.462j(1) or (2) “involves the death of any person, the person is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000, or both.” Mich. Comp. Laws Ann. § 750.462j(1)(c), (2)(c).

Mich. Comp. Laws Ann. § 750.462i (Kidnapping, criminal sexual conduct, or attempt to kill; penalty) provides a penalty enhancement for an offense committed under Chapter LXVIIA (Human trafficking), including Mich. Comp. Laws Ann. § 750.462g and § 750.462j, that “involves kidnapping<sup>12</sup> or an attempt to kidnap, criminal sexual conduct<sup>13</sup> or an attempt to commit criminal sexual conduct, or an attempt to kill.” If found guilty of

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<sup>8</sup> Mich. Comp. Laws Ann. § 750.462j(6)(f) states, “‘Involuntary servitude’ includes, but is not limited to, a state of providing labor or services entered into or maintained by means of force, fraud, or coercion.”

<sup>9</sup> Mich. Comp. Laws Ann. § 750.520a(r) (Definitions) states, “‘Sexual penetration’ means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.” Under Mich. Comp. Laws Ann. § 750.520a(q), “sexual contact” is defined as

the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

- (i) Revenge.
- (ii) To inflict humiliation.
- (iii) Out of anger.

<sup>10</sup> Mich. Comp. Laws Ann. § 722.673(g) (Definitions) defines “sexually explicit performance” as “a motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.”

<sup>11</sup> See *infra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145c (Definitions; child sexually abusive activity or material; penalties).

<sup>12</sup> Mich. Comp. Laws Ann. § 750.349(1) (Kidnapping) provides that

A person commits the crime of kidnapping if he or she knowingly restrains another person with the intent to do 1 or more of the following:

- (a) Hold that person for ransom or reward.
- (b) Use that person as a shield or hostage.
- (c) Engage in criminal sexual penetration or criminal sexual contact with that person.
- (d) Take that person outside of this state.
- (e) Hold that person in involuntary servitude.

<sup>13</sup> Criminal sexual conduct is a crime under Mich. Comp. Laws Ann. §§ 750.520b (Criminal sexual conduct in the first degree)–750.520g (Assault with intent to commit criminal sexual conduct).

violating Mich. Comp. Laws Ann. § 750.462i, “the defendant shall be imprisoned for life or any term of years.” Mich. Comp. Laws Ann. § 750.462i.

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

The following laws make CSEC a crime in Michigan:

1. Mich. Comp. Laws Ann. § 750.13 (Enticing away female under sixteen; felony, penalty) makes it a crime to “take or entice away any female under the age of 16 years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of prostitution, concubinage, sexual intercourse or marriage.” A conviction for violating Mich. Comp. Laws Ann. § 750.13 is punishable as a felony by imprisonment up to 10 years. Mich. Comp. Laws Ann. § 750.13.
2. Mich. Comp. Laws Ann. § 750.145c(2) (Definitions; child sexually abusive activity or material; penalties) states,

A person who persuades, induces, entices, coerces, causes, or knowingly allows a child<sup>14</sup> to engage in a child sexually abusive activity<sup>15</sup> for the purpose of producing any child sexually abusive material,<sup>16</sup> or a person who arranges for, produces, makes, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, or finance any child sexually abusive activity or child sexually abusive material is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

The following laws may also apply to commercial sexual exploitation of children crimes in Michigan, although they do not refer specifically to commercial transactions:

1. Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose) states,

A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or

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<sup>14</sup> Mich. Comp. Laws Ann. § 750.145c(1)(b) defines “child” as “a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.”

<sup>15</sup> See *supra* note 3.

<sup>16</sup> Mich. Comp. Laws Ann. § 750.145c(1)(m) defines “child sexually abusive material” as “any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.”

an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony . . . .

A first time conviction for violating this statute is punishable by imprisonment up to 4 years, a fine up to \$4,000, or both. Mich. Comp. Laws Ann. § 750.145a. Subsequent convictions are punishable by imprisonment up to 10 years, a fine up to \$10,000, or both. Mich. Comp. Laws Ann. § 750.145b(1).

2. Mich. Comp. Laws Ann. § 750.520b(1) (Criminal sexual conduct in the first degree; felony) provides that “[a] person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with,” among others, a victim “under 13 years of age,” or “under circumstances involving the commission of any other felony.” Mich. Comp. Laws Ann. § 750.520b(1)(a), (c). A conviction under this statute is generally punishable by “imprisonment for life or for any term of years.” Mich. Comp. Laws Ann. § 750.520b(2)(a). However, if the defendant is at least 17 and the victim is less than 13, the minimum sentence is imprisonment for 25 years. Mich. Comp. Laws Ann. § 750.520b(2)(b). In addition to penalties under subsections (2)(a) and (2)(b), “the court shall sentence the defendant to lifetime electronic monitoring under section 520n.” Mich. Comp. Laws Ann. § 750.520b(2)(d). If the offender is 17 or older and the victim is less than 13 and “if the person was previously convicted of a violation of this section or section 520c [Criminal sexual conduct in the second degree], 520d [Criminal sexual conduct in the third degree], 520e [Criminal sexual conduct in the fourth degree], or 520g [Assault with intent to commit criminal sexual conduct],” a violation is punishable by life imprisonment without parole. Mich. Comp. Laws Ann. § 750.520b(2)(c). An additional mandatory minimum of at least 5 years is imposed for all violations under the statute for subsequent offenders of first, second, or third degree criminal sexual conduct. Mich. Comp. Laws Ann. § 750.520f(1).
3. Mich. Comp. Laws Ann. § 750.520c(1) (Criminal sexual conduct in the second degree; felony) states that “[a] person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with,” among others, a victim “under 13 years of age,” or “under circumstances involving the commission of any other felony.” Mich. Comp. Laws Ann. § 750.520c(1)(a), (c). A conviction for violating Mich. Comp. Laws Ann. § 750.520c(1) is punishable as a felony by a maximum imprisonment of 15 years and lifetime electronic monitoring if committed by a person at least 17 against a child under 13 for a first offense, enhanced by a mandatory minimum sentence of at least 5 years for subsequent offenses. Mich. Comp. Laws Ann. §§ 750.520c(2)(a), (b), 750.520f(1).
4. Mich. Comp. Laws Ann. § 750.520d(1) (Criminal sexual conduct in the third degree; felony) states that “[a] person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with,” among others, a victim aged 13–15. A conviction under Mich. Comp. Laws Ann. § 750.520d(1) is punishable as a felony by imprisonment up to 15 years for a first offense and a mandatory minimum of at least 5 years for subsequent offenses. Mich. Comp. Laws Ann. §§ 750.520d(2), 750.520f(1).
5. Mich. Comp. Laws Ann. § 750.520e(1) (Criminal sexual conduct in the fourth degree; misdemeanor) makes it a crime to, among other things, engage in sexual contact with a child aged 13–15 when the offender is at least 5 years older than the victim. A conviction under Mich. Comp. Laws Ann. § 750.520e(1) is punishable as a misdemeanor by imprisonment up to 2 years, a fine up to \$500, or both. Mich. Comp. Laws Ann. § 750.520e(2).

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

Michigan’s prostitution law, Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act; crime), does not refer to the state human trafficking laws, Mich. Comp. Laws Ann. §§ 750.462a–750.462j, to identify CSEC victims as minor victims of trafficking.

- 1.3.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act; crime) when the person charged is a minor, to refer to Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) to ensure CSEC victims and minors engaged in prostitution are identified as 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.*

Mich. Comp. Laws Ann. § 750.159i (Prohibited conduct) states,

- (1) A person employed by, or associated with, an enterprise shall not knowingly conduct or participate in the affairs of the enterprise directly or indirectly through a pattern of racketeering activity.
- (2) A person shall not knowingly acquire or maintain an interest in or control of an enterprise or real or personal property used or intended for use in the operation of an enterprise, directly or indirectly, through a pattern of racketeering activity.
- (3) A person who has knowingly received any proceeds derived directly or indirectly from a pattern of racketeering activity shall not directly or indirectly use or invest any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the establishment or operation of an enterprise, or the acquisition of any title to, or a right, interest, or equity in, real or personal property used or intended for use in the operation of an enterprise.
- (4) A person shall not conspire or attempt to violate subsection (1), (2), or (3).

Mich. Comp. Laws Ann. § 750.159g defines “racketeering” to include, among other things,

committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain, involving any of the following:

....

(n) A violation of section 145c, concerning child sexually abusive activity or material.

(o) A violation of section 145d, concerning internet or computer crimes.

....

(ff) A violation of section 452 [House of ill-fame; keeping, maintaining or operating], 455 [Pandering; felony], 457 [Earnings of prostitute, accepting], 458 [Detaining female in house of prostitution for debt], or 459 [Transporting female for prostitution; felony], concerning prostitution.

(gg) A violation of chapter LXVIIA, concerning human trafficking.

....

Mich. Comp. Laws Ann. § 750.159f(c) defines a “pattern of racketeering activity” as

not less than 2 incidents of racketeering to which all of the following characteristics apply:

- (i) The incidents have the same or a substantially similar purpose, result, participant, victim, or method of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated acts.
- (ii) The incidents amount to or pose a threat of continued criminal activity.
- (iii) At least 1 of the incidents occurred within this state on or after the effective date of the amendatory act that added this section, and the last of the incidents occurred within 10 years after the commission of any prior incident, excluding any period of imprisonment served by a person engaging in the racketeering activity.

A conviction for violating Mich. Comp. Laws Ann. § 750.159i is punishable as a felony by imprisonment up to 20 years, a fine up to \$100,000, or both, and asset forfeiture. Mich. Comp. Laws Ann. § 750.159j(1). Asset forfeiture under this statute is both mandatory and criminal. Mich. Comp. Laws Ann. §750.159j(4) states,

The court shall order a person convicted of a violation of section 159i to criminally forfeit to the state any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 159i, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation.

Pursuant to Mich. Comp. Laws Ann. §750.159j(12) “[a]n order of criminal forfeiture entered under this section shall authorize an appropriate law enforcement agency to seize the property declared criminally forfeited under this section. . .” Disbursement of the property is governed by Mich. Comp. Laws Ann. §750.159r, which states that upon forfeiture, the property may be sold and disbursed to in the following order of priority: to pay an outstanding security interest, to satisfy an order of restitution, to pay the claim of each person who shows that he is a victim of the crime, to the extent that the claim is not covered by an order of restitution, to pay any outstanding lien against the property that has been imposed by a governmental unit, and to pay the proper expenses of proceedings for forfeiture and sale. The remaining balance shall be distributed to the units of government substantially involved in effecting the forfeiture.

**Legal Components:**

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

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

Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) makes it a crime to “knowingly recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, provide, or obtain by any means, a minor knowing that the minor will be used for child sexually abusive activity,”<sup>17</sup> and Mich. Comp. Laws Ann. § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) makes it illegal for a person to “knowingly provide or obtain the labor or services of another person by force, fraud, or coercion,” and provides enhanced penalties where “the violation involves the forced labor of a minor or a commercial sex act.” While both offenses use the term “obtain,” both are unlikely to apply to buyers following federal precedent<sup>18</sup> due to the definition of the word “obtain” provided in Mich. Comp. Laws Ann. § 750.462a(i) (Definitions). “Obtain” is defined in Mich. Comp. Laws Ann. § 750.462a(i) (Definitions) as “to secure performance of labor or services.” “Labor” is defined as “work of economic or financial value,” and “services” is defined as “an ongoing relationship between a person and another person in which the other person performs activities under the supervision of or for the benefit of the

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<sup>17</sup> See *supra* note 3.

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



person, including, but not limited to, commercial sexual activity and sexually explicit performances.” Mich. Comp. Laws Ann. § 750.462a(f), (j). Under these definitions, the requirement of an “ongoing relationship” appears specifically tailored to the conduct of traffickers and renders application to buyers unlikely.

- 2.1.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) to expressly apply to buyers of commercial sex with minors.

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

None of Michigan’s CSEC laws expressly criminalize buying sex with minors. Although not expressly commercial, Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose) may apply to a buyer who “solicits” a minor under 16 for the purposes of a sexual act.<sup>19</sup> A violation of Mich. Comp. Laws Ann. § 750.145a is a felony punishable by imprisonment up to 4 years, a fine up to \$4,000, or both, for a first offense, while subsequent convictions are punishable by imprisonment up to 10 years, a fine up to \$10,000, or both.<sup>20</sup> Mich. Comp. Laws Ann. §§ 750.145a, 750.145b(1).

Several sexual offenses might also apply to buyers of sex acts with a minor.<sup>21</sup>

- 2.2.1 Recommendation: Enact a law making it a crime to purchase sex acts with a minor under 18.

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

Solicitation and patronization of prostitution under Michigan’s general prostitution law, Mich. Comp. Laws Ann. § 750.449a (Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty), is age neutral but gender-specific, providing that “[a]ny male person who engages or offers to engage the services of a female person, not his wife, for the purpose of prostitution, lewdness or assignation, by the payment in money or other forms of consideration, is guilty of a misdemeanor.”

Buyers who are convicted under Mich. Comp. Laws Ann. § 750.449a will be punished for a misdemeanor in accordance with the provisions of Mich. Comp. Laws Ann. § 750.451 (Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition) and receive up to 93 days’ imprisonment, a fine up to \$500, or both, for a first conviction; up to 1 year imprisonment, a fine up to \$1,000, or both, if the person has 1 prior conviction;<sup>22</sup> and imprisonment up to 2 years, a fine up to \$2,000, or both, if the person has 2 prior convictions. Mich. Comp. Laws Ann. §§ 750.449a, 750.451(1)–(3).

- 2.3.1 Recommendation: Enact a law that makes buying or attempting to buy sex with a minor under 18 a separate crime from solicitation of an adult for prostitution, or amend Mich. Comp. Laws Ann. § 750.449a (Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty) to provide heightened penalties when the person solicited is a minor under 18.

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

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<sup>19</sup> See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145a.

<sup>20</sup> See *infra* Appendix A for further discussion of sentencing guidelines.

<sup>21</sup> See *supra* Section 1.2 for discussion of the sexual offenses that may apply to some buyers.

<sup>22</sup> Pursuant to Mich. Comp. Laws Ann. § 750.451 (5), “prior conviction” is defined as “a violation of section 448, 449, 449a, 450, or 462 or a violation of a law of another state or of a political subdivision of this state or another state substantially corresponding to section 448, 449, 449a, 450, or 462.”

Since a buyer may not be prosecuted under Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) or § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), or the CSEC laws, the only penalties applicable to buyers are under the sex offenses described in detail in Section 1.2.

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>23</sup> against a minor. To the extent buyers can be prosecuted under other federal CSEC laws,<sup>24</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>25</sup>

2.4.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) to apply expressly to buyers and align penalties for these offenses with 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.*

Michigan does not expressly criminalize the use of the Internet to purchase commercial sex acts with a minor; however, the using the Internet to communicate with a minor with the intent to commit, or attempt to commit, a violation of specified sexual offense laws is illegal under Mich. Comp. Laws Ann. § 750.145d(1)(a) (Use of internet or computer system; prohibited communication). Specifically, Mich. Comp. Laws Ann. § 750.145d(1)(a) states,

A person shall not use the internet or a computer,<sup>26</sup> computer program,<sup>27</sup> computer network,<sup>28</sup> or computer system<sup>29</sup> to communicate with any person for the purpose of doing any of the following:

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<sup>23</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>24</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>25</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>26</sup> Mich. Comp. Laws Ann. § 750.145d(9)(a) defines “computer” as “any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], . . . 520b [Criminal sexual conduct in the first degree; felony; consecutive terms], 520c [Criminal sexual conduct in the second degree; felony], 520d [Criminal sexual conduct in the third degree; felony], 520e [Criminal sexual conduct in the fourth degree; misdemeanor], or 520g [Assault with intent to commit criminal sexual conduct; felony] . . . in which the victim or intended victim is a minor or is believed by that person to be a minor.

The penalty for violating Mich. Comp. Laws Ann. § 750.145d(1)(a) depends on the penalty applicable to the underlying offense for purposes of which the defendant solicited a minor.<sup>30</sup>

2.5.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication) to specifically prohibit use of the Internet to purchase sex acts with a minor.

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

Mich. Comp. Laws Ann. § 750.449a (Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty) is age neutral, making the mistake of age defense irrelevant. Mich. Comp. Laws Ann. § 750.145d(1)(a) (Use of internet or computer system; prohibited communication) does not expressly provide that the mistake of age defense is unavailable to buyers of commercial sex with minor. However, Mich. Comp.

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that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.”

<sup>27</sup> Mich. Comp. Laws Ann. § 750.145d(9)(c) defines “computer program” as “a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.”

<sup>28</sup> Mich. Comp. Laws Ann. § 750.145d(9)(b) defines “computer network” as “the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.”

<sup>29</sup> Mich. Comp. Laws Ann. § 750.145d(9)(d) defines “computer system” as “a set of related, connected or unconnected, computer equipment, devices, software, or hardware.”

<sup>30</sup> A conviction under Mich. Comp. Laws Ann. § 750.145d(1)(a) is subject to the following penalty scheme pursuant to Mich. Comp. Laws Ann. § 750.145d(2):

(a) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of less than 1 year, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(b) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 1 year or more but less than 2 years, the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$5,000.00, or both.

(c) If the underlying crime is a misdemeanor or a felony with a maximum term of imprisonment of 2 years or more but less than 4 years, the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(d) If the underlying crime is a felony with a maximum term of imprisonment of 4 years or more but less than 10 years, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both.

(e) If the underlying crime is a felony punishable by a maximum term of imprisonment of 10 years or more but less than 15 years, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(f) If the underlying crime is a felony punishable by a maximum term of imprisonment of 15 years or more or for life, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purposes) expressly applies “regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age.” Conversely, Mich. Comp. Laws Ann. § 750.145c(4) (Definitions; child sexually abusive activity or material; penalties) only applies where a defendant possessing child pornography “knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child,<sup>31</sup> or that person has not taken reasonable precautions to determine the age of the child.”

2.6.1 Recommendation: Upon enacting a CSEC law applicable to buying sex with minors, expressly prohibit the use of a mistake of age defense in relation to this crime.

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

Michigan’s CSEC laws do not specifically criminalize purchasing a sex act with a minor.<sup>32</sup> Therefore, the applicable law would be Mich. Comp. Laws Ann. § 750.449a (Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty) which is age neutral, and the same penalties apply regardless of the age of the person solicited. Mich. Comp. Laws Ann. §§ 750.449a, 750.451.

2.7.1 Recommendation: Enact a CSEC law applicable to buying sex with minors that imposes sufficiently high base penalties which apply to all minors, regardless of age.

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

Buyers of sex with minors may face fines in the following amounts: \$500 for a violation of Mich. Comp. Laws Ann. § 750.520e (Criminal sexual conduct in the fourth degree; misdemeanor) and \$5,000–\$20,000 for a violation of Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication), depending on the underlying crime. Mich. Comp. Laws Ann. §§ 750.520e(2), 750.145d(2)(a)–(f). Buyers convicted of Mich. Comp. Laws Ann. § 750.449a (Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty) may be required to pay fines up to \$500 for a first conviction, up to \$1,000 if they have 1 prior conviction, and up to \$2,000 if they have 2 prior convictions. Mich. Comp. Laws Ann. §§ 750.449a, 750.451. A buyer convicted of violating Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose) may be ordered to pay a fine of up to \$4,000 for a first offense and up to \$10,000 for each subsequent offense. Mich. Comp. Laws Ann. §§ 750.145a, 750.145b(1).

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<sup>31</sup> Pursuant to Mich. Comp. Laws Ann. § 750.145c(1)(a),

“Appears to include a child” means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:

- (i) It was created using a depiction of any part of an actual person under the age of 18.
- (ii) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:
  - (A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.
  - (B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.
  - (C) The depiction depicts or describes a listed sexual act in a patently offensive way.

<sup>32</sup> See *supra* Section 2.2.

A buyer may be required to make restitution as ordered by the court under Mich. Comp. Laws Ann. § 780.766(2) (“Victim” defined; order of restitution generally), which states in part,

Except as provided in subsection (8),<sup>33</sup> when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction or to the victim’s estate. . . .

Additionally, buyers may be subject to asset forfeiture under the nuisance law. Pursuant to Mich. Comp. Laws Ann. § 600.3801 (Nuisance; injunction; abatement; guilt),

[a]ny building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution or gambling, or used by, or kept for the use of prostitutes or other disorderly persons, . . . is declared a nuisance, and the furniture, fixtures, and contents of the building, vehicle, boat, aircraft, or place and all intoxicating liquors therein are also declared a nuisance, and all controlled substances and nuisances shall be enjoined and abated as provided in this act and as provided in the court rules. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any building, vehicle, or place used for any of the purposes or acts set forth in this section is guilty of a nuisance.

Mich. Comp. Laws Ann. § 600.3830(2) (Removal and sale of property; fees; closing of building; loss of property exemptions; liability of officers) states,

Any person found guilty of maintaining a nuisance under the provisions of this chapter shall forfeit the benefit of all property exemptions, so far as the satisfaction of the order or judgment of the court requires the same, and the taking and disposing of any property of the defendant or defendants by virtue of such order or judgment by any officer directed to execute the same is not a trespass, nor shall such officer be liable either civilly or criminally therefor, if a proper return of such order or judgment and accounting for such property is made to the court within 10 days after the order or judgment is executed.

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

Mich. Comp. Laws Ann. § 750.145c(4) (Definitions; child sexually abusive activity or material; penalties) states, with certain exceptions,

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<sup>33</sup> Mich. Comp. Laws Ann. § 780.766(8) states,

The court shall order restitution to the crime victim services commission or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim’s estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the crime. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation. However, an order of restitution shall require that all restitution to a victim or victim’s estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim’s estate if the victim or victim’s estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its action.

Additionally, under subsection (9), “[a]ny amount paid to a victim or victim’s estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim’s estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim’s estate by an award from the crime victim services commission made after an order of restitution under this section.” Mich. Comp. Laws Ann. § 780.766(9).

A person who knowingly possesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. . . .

....

In comparison, a federal conviction for possession of child pornography<sup>34</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>35</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>36</sup>

2.9.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.145c(4) (Definitions; child sexually abusive activity or material; penalties) to impose more substantial penalties for possessing child pornography by aligning them to federal penalties.

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

Mich. Comp. Laws Ann. § 28.723 (Individuals required to be registered) provides that, among others, persons convicted of a listed offense “who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act.” Mich. Comp. Laws Ann. § 28.723(1). “Listed offense” is defined as “a tier I, tier II, or tier III offense.” Mich. Comp. Laws Ann. § 28.722(k) (Definitions). Under Mich. Comp. Laws Ann. § 28.722(s), a “Tier I offense” is defined as,

1 or more of the following:

(i) A violation of section 145c(4) [Definitions; child sexually abusive activity or material; penalties] of the Michigan penal code, 1931 PA 328, MCL 750.145c.

....

(vi) Any other violation of a law of this state or a local ordinance of a municipality, other than a tier II or tier III offense, that by its nature constitutes a sexual offense against an individual who is a minor.

....

(viii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vii).

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<sup>34</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>35</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>36</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).

(ix) An offense substantially similar to an offense described in subparagraphs (i) to (viii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

Mich. Comp. Laws Ann. § 28.722(u) provides that Tier II offenses include,

1 or more of the following:

(i) A violation of section 145a [Accosting, enticing or soliciting child for immoral purpose] of the Michigan penal code, 1931 PA 328, MCL 750.145a.

(ii) A violation of section 145b [Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty] of the Michigan penal code, 1931 PA 328, MCL 750.145b.

....

(iv) A violation of section 145d(1)(a) [Use of Internet or computer system; prohibited communication] of the Michigan penal code, 1931 PA 328, MCL 750.145d, except for a violation arising out of a violation of section 157c of the Michigan penal code, 1931 PA 328, MCL 750.157c. ....

(vii) A violation of section 448 [Soliciting, accosting, or inviting to commit prostitution or immoral act; crime] of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor.

....

(ix) A violation of section 520c [Criminal sexual conduct in the second degree; felony], [or] 520e [Criminal sexual conduct in the fourth degree; misdemeanor] . . . of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e . . . committed against an individual 13 years of age or older but less than 18 years of age.

....

(xi) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (x).

(xii) An offense substantially similar to an offense described in subparagraphs (i) to (xi) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

Lastly Mich. Comp. Laws Ann. § 28.722(w) defines a “Tier III offense” as,

1 or more of the following:

....

(iv) A violation of section 520b [Criminal sexual conduct in the first degree; felony], [or] 520d [Criminal sexual conduct in the third degree; felony] . . . of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d . . . This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.

(v) A violation of section 520c [Criminal sexual conduct in the second degree; felony] . . . of the Michigan penal code, 1931 PA 328, MCL 750.520c . . . , committed against an individual less than 13 years of age.

(vi) A violation of section 520e [Criminal sexual conduct in the fourth degree; misdemeanor] of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age.

(vii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vi).

(viii) An offense substantially similar to an offense described in subparagraphs (i) to (vii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

- 2.10.1 Recommendation: Amend Mich. Comp. Laws Ann. § 28.722(k) (Definitions) to require buyers convicted of violating Mich. Comp. Laws Ann. § 750.449a (Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty), where a buyer purchases sex with a minor, to register as sex offenders.



**Legal Components:**

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.
- 3.2 Creating and distributing child pornography carries penalties as high as similar federal offenses.
- 3.3 Using the Internet to lure, entice, recruit or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.
- 3.4 Financial penalties for traffickers, including asset forfeiture, are sufficiently high.
- 3.5 Convicted traffickers are required to register as sex offenders.
- 3.6 Laws relating to termination of parental rights for certain offenses include sex trafficking or commercial sexual exploitation of children (CSEC) offenses in order to remove the children of traffickers from their control and potential exploitation.

**Legal Analysis:**

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.

Michigan’s human trafficking laws applicable to traffickers carry significant penalties. A violation of Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) is a felony punishable by a sentence of imprisonment up to 20 years.<sup>37</sup> Mich. Comp. Laws Ann. § 750.462g. A violation of Mich. Comp. Laws Ann. § 750.462j(1)(b) (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) is a felony punishable by imprisonment up to 20 years, a fine of up to \$20,000, or both, enhanced to a maximum of life in prison, a fine up to \$50,000, or both, if the crime involves the death of any person. Mich. Comp. Laws Ann. § 750.462j(1)(b), (c). To the extent that a violation of Mich. Comp. Laws Ann. § 750.462g or § 750.462j(1)(b) “involves kidnapping or an attempt to kidnap,” Mich. Comp. Laws Ann. § 750.462i (Kidnapping, criminal sexual conduct, or attempt to kill; penalty) provides that a trafficker may receive a sentence of imprisonment “for life or any term of years.”

Traffickers also may be prosecuted under Michigan’s CSEC laws. A trafficker convicted of violating Mich. Comp. Laws Ann. § 750.13 (Enticing away female under sixteen; felony, penalty) is guilty of a felony punishable by imprisonment up to 10 years.<sup>38</sup> Mich. Comp. Laws Ann. § 750.13.

A trafficker convicted of violating Mich. Comp. Laws Ann. § 750.145c(2) (Definitions; child sexually abusive activity or material; penalties) will receive a sentence of imprisonment up to 20 years, a fine up to \$100,000, or both.<sup>39</sup> Mich. Comp. Laws Ann. § 750.145c(2).

A trafficker could be charged with money laundering under Mich. Comp. Laws Ann. § 750.411k (Proceeds of criminal offense), which states,

(1) A person shall not knowingly receive or acquire a monetary instrument or other property that constitutes the proceeds or substituted proceeds of a specified criminal offense with prior actual knowledge of both of the following:

(a) The monetary instrument or other property represents the proceeds or substituted proceeds of a criminal offense.

<sup>37</sup> See *supra* Section 1.1 for the substantive provisions of Mich. Comp. Laws Ann. § 750.462g; see *infra* Appendix A for further discussion of sentencing guidelines.

<sup>38</sup> See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.13.

<sup>39</sup> See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145c.

- (b) The receipt or acquisition of the proceeds or substituted proceeds meets 1 or more of the following criteria:
  - (i) It will aid that person or another person in promoting or carrying on the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
  - (ii) It is designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or to avoid a transaction reporting requirement under state or federal law.
- (2) A person shall not knowingly conduct, attempt to conduct, or participate in conducting or attempting to conduct a financial transaction involving a monetary instrument or other property that constitutes the proceeds or substituted proceeds of a specified criminal offense with prior actual knowledge of both of the following:
  - (a) The monetary instrument or other property represents the proceeds or substituted proceeds of a criminal offense.
  - (b) The financial transaction meets 1 or more of the following criteria:
    - (i) It will aid that person or another person in promoting or carrying on the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
    - (ii) It is designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense, or to avoid a transaction reporting requirement under state or federal law.

First-degree money laundering is a felony punishable by imprisonment up to 20 years, a fine up to \$500,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411o(2). First-degree money laundering occurs, pursuant to Mich. Comp. Laws Ann. § 750.411o(1), if all of the following circumstances exist:

- (a) The value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation is \$10,000.00 or more.<sup>40</sup>
- (b) The specified criminal offense involved in the violation is a controlled substance offense, or an attempt, solicitation, or conspiracy to commit a controlled substance offense.
- (c) The violation is committed with the intent to do 1 or more of the following:
  - (i) Promote the commission of the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
  - (ii) Conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or avoid a transaction reporting requirement under state or federal law.

Second-degree money laundering is a felony punishable by imprisonment up to 10 years, a fine up to \$100,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411n(2). Second-degree money laundering occurs, pursuant to Mich. Comp. Laws Ann. § 750.411n(1), if the amount involved is greater than \$10,000 and one of the following circumstances exists:

- (a) The specified criminal offense involved in the violation is a controlled substance offense, or an attempt, solicitation, or conspiracy to commit a controlled substance offense.
- (b) The violation is committed with the intent to do 1 or more of the following:

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<sup>40</sup> The \$10,000 threshold for the entire money laundering section can be aggregated over 30 calendar days. Mich. Comp. Laws Ann. §§ 750.411o(3), 750.411n(3), 750.411m(3).

- (i) Promote the commission of the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
- (ii) Conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or avoid a transaction reporting requirement under state or federal law.

Third-degree money laundering is a felony punishable by imprisonment up to 5 years, a fine up to \$50,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411m(2). Third-degree money laundering occurs, pursuant to Mich. Comp. Laws Ann. § 750.411m(1), if one of the following circumstances exists:

- (a) The value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation is \$10,000.00 or more.
- (b) The specified criminal offense involved in the violation is a controlled substance offense, or an attempt, solicitation, or conspiracy to commit a controlled substance offense.
- (c) The violation is committed with the intent to do 1 or more of the following:
  - (i) Promote the commission of the criminal offense from which the proceeds or substituted proceeds were derived or any other criminal offense.
  - (ii) Conceal or disguise the nature, location, source, ownership, or control of the proceeds or substituted proceeds of the specified criminal offense or avoid a transaction reporting requirement under state or federal law.

Fourth-degree money laundering is a misdemeanor punishable by imprisonment up to 2 years, a fine up to \$10,000 “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or both imprisonment and a fine. Mich. Comp. Laws Ann. § 750.411l.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA) for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>41</sup> against a minor.

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

Mich. Comp. Laws Ann. § 750.145c(2), (3) (Definitions; child sexually abusive activity or material; penalties) make the creation and distribution of child pornography illegal.<sup>42</sup> A trafficker who is convicted of violating Mich. Comp. Laws Ann. § 750.145c(2) by creating child pornography may receive imprisonment up to 20 years, a fine up to \$100,000, or both, if the trafficker “knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.” Mich. Comp. Laws Ann. § 750.145c(2). A trafficker convicted of violating Mich. Comp. Laws Ann. § 750.145c(3) for distributing child pornography is guilty of a felony punishable by imprisonment up to 7 years, a fine not to exceed \$50,000, or both. Mich. Comp. Laws Ann. § 750.145c(3).

<sup>41</sup> See *supra* note 23.

<sup>42</sup> See *supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145c(2), (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>43</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>44</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>45</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>46</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.*

Michigan does not expressly criminalize the use of the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor; however, the use of the Internet to communicate with a minor while intending to commit, or attempting to commit, a violation of specified sexual offense laws is illegal under Mich. Comp. Laws Ann. § 750.145d(1)(a) (Use of Internet or computer system; prohibited communication), which states,

A person shall not use the internet or a computer,<sup>47</sup> computer program,<sup>48</sup> computer network,<sup>49</sup> or computer system<sup>50</sup> to communicate with any person for the purpose of doing any of the following:

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], 145c [Definitions; child sexually abusive activity or material; penalties] . . . 520b [Criminal sexual conduct in the first degree; felony], 520c [Criminal sexual conduct in the second degree; felony], 520d [Criminal sexual conduct in the third degree; felony], [or] 520e [Criminal sexual conduct in the fourth degree; misdemeanor] . . . in which the victim or intended victim is a minor or is believed by that person to be a minor.

The penalty for violating Mich. Comp. Laws Ann. § 750.145d(1)(a) depends on the penalty applicable to the underlying offense, the purpose for which the defendant solicited the minor. Mich. Comp. Laws Ann. § 750.145d(2).<sup>51</sup>

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<sup>43</sup> See *supra* note 23.

<sup>44</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>45</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>46</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).

<sup>47</sup> See *supra* note 26 for the definition of “computer.”

<sup>48</sup> See *supra* note 27 for the definition of “computer program.”

<sup>49</sup> See *supra* note 28 for the definition of “computer network.”

<sup>50</sup> See *supra* note 29 for the definition of “computer system.”

<sup>51</sup> See *supra* note 30 for penalty scheme under Mich. Comp. Laws Ann. § 750.145d(2).

- 3.3.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication) to include Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) to ensure availability of enhanced penalties when the Internet is used to commit trafficking offenses.

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

Traffickers may receive fines in the following amounts: up to \$4,000 for a first violation of Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose), up to \$10,000 for a second violation under Mich. Comp. Laws Ann. § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty), up to \$100,000 for violating subsection (2) and up to \$50,000 for violating subsection (3) of Mich. Comp. Laws Ann. § 750.145c (Definitions; child sexually abusive activity or material; penalties). Mich. Comp. Laws Ann. §§ 750.145a, 750.145b(1), 750.145c(2), 750.145c(3), 750.159j(1). Additionally, traffickers may receive fines up to \$5,000–\$20,000 for violations of Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication), and up to \$20,000 for violations of Mich. Comp. Laws Ann. § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty). Mich. Comp. Laws Ann. §§ 750.145d(2)(a)–(f), 750.462j(1)(b). However, traffickers convicted of Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) are not subject to a fine.

Mich. Comp. Laws Ann. § 780.766b (Conviction of offense described in MCL 750.462a to 750.462i; restitution) provides for mandatory restitution and states,

“When sentencing a defendant convicted of an offense described in chapter LXVIIA [Human trafficking] . . . the court shall order restitution for the full amount of loss suffered by the victim.” Mich. Comp. Laws Ann. § 750.462j(5) (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), enacted subsequent to Mich. Comp. Laws Ann. § 780.766b and § 750.462g (Use of minor for child sexually abusive activity; prohibition), specifically provides that “[t]he court shall order a person convicted of violating this section to pay restitution to the victim in the manner provided in section 16b of the William Van Regenmorter crime victim’s rights act, 1985 PA 87, MCL 780.766b, and to reimburse any governmental entity for its expenses incurred as a result of the violation, in the manner provided in section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.”

Traffickers convicted of other crimes are also subject to mandatory restitution orders pursuant to Mich. Comp. Laws Ann. § 780.766 (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole). Mich. Comp. Laws Ann. § 780.766(2) states,

Except as provided in subsection (8),<sup>52</sup> when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction or to the victim’s estate. . . .

Under Mich. Comp. Laws Ann. § 780.766(24),

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<sup>52</sup> See *supra* note 33.

If the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

- (a) Homemaking and child care expenses.
- (b) Income loss not ordered to be paid under subsection (4)(h).
- (c) Mileage.
- (d) Lodging or housing.
- (e) Meals.
- (f) Any other cost incurred in exercising the rights of the victim or a parent under this act.”

Additionally, traffickers may be subject to asset forfeiture under the nuisance law. Pursuant to Mich. Comp. Laws Ann. § 600.3801 (Nuisance; injunction; abatement; guilt),

[a]ny building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution or gambling, or used by, or kept for the use of prostitutes or other disorderly persons, . . . is declared a nuisance, and the furniture, fixtures, and contents of the building, vehicle, boat, aircraft, or place and all intoxicating liquors therein are also declared a nuisance, and all controlled substances and nuisances shall be enjoined and abated as provided in this act and as provided in the court rules. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any building, vehicle, or place used for any of the purposes or acts set forth in this section is guilty of a nuisance.

Mich. Comp. Laws Ann. § 600.3830(2) (Removal and sale of property; fees; closing of building; loss of property exemptions; liability of officers) states,

Any person found guilty of maintaining a nuisance under the provisions of this chapter shall forfeit the benefit of all property exemptions, so far as the satisfaction of the order or judgment of the court requires the same, and the taking and disposing of any property of the defendant or defendants by virtue of such order or judgment by any officer directed to execute the same is not a trespass, nor shall such officer be liable either civilly or criminally therefor, if a proper return of such order or judgment and accounting for such property is made to the court within 10 days after the order or judgment is executed.

While asset forfeiture is not expressly required of traffickers convicted under Mich. Comp. Laws Ann. § 750.462g or § 750.462j(1)(b), asset forfeiture may be available under Michigan’s law related to criminal enterprises. Mich. Comp. Laws Ann. § 750.159j(4) (Violation as felony; penalties; imposition of costs; order to criminally forfeit property) states,

The court shall order a person convicted of a violation of section 159i [Prohibited conduct] to criminally forfeit to the state any real, personal, or intangible property in which he or she has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 159i, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation. . . .

A conviction for money laundering under Mich. Comp. Laws Ann. § 750.411k can result in fines from up to \$10,000–\$500,000, “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” depending on the degree of the violation.<sup>53</sup> Mich. Comp. Laws Ann. §§ 750.411l, 750.411m(2), 750.411n(2), 750.411o(2).

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<sup>53</sup> See *supra* Section 3.1 for discussion of the substantive provisions of the money laundering statutes.

- 3.4.1 Recommendation: Amend Mich. Comp. Laws Ann. § 600.3801 (Nuisance; injunction; abatement; guilt) to include property used in or derived from human trafficking and CSEC offenses as a nuisance subject to forfeiture

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

A trafficker convicted under Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) or § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), would not be required to register as a sex offender under Mich. Comp. Laws Ann. § 28.723 (Individuals required to be registered). Instead, Mich. Comp. Laws Ann. § 28.723 only requires registration when an offender is convicted of violating a “listed offense,” which is defined as “a tier I, tier II, or tier III offense.” Mich. Comp. Laws Ann. §§ 28.723(1)(a), 28.722(k). Neither Mich. Comp. Laws Ann. § 750.462g nor § 750.462j is included in the definitions of tier I, II, or III offenses. Mich. Comp. Laws Ann. § 28.722(r)–(w). However, traffickers convicted of violating Mich. Comp. Laws Ann. § 750.145a (Accosting, enticing or soliciting child for immoral purpose), § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty), § 750.145c (Definitions; child sexually abusive activity or material; penalties), § 750.145d(1)(a) (Use of internet or computer system; prohibited communication) (except when the underlying violation is of Mich. Comp. Laws Ann. § 750.157c), and § 750.455 (Pandering; felony) are required to register as sex offenders. Mich. Comp. Laws Ann. § 28.722(u)(i)–(iv), (viii).

- 3.5.1 Recommendation: Amend Mich. Comp. Laws Ann. § 28.722(r)–(w) to require traffickers convicted of violating Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) to register as a sex offender under Mich. Comp. Laws Ann. § 28.723 (Individuals required to be registered) when the victim is a minor.

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.*

Mich. Comp. Laws Ann. § 712A.19b(3) (Termination of parental rights to child) does not provide that a violation of Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition), § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), or any of Michigan’s CSEC laws constitute grounds for the termination of parental rights. However, under Mich. Comp. Laws Ann. § 712A.19b(3) the court may terminate parental rights when a parent is convicted of other crimes, as well as in specified situations, including when a parent or nonparent adult subjects a child to sexual abuse. Specifically, Mich. Comp. Laws Ann. § 712A.19b(3) states,

The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

....

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

- (i) The parent’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent’s home.
- (ii) The parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent’s home.
- (iii) A nonparent adult’s act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent’s home.

....

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

(k) The parent abused the child or a sibling of the child and the abuse included 1 or more of the following:

....

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

....

....

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

....

(ii) A violation of a criminal statute that includes as an element the use of force or the threat of force and that subjects the parent to sentencing under section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10 [Punishment for subsequent felony], 769.11 [Punishment for subsequent felony following conviction of 2 or more felonies], and 769.12 [Punishment for subsequent felony following conviction of 3 or more felonies].

(iii) A federal law or law of another state with provisions substantially similar to a crime or procedure listed or described in subparagraph (i) or (ii).

3.6.1 Recommendation: Amend Mich. Comp. Laws Ann. § 712A.19b(3)(n) (Termination of parental rights to child) to include Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition), § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), § 750.145a (Accosting, enticing or soliciting child for immoral purpose), § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty), § 750.145c (Definitions; child sexually abusive activity or material; penalties) and § 750.145d (Use of internet or computer system; prohibited communication) as grounds for termination of parental rights.



**Legal Components:**

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*
- 4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*
- 4.3 *Promoting and selling child sex tourism is illegal.*
- 4.4 *Promoting and selling child pornography is illegal.*

**Legal Analysis:**

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.*

Mich. Comp. Laws Ann. § 750.462h(1) (Prohibited acts; violation as felony; penalty) states,

A person shall not knowingly do 1 or both of the following:

- (a) Recruit, entice, harbor, transport, provide, or obtain by any means, or attempt to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to forced labor or services.
- (b) Benefit financially or receive anything of value from participation in a venture that has engaged in an act described in this chapter.

A conviction is punishable by imprisonment up to 10 years, enhanced to 15 years when injury results and to life in prison if death results.<sup>54</sup> Mich. Comp. Laws Ann. § 750.462h(2)–(4). Additionally, facilitators could fall under Mich. Comp. Laws Ann. § 750.462j(2) (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), which includes those who “harbor [or] transport . . . a person for labor or services for the purpose of holding that person in involuntary servitude or debt bondage.”<sup>55</sup> Where the violation of Mich. Comp. Laws Ann. § 750.462j(2) involves a minor victim or a commercial sex act, a facilitator will receive a sentence of imprisonment up to 20 years, a fine up to \$20,000, or both, unless the violation involves a death, in which case the facilitator may receive a sentence up to life imprisonment, a fine up to \$50,000, or both. Mich. Comp. Laws Ann. § 750.462j(2)(b), (c).

A facilitator could also be prosecuted under Michigan’s money laundering statutes and face punishments from imprisonment up to 2–20 imprisonment, fines from up to \$10,000–\$500,000, “or twice the value of the proceeds or substituted proceeds of the specified criminal offense involved in the violation, whichever is greater,” or imprisonment and a fine, depending on the degree of the violation.<sup>56</sup> Mich. Comp. Laws Ann. §§ 750.4111, 750.411m(2), 750.411n(2), 750.411o(2).

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

Facilitators face a maximum fine of \$50,000 for the promotion and distribution of child pornography under Mich. Comp. Laws Ann. § 750.145c(3) (Definitions; child sexually abusive activity or material; penalties). No

<sup>54</sup> See *infra* Appendix A for further discussion of sentencing guidelines.

<sup>55</sup> See *supra* Section 1.1 for the substantive provisions of Mich. Comp. Laws Ann. § 750.462j(2).

<sup>56</sup> See *supra* Section 3.1 for the substantive provisions of the Michigan money laundering statutes.

finances are provided for facilitators convicted under Mich. Comp. Laws Ann. § 750.462h(1)(b) (Prohibited acts; violation as felony; penalty).

Mich. Comp. Laws Ann. § 780.766b (Conviction of offense described in MCL 750.462a to 750.462i; restitution) provides for mandatory restitution and states, “When sentencing a defendant convicted of an offense described in chapter LXVIIA [Human trafficking] . . . the court shall order restitution for the full amount of loss suffered by the victim.”<sup>57</sup> Mich. Comp. Laws Ann. § 750.462j(5) (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), which was enacted later, also provides that restitution is available under Mich. Comp. Laws Ann. § 780.766b for victims of facilitators convicted under Mich. Comp. Laws Ann. § 750.462j(2).

Facilitators convicted of other crimes shall be required to make restitution pursuant to Mich. Comp. Laws Ann. § 780.766(2) (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole).<sup>58</sup>

Additionally, facilitators may be subject to asset forfeiture under the nuisance law. Pursuant to Mich. Comp. Laws Ann. § 600.3801 (Nuisance; injunction; abatement; guilt),

[a]ny building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution or gambling, or used by, or kept for the use of prostitutes or other disorderly persons, . . . is declared a nuisance, and the furniture, fixtures, and contents of the building, vehicle, boat, aircraft, or place and all intoxicating liquors therein are also declared a nuisance, and all controlled substances and nuisances shall be enjoined and abated as provided in this act and as provided in the court rules. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any building, vehicle, or place used for any of the purposes or acts set forth in this section is guilty of a nuisance.

Mich. Comp. Laws Ann. § 600.3830(2) (Removal and sale of property; fees; closing of building; loss of property exemptions; liability of officers) states,

Any person found guilty of maintaining a nuisance under the provisions of this chapter shall forfeit the benefit of all property exemptions, so far as the satisfaction of the order or judgment of the court requires the same, and the taking and disposing of any property of the defendant or defendants by virtue of such order or judgment by any officer directed to execute the same is not a trespass, nor shall such officer be liable either civilly or criminally therefor, if a proper return of such order or judgment and accounting for such property is made to the court within 10 days after the order or judgment is executed.

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

Michigan has no laws preventing the promotion or sale of child sex tourism.

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

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<sup>57</sup> See *infra* Section 5.10 for the substantive provisions of Mich. Comp. Laws Ann. § 780.766b.

<sup>58</sup> See *infra* Section 5.10 for a full discussion of restitution calculation.

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

Mich. Comp. Laws Ann. § 750.145c(3) (Definitions; child sexually abusive activity or material; penalties) makes the distribution and promotion of child pornography a felony.<sup>59</sup> A violation of Mich. Comp. Laws Ann. § 750.145c(3) is punishable by imprisonment up to 7 years, a fine up to \$50,000, or both, where the facilitator “knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.”

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<sup>59</sup> *See supra* Section 1.2 for the substantive provisions of Mich. Comp. Laws Ann. § 750.145c(3).

***Legal Components:***

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

***Legal Analysis:***

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

Under the William Van Regenmorter Crime Victim’s Rights Act,<sup>60</sup> “victim” is defined in part as “[a]n individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.”<sup>61</sup> Mich. Comp. Laws Ann. § 780.752(1)(m)(i). Similarly, for purposes of receiving restitution under Mich. Comp. Laws Ann. § 780.766(1) (“Victim” defined; order of restitution generally; order of restitution as condition of probation or parole), a “victim” is defined in part as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.”

In Chapter 18 (Department of management and budget), sections 351 (Definitions)–368 (Crimes to which act applicable), which govern eligibility requirements for crime victim compensation, Mich. Comp. Laws Ann. § 18.351(1) (Definitions) defines “victim” as “a person who suffers a personal physical injury as a direct result

<sup>60</sup> Mich. Comp. Laws Ann. §§ 780.751–.834.

<sup>61</sup> Mich. Comp. Laws Ann. § 780.752(1)(b) defines “crime” as “a violation of a penal law of this state for which the offender, upon conviction, may be punished by imprisonment for more than 1 year or an offense expressly designated by law as a felony.”

of a crime,”<sup>62</sup> and “personal physical injury” as “actual bodily harm and includes pregnancy.” Mich. Comp. Laws Ann. § 18.351(1)(f), (i).

5.1.1 Recommendation: Amend Michigan’s Child Protection Laws under Mich. Comp. Laws Ann. § 722 to establish a definition of “victim” which specifically includes victims of Mich. Comp. Laws Ann. §§ 750.462a (Definitions)–750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), Mich. Comp. Laws Ann. § 750.13 (Enticing away female under sixteen; felony, penalty), and Mich. Comp. Laws Ann. § 750.145c(2) (Definitions; child sexually abusive activity or material; penalties).

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.*

Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition), § 750.13 (Enticing away female under sixteen; felony, penalty) and § 750.145c(2)–(4) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material) do not expressly bar a defense based on consent of the minor.

5.2.1 Recommendation: Amend 750.462g (Use of minor for child sexually abusive activity; prohibition), § 750.13 (Enticing away female under sixteen; felony, penalty) and § 750.145c(2)–(4) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material) to expressly bar a defense based on consent in CSEC and minor sex trafficking cases.

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

Michigan’s prostitution laws make some, but not all, minors immune from prosecution. Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act) makes it a crime for “[a] person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act.” This leaves minors who are 16–17 subject to arrest and conviction for prostitution. Mich. Comp. Laws Ann. §§ 750.448, 750.451.

5.3.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act; crime) to make all minors under 18 immune from prosecution under this provision.

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<sup>62</sup> Mich. Comp. Laws Ann. § 18.351(c) defines “crime” as

an act that is 1 of the following:

- (i) A crime under the laws of this state or the United States that causes an injury within this state.
- (ii) An act committed in another state that if committed in this state would constitute a crime under the laws of this state or the United States, that causes an injury within this state or that causes an injury to a resident of this state within a state that does not have a victim compensation program eligible for funding from the victims of crime act of 1984, chapter XIV of title II of the comprehensive crime control act of 1984, Public Law 98-473, 98 Stat. 2170.

....

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

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

- I. Initial Custody
  - a. Authority for initial custody

Under the Child Protection Laws, Mich. Comp. Laws Ann. §§ 722.621–722.638, a minor trafficking victim may enter child protective services and, where necessary, be taken into protective custody. This may happen through a report of abuse under Mich. Comp. Laws Ann. § 722.623(1)(a) (Individual required to report child abuse or neglect; written report), which requires specified medical and psychosocial professionals, social service providers, school personnel, law enforcement, clergy, or child care providers, among others, with “reasonable cause to suspect child abuse or neglect” to immediately report “the suspected child abuse or neglect to the department.”<sup>63</sup> In addition, Mich. Comp. Laws Ann. § 722.624 (Persons permitted to report child abuse or neglect) states, “[A]ny person, including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the department or a law enforcement agency.” Mich. Comp. Laws Ann. § 722.623(6) further states in part,

If an allegation, written report, or subsequent investigation of suspected child abuse or child neglect indicates a violation of sections 136b [Definitions; child abuse] and 145c [Definitions; child sexually abusive activity or material; penalties], sections 520b to 520g [Criminal sexual conduct] of the Michigan penal code . . . or if the allegation, written report, or subsequent investigation indicates that the suspected child abuse or child neglect was committed by an individual who is not a person responsible for the child’s health or welfare, . . . the department shall transmit a copy of the allegation or written report and the results of any investigation to a law enforcement agency in the county in which the incident occurred. . . .

Within 24 hours of receiving a report of suspected abuse, the department shall, depending on the circumstances, commence an investigation or “refer the report to the prosecuting attorney and the local law enforcement agency.” Mich. Comp. Laws Ann. § 722.628(1).<sup>64</sup> If “[t]he child is the victim of suspected sexual abuse or sexual exploitation,” law enforcement must commence an investigation of the suspected abuse or neglect within 24 hours. Mich. Comp. Laws Ann. § 722.628(1), (3)(b). “In the course of its investigation, the department shall determine if the child is abused or neglected.” Mich. Comp. Laws Ann. § 722.628(2).

“After completing a field investigation and based on its results, the department shall determine in which single category, prescribed by section 8d, to classify the allegation of child abuse or neglect.” Mich. Comp. Laws Ann. § 722.628(12). If as a result of the field investigation, “[t]he department determines that there is evidence of child abuse or neglect,” and that a violation of, among other crimes, Mich. Comp. Laws Ann. § 750.145c (Definitions; child sexually abusive activity or material; penalties), occurs, the department must

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<sup>63</sup> The “department” is defined in Mich. Comp. Laws. § 722.622(o) (Definitions) as “the department of human resources.” *See supra* note 69.

<sup>64</sup> Similarly, where a law enforcement agency suspects abuse, Mich. Comp. Laws Ann. § 722.628(1) (Referring report or commencing investigation; informing parent or legal guardian of investigation) requires the law enforcement entity to “refer the report to the department . . . or shall commence an investigation of the child suspected of being abused or neglected.” Mich. Comp. Laws. Ann. § 722.628(1).

classify the abuse as Category 1. Mich. Comp. Laws Ann. §§ 722.628d(1)(e)(iv),<sup>65</sup> 722.628a(1)(f). When abuse is classified as Category 1, Mich. Comp. Laws Ann. § 722.628d(2) states,

In response to a category I classification, the department shall do all of the following:

- (a) If a court petition is not required under another provision of this act, submit a petition for authorization by the court under section 2(b) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.
- (b) Open a protective services case and provide the services necessary under this act.
- (c) List the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry as provided in section 7(7), either by name or as “unknown” if the perpetrator has not been identified.

Mich. Comp. Laws Ann. § 712A.14(1) also permits law enforcement to “without the order of the court, immediately take into custody any child . . . whose surroundings are such as to endanger his or her health, morals, or welfare,” and after taking into custody, the law enforcement officer “shall immediately attempt to notify the parent or parents, guardian, or custodian,” and if not released to the parents, bring the child “before the court for a preliminary hearing on the status of the child.” Mich. Comp. Laws Ann. § 712A.14(1), (2).

## II. Process following initial custody

Pursuant to Mich. Comp. Laws Ann. § 722.637(1) (Submission of petition for authorization under MCL 712A.2; exception), unless excepted under subsection (2), “within 24 hours after the department determines that a child was . . . sexually abused . . . the department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2.” However, Mich. Comp. Laws Ann. § 722.637(2) states,

The department is not required to file a petition for authorization by the court as described in subsection (1) if the department determines that the parent or legal guardian is not a suspected perpetrator of the abuse and the department determines that all of the following apply:

- (a) The parent or legal guardian did not neglect or fail to protect the child.
- (b) The parent or legal guardian does not have a historical record that shows a documented pattern of neglect or failing to protect the child.
- (c) The child is safe in the parent’s or legal guardian’s care.

If a petition for authorization is filed, Mich. Comp. Laws Ann. § 712A.2(b) (Authority and jurisdiction of court) grants the family court jurisdiction over a

juvenile under 18 years of age found within the county:

- (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile,<sup>66</sup> when able to do so, neglects or refuses to provide proper or necessary support, education, medical,

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<sup>65</sup> Here and elsewhere in this report that Mich. Comp. Laws Ann § 722.628d is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 4893. H.B. 4893. 2014 Leg., 97th Legislature. (effective September 7, 2014).

<sup>66</sup> Chapter 712A does not define “person legally responsible for the care and maintenance of the juvenile”; however, Mich. Comp. Laws Ann. § 712A.13a(1)(h) defines a “non-parent adult” as

a person who is 18 years of age or older and who, regardless of the person’s domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under this chapter:

- (i) Has substantial and regular contact with the child.
- (ii) Has a close personal relationship with the child’s parent or with a person responsible for the child’s health or welfare.

surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

. . . .  
(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.  
. . . .

Mich. Comp. Laws Ann. § 712A.13a(2) (Definitions; petition) states,

If a juvenile is alleged to be within the provisions of section 2(b) of this chapter, the court may authorize a petition to be filed at the conclusion of the preliminary hearing or inquiry. The court may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of section 2(b) of this chapter. If a petition is before the court because the department of human services is required to submit the petition under section 17 of the child protection law, 1975 PA 238, MCL 722.637, the court shall hold a hearing on the petition within 24 hours or on the next business day after the petition is submitted, at which hearing the court shall consider at least the matters governed by subsections (4) and (5).

Another avenue by which a child may come within the jurisdiction of the family court is if a child is taken into protective custody, following which a preliminary hearing must be held if the child is not released to her parents. Pursuant to Mich. Comp. Laws Ann. § 722.626(1) (Detention of child in temporary protective custody),

If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines that the release of the child would endanger the child's health or welfare, the attending physician shall notify the person in charge and the department. The person in charge may detain the child in temporary protective custody until the next regular business day of the probate court, at which time the probate court shall order the child detained in the hospital or in some other suitable place pending a preliminary hearing as required by section 14 of chapter 12A of the probate code of 1939, 1939 PA 288, MCL 712A.14, or order the child released to the child's parent, guardian, or custodian.

Mich. Comp. Laws Ann. § 712A.14(2) (Officers or county agent authorized to take child into custody) states,

If a child is not released under subsection (1), the child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.

### **Child Identified as Delinquent**

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(iii) Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

In comparison, Mich. Comp. Laws Ann. § 722.622(u) (Definitions) in the Child Protection Law defines "person responsible for the child's health or welfare" in part as "a . . . person 18 years of age or older who resides for any length of time in the same home in which the child resides." Here and elsewhere in this report that Mich. Comp. Laws Ann § 722.622 is quoted or cited, it has been updated to reflect the amendments added by the passage of House Bill 4893. H.B. 4893. 2014 Leg., 97th Legislature. (effective September 7, 2014).



## I. Initial Custody

### a. Authority for Initial Custody

If a minor victim of trafficking, under the age of 17, is instead arrested for a juvenile or status offense, the family division of the circuit court will have jurisdiction over the juvenile proceeding pursuant to Mich. Comp. Laws Ann. § 712A.2(a).<sup>67</sup> If the minor “who is found violating any law or ordinance” is taken into immediate custody by law enforcement without an order from the court pursuant to Mich. Comp. Laws Ann. § 712A.14(1), and the minor cannot be released to parents under Mich. Comp. Laws Ann. § 712A.14(1) or (2),<sup>68</sup> the juvenile

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<sup>67</sup> Mich. Comp. Laws Ann. § 712A.2(a) states,

The court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States. . . .

. . . .  
(2) The juvenile has deserted his or her home without sufficient cause, and the court finds on the record that the juvenile has been placed or refused alternative placement or the juvenile and the juvenile’s parent, guardian, or custodian have exhausted or refused family counseling.

. . . .  
(4) The juvenile willfully and repeatedly absents himself or herself from school or other learning program intended to meet the juvenile’s educational needs . . . .

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

(A) “Education” means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

(B) “Without proper custody or guardianship” does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the juvenile.

<sup>68</sup> Under circumstances where a child is taken into custody by a law enforcement officer or county agent, without an order of the court, as provided in Mich. Comp. Laws Ann. § 712A.14(1),

[A]n officer or county agent . . . shall immediately attempt to notify the parent or parents, guardian, or custodian. While awaiting the arrival of the parent or parents, guardian, or custodian, a child under the age of 17 years . . . shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Unless the child requires immediate detention as provided for in this act, the officer shall accept the written promise of the parent or parents,

has various options for placement pending trial. However, to the extent that a minor is taken into custody on prostitution charges under Mich. Comp. Laws Ann. § 750.448 (Soliciting, accosting, or inviting to commit prostitution or immoral act), only a minor who is “16 years of age or older” could be charged with this offense. Mich. Comp. Laws Ann. §§ 750.448, 750.451.

## II. Placement process pending adjudication/investigation

If delinquency charges are filed, Mich. Comp. Laws Ann. § 712A.14(3) provides, “If a complaint is authorized under subsection (2), the order shall state where the child is to be placed, pending investigation and hearing . . . .” Placement options include the parent’s home, “a suitable place of detention,” a licensed “child care institution or child placing agency,” or “[i]f a child is within the court’s jurisdiction under section 2(a) of this chapter, in a suitable foster care home subject to the court’s supervision.” Mich. Comp. Laws § 712A.14(3). Alternatively, Mich. Comp. Laws Ann. § 712A.11(7) (Preliminary inquiry; petition) permits the court to offer the juvenile the option of avoiding formal jurisdiction and delinquency adjudication by participating in a voluntary program under the Juvenile Diversion Act, codified at Mich. Comp. Laws Ann. § 722.821 to § 722.831.

## III. Outcomes

Where a juvenile remains in custody, Mich. Comp. Laws Ann. § 712A.16(1) (Detention and care of juvenile) provides that, in general, minors under 17 are not to be kept with “criminal or dissolute persons.” For a minor who proceeds to adjudication in the juvenile court, Mich. Comp. Laws Ann. § 712A.18(1) (Orders of disposition) provides a range of dispositional alternatives, including, among others, giving a warning to the juvenile and juvenile’s parents and dismissing the petition, placing “the juvenile on probation, or under supervision in the juvenile’s own home or in the home of an adult who is related to the juvenile,” placing the child “in a suitable foster care home,” or committing “the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics.” Mich. Comp. Laws Ann. § 712A.18(1)(a)–(c), (e). Additionally, pursuant to Mich. Comp. Laws Ann. § 712A.18(1)(l), the court may, “[i]f a juvenile is within the court’s jurisdiction under section 2(a)(1) of this chapter, place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp . . . .” The court also may, “[i]f the court entered a judgment of conviction under section 2d of this chapter, enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted.” Mich. Comp. Laws Ann. § 712A.18(1)(m).

### 5.4.1 Recommendation: Enact a law establishing specialized shelters and treatment centers for minor victims of commercial sexual exploitation.

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

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guardian, or custodian, to bring the child to the court at a time fixed therein. The child shall then be released to the custody of the parent or parents, guardian, or custodian.

Where the child is not released into the care of the child’s parent, guardian or custodian, as provided in Mich. Comp. Laws Ann. § 712A.14(2), “[T]he child and his or her parents, guardian, or custodian, if they can be located, shall immediately be brought before the court for a preliminary hearing on the status of the child, and an order signed by a judge of probate or a referee authorizing the filing of a complaint shall be entered or the child shall be released to his or her parent or parents, guardian, or custodian.”

Some types of commercial sexual exploitation are expressly identified as a type of abuse and neglect within Michigan’s child protection laws. Mich. Comp. Laws Ann. § 722.622(f)<sup>69</sup> (Definitions) defines “child abuse” to include “harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare or by a teacher, a teacher’s aide, or a member of the clergy..” Mich. Comp. Laws Ann. § 722.622(w) defines “sexual abuse” as “engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code . . . with a child,”<sup>70</sup> and Mich. Comp. Laws Ann. § 722.622(x) defines “sexual exploitation” as “allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of the Michigan penal code [Definitions; child sexually abusive activity or material; penalties].” However, conduct criminalized under Mich. Comp. Laws Ann. § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), § 750.462g (Use of minor for child sexually abusive activity; prohibition), and § 750.13 (Enticing away female under sixteen) is not expressly identified as a type of child abuse.

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

Mich. Comp. Laws Ann. § 722.622(u)<sup>71</sup> (Definitions) defines “person responsible for the child’s health or welfare” in part as “a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or . . . nonparent adult . . .” and Mich. Comp. Laws Ann. § 722.622(t) defines “nonparent adult” as “a person who is 18 years of age or older and who, regardless of the person’s domicile, meets all of the following criteria in relation to a child: (i) Has substantial and regular contact with the child. (ii) Has a close personal relationship with the child’s parent or with a person responsible for the child’s health or welfare. (iii) Is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.” Mich. Comp. Laws Ann. § 722.622(u) defines “child abuse” in part as “harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare.” Since the definitions of “person responsible for the child’s health or welfare” and “nonparent” require legal custody or a close connection to the child’s family, child protective services may be unable to intervene and provide services in some cases involving a minor trafficked by a non-family member.

5.6.1 Recommendation: Amend Mich. Comp. Laws Ann. § 722.622 (Definitions) to expand the definition of “person responsible for the child’s health or welfare” to include a person who has custody or control of a child.

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

Mich. Comp. Laws Ann. § 18.354(1)(a) (Eligibility for awards; limitations; waiver) of the Crime Victims Compensation Board Act<sup>72</sup> provides that a victim<sup>73</sup> of a crime is entitled to an award, unless the limitations in Mich. Comp. Laws Ann. § 18.354(2) apply. Mich. Comp. Laws Ann. § 18.354(2) provides that “[a] person is not eligible to receive an award if the person is either of the following: (a) Criminally responsible for the crime.

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<sup>69</sup> See *supra* note 67

<sup>70</sup> See *supra* note 9.

<sup>71</sup> See *supra* note 67.

<sup>72</sup> Mich. Comp. Laws Ann. §§ 18.351–18.368.

<sup>73</sup> See *supra* Section 5.1 for the definition of “victim.”

(b) An accomplice to the crime.” To the extent that a domestic minor sex trafficking victim can be considered criminally responsible or an accomplice to the relevant crime because of his or her participation in a commercial sex act, the provisions of Mich. Comp. Laws Ann. § 18.354(2) could prevent some domestic minor sex trafficking victims from being eligible to receive an award.

Mich. Comp. Laws Ann. § 18.354(3) also requires that “the claimant has incurred a minimum out-of-pocket loss<sup>74</sup> of \$200.00 or has lost at least 2 continuous weeks’ earnings or support”; however, “[i]f the claimant is a victim of criminal sexual conduct in the first, second, or third degree, the commission may waive the limitations of this subsection.”

Additionally, Mich. Comp. Laws Ann. § 18.355(2), (3) (Claim; filing; notice) states,

(2) Except as provided in subsection (3), a claim shall be filed by the claimant not later than 1 year after the occurrence of the crime upon which the claim is based, except as follows:

(a) If police records show that a victim of criminal sexual conduct in the first, second, or third degree was less than 18 years of age at the time of the occurrence and that the victim reported the crime before attaining 19 years of age, a claim based on that crime may be filed by [the victim or others eligible for awards] not later than 1 year after the crime was reported.

....

(3) Upon petition by the claimant and for good cause shown, the commission may extend the period in which a claim may be filed under subsection (2).

Mich. Comp. Laws Ann. § 18.355 does not clarify what constitutes “good cause” under Mich. Comp. Laws Ann. § 18.355(3) for a claimant’s failure to file within the time limits imposed under Mich. Comp. Laws Ann. § 18.355(2).

5.7.1 Recommendation: Amend Mich. Comp. Laws Ann. § 18.354 (Eligibility for awards; limitations; waiver) to make the ineligibility factors in Mich. Comp. Laws Ann. § 18.354(2) and (3) and the time restrictions on filing in Mich. Comp. Laws Ann. § 18.355(2) (Claim; filing; notice) inapplicable to minor victims of sex trafficking.

5.7.2 Recommendation: Amend Mich. Comp. Laws Ann. § 18.351(1)(f) (Definitions) to include psychological and emotional trauma in the definition of “personal physical injury” to ensure that sexually abused minors are considered victims.

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

The William Van Regenmorter Crime Victim’s Rights Act<sup>75</sup> provides several protections to victims of felony offenses or offenses punishable by imprisonment for more than one year, including, but not limited to, victims of Mich. Comp. Laws Ann. § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) and § 750.462g (Use of minor for child sexually abusive activity; prohibition). Mich. Comp. Laws Ann. § 780.752(1)(b), (1)(m)(i).<sup>76</sup> For example, under Mich. Comp. Laws Ann. § 780.757 (Waiting area

<sup>74</sup> Mich. Comp. Laws Ann. § 18.351(e) defines “out-of-pocket loss” as “the unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care, psychological counseling, replacement services, any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing, or other services necessary as a result of the injury upon which a claim is based.”

<sup>75</sup> Mich. Comp. Laws Ann. §§ 780.751–.834.

<sup>76</sup> However, “[a]n individual who is charged with a crime arising out of the same transaction from which the charge against the defendant arose is not eligible to exercise the privileges and rights established for victims under this article,” and “[a]n individual who is incarcerated is not eligible to exercise the privileges and rights established for

for victim or other safeguards), “The court shall provide a waiting area for the victim separate from the defendant, defendant’s relatives, and defense witnesses,” or, “[i]f a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim’s contact with defendant, defendant’s relatives, and defense witnesses during court proceedings.” Victims of certain sexual offenses have the right to a speedy trial pursuant to Mich. Comp. Laws Ann. § 780.759(1) (Speedy trial; requirements; hearing; notice; time of trial). Victims may also be protected from having to testify about personal identifying information under Mich. Comp. Laws Ann. § 780.758(1) (Motion not to compel testimony of victim or other witness; hearing).

Pursuant to Michigan Rules of Evidence Rule 803A (Hearsay exception; child’s statement about sexual act), Michigan also provides a hearsay exception in criminal and delinquency proceedings for child witnesses testifying about a sexual act, which states in part,

A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding, provided:

- (1) the declarant was under the age of ten when the statement was made;
- (2) the statement is shown to have been spontaneous and without indication of manufacture;
- (3) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective [sic] circumstance; and
- (4) the statement is introduced through the testimony of someone other than the declarant.

If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule.

A statement may not be admitted under this rule unless the proponent of the statement makes known to the adverse party the intent to offer the statement, and the particulars of the statement, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.

Mich. Comp. Laws Ann. § 750.520j (Evidence of victim’s sexual conduct) and § 750.520h (Corroboration of victim’s testimony not required)<sup>77</sup> provide protections to testifying victims of sexual offenses, but not to victims of Mich. Comp. Laws Ann. § 750.462j, § 750.462g, or Michigan’s CSEC laws.

Mich. Comp. Laws Ann. § 750.520j(1) states,

Evidence of specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct, and reputation evidence of the victim’s sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

- (a) Evidence of the victim’s past sexual conduct with the actor.
- (b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

Additional witness protections specific to child victims under the age of 16 of specified sex offenses are available under Mich. Comp. Laws Ann. § 600.2163a (Definitions; prosecutions and proceedings to which section applicable; use of dolls or mannequins; support person; notice; videorecorded statement; special

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victims under this article except that he or she may submit a written statement to the court for consideration at sentencing.” Mich. Comp. Laws Ann. § 780.752(3), (4).

<sup>77</sup> Mich. Comp. Laws Ann. § 750.520h (Corroboration of victim’s testimony not required) states, “The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g.”

arrangements to protect welfare of witness; videotape deposition). Mich. Comp. Laws Ann. § 600.2163a(2) states that the protections of Mich. Comp. Laws Ann. § 600.2163a are limited to “prosecutions and proceedings under section 136b [Definitions; child abuse], 145c [Definitions; child sexually abusive activity or material], 520b [Criminal sexual conduct in the first degree] to 520e [Criminal sexual conduct in the fourth degree], or 520g [Criminal sexual conduct].” Pursuant to Mich. Comp. Laws Ann. § 600.2163a(3), “If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.” Mich. Comp. Laws Ann. § 600.2163a(4) further provides that “[a] witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony.” Additionally, Mich. Comp. Laws Ann. § 600.2163a(5) states,

A custodian of the videorecorded statement<sup>78</sup> may take a witness’s videorecorded statement before the normally scheduled date for the defendant’s preliminary examination. The videorecorded statement shall state the date and time that the statement was taken; shall identify the persons present in the room and state whether they were present for the entire videorecording or only a portion of the videorecording; and shall show a time clock that is running during the taking of the videorecorded statement.

Mich. Comp. Laws Ann. § 600.2163a(6) sets out the following purposes for which a “videorecorded statement” can be introduced:

- (a) It may be admitted as evidence at all pretrial proceedings, except that it may not be introduced at the preliminary examination instead of the live testimony of the witness.
- (b) It may be admitted for impeachment purposes.
- (c) It may be considered by the court in determining the sentence.
- (d) It may be used as a factual basis for a no contest plea or to supplement a guilty plea.

Pursuant to Mich. Comp. Laws Ann. § 600.2163a(11), “A videorecorded statement that becomes part of the court record is subject to a protective order of the court for the purpose of protecting the privacy of the witness.”

Mich. Comp. Laws Ann. § 600.2163a(14) states,

If the court determines on the record that it is necessary to protect the welfare of the witness and grants the motion made under subsection (13),<sup>79</sup> the court shall order both of the following:

- (a) All persons not necessary to the proceeding shall be excluded during the witness’s testimony from the courtroom where the preliminary examination is held. Upon request by any person and the payment of the appropriate fees, a transcript of the witness’s testimony shall be made available.

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<sup>78</sup> Mich. Comp. Laws Ann. § 600.2163a(1)(a) defines “custodian of the videorecorded statement” as “the family independence agency, investigating law enforcement agency, prosecuting attorney, or department of attorney general or another person designated under the county protocols established as required by section 8 of the child protection law, 1975 PA 238, MCL 722.628.”

<sup>79</sup> Mich. Comp. Laws Ann. § 600.2163a(13) states,

If, upon the motion of a party made before the preliminary examination, the court finds on the record that the special arrangements specified in subsection (14) are necessary to protect the welfare of the witness, the court shall order those special arrangements. In determining whether it is necessary to protect the welfare of the witness, the court shall consider all of the following:

- (a) The age of the witness.
- (b) The nature of the offense or offenses.
- (c) The desire of the witness or the witness’s family or guardian to have the testimony taken in a room closed to the public.

(b) In order to protect the witness from directly viewing the defendant, the courtroom shall be arranged so that the defendant is seated as far from the witness stand as is reasonable and not directly in front of the witness stand. The defendant's position shall be located so as to allow the defendant to hear and see the witness and be able to communicate with his or her attorney.

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.*

Mich. Comp. Laws Ann. § 712A.18e (Application for entry of order setting aside adjudication; filing) states that persons with no more than 1 juvenile offense and no felony convictions may apply to have the adjudication set aside unless the adjudication was for an offense that would be classified as a felony with a maximum sentence of life imprisonment if committed by an adult, the adjudication was for a certain type of traffic offense, or the juvenile was tried and convicted as an adult; only one adjudication may be set aside under this provision. Mich. Comp. Laws Ann. § 712A.18e(1), (2)(a), (2)(b).

Pursuant to Mich Comp. Laws § 712A.18e(3),

An application under this section shall not be filed until the expiration of 5 years following imposition of the disposition for the adjudication that the applicant seeks to set aside, or 5 years following completion of any term of detention for that adjudication, or when the person becomes 24 years of age, whichever occurs later.

Mich Comp. Laws § 712A.18e(4) further requires that an application be “signed under oath by the person whose adjudication is to be set aside” and provide, as well as other information, including statements “that the applicant has not been adjudicated of a juvenile offense other than the one that is sought to be set aside as a result of this application,” “that the applicant has not been convicted of any felony offense,” and “whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.” Mich. Comp. Laws Ann. § 712A.18e(4)(c), (4)(d), (4)(f), (4)(g).

With one narrow exception,<sup>80</sup> the court may set aside the adjudication “if the court determines that the circumstances and behavior of the applicant from the date of the applicant’s adjudication to the filing of the application warrant setting aside the adjudication and that setting aside the adjudication is consistent with the public welfare.” Mich. Comp. Laws Ann. § 712A.18e(9).

5.9.1 Recommendation: Amend Mich. Comp. Laws Ann. § 712A.18e (Application for entry of order setting aside adjudication; filing) to permit automatic expungement upon application at age 18 of juvenile records for victims of commercial sexual exploitation arrested for offenses arising from their exploitation.

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<sup>80</sup> Mich Comp. Laws § 712A.18e(10) states, “Notwithstanding subsection (9), the court shall set aside the adjudication of a person who was adjudicated for an offense that if committed by an adult would be a violation or an attempted violation of section 413 [Motor vehicle; taking possession and driving away] of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.413 of the Michigan Compiled Laws, if the person files an application with the court and otherwise meets the requirements of this section.”

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.*

Restitution is mandatory for minor victims of Mich. Comp. Laws Ann. § 750.462a (Definitions) to § 750.462i (Kidnapping, criminal sexual conduct, or attempt to kill; penalty), and victims of Mich. Comp. Laws Ann. § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), as provided in Mich. Comp. Laws Ann. § 780.766b (Conviction of offense described in MCL 750.462a to 750.462i; restitution). Mich. Comp. Laws Ann. § 780.766b states,

When sentencing a defendant convicted of an offense described in chapter LXVIIA [Human trafficking] of the Michigan penal code, 1931 PA 328, MCL 750.462a [Definitions] to 750.462i [Kidnapping, criminal sexual conduct, or attempt to kill; penalty], the court shall order restitution for the full amount of loss suffered by the victim. In addition to restitution ordered under section 16 [Mich. Comp. Laws Ann. § 780.766, the court may order the defendant to pay all of the following:

- (a) Lost income, calculated by whichever of the following methods results in the largest amount:
  - (i) The gross amount received by the defendant from or the value to the defendant of the victim's labor or services.
  - (ii) The value of the victim's labor or services as calculated under the minimum wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398, or the federal minimum wage, whichever results in the largest value.
  - (iii) Income loss as determined under section 16(4)(c).
- (b) The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- (c) Attorney fees and other costs and expenses incurred by the victim because of the offense, including, but not limited to, costs and expenses relating to assisting the investigation of the offense and for attendance at related court proceedings as follows:
  - (i) Wages lost.
  - (ii) Child care.
  - (iii) Transportation.
  - (iv) Parking.
- (d) Any other loss suffered by the victim as a proximate result of the offense.

Although restitution for victims of Mich. Comp. Laws Ann. § 750.462j is not expressly authorized under § 780.766b, Mich. Comp. Laws Ann. § 750.462j states that restitution is available under § 780.766b for victims of defendants convicted of violating § 750.462j. Mich. Comp. Laws Ann. § 750.462j(5).

Restitution also is mandatory under Mich. Comp. Laws Ann. § 780.766(2) ("Victim" defined; order of restitution generally; order of restitution as condition of probation or parole), which states,

Except as provided in subsection (8),<sup>81</sup> when sentencing a defendant convicted of a crime, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim<sup>82</sup> of the defendant's course of conduct that gives rise to the conviction or to the victim's estate. . . .

Mich. Comp. Laws Ann. § 780.766(4) states,

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<sup>81</sup> See *supra* note 33.

<sup>82</sup> Mich. Comp. Laws Ann. § 780.766(1) states in part, "As used in this section only, 'victim' means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime. . . ."



If a crime results in physical or psychological injury to a victim, the order of restitution shall require that the defendant do 1 or more of the following, as applicable:

- (a) Pay an amount equal to the reasonably determined cost of medical and related professional services and devices actually incurred and reasonably expected to be incurred relating to physical and psychological care.
- (b) Pay an amount equal to the reasonably determined cost of physical and occupational therapy and rehabilitation actually incurred and reasonably expected to be incurred.
- (c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the crime.
- (d) Pay an amount equal to the reasonably determined cost of psychological and medical treatment for members of the victim's family actually incurred and reasonably expected to be incurred as a result of the crime.
- (e) Pay an amount equal to the reasonably determined costs of homemaking and child care expenses actually incurred and reasonably expected to be incurred as a result of the crime or, if homemaking or child care is provided without compensation by a relative, friend, or any other person, an amount equal to the costs that would reasonably be incurred as a result of the crime for that homemaking and child care, based on the rates in the area for comparable services.
- .....
- (h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury.

In addition, Mich. Comp. Laws Ann. § 780.766(24) states,

If the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

- (a) Homemaking and child care expenses.
- (b) Income loss not ordered to be paid under subsection (4)(h).
- (c) Mileage.
- (d) Lodging or housing.
- (e) Meals.
- (f) Any other cost incurred in exercising the rights of the victim or a parent under this act.

However, no civil remedies are provided under Michigan's human trafficking laws, or those related to Michigan's CSEC offenses. Additionally, Mich. Comp. Laws Ann. § 750.159u (Civil cause of action not created by chapter), codified among Michigan's laws regarding criminal enterprises, specifically provides that "this chapter does not create a civil cause of action between 2 or more persons."

- 5.10.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.462a (Definitions) to § 750.462i (Kidnapping, criminal sexual conduct, or attempt to kill; penalty), and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) to include civil remedies for minor victims of trafficking.

*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.*

Mich. Comp. Laws Ann. § 767.24(1) (Indictments; finding and filing; limitations) eliminates the statute of limitations for Mich. Comp. Laws Ann. § 750.520b (Criminal sexual conduct in the first degree), but not for any trafficking or CSEC offenses. For Mich. Comp. Laws Ann. § 750.145c (Definitions; child sexually abusive activity or material), § 750.520c (Criminal sexual conduct in the second degree), § 750.520d (Criminal sexual

conduct in the third degree), § 750.520e (Criminal sexual conduct in the fourth degree), and § 750.520g (Assault with intent to commit criminal sexual conduct), the statute of limitations is generally “10 years after the offense is committed or by the alleged victim’s twenty-first birthday, whichever is later.” Mich. Comp. Laws Ann. § 767.24(2)(a).

In contrast, indictments for Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition), § 750.462h (Prohibited acts), § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), and § 750.13 (Enticing away female under sixteen) must be “found and filed within 6 years after the offense is committed.” Mich. Comp. Laws Ann. § 767.24(5).

- 5.11.1 Recommendation: Amend Mich. Comp. Laws Ann. § 767.24 (Indictments; finding and filing; limitations) to eliminate the statute of limitations for prosecutions involving violations of Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition), § 750.462h (Prohibited acts), § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty), or § 750.13 (Enticing away female under sixteen).

**Legal Components:**

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

**Legal Analysis:**

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

Pursuant to Mich. Comp. Laws Ann. § 28.609 (Minimum standards; rules), law enforcement officers in Michigan must meet minimum standards in order to be employed as a law enforcement officer. Additionally, Mich. Comp. Laws Ann. § 28.221 (Training school for peace officers; creation, location, subjects) requires the Michigan Department of Public Safety to provide law enforcement with training in specified subjects which include issues related to human trafficking and domestic minor sex trafficking. Mich. Comp. Laws Ann. § 28.221.

According to the Basic Training Curriculum and Training Objectives manual published in 2010 by the Michigan Commission on Law Enforcement Standards (MCOLES), police officers receive special training in the area of child abuse and neglect investigations.<sup>83</sup> Section I.G.1.2.(c) of the manual, entitled “Recognize Suspected Cases of Child Abuse While Responding to Complaints Related to and Not Related to Child Abuse,” includes training on “indicators of sexual abuse or criminal sexual conduct (e.g., incest, molestation, pornography).”<sup>84</sup> Section I.H.2.2.(a)(24), entitled “Demonstrate an Understanding of Substantive Criminal Law as It Relates to Domestic Violence,” includes human trafficking among the “crimes likely to be committed in a domestic violence incident.”<sup>85</sup>

- 6.1.1 Recommendation: Amend Mich. Comp. Laws Ann. § 28.221 (Training school for peace officers; creation, location, subjects) to mandate or authorize training on human trafficking and domestic minor sex trafficking.

<sup>83</sup> The Basic Training Curriculum and Training Objectives Manual published in 2010 by the Michigan Commission on Law Enforcement Standards (MCOLES) demonstrates that police officers receive special training in the area of child abuse and neglect investigations. Section I.G.1.2.(c) of the manual, entitled “Recognize Suspected Cases of Child Abuse While Responding to Complaints Related to and Not Related to Child Abuse,” includes training on “indicators of sexual abuse or criminal sexual conduct (e.g., incest, molestation, pornography).” Michigan Comm’n on Law Enforcement Standards, Basic Training Curriculum and Training Objectives 84 (2010), *available at* [http://www.mi.gov/documents/mcoles/Basic\\_Training\\_Manual\\_Part\\_I-2011\\_342561\\_7.pdf](http://www.mi.gov/documents/mcoles/Basic_Training_Manual_Part_I-2011_342561_7.pdf) (last visited, Nov. 27, 2012).

<sup>84</sup> See *supra* note 83 at I-G-1, page 2.

<sup>85</sup> See *supra* note 83 at I-H-2, page 3.

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

Single party consent to audiotaping generally is not permitted under Michigan law. Mich. Comp. Laws Ann. § 750.539c (Eavesdropping upon private conversation) provides that “[a]ny person who is present or who is not present during a private conversation and who wilfully uses any device to eavesdrop<sup>86</sup> upon the conversation without the consent of all parties thereto, or who knowingly aids, employs or procures another person to do the same . . . is guilty of a felony.” However, Mich. Comp. Laws Ann. § 750.539g(a) (Exceptions) specifically excepts “[e]avesdropping or surveillance not otherwise prohibited by law by a peace officer of this state or of the federal government, or the officer’s agent, while in the performance of the officer’s duties,” from the prohibitions in Mich. Comp. Laws Ann. §§ 750.539a–750.539f.

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

Mich. Comp. Laws Ann. § 750.539g(a) (Exceptions) provides that the prohibitions on intercepting communications in “[s]ections 539a to 539f do not prohibit . . . [e]avesdropping or surveillance not otherwise prohibited by law by a peace officer of this state or of the federal government, or the officer’s agent, while in the performance of the officer’s duties.” As no other statutes appear to limit law enforcement’s ability to intercept communications in the course of investigations, law enforcement officers and their agents should be able to utilize wiretapping in trafficking investigations.<sup>87</sup>

## 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.*

Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) of the human trafficking act and the CSEC laws are silent as to a defendant’s ability to raise a defense that the victim was a law enforcement officer acting as a decoy, rather than an actual minor.

The use of the language, “believed by that person to be a minor,” suggests that the use of the Internet to investigate buyers and traffickers under Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication) is permissible. Additionally, case law involving prosecutions for violations of Mich. Comp. Laws Ann. § 750.145d indicates that law enforcement currently uses the Internet to investigate violations of Mich. Comp. Laws Ann. § 750.145d.<sup>88</sup>

- 6.4.1 Recommendation: Amend Mich. Comp. Laws Ann. § 750.462g (Use of minor for child sexually abusive activity; prohibition) and § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty) to revoke a defendant’s ability to raise a defense that the

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<sup>86</sup> Mich. Comp. Laws Ann. § 750.539a(2) (Definitions) provides in part, “‘Eavesdrop’ or ‘eavesdropping’ means to overhear, record, amplify or transmit any part of the private discourse of others without the permission of all persons engaged in the discourse.”

<sup>87</sup> The Michigan Supreme Court has determined that law enforcement officers do not need to obtain a warrant in “participant monitoring” situations. *People v. Collins*, 475 N.W. 2d 684, 698 (Mich. 1991). “Participant monitoring” refers “only to the electronic monitoring (whether or not recorded) by a law enforcement agent of a conversation where one of the parties to the conversation has previously consented to the activity.” *Id.* at 684, n. 1.

<sup>88</sup> The Michigan Supreme Court has held that impossibility was not a defense to the crime of attempt where a law enforcement officer posed as a 14 year old girl in a chat room and the defendant communicated with the law enforcement officer, believing he was communicating with a 14 year old girl, to arrange a meeting for the purpose of engaging in sex acts. *People v. Thousand*, 631 N.W.2d 694, 705 (Mich. 2001); *see also* *People v. Kowalski*, 803 N.W.2d 200 (Mich. 2011) (Reinstating convictions for the crime of using the Internet to commit the crime of accosting a minor for immoral purposes or encouraging a minor to commit an immoral act under Mich. Comp. Laws Ann. § 750.145a and § 750.145d that were based on evidence obtained from an Internet chat room sting operation).

victim was a law enforcement officer was acting as a decoy.

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

Although Mich. Comp. Laws Ann. § 750.145d (Use of internet or computer system; prohibited communication) does not expressly permit the use of the Internet to investigate the buying or selling of sex with minors, it does indicate that an offender who believes the victim to be a minor is in violation of the statute. Mich. Comp. Laws Ann. § 750.145d(1)(a) makes it illegal for a defendant to

use the internet or a computer . . . for the purpose of doing any of the following:

(a) Committing, attempting to commit, conspiring to commit, or soliciting another person to commit conduct proscribed under section 145a [Accosting, enticing or soliciting child for immoral purpose], 145c [Definitions; child sexually abusive activity or material; penalties] . . . 520b [Criminal sexual conduct in the first degree], 520c [Criminal sexual conduct in the second degree], 520d [Criminal sexual conduct in the third degree], 520e [Criminal sexual conduct in the fourth degree], or 520g [Assault with intent to commit criminal sexual conduct] . . . in which the victim or intended victim is . . . believed by that person to be a minor.

The use of the language, “believed by that person to be a minor,” suggests that the use of the Internet to investigate buyers and traffickers under Mich. Comp. Laws Ann. § 750.145d is permissible. Additionally, case law involving prosecutions for violations of Mich. Comp. Laws Ann. § 750.145d indicates that law enforcement currently uses the Internet to investigate violations of Mich. Comp. Laws Ann. § 750.145d.<sup>89</sup>

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

Pursuant to Mich. Comp. Laws Ann. § 28.258(2) (Definitions; certain persons reported missing),

If an individual who is any of the following is reported missing, the law enforcement agency receiving the report, after conducting a preliminary investigation, shall immediately enter the information described in subsection (3) regarding that individual into the LEIN,<sup>90</sup> the national crime information center, and if the individual is a child,<sup>91</sup> the clearinghouse:

. . . .

(b) An individual who was in the company of another individual under circumstances indicating that the individual’s physical safety may be in danger.

(c) An individual who disappeared under circumstances indicating that the disappearance was not voluntary.

(d) A child not described in subdivision (a), (b), (c), or (f).

(e) An individual not described in subdivision (a), (b), (c), or (f), who is believed to be incapable of returning to his or her residence without assistance.

. . . .

Mich. Comp. Laws Ann. § 28.258(3) states,

The information to be entered into the LEIN, the national crime information center, and the clearinghouse under subsection (2) shall include all of the following, if available:

(a) The name and address of the individual.

<sup>89</sup> See *supra* note 88.

<sup>90</sup> Mich. Comp. Laws Ann. § 28.258(1)(e) defines “LEIN” as a “law enforcement information network regulated under the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.”

<sup>91</sup> “Child” is defined in Mich. Comp. Laws Ann. § 28.258(1)(a) as “an individual less than 17 years of age.”

- (b) The vital statistics of the individual, including a physical description, and if the missing individual is a child, the child's date of birth, state of birth, and if possible, mother's maiden name.
- (c) The date the individual was missing and, if the missing individual is a child under subsection (2)(d), the date the child becomes 17 years of age.
- (d) Any other information that may assist in the location of the individual, as determined by the department and the LEIN policy council.

Mich. Comp. Laws Ann. § 28.259(1), (2) (Missing children information clearinghouse) establishes “[a] missing children information clearinghouse,” which

shall do all of the following:

- (a) Record each report on a missing child received under section 8.
- (b) Accept and record a report about a missing child from a law enforcement agency.
- (c) Exchange information on children suspected of interstate travel with the national crime information center.
- (d) Establish a policy regarding the compilation of a record of the reasons children become missing.

After a missing child has been found, Mich. Comp. Laws Ann. § 28.259(3) requires that “the originating law enforcement agency . . . remove the missing child from the clearinghouse record by means of the LEIN. If the originating law enforcement agency has new information about the missing child's location, that agency shall report the information to the law enforcement agency with jurisdiction in the area in which the missing child may be located.”

**APPENDIX A:  
MICHIGAN SENTENCING GUIDELINES**

**1. Statutory Sentencing Guidelines**

Michigan has codified sentencing guidelines and imposes minimum sentences based on a person's prior criminal record and specified offense variables. Mich. Comp. Laws § 777.21 (Minimum sentence range; determination), which establishes the procedure for calculating appropriate minimum sentences, states,

(1) Except as otherwise provided in this section, for an offense enumerated in part 2 [Included felonies] of [Chapter XVI (Miscellaneous provisions)],<sup>92</sup> determine the recommended minimum sentence range as follows:

(a) Find the offense category for the offense from part 2 of this chapter. From section 22 [Offense variables; scoring] of this chapter, determine the offense variables to be scored for that offense category and score only those offense variables for the offender as provided in part 4 [Offense variables] of this chapter. Total those points to determine the offender's offense variable level.

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<sup>92</sup> Offenses in the chapter include the following: Mich. Comp. Laws § 750.145a (Accosting, enticing or soliciting child for immoral purpose), Mich. Comp. Laws § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty), Mich. Comp. Laws § 750.145c(2)–(4) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited), Mich. Comp. Laws § 750.145d(2)(b)–(f) (Use of internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions), Mich. Comp. Laws § 750.159j (Violation as felony; penalties; imposition of costs; order to criminally forfeit property; additional authority of court; conditions for entering order of criminal forfeiture; attorney fees; determination of extent of property; property not reachable; retention of property by law enforcement agency; disposition of money seized; seizure; other criminal or civil remedies not precluded), Mich. Comp. Laws § 750.349 (Kidnapping; “restrain” defined; violation as felony; penalty; other violation arising from same transaction), Mich. Comp. Laws § 750.451 (Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition), Mich. Comp. Laws § 750.452 (House of ill-fame; keeping, maintaining or operating), Mich. Comp. Laws § 750.455 (Pandering; felony), Mich. Comp. Laws § 750.457 (Earnings of prostitute, accepting), Mich. Comp. Laws § 750.458 (Detaining female in house of prostitution for debt), Mich. Comp. Laws § 750.459 (Transporting female for prostitution; felony), Mich. Comp. Laws § 750.462b(1)–(3) (Forced labor or services; threat of physical harm; prohibition; violation as felony; penalty), Mich. Comp. Laws § 750.462c(1)–(3) (Forced labor or services; physical restraint; prohibition; violation as felony; penalty), Mich. Comp. Laws § 750.462d(1)–(3) (Forced labor or services; abuse of law or legal process; prohibition; violation as felony; penalty), Mich. Comp. Laws § 750.462e(1)–(3) (Forced labor or services; destroying, concealing, removing, confiscating, or possessing passport or immigration document of another person; prohibition; violation as felony; penalty), Mich. Comp. Laws § 750.462f(1)–(3) (Forced labor or services; blackmail or threat of financial harm; prohibition; violation as felony; penalty), Mich. Comp. Laws § 750.462g(1) (Use of minor for child sexually abusive activity; prohibition; violation as felony; penalty), Mich. Comp. Laws § 750.462h(2)–(4) (Prohibited acts; violation as felony; penalty), Mich. Comp. Laws § 750.462i (Kidnapping, criminal sexual conduct, or attempt to kill; penalty), Mich. Comp. Laws § 750.462j (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty; recruiting, harboring, transporting, providing, or obtaining person for involuntary servitude or debt bondage as crime; penalty; other violations of law; consecutive terms; restitution; definitions) Mich. Comp. Laws § 750.520b(2) (Criminal sexual conduct in the first degree; felony; consecutive terms), Mich. Comp. Laws § 750.520c (Criminal sexual conduct in the second degree; felony), Mich. Comp. Laws § 750.520d (Criminal sexual conduct in the third degree; felony), Mich. Comp. Laws § 750.520e (Criminal sexual conduct in the fourth degree; misdemeanor), Mich. Comp. Laws § 750.520g(1)–(2) (Assault with intent to commit criminal sexual conduct; felony). Mich. Comp. Laws §§ 777.16g, 777.16i, 777.16q, 777.16w, 777.16y.

- (b) Score all prior record variables for the offender as provided in part 5 [Prior record variables] of this chapter. Total those points to determine the offender's prior record variable level.
- (c) Find the offense class for the offense from part 2 of this chapter. Using the sentencing grid for that offense class in part 6 [Sentencing grids] of this chapter, determine the recommended minimum sentence range from the intersection of the offender's offense variable level and prior record variable level. The recommended minimum sentence within a sentencing grid is shown as a range of months or life.
- (2) If the defendant was convicted of multiple offenses, subject to section 14 of chapter XI,<sup>93</sup> score each offense as provided in this part.
- (3) If the offender is being sentenced under section 10,<sup>94</sup> 11,<sup>95</sup> or 12<sup>96</sup> of chapter IX, determine the offense category, offense class, offense variable level, and prior record variable level based on the underlying offense. To determine the recommended minimum sentence range, increase the upper limit of the recommended minimum sentence range determined under part 6 for the underlying offense as follows:
- (a) If the offender is being sentenced for a second felony, 25%.
  - (b) If the offender is being sentenced for a third felony, 50%.
  - (c) If the offender is being sentenced for a fourth or subsequent felony, 100%.
- (4) If the offender is being sentenced for a violation described in section 18 of this chapter,<sup>97</sup> both of the following apply:
- (a) Determine the offense variable level by scoring the offense variables for the underlying offense and any additional offense variables for the offense category indicated in section 18 of this chapter.
  - (b) Determine the offense class based on the underlying offense. If there are multiple underlying felony offenses, the offense class is the same as that of the underlying felony offense with the highest crime class. If there are multiple underlying offenses but only 1 is a felony, the offense class is the same as that of the underlying felony offense. If no underlying offense is a felony, the offense class is G.
- (5) If the offender is being sentenced for an attempted felony described in section 19 of this chapter,<sup>98</sup> determine the offense variable level and prior record variable level based on the underlying attempted offense.

## 2. Sentencing Variables

There are two kinds of sentencing variables, prior record variables and offense variables. Both are considered when determining the proper minimum sentence under the guidelines.

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<sup>93</sup> Mich. Comp. Laws § 771.14 (Presentence investigation report; contents; information related to victim prohibited from inclusion; information exempted from disclosure; amendment or alteration; review of report; challenge; findings; copies).

<sup>94</sup> Mich. Comp. Laws § 769.10 (Punishment for subsequent felony; sentence imposed for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited).

<sup>95</sup> Mich. Comp. Laws § 769.11 (Punishment for subsequent felony following conviction of 2 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited).

<sup>96</sup> Mich. Comp. Laws § 769.12 (Punishment for subsequent felony following conviction of 3 or more felonies; sentence for term of years considered indeterminate sentence; use of conviction to enhance sentence prohibited; eligibility for parole; provisions not in derogation of consecutive sentence; "prisoner subject to disciplinary time" defined).

<sup>97</sup> Mich. Comp. Laws § 777.18 (MCL 333.7410 to 750.367a; felonies to which chapter applicable) includes sentencing for Mich. Comp. Laws 750.157c (Person inducing a minor to commit a felony).

<sup>98</sup> Mich. Comp. Laws § 777.19 (Attempt to commit offense; applicability of chapter).



## *Offense Variables*

Offense variables are listed in Mich. Comp. Laws §§ 777.31–777.49a (Part 4. Offense variables). Potentially applicable offense variables are included below.

- **Mich. Comp. Laws § 777.33 (Physical injury to victim)**

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was killed. . . . 100 points
  - (b) A victim was killed. . . . 50 points
  - (c) Life threatening or permanent incapacitating injury occurred to a victim. . . . 25 points
  - (d) Bodily injury requiring medical treatment occurred to a victim. . . . 10 points
  - (e) Bodily injury not requiring medical treatment occurred to a victim. . . . 5 points
  - (f) No physical injury occurred to a victim. . . . 0 points
- (2) All of the following apply to scoring offense variable 3:
- (a) In multiple offender cases, if 1 offender is assessed points for death or physical injury, all offenders shall be assessed the same number of points.
  - (b) Score 100 points if death results from the commission of a crime and homicide is not the sentencing offense.
  - (c) Score 50 points if death results from the commission of a crime and the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive and any of the following apply:
    - (i) The offender was under the influence of or visibly impaired by the use of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
    - (ii) The offender had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the offender had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
    - (iii) The offender’s body contained any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.
  - (d) Do not score 5 points if bodily injury is an element of the sentencing offense.
- (3) As used in this section, “requiring medical treatment” refers to the necessity for treatment and not the victim’s success in obtaining treatment.

- **Mich. Comp. Laws § 777.34 (Psychological injury to victim)**

(1) Offense variable 4 is psychological injury to a victim. Score offense variable 4 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Serious psychological injury requiring professional treatment occurred to a victim. . . . 10 points
  - (b) No serious psychological injury requiring professional treatment occurred to a victim. . . . 0 points
- (2) Score 10 points if the serious psychological injury may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.

- **Mich. Comp. Laws § 777.35 (Psychological injury to member of victim’s family)**

(1) Offense variable 5 is psychological injury to a member of a victim’s family. Score offense variable 5 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Serious psychological injury requiring professional treatment occurred to a victim’s family. . . . 15 points
- (b) No serious psychological injury requiring professional treatment occurred to a victim’s family. . . . 0 points

(2) Score 15 points if the serious psychological injury to the victim’s family may require professional treatment. In making this determination, the fact that treatment has not been sought is not conclusive.

- **Mich. Comp. Laws § 777.36 (Intent to kill or injure another individual)**

(1) Offense variable 6 is the offender’s intent to kill or injure another individual. Score offense variable 6 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender had premeditated intent to kill or the killing was committed while committing or attempting to commit arson, criminal sexual conduct in the first or third degree, child abuse in the first degree, a major controlled substance offense, robbery, breaking and entering of a dwelling, home invasion in the first or second degree, larceny of any kind, extortion, or kidnapping or the killing was the murder of a peace officer or a corrections officer. . . . 50 points
- (b) The offender had unpremeditated intent to kill, the intent to do great bodily harm, or created a very high risk of death or great bodily harm knowing that death or great bodily harm was the probable result. . . . 25 points
- (c) The offender had intent to injure or the killing was committed in an extreme emotional state caused by an adequate provocation and before a reasonable amount of time elapsed for the offender to calm or there was gross negligence amounting to an unreasonable disregard for life. . . . 10 points
- (d) The offender had no intent to kill or injure. . . . 0 points

(2) All of the following apply to scoring offense variable 6.

- (a) The sentencing judge shall score this variable consistent with a jury verdict unless the judge has information that was not presented to the jury.
- (b) Score 10 points if a killing is intentional within the definition of second degree murder or voluntary manslaughter, but the death occurred in a combative situation or in response to victimization of the offender by the decedent.

- **Mich. Comp. Laws § 777.37 (Aggravated physical abuse; “sadism” defined)**

(1) Offense variable 7 is aggravated physical abuse. Score offense variable 7 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense. . . . 50 points
- (b) No victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense. . . . 0 points

(2) Count each person who was placed in danger of injury or loss of life as a victim.

(3) As used in this section, ”sadism” means conduct that subjects a victim to extreme or

prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification.

- **Mich. Comp. Laws § 777.38 (Victim asportation or captivity)**

(1) Offense variable 8 is victim asportation or captivity. Score offense variable 8 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) A victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense. . . . 15 points
  - (b) No victim was asported or held captive. . . . 0 points
- (2) All of the following apply to scoring offense variable 8:
- (a) Count each person who was placed in danger of injury or loss of life as a victim.
  - (b) Score 0 points if the sentencing offense is kidnapping.

- **Mich. Comp. Laws § 777.39 (Offense variable 9; number of victims; scoring)**

(1) Offense variable 9 is number of victims. Score offense variable 9 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Multiple deaths occurred. . . . 100 points
  - (b) There were 10 or more victims who were placed in danger of physical injury or death, or 20 or more victims who were placed in danger of property loss. . . . 25 points
  - (c) There were 2 to 9 victims who were placed in danger of physical injury or death, or 4 to 19 victims who were placed in danger of property loss. . . . 10 points
  - (d) There were fewer than 2 victims who were placed in danger of physical injury or death, or fewer than 4 victims who were placed in danger of property loss. . . . 0 points
- (2) All of the following apply to scoring offense variable 9:
- (a) Count each person who was placed in danger of physical injury or loss of life or property as a victim.
  - (b) Score 100 points only in homicide cases.

- **Mich. Comp. Laws § 777.40 (Exploitation of vulnerable victim)**

(1) Offense variable 10 is exploitation of a vulnerable victim. Score offense variable 10 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Predatory conduct was involved. . . . 15 points
  - (b) The offender exploited a victim's physical disability, mental disability, youth or agedness, or a domestic relationship, or the offender abused his or her authority status. . . . 10 points
  - (c) The offender exploited a victim by his or her difference in size or strength, or both, or exploited a victim who was intoxicated, under the influence of drugs, asleep, or unconscious. . . . 5 points
  - (d) The offender did not exploit a victim's Vulnerability. . . . 0 points
- (2) The mere existence of 1 or more factors described in subsection (1) does not automatically equate with victim vulnerability.
- (3) As used in this section:
- (a) "Predatory conduct" means preoffense conduct directed at a victim for the primary purpose of victimization.
  - (b) "Exploit" means to manipulate a victim for selfish or unethical purposes.
  - (c) "Vulnerability" means the readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation.

(d) “Abuse of authority status” means a victim was exploited out of fear or deference to an authority figure, including, but not limited to, a parent, physician, or teacher.

- **Mich. Comp. Laws § 777.41 (Criminal sexual penetration)**

(1) Offense variable 11 is criminal sexual penetration. Score offense variable 11 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Two or more criminal sexual penetrations occurred. . . . 50 points
  - (b) One criminal sexual penetration occurred. . . . 25 points
  - (c) No criminal sexual penetration occurred. . . . 0 points
- (2) All of the following apply to scoring offense variable 11:
- (a) Score all sexual penetrations of the victim by the offender arising out of the sentencing offense.
  - (b) Multiple sexual penetrations of the victim by the offender extending beyond the sentencing offense may be scored in offense variables 12 or 13.
  - (c) Do not score points for the 1 penetration that forms the basis of a first- or third-degree criminal sexual conduct offense.

- **Mich. Comp. Laws § 777.42 (Contemporaneous felonious criminal acts)**

(1) Offense variable 12 is contemporaneous felonious criminal acts. Score offense variable 12 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Three or more contemporaneous felonious criminal acts involving crimes against a person were committed. . . . 25 points
  - (b) Two contemporaneous felonious criminal acts involving crimes against a person were committed. . . . 10 points
  - (c) Three or more contemporaneous felonious criminal acts involving other crimes were committed. . . . 10 points
  - (d) One contemporaneous felonious criminal act involving a crime against a person was committed. . . . 5 points
  - (e) Two contemporaneous felonious criminal acts involving other crimes were committed . . . 5 points
  - (f) One contemporaneous felonious criminal act involving any other crime was committed. . . . 1 point
  - (g) No contemporaneous felonious criminal acts were committed. . . . 0 points
- (2) All of the following apply to scoring offense variable 12:
- (a) A felonious criminal act is contemporaneous if both of the following circumstances exist:
    - (i) The act occurred within 24 hours of the sentencing offense.
    - (ii) The act has not and will not result in a separate conviction.
  - (b) A violation of section 227b<sup>99</sup> of the Michigan penal code, 1931 PA 328, MCL 750.227b, should not be considered for scoring this variable.
  - (c) Do not score conduct scored in offense variable 11.

- **Mich. Comp. Laws § 777.43 (Continuing pattern of criminal behavior)**

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<sup>99</sup> Mich. Comp. Laws § 750.227b (Carrying or possessing firearm when committing or attempting to commit felony; “law enforcement officer” defined).

(1) Offense variable 13 is continuing pattern of criminal behavior. Score offense variable 13 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offense was part of a pattern of felonious criminal activity involving 3 or more sexual penetrations against a person or persons less than 13 years of age. . . . 50 points
  - (b) The offense was part of a pattern of felonious criminal activity directly related to causing, encouraging, recruiting, soliciting, or coercing membership in a gang or communicating a threat with intent to deter, punish, or retaliate against another for withdrawing from a gang. . . . 25 points
  - (c) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person. . . . 25 points
  - (d) The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property or a violation of section 7401(2)(a)(i) to (iii)<sup>100</sup> or section 7403(2)(a)(i) to (iii)<sup>101</sup> of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403. . . . 10 points
  - (e) The offense was part of a pattern of felonious criminal activity involving a combination of 3 or more violations of section 7401(2)(a)(i) to (iii) or section 7403(2)(a)(i) to (iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403. . . . 10 points
  - (f) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against property. . . . 5 points
  - (g) No pattern of felonious criminal activity existed. . . . 0 points
- (2) All of the following apply to scoring offense variable 13:
- (a) For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction.
  - (b) The presence or absence of multiple offenders, the age of the offenders, or the degree of sophistication of the organized criminal group is not as important as the fact of the group's existence, which may be reasonably inferred from the facts surrounding the sentencing offense.
  - (c) Except for offenses related to membership in an organized criminal group or that are gang-related, do not score conduct scored in offense variable 11 or 12.
  - (d) Score 50 points only if the sentencing offense is first degree criminal sexual conduct.
  - (e) Do not count more than 1 controlled substance offense arising out of the criminal episode for which the person is being sentenced.
  - (f) Do not count more than 1 crime involving the same controlled substance. For example, do not count conspiracy and a substantive offense involving the same amount of controlled substances or possession and delivery of the same amount of controlled substances.

- **Mich. Comp. Laws § 777.44 (Offender's role)**

(1) Offense variable 14 is the offender's role. Score offense variable 14 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender was a leader in a multiple offender situation. . . . 10 points
- (b) The offender was not a leader in a multiple offender situation. . . . 0 points

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<sup>100</sup> Mich. Comp. Laws § 333.7401 (Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance; violations; penalties; consecutive terms; discharge from lifetime probation; "plant" defined).

<sup>101</sup> Mich. Comp. Laws § 333.7403 (Knowingly or intentionally possessing controlled substance, controlled substance analogue, or prescription form; violations; penalties; discharge from lifetime probation).

- (2) All of the following apply to scoring offense variable 14:
  - (a) The entire criminal transaction should be considered when scoring this variable.
  - (b) If 3 or more offenders were involved, more than 1 offender may be determined to have been a leader.

- **Mich. Comp. Laws § 777.46 (Property obtained, damaged, lost, or destroyed)**

(1) Offense variable 16 is property obtained, damaged, lost, or destroyed. Score offense variable 16 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) Wanton or malicious damage occurred beyond that necessary to commit the crime for which the offender is not charged and will not be charged. . . . 10 points
  - (b) The property had a value of more than \$20,000.00 or had significant historical, social, or sentimental value. . . . 10 points
  - (c) The property had a value of \$1,000.00 or more but not more than \$20,000.00. . . . 5 points
  - (d) The property had a value of \$200.00 or more but not more than \$1,000.00. . . . 1 point
  - (e) No property was obtained, damaged, lost, or destroyed or the property had a value of less than \$200.00. . . . 0 points
- (2) All of the following apply to scoring offense variable 16:
- (a) In multiple offender or victim cases, the appropriate points may be determined by adding together the aggregate value of the property involved, including property involved in uncharged offenses or charges dismissed under a plea agreement.
  - (b) In cases in which the property was obtained unlawfully, lost to the lawful owner, or destroyed, use the value of the property in scoring this variable. If the property was damaged, use the monetary amount appropriate to restore the property to pre-offense condition in scoring this variable.
  - (c) The amount of money or property involved in admitted but uncharged offenses or in charges that have been dismissed under a plea agreement may be considered.

### *Prior Record Variables*

Prior record variables are listed in Mich. Comp. Laws §§ 777.50–777.57 (Part 5. Prior record variables). Potentially applicable prior record variables are included below.

- **Mich. Comp. Laws § 777.51 (Prior high severity felony convictions)**

(1) Prior record variable 1 is prior high severity felony convictions. Score prior record variable 1 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 3 or more prior high severity felony convictions. . . . 75 points
  - (b) The offender has 2 prior high severity felony convictions. . . . 50 points
  - (c) The offender has 1 prior high severity felony conviction. . . . 25 points
  - (d) The offender has no prior high severity felony convictions. . . . 0 points
- (2) As used in this section, “prior high severity felony conviction” means a conviction for any of the following, if the conviction was entered before the sentencing offense was committed:
- (a) A crime listed in offense class M2, A, B, C, or D .
  - (b) A felony under a law of the United States or another state corresponding to a crime listed in offense class M2, A, B, C, or D .
  - (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.
  - (d) A felony under a law of the United States or another state that does not correspond to a

crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.

- **Mich. Comp. Laws § 777.52 (Prior low severity felony convictions)**

(1) Prior record variable 2 is prior low severity felony convictions. Score prior record variable 2 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 4 or more prior low severity felony convictions. . . . 30 points
- (b) The offender has 3 prior low severity felony convictions. . . . 20 points
- (c) The offender has 2 prior low severity felony convictions. . . . 10 points
- (d) The offender has 1 prior low severity felony conviction. . . . 5 points
- (e) The offender has no prior low severity felony convictions. . . . 0 points

(2) As used in this section, “prior low severity felony conviction” means a conviction for any of the following, if the conviction was entered before the sentencing offense was committed:

- (a) A crime listed in offense class E, F, G, or H.
- (b) A felony under a law of the United States or another state that corresponds to a crime listed in offense class E, F, G, or H.
- (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.
- (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.

- **Mich. Comp. Laws § 777.53 (Prior high severity juvenile adjudications)**

(1) Prior record variable 3 is prior high severity juvenile adjudications. Score prior record variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 3 or more prior high severity juvenile adjudications. . . . 50 points
- (b) The offender has 2 prior high severity juvenile adjudications. . . . 25 points
- (c) The offender has 1 prior high severity juvenile adjudication. . . . 10 points
- (d) The offender has no prior high severity juvenile adjudications. . . . 0 points

(2) As used in this section, “prior high severity juvenile adjudication” means a juvenile adjudication for conduct that would be any of the following if committed by an adult, if the order of disposition was entered before the sentencing offense was committed:

- (a) A crime listed in offense class M2, A, B, C, or D.
- (b) A felony under a law of the United States or another state corresponding to a crime listed in offense class M2, A, B, C, or D .
- (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.
- (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.

- **Mich. Comp. Laws § 777.54 (Prior low severity juvenile adjudications)**

(1) Prior record variable 4 is prior low severity juvenile adjudications. Score prior record variable 4 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 6 or more prior low severity juvenile adjudications. . . . 20 points
- (b) The offender has 5 prior low severity juvenile adjudications. . . . 15 points

- (c) The offender has 3 or 4 prior low severity juvenile adjudications. . . . 10 points
  - (d) The offender has 2 prior low severity juvenile adjudications. . . . 5 points
  - (e) The offender has 1 prior low severity juvenile adjudication. . . . 2 points
  - (f) The offender has no prior low severity juvenile adjudications. . . . 0 points
- (2) As used in this section, “prior low severity juvenile adjudication” means a juvenile adjudication for conduct that would be any of the following if committed by an adult, if the order of disposition was entered before the sentencing offense was committed:
- (a) A crime listed in offense class E, F, G, or H.
  - (b) A felony under a law of the United States or another state corresponding to a crime listed in offense class E, F, G, or H.
  - (c) A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.
  - (d) A felony under a law of the United States or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.

- **Mich. Comp. Laws § 777.55 (Prior misdemeanor convictions or prior misdemeanor juvenile adjudications)**

- (1) Prior record variable 5 is prior misdemeanor convictions or prior misdemeanor juvenile adjudications. Score prior record variable 5 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
- (a) The offender has 7 or more prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 20 points
  - (b) The offender has 5 or 6 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 15 points
  - (c) The offender has 3 or 4 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 10 points
  - (d) The offender has 2 prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 5 points
  - (e) The offender has 1 prior misdemeanor conviction or prior misdemeanor juvenile adjudication. . . . 2 points
  - (f) The offender has no prior misdemeanor convictions or prior misdemeanor juvenile adjudications. . . . 0 points
- (2) All of the following apply to scoring record variable 5:
- (a) Except as provided in subdivision (b), count a prior misdemeanor conviction or prior misdemeanor juvenile adjudication only if it is an offense against a person or property, a controlled substance offense, or a weapon offense. Do not count a prior conviction used to enhance the sentencing offense to a felony.
  - (b) Count all prior misdemeanor convictions and prior misdemeanor juvenile adjudications for operating or attempting to operate a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while under the influence of or impaired by alcohol, a controlled substance, or a combination of alcohol and a controlled substance. Do not count a prior conviction used to enhance the sentencing offense to a felony.
- (3) As used in this section:
- (a) “Prior misdemeanor conviction” means a conviction for a misdemeanor under a law of this state, a political subdivision of this state, another state, a political subdivision of another state, or the United States if the conviction was entered before the sentencing offense was committed.
  - (b) “Prior misdemeanor juvenile adjudication” means a juvenile adjudication for conduct that if committed by an adult would be a misdemeanor under a law of this state, a political



subdivision of this state, another state, a political subdivision of another state, or the United States if the order of disposition was entered before the sentencing offense was committed.

- **Mich. Comp. Laws § 777.56 (Relationship to criminal justice system)**

(1) Prior record variable 6 is relationship to the criminal justice system. Score prior record variable 6 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender is a prisoner of the department of corrections or serving a sentence in jail. . . . 20 points
  - (b) The offender is incarcerated in jail awaiting adjudication or sentencing on a conviction or probation violation. . . . 15 points
  - (c) The offender is on parole, probation, or delayed sentence status or on bond awaiting adjudication or sentencing for a felony. . . . 10 points
  - (d) The offender is on probation or delayed sentence status or on bond awaiting adjudication or sentencing for a misdemeanor. . . . 5 points
  - (e) The offender has no relationship to the criminal justice system. . . . 0 points
- (2) Score the appropriate points under this section if the offender is involved with the criminal justice system in another state or United States.
- (3) As used in this section:

- (a) “Delayed sentence status” includes, but is not limited to, an individual assigned or deferred under any of the following:
  - (i) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
  - (ii) Section 1076(4) of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.
  - (iii) Section 350a of the Michigan penal code, 1931 PA 328, MCL 750.350a.
  - (iv) Section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430.
  - (v) Sections 11 to 15 of chapter II.
  - (vi) Section 4a of chapter IX.
- (b) “Prisoner of the department of corrections or serving a sentence in jail” includes an individual who is an escapee.

- **Mich. Comp. Laws § 777.57 (Subsequent or concurrent felony convictions)**

(1) Prior record variable 7 is subsequent or concurrent felony convictions. Score prior record variable 7 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

- (a) The offender has 2 or more subsequent or concurrent convictions. . . . 20 points
  - (b) The offender has 1 subsequent or concurrent conviction. . . . 10 points
  - (c) The offender has no subsequent or concurrent convictions. . . . 0 points
- (2) All of the following apply to scoring record variable 7:
- (a) Score the appropriate point value if the offender was convicted of multiple felony counts or was convicted of a felony after the sentencing offense was committed.
  - (b) Do not score a felony firearm conviction in this variable.
  - (c) Do not score a concurrent felony conviction if a mandatory consecutive sentence or a consecutive sentence imposed under section 7401(3) of the public health code, 1978 PA 368, MCL 333.7401, will result from that conviction.

### 3. Offenses and Penalties by Class.

Michigan’s sentencing guidelines separate offenses into eight separate categories. An individual’s sentence is based on the class of the offense, the prior offense variables present, and the prior record variables present.

*Class A Offenses*

Class A offenses are subject to minimum imprisonment ranges of 21–35 months to 270–450 months. Mich. Comp. Laws § 777.62 (Minimum sentence ranges for class A). The following are Class A offenses:

- Mich. Comp. Laws § 750.349 (Kidnapping; “restrain” defined; violation as felony; penalty; other violation arising from same transaction)
- Mich. Comp. Laws § 750.462b(3) (Forced labor or services; threat of physical harm; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462c(3) (Forced labor or services; physical restraint; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462d(3) (Forced labor or services; abuse of law or legal process; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462e(3) (Forced labor or services; destroying, concealing, removing, confiscating, or possessing passport or immigration document of another person; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462f(3) (Forced labor or services; blackmail or threat of financial harm; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462h(4) (Prohibited acts; violation as felony; penalty)
- Mich. Comp. Laws § 750.462i (Kidnapping, criminal sexual conduct, or attempt to kill; penalty)
- Mich. Comp. Laws § 750.462j(1)(c), (2)(c) (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty; recruiting, harboring, transporting, providing, or obtaining person for involuntary servitude or debt bondage as crime; penalty; other violations of law; consecutive terms; restitution; definitions)
- Mich. Comp. Laws § 750.520b(2) (Criminal sexual conduct in the first degree; felony; consecutive terms)

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16q (MCL 750.332 to 750.350a; felonies to which chapter applicable), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–19 points)	21–35 months	27–45 months	42–70 months	51–85 months	81–135 months	108–180 months
II (20–39 points)	27–45 months	42–70 months	51–85 months	81–135 months	108–180 months	126–210 months
III (40–59 points)	42–70 months	51–85 months	81–135 months	108–180 months	126–210 months	135–225 months
IV (60–79 points)	51–85 months	81–135 months	108–180 months	126–210 months	135–225 months	171–285 months

V (80–99 points)	81–135 months	108–180 months	126–210 months	135–225 months, or life	171–285 months	225–375 months
VI (100+ points)	108–180 months	126–210 months	135–225 months, or life	171–285 months, or life	225–375 months	270–450 months

Mich. Comp. Laws § 777.62 (Minimum sentence ranges for class A).

*Class B Offenses*

Class B offenses are subject to minimum imprisonment ranges of 0–18 months to 117–160 months. Mich. Comp. Laws § 777.63 (Minimum sentence ranges for class B). The following are Class B offenses:

- Mich. Comp. Laws § 750.145c(2) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited)
- Mich. Comp. Laws § 750.145d(2)(f) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.159j (Violation as felony; penalties; imposition of costs; order to criminally forfeit property; additional authority of court; conditions for entering order of criminal forfeiture; attorney fees; determination of extent of property; property not reachable; retention of property by law enforcement agency; disposition of money seized; seizure; other criminal or civil remedies not precluded)
- Mich. Comp. Laws 750.458 (Detaining female in house of prostitution for debt)
- Mich. Comp. Laws § 750.459 (Transporting female for prostitution; felony)
- Mich. Comp. Laws § 750.462g(1) (Use of minor for child sexually abusive activity; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462j(2)(b) (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty; recruiting, harboring, transporting, providing, or obtaining person for involuntary servitude or debt bondage as crime; penalty; other violations of law; consecutive terms; restitution; definitions)
- Mich. Comp. Laws § 750.520d (Criminal sexual conduct in the third degree; felony).

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16i (MCL 750.158 to 750.182a; felonies to which chapter applicable), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–9 points)	0–18 months	12–20 months	24–40 months	36–60 months	51–85 months	72–120 months
II (10–24 points)	12–20 months	15–25 months	30–50 months	51–85 months	72–120 months	78–130 months
III	15–25	21–35	36–60	57–95	78–130	84–140

(25-34 points)	months	months	months	months	months	months
IV (34-49 points)	21-35 months	24-40 months	45-75 months	72-120 months	84-140 months	87-145 months
V (50-74 points)	24-40 months	36-60 months	51-85 months	78-130 months	87-145 months	99-160 months
VI (75+ points)	36-60 months	45-75 months	57-95 months	84-140 months	99-160 months	117-160 months

Mich. Comp. Laws § 777.63 (Minimum sentence ranges for class B).

*Class C Offenses*

Class C offenses are subject to minimum imprisonment ranges of 0-11 months to 62-114 months. Mich. Comp. Laws § 777.64 (Minimum sentence ranges for class C). The following are Class C offenses:

- Mich. Comp. Laws § 750.145d(2)(e) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.462b(2) (Forced labor or services; threat of physical harm; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462c(2) (Forced labor or services; physical restraint; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462d(2) (Forced labor or services; abuse of law or legal process; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462e(2) (Forced labor or services; destroying, concealing, removing, confiscating, or possessing passport or immigration document of another person; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462f(2) (Forced labor or services; blackmail or threat of financial harm; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462h(3) (Prohibited acts; violation as felony; penalty)
- Mich. Comp. Laws § 750.520c (Criminal sexual conduct in the second degree; felony).

Mich. Comp. Laws §§ 777.16g(MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.158 to 750.182a; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1-9 points	C 10-24 points	D 25-49 points	E 50-74 points	F 75+ points
I (0-9 points)	0-11 months	0-17 months	10-19 months	12-24 months	19-38 months	29-57 months
II (10-24 points)	0-17 months	5-17 months	12-24 months	19-38 months	29-57 months	36-71 months
III (25-34 points)	10-19 months	12-24 months	19-38 months	29-57 months	36-71 months	43-86 months
IV	12-24	19-38	29-57	36-71	43-86	50-100

(35-49 points)	months	months	months	months	months	months
V (50-74 points)	19-38 months	29-57 months	36-71 months	43-86 months	50-100 months	58-114 months
VI (75+ points)	29-57 months	36-71 months	43-86 months	50-100 months	58-114 months	62-114 months

Mich. Comp. Laws § 777.64 (Minimum sentence ranges for class).

*Class D Offenses*

Class D offenses are subject to minimum imprisonment ranges of 0-6 to 43-76 months. Mich. Comp. Laws § 777.65 (Minimum sentence ranges for class D). The following are Class D offenses:

- Mich. Comp. Laws § 750.145b (Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty)
- Mich. Comp. Laws § 750.145c(3) (Definitions; child sexually abusive activity or material; penalties; possession of child sexually abusive material; expert testimony; defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited)
- Mich. Comp. Laws § 750.145d(2)(d) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.462b(1) (Forced labor or services; threat of physical harm; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462c(1) (Forced labor or services; physical restraint; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462d(1) (Forced labor or services; abuse of law or legal process; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462e(1) (Forced labor or services; destroying, concealing, removing, confiscating, or possessing passport or immigration document of another person; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462f(1) (Forced labor or services; blackmail or threat of financial harm; prohibition; violation as felony; penalty)
- Mich. Comp. Laws § 750.462h(2) (Prohibited acts; violation as felony; penalty)
- Mich. Comp. Laws § 750.462j(2)(a) (Providing or obtaining labor or services by force, fraud, or coercion as crime; penalty; recruiting, harboring, transporting, providing, or obtaining person for involuntary servitude or debt bondage as crime; penalty; other violations of law; consecutive terms; restitution; definitions)
- Mich. Comp. Laws § 750.520(g)(1) (Assault with intent to commit criminal sexual conduct; felony).

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

<b>Offense</b>	
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Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–9 points)	0–6 months	0–9 months	0–11 months	0–17 months	5–23 months	10–23 months
II (10–24 points)	0–9 months	0–11 months	0–17 months	5–23 months	10–23 months	19–38 months
III (25–34 points)	0–11 months	0–17 months	5–23 months	10–23 months	19–38 months	29–57 months
IV (35–49 points)	0–17 months	5–23 months	10–23 months	19–38 months	29–57 months	34–67 months
V (50–74 points)	5–23 months	10–23 months	19–38 months	29–57 months	34–67 months	38–76 months
VI (75+ points)	10–23 months	19–38 months	29–57 months	34–67 months	38–76 months	43–76 months

Mich. Comp. Laws § 777.65 (Minimum sentence ranges for class D).

#### *Class E Offenses*

Class E offenses are subject to minimum imprisonment ranges of 0–3 months to 24–38 months. Mich. Comp. Laws § 777.66 (Minimum sentence ranges for class E). The following are Class E offenses:

- Mich. Comp. Laws § 750.452 (House of ill-fame; keeping, maintaining or operating)
- Mich. Comp. Laws § 750.520(g)(2) (Assault with intent to commit criminal sexual conduct; felony)
- An attempt to commit any Class A, B, C, or D offense

Mich. Comp. Laws §§ 777.19(Attempt to commit offense, applicability of chapter), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I (0–9 points)	0–3 months	0–6 months	0–9 months	5–23 months	7–23 months	9–23 months
II (10–24 points)	0–6 months	0–9 months	0–11 months	7–23 months	10–23 months	12–24 months
III (25–34 points)	0–9 months	0–11 months	0–17 months	10–23 months	12–24 months	14–29 months
IV	0–11 months	0–17 months	5–23 months	12–24	14–29	19–38

(35-49 points)				months	months	months
V (50-74 points)	0-14 months	5-23 months	7-23 months	14-29 months	19-38 months	22-38 months
VI (75+ points)	0-17 months	7-23 months	12-24 months	19-38 months	22-38 months	24-38 months

Mich. Comp. Laws §§ 777.66 (Minimum sentence ranges for class E).

*Class F Offenses*

Class F offenses subject to minimum imprisonment ranges of 0-3 months to 17-30 months. Mich. Comp. Laws § 777.67 (Minimum sentence ranges for class F). The following are Class F offenses:

- Mich. Comp. Laws § 750.145a (Accosting, enticing or soliciting child for immoral purpose)
- Mich. Comp. Laws § 750.145c(4)(Definitions; child sexually abusive activity or material; penalties; possessions of child sexually abusive material; expert testimony, defenses; acts of commercial film or photographic print processor; report to law enforcement agency by computer technician; applicability and uniformity of section; enactment or enforcement of ordinances, rules, or regulations prohibited)
- Mich. Comp. Laws § 750.145d(2)(c) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)

Mich. Comp. Laws § 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1-9 points	C 10-24 points	D 25-49 points	E 50-74 points	F 75+ points
I (0-9 points)	0-3 months	0-6 months	0-9 months	2-17 months	5-23 months	10-23 months
II (10-34 points)	0-6 months	0-9 months	0-17 months	5-23 months	10-23 months	12-24 months
III ( 35-74 points)	0-9 months	0-17 months	2-17 months	10-23 months	12-24 months	14-29 months
IV ( 75+ points)	0-17 months	2-17 months	5-23 months	12-24 months	14-29 months	17-30 months

Mich. Comp. Laws § 777.67 (Minimum sentence ranges for class F).

*Class G Offenses*

Class G offenses subject to minimum imprisonment ranges of 0-3 months to 7-23 months. Mich. Comp. Laws § 777.68 (Minimum sentence ranges for class G). The following are Class G offenses:

- Mich. Comp. Laws § 750.145d(2)(b) (Use of Internet or computer system; prohibited communication; violation; penalty; order to reimburse state or local governmental unit; definitions)
- Mich. Comp. Laws § 750.451 (Violation of §§ 750.448, 750.449, 750.449a, 750.450, or 750.462; prior convictions; penalty; definition)
- Mich. Comp. Laws § 750.455 (Pandering; felony)
- Mich. Comp. Laws § 750.457 (Earnings of prostitute, accepting)
- Mich. Comp. Laws § 750.520e (Criminal sexual conduct in the fourth degree; misdemeanor).

Mich. Comp. Laws §§ 777.16g (MCL 750.135 to 750.147b; felonies to which chapter applicable; violation of MCL 750.145d), 777.16w (MCL 750.451 to 750.465a(1)(c); felonies to which chapter applicable), 777.16y (MCL 750.520b(2) to 750.532; felonies to which chapter applicable).

Offense Variable Level	Prior Record Variable Level					
	A 0 points	B 1–9 points	C 10–24 points	D 25–49 points	E 50–74 points	F 75+ points
I ( 0-9 points)	0–3 months	0–6 months	0–9 months	0–11 months	0–17 months	2–17 months
II ( 10-15 points)	0–6 months	0–9 months	0–11 months	0–17 months	2–17 months	5–23 months
III ( 16+ points)	0–9 months	0–11 months	0–17 months	2–17 months	5–23 months	7–23 months

Mich. Comp. Laws § 777.68 (Minimum sentence ranges for Class G).

#### *Class H Offenses*

Class H offenses are subject to minimum imprisonment ranges of 0–1 months to 5–17 months. Mich. Comp. Laws § 777.69 (Minimum sentence ranges for class H). No class H offenses were cited directly in this report. However, an attempt to commit any Class E, F, or G offense is a Class H offense. Mich. Comp. Laws § 777.19 (Attempt to commit offense, applicability of chapter).

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