

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2014 ANALYSIS AND RECOMMENDATIONS MISSISSIPPI

### 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 sex 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 sex 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.*

Mississippi's Human Trafficking Act, Miss. Code Ann. §§ 97-3-54 to 97-3-54.9,<sup>2</sup> criminalizes sex trafficking of minors without regard to use of force, fraud, or coercion. Miss. Code Ann. § 97-3-54.1(1)(c) (Mississippi Human Trafficking Act; offenses). Miss. Code Ann. § 97-3-54.1(1)(c) addresses the sex trafficking of minors specifically, stating,

(c) A person who knowingly subjects, or attempts to subject, or who recruits, entices, harbors,

<sup>1</sup> Unless otherwise specified, all references to Mississippi statutes were taken from the Mississippi Code 1972 Annotated (LEXIS through 2014 Regular Session and 1<sup>st</sup> and 2<sup>nd</sup> Extraordinary Sessions) and all federal statutes were taken from United States Code (LEXIS through PL 112-165, approved 9/9/2014). This report includes legislation enacted as of August 1, 2014.

<sup>2</sup>

transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, a minor, knowing that the minor will engage in commercial sexual activity,<sup>3</sup> sexually explicit performance,<sup>4</sup> or the production of sexually oriented material,<sup>5</sup> or causes or attempts to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, shall be guilty of procuring sexual servitude of a minor. . . .

Miss. Code Ann. § 97-3-54.4 (j)<sup>6</sup> (Mississippi Human Trafficking Act; definitions) defines a “minor” as a person under 18. Under Miss. Code Ann. § 97-3-54.4(p), “trafficked person” is defined as “a person subjected to the practices prohibited by this act [Sections 97-3-54 through 97-3-54.9] regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted, and is a term used interchangeably with the terms ‘victim,’ ‘victim of trafficking’ and ‘trafficking victim.’”<sup>7</sup>

Pursuant to Miss. Code Ann. § 97-3-2<sup>8</sup>, human trafficking as provided in § 97-3-54.1 (Human Trafficking Act; prohibited conduct; penalty) is defined as a crime of violence.<sup>9</sup> Persons convicted of trafficking minors under Miss. Code Ann. § 97-3-54.1(1)(c) face higher penalties than those convicted of trafficking adults. A conviction under Miss. Code Ann. § 97-3-54.1(1)(c) carries a minimum sentence of five years to a maximum sentence of 30 years compared to a maximum of 20 years for trafficking adults under Miss. Code Ann. §§ 97-3-54.1(1)(a) and (b), 97-3-54.1(2). The Mississippi Human Trafficking Act also provides for fines as part of its penalty scheme. For violations of Miss. Code Ann. § 97-3-54.1(1)(c) (Procuring sexual servitude of a minor) fines from \$50,000.00–\$500,000.00 may be imposed. Additionally, a maximum fine of \$10,000 may be imposed as provided in Miss. Code Ann. § 99-19-32(1)

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<sup>3</sup> Pursuant to Miss. Code Ann. § 97-3-54.4(d) (Mississippi Human Trafficking Act; definitions), “commercial sexual activity” is defined as “any sex act on account of which anything of value is given to, promised to, or received by any person.”

<sup>4</sup> “Sexually-explicit performance” is defined in Miss. Code Ann. § 97-3-54.4(o) as “a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.”

<sup>5</sup> “Sexually oriented material” is defined in § 97-3-54.4(r) by referring to Miss. Code Ann. § 97-5-27, which defines the term as material that “contains representations or descriptions, actual or simulated, of masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.”

<sup>6</sup> .  
<sup>7</sup> A victim of human trafficking who is charged with a violation of Miss. Code Ann. § 97-3-54.1 (Human Trafficking; offenses) may assert an affirmative defense under Miss. Code Ann. § 97-3-54.1(5),<sup>7</sup> which states:

- (5) It is an affirmative defense in a prosecution under this act that the defendant:
- (a) Is a victim; and
  - (b) Committed the offense under a reasonable apprehension created by a person that, if the defendant did not commit the act, the person would inflict serious harm on the defendant, a member of the defendant’s family, or a close associate.

Additionally, Miss. Code Ann. § 97-3-54.1(4) provides in part, “[a] minor who has been identified as a victim of trafficking shall not be liable for criminal activity in violation of this section.”

<sup>8</sup> Here and elsewhere in this report that Miss. Code Ann. § 97-3-2 is quoted or cited, it reflects the amendments added by the passage of House Bill 585 during the regular session of the 2014 Mississippi Legislature (effective July 1, 2014).

<sup>9</sup> Miss. Code Ann. § 97-3-2 further provides that no person convicted of a crime of violence listed in § 97-3-2(1) is eligible for parole or early release until 50% of the sentence has been served.

(Fines and assessments upon persons convicted of offenses punishable by imprisonment for more than one year; deposit in Criminal Justice Fund).<sup>10</sup>

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

1. Miss. Code Ann. § 97-29-51(1)(a)<sup>11</sup> (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states,

A person commits the misdemeanor of procuring the services of a prostitute if the person knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or sexual conduct with the person or with any other person. "Sexual conduct" includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.

When the person whose services are procured is a minor under 18, "the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both." Miss. Code Ann. § 97-29-51(1)(c).

2. Miss. Code Ann. § 97-29-51(2)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states,

A person commits the felony of promoting prostitution if the person:

- (i) Knowingly or intentionally entices, compels, causes, induces, persuades, or encourages by promise, threat, violence, or by scheme or device, another person to become a prostitute;
- (ii) Knowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution;
- (iii) Knowingly induces, persuades, or encourages a person to come into or leave this state for the purpose of prostitution;
- (iv) Having control over the use of a place or vehicle, knowingly or intentionally permits another person to use the place or vehicle for prostitution;
- (v) Accepts, receives, levies or appropriates money or other property of value from a prostitute, without lawful consideration, with knowledge or reasonable cause to know it was earned, in whole or in part, from prostitution; or
- (vi) Conducts, directs, takes, or transports, or offers or agrees to take or transport, or aids or assists in transporting, any person to any vehicle, conveyance, place, structure, or

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<sup>10</sup> Miss. Code Ann. § 99-19-32(1) (Fines and assessments upon persons convicted of offenses punishable by imprisonment for more than one year; deposit in Criminal Justice Fund) states, "(1) Offenses punishable by imprisonment in the State Penitentiary for more than one (1) year and for which no fine is provided elsewhere by statute may be punishable by a fine not in excess of Ten Thousand Dollars (\$10,000.00). Such fine, if imposed, may be in addition to imprisonment or any other punishment or penalty authorized by law."

<sup>11</sup>).

building, or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution.

When the person whose services are promoted is a minor under 18, “the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(2)(c).

3. Miss. Code Ann. § 97-5-5<sup>12</sup> (Enticing a child under 14; punishment) makes it a crime to “maliciously, willfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen (14) years, with intent to detain or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage.” Upon conviction, a person will “be imprisoned in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years, or fined not more than Ten Thousand Dollars (\$10,000.00), or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Sections 97–3–54 et seq.” Miss. Code Ann. § 97-5-5.
4. Miss. Code Ann. § 97-5-33<sup>13</sup> (Exploitation of children; prohibitions) states,
  1. No person shall, by any means including computer, cause, solicit or knowingly permit any child<sup>14</sup> to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
  2. No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.
  3. No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
  4. No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
  5. No person shall, by any means including computer, knowingly possess or knowingly access with intent to view any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
  6. No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.
  7. No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.

Pursuant to Miss. Code Ann. § 97-3-2<sup>15</sup>, exploitation of a child as provided in § 97-5-33 is defined as a crime of violence.<sup>16</sup> Under Miss. Code Ann. § 97-5-35, a first-time conviction for violating any provision of Miss. Code Ann.

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<sup>14</sup> Child is defined in Miss. Code Ann. § 97-5-31(a) (Exploitation of children; definitions) as “any individual who has not attained the age of eighteen (18) years.”

<sup>15</sup> See *supra* note 8.

<sup>16</sup> See *supra* note 9.

§ 97-5-33 is punishable by imprisonment for 5–40 years and a \$50,000–\$500,000 fine.<sup>17</sup> Repeat offenders face 20 years to life imprisonment and a \$100,000–\$1,000,000 fine. Miss. Code Ann. § 97-5-35.

Mississippi has several laws that, although not specifically directed towards commercial sexual exploitation, could potentially be used to convict persons engaged in the commercial sexual exploitation of children.

1. Miss. Code Ann. § 97-5-27 (3)(a)<sup>18</sup> (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) states,

(3) (a) A person is guilty of computer luring when:

- (i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and
- (ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

....

(4) Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97–3–54 et seq.

A conviction is punishable as a felony by imprisonment up to 3 years and a fine up to \$10,000. Miss. Code Ann. § 97-5-27(3)(e).

2. Miss. Code Ann. § 97-5-39(1)(a)<sup>19</sup> (Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child) penalizes a “parent, guardian or any other person who intentionally, knowingly or recklessly commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child . . . .”<sup>20</sup> A conviction is punishable as a misdemeanor by up to 1 year in jail, a fine of up to \$1,000, or both. Miss. Code Ann. § 97-5-39(1)(a). “A parent, legal guardian or other person who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child” is subject to sentenced to imprisonment in the custody of the Department of Corrections for up to 10 years, a fine of up to \$10,000, or both. Miss Code Ann. § 97-5-39(1)(e).
3. Miss. Code Ann. § 97-3-65(1) (Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances) states,

(1) The crime of statutory rape is committed when:

- (a) Any person seventeen (17) years of age or older has sexual intercourse with a child who:
  - (i) Is at least fourteen (14) but under sixteen (16) years of age;

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<sup>17</sup> Mississippi does not use a felony crime classification system.

<sup>20</sup> Abused child is defined in Miss. Code Ann. § 43-21-105(m) in part as “a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment.”

- (ii) Is thirty-six (36) or more months younger than the person; and
- (iii) Is not the person's spouse; or
- (b) A person of any age has sexual intercourse<sup>21</sup> with a child who:
  - (i) Is under the age of fourteen (14) years;
  - (ii) Is twenty-four (24) or more months younger than the person; and
  - (iii) Is not the person's spouse.

Pursuant to Miss. Code Ann. § 97-3-65(3), a person convicted of violating § 9-3-65(1) may be penalized as follows:

- (a) If eighteen (18) years of age or older, but under twenty-one (21) years of age, and convicted under subsection (1)(a) of this section, to imprisonment for not more than five (5) years in the State Penitentiary or a fine of not more than Five Thousand Dollars (\$ 5,000.00), or both;
- (b) If twenty-one (21) years of age or older and convicted under subsection (1)(a) of this section, to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$ 10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense;
- (c) If eighteen (18) years of age or older and convicted under subsection (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years;
- (d) If thirteen (13) years of age or older but under eighteen (18) years of age and convicted under subsection (1)(a) or (1)(b) of this section, such imprisonment, fine or other sentence as the court, in its discretion, may determine.

Pursuant to Miss. Code Ann. § 97-3-65(4)(a), if the defendant incapacitated the victim by drug or drink or used force, the sentence may be extended to life in prison at the jury's or the judge's discretion.

4. Miss. Code Ann. § 97-3-95(1) (Sexual battery)<sup>22</sup> states in part, "A person is guilty of sexual battery if he or she engages in sexual penetration<sup>23</sup> with: . . . (c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child; or (d) A child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child." Pursuant to Miss. Code Ann. § 97-3-101(Sexual battery; penalty), the penalties for Miss. Code Ann. § 97-3-95(1)(c), (d) for offenders over 18 are as follows:

- (2) (a) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is at least eighteen (18) but under twenty-one (21) years of age shall be imprisoned for not more than five (5) years in the State Penitentiary or fined not more than Five Thousand Dollars (\$ 5,000.00), or both;

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<sup>21</sup> Miss. Code Ann. § 97-3-65(6) defines "sexual intercourse" as "a joining of the sexual organs of a male and female human being in which the penis of the male is inserted into the vagina of the female or the penetration of the sexual organs of a male or female human being in which the penis or an object is inserted into the genitals, anus or perineum of a male or female."

<sup>22</sup> Miss. Code Ann. § 97-3-99 (Sexual battery; defense) provides, "A person is not guilty of any offense under Sections 97-3-95 through 97-3-103 if the alleged victim is that person's legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim."

<sup>23</sup> Pursuant to Miss. Code Ann. § 97-3-97(a) (Sexual battery; definitions), "'Sexual penetration' includes cunnilingus, fellatio, buggery or pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body."

- (b) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is twenty-one (21) years of age or older shall be imprisoned not more than thirty (30) years in the State Penitentiary or fined not more than Ten Thousand Dollars (\$ 10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense.
- (3) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(d) who is eighteen (18) years of age or older shall be imprisoned for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years.<sup>24</sup>

5. Miss. Code Ann. § 97-5-23(1) (Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person) provides, “Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child under the age of sixteen (16) years, with or without the child’s consent,” is guilty of a felony punishable by imprisonment for 2–15 years, or a \$1,000–\$5,000 fine, or both. Pursuant to Miss. Code Ann. § 97-5-23(3), a defendant may be sentenced to imprisonment up to 20 years for a subsequent conviction; at least half of the sentence must be served.

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

Miss. Code Ann. § 97-29-49(3)<sup>25</sup> (Prostitution) refers to the human trafficking statute when the person engaged in prostitution is a minor by requiring that “any law enforcement officer who takes a minor under eighteen (18) years of age into custody for suspected prostitution shall immediately make a report to the Department of Human Services as required in Section 43-21-353 for suspected child sexual abuse or neglect, and the department shall commence an initial investigation into suspected child sexual abuse or neglect.” Further, “[i]f it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person, as defined by Section 97–3–54.4 [Definitions related to human trafficking], that person shall be immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97–3–54.1(4) [Human trafficking; offenses] shall be applicable.” Miss. Code Ann. § 97-29-49(3), (4).

Additionally, Miss. Code Ann. § 97-29-51(3) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states that

If it is determined that a person suspected of or charged with promoting prostitution is a trafficked person, as defined by Section 97–3–54.4, that fact shall be considered a mitigating factor in any prosecution of that person for prostitution, and the person shall be referred to appropriate resources for assistance. If it is determined that a person suspected of or charged with promoting prostitution is a minor under eighteen (18) years of age who meets the definition of a trafficked person as defined in Section 97–3–54.4, the minor is immune from prosecution for promoting prostitution as a juvenile or adult and provisions of Section 97–3–54.1(4) [Human trafficking; offenses] shall be applicable.

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<sup>24</sup> Miss. Code Ann. § 97-3-99 (Sexual battery; defense) provides a defense to this charge as follows:

A person is not guilty of any offense under Sections 97-3-95 through 97-3-103 if the alleged victim is that person’s legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged 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.*

Mississippi's Racketeer Influenced and Corrupt Organizations Act (RICO), codified at Miss. Code Ann. § 97-43-5 (Prohibited activities), provides,

1. It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
2. It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
3. It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
4. It is unlawful for any person to conspire to violate any of the provisions of subsections (1), (2) or (3) of this section.

“Racketeering activity” is defined in Miss. Code Ann. § 97-43-3(a)<sup>26</sup> as “to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit any crime which is chargeable under” certain specified provisions, including § 97-29-49 (Prostitution), § 97-29-51 (Procuring prostitutes), § 97-5-5 (Enticing a child for concealment, prostitution or marriage), §§ 97-5-31 –37 (Exploitation of children), and § 97-3-54 et seq. (Mississippi Human Trafficking Act) . Miss. Code Ann. § 97-43-3(a)(10), (11), and (16). A “pattern of racketeering activity” is defined in Miss. Code Ann. § 97-43-3(d) as “engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this chapter and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.”

A conviction for violating the Racketeer Influenced and Corrupt Organizations Act (RICO), Miss. Code Ann. §§ 97-43-1 through -11, carries a 20-year maximum sentence, or a maximum fine of \$25,000, or both pursuant to Miss. Code Ann. § 97-43-7 (Penalties). In the alternative, subsection (2) states, “In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of this chapter, through which he derived pecuniary value, or by which he caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three (3) times the gross value gained or three (3) times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.” Miss. Code Ann. § 97-43-7(2).

Discretionary, civil forfeiture is also available for a racketeering violation, pursuant to Miss. Code Ann. § 97-43-9(2) which states, “[a]ll property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of this chapter is subject to civil forfeiture to the state” pursuant to Miss. Code Ann. § 97-43-11 (Seizure and forfeiture of property; procedures). Seizure of the property is governed by Miss. Code Ann. § 97-43-11(3) which states “(3) Property

subject to forfeiture may be seized by law enforcement officers upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if: (a) The seizure is incident to an arrest or a search under a search warrant or an inspection under a lawful administrative inspection; (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding . . .”

Where the enterprise targeted through the racketeering statute is a criminal gang, the Mississippi Street Gang Act<sup>27</sup> may apply as well. Miss. Code Ann. § 97-44-19 (Penalties for criminal street gang activity), states in part,

1. Any person who intentionally directs, participates, conducts, furthers, or assists in the commission of illegal gang activity shall be punished by imprisonment for not less than one (1) year nor more than one-half (1/2) of the maximum term of imprisonment provided for an underlying offense and may be fined an amount not to exceed Ten Thousand Dollars (\$ 10,000.00). Any sentence of imprisonment imposed pursuant to this section shall be in addition and consecutive to any sentence imposed for the underlying offense.
2. Any person who is convicted of a felony or an attempted felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be imprisoned for not less than one (1) year nor more than one-half (1/2) of the maximum term of imprisonment provided for that offense.
3. Any person who is convicted of an offense other than a felony which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct or enterprise by gang members, shall, in addition and consecutive to the penalty provided for that offense, be imprisoned for an additional period of not more than one (1) year.

For such a violation, Miss. Code Ann. § 97-44-5 provides that the Attorney General, district attorney, or county attorney, or their designees may seek a civil remedy on behalf of “any public authority expending money, allocating or reallocating police, firefighting, emergency or other personnel or resources, or otherwise incurring any loss, deprivation or injury, or sustaining any damage, impairment or harm whatsoever, proximately caused by any criminal activity.” Pursuant to Miss. Code Ann. § 97-44-13(2), “A final judgment in favor of a public authority under this chapter shall entitle it to recover compensatory damages for all damages, losses, impairments or other harm proximately caused, together with the costs of the suit and reasonable attorney’s fees. Punitive damages may be assessed against any streetgang, against any streetgang officer or member found guilty of actual participation in, or to be legally accountable for, a criminal activity under this chapter. One

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<sup>27</sup> “Streetgang” is defined at Miss. Code Ann. § 97-44-3(a) (Definitions) as “any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three (3) or more persons with an established hierarchy that, through its membership or through the agency of any member, engages in felonious criminal activity.” The definition further states, “For purposes of this chapter, it shall not be necessary to show that a particular conspiracy, combination or conjoining of persons possesses, acknowledges or is known by any common name, insignia, flag, means of recognition, secret signal or code, creed, belief, structure, leadership or command structure, method of operation or criminal enterprise, concentration or specialty, membership, age or other qualifications, initiation rites, geographical or territorial situs or boundary or location, or other unifying mark, manner, protocol or method of expressing or indicating membership when the conspiracy’s existence, in law or in fact, can be demonstrated by a preponderance of the competent evidence. However, any evidence reasonably tending to show or demonstrate, in law or in fact, the existence of or membership in any conspiracy, confederation or other association described herein, or probative of the existence of or membership in any such association, shall be admissible in any action or proceeding brought under this chapter.”

hundred percent (100%) of punitive damages awarded will be expended by the public authority to implement preventative programs for juveniles or to fund existing programs.”

**Legal Components:**

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

**Legal Analysis:**

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

Miss. Code Ann. § 97-3-54.1(1)(c)<sup>28</sup> (Mississippi Human Trafficking Act; prohibited conduct; penalty) addresses the sex trafficking of minors specifically, and holds buyers liable for “causing” a minor to engage in commercial sex acts, stating,

(c) A person who . . . causes or attempts to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, shall be guilty of procuring sexual servitude of a minor and shall be punished by commitment to the custody of the Department of Corrections for not less than five (5) nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.

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

Miss. Code Ann. § 97-29-51<sup>29</sup> (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states:

A person commits the misdemeanor of procuring the services of a prostitute if the person knowingly

<sup>29</sup> See *supra* note 11.

or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or sexual conduct with the person or with any other person. “Sexual conduct” includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.”

When the person whose services are procured is a minor under 18, “the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(c).

In addition, several non-commercial sex offenses discussed in Section 1.2 may also apply to buyers of sex acts with minors, including Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact), Miss. Code Ann. § 97-3-65(1) (Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances), Miss. Code Ann. § 97-3-95(1) (Sexual battery), and Miss. Code Ann. § 97-5-23(1) (Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person).

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

Mississippi’s solicitation statute, Miss. Code Ann. § 97-29-51<sup>30</sup> (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) distinguishes between soliciting minors and soliciting adults. If convicted of soliciting a minor, a buyer of commercial sex acts with a minor will be sentenced to a minimum of five years and a maximum of 30 years, and a fine of \$50,000-\$500,000, or both. Miss. Code Ann. § 97-29-51(c). By contrast, solicitation of an adult is a misdemeanor punishable by a maximum fine of \$200 and/or a maximum sentence of six months. Miss. Code Ann. § 97-29-51(b).

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

A conviction under Miss. Code Ann. § 97-3-54.1(1)(c)<sup>31</sup> (Mississippi Human Trafficking Act; prohibited conduct; penalty) is punishable by imprisonment for 5–30 years and a fine of \$50,000–\$500,000 or both. Miss. Code Ann. § 97-3-54.1(1)(c). A conviction under Miss. Code Ann. § 97-29-51(1)(a)<sup>32</sup> (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) when the person whose services are procured is a minor under 18, shall result in “a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(1)(c), (2)(c).

Defendants over the age of 18 convicted of statutory rape under Miss. Code Ann. § 97-3-65 (Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances) face penalties under Miss. Code Ann. § 97-3-65(3) ranging from 5–40 years imprisonment or fines up to \$10,000, depending on the age of the defendant and the age of the victim.<sup>33</sup>

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<sup>30</sup> See *supra* note 11.

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<sup>32</sup> See *supra* note 11.

<sup>33</sup> See *supra* Section 1.2 for discussion of Miss. Code Ann. § 97-3-65.

Penalties for buyers convicted under Miss. Code Ann. § 97-5-39 (Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child), § 97-3-101 (Sexual battery; penalty) or § 97-5-23(1) (Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person) range from a misdemeanor punishable by up to 1 year in jail to imprisonment for life “or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years” and possible fines ranging from \$1,000 to \$10,000. Miss Code Ann. §§ 97-5-39(1)(e), 97-3-95(1)(c), (d), 97-3-101(2)(a), (b), 97-3-101(3), 97-5-23(1).<sup>34</sup>

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victim Protection Act (TVPA)<sup>35</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>36</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>37</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>38</sup>

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

Although not expressly commercial, Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) penalizes a person who knowingly engages in sexually oriented communication with a minor by using a computer. Miss. Code Ann. § 97-5-27(3)(a) states,

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<sup>34</sup> See *supra* Section 1.2.

<sup>35</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>36</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>37</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>38</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).

A person is guilty of computer luring when:

- (i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and
- (ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

The penalty for a conviction under Miss. Code Ann. § 97-5-27(3)(a) is commitment up to 3 years to the Department of Corrections and a maximum fine of \$10,000. Miss. Code Ann. § 97-5-27(3)(e), and “does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97-3-54.” Miss. Code Ann. § 97-5-27(4).

Using the Internet to commit crimes involving commercial sexual exploitation of minors is also punishable under Miss. Code Ann. §97-5-33<sup>39</sup> (Exploitation of children; prohibitions). Although not specifically commercial in nature, Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) criminalizes acts of sexual exploitation of minors that may be committed by buyers. Miss. Code Ann. § 97-5-33(6) states, “No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.”

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

The Anti-Human Trafficking Act (§§ 97-3-54 to 54.4) expressly prohibits a mistake of age defense. While Miss. Code Ann. § 97-29-51(2)(c) and (4) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) prohibit a mistake of age defense for promoting prostitution offenses, the buyer-applicable offense of procuring the services of a prostitute under Miss. Code Ann. § 97-29-51(1)(c) does not prohibit this defense.

The non-commercial offense of Miss. Code Ann. § 97-5-27(3)(c)(i) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) also provides several defenses that may apply to buyers, stating,

- (c) In any prosecution for computer luring, it shall be a defense that:
  - (i) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or
  - (ii) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to the materials prohibited, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or
  - (iii) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or
  - (iv) The defendant has in good faith established a mechanism such that the labeling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or

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<sup>39</sup> See *supra* note 13.

screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

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

Miss. Code Ann. § 97-3-54.1<sup>40</sup> (Human Trafficking Act; prohibited conduct; penalty) and § 97-29-51 (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) protect all minors under 18 and do not reduce penalties when older minors are the victims of the crime.

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.*

Miss. Code Ann. § 97-3-54.1(1)(c)<sup>41</sup> (Human Trafficking Act; prohibited conduct; penalty) provides significant financial penalties for buyers, including a possible fine of \$50,000–\$500,000. Similarly, under Miss. Code Ann. § 97-29-51(1)(c)<sup>42</sup> (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties), a conviction for soliciting sex with a minor is punishable by “a fine of not less than Fifty Thousand nor more than Five Hundred Thousand Dollars (\$500,000.00).”

Buyers also face asset forfeiture under the Mississippi Human Trafficking Act. Miss. Code Ann. § 97-3-54.7<sup>43</sup> (Forfeiture of assets and disposition of proceeds) states,

(1) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.

(a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:

- (i) Conveyances, including aircraft, vehicles or vessels;
- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money or weapons;
- (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
- (v) Negotiable instruments and securities;
- (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
- (vii) Any property traceable to proceeds from a violation; and
- (viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

Pursuant to Miss. Code Ann. § 97-3-54.6<sup>44</sup> (Injunctive and other relief for victims of trafficking; confidentiality), buyers are subject to mandatory restitution and a possible civil judgment for threefold the actual damages sustained by the victim. Miss Code Ann. § 97-3-54.6 states in part,

(2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution,

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<sup>42</sup> See *supra* note 11.

the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.

(3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

Pursuant to Miss. Code Ann. § 99-19-75 (Assessment on certain offenses against children to be deposited in Mississippi Children's Trust Fund), the court shall impose a special assessment of \$1,000 against persons convicted of certain listed crimes, including statutory rape and convictions under § 97-5-1 et. seq. (Offenses affecting children) in addition to any fines that the court levies as part of the judgment. The special assessment is paid into the Mississippi Children's Trust fund. Miss. Code Ann. § 99-19-75.

Restitution to victims of any crime is authorized, at the court's discretion, under Miss Code Ann. § 99-37-3 (Imposition and amount of restitution), which states, “(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$ 5,000.00).” The discretionary decision by the court must take into account, among other things, the defendant's ability to pay. Miss Code Ann. § 99-37-3(2).

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

Miss. Code Ann. § 97-5-33(3) (Exploitation of children; prohibitions) states, “No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” Under subsection (5), a person may not “by any means including computer, knowingly possess or knowingly access with intent to view any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” A conviction under Miss. Code Ann. § 97-5-33 is punishable by imprisonment for 5–40 years and a \$50,000–\$500,000 fine for the first offense and 20 years to life and a \$100,000–\$1,000,000 fine for subsequent convictions. Miss. Code Ann. § 97-5-35.

In comparison, a federal conviction for possession of child pornography<sup>45</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>46</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>47</sup>

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<sup>45</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>46</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>47</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

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

With respect to adult offenders, Miss. Code Ann. § 45-33-25(1)(a)<sup>48</sup> (Registration with Mississippi Department of Public Safety of all convicted sex offenders residing in the state) states in part, “Any person having a permanent or temporary residence in this state or who is employed or attending school in this state who has been convicted of a registrable offense in this state or another jurisdiction or who has been acquitted by reason of insanity of a registrable offense in this state or another jurisdiction shall register with the responsible agency and the Mississippi Department of Public Safety.” Miss. Code Ann. § 45-33-23(h) (Definitions)<sup>49</sup> defines “sex offense” or “registrable offense” as any of the following offenses:

- (ii) Section 97-3-65 relating to rape; however, conviction or adjudication under Section 97-3-65(1)(a) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;
- (iii) Section 97-3-71 relating to rape and assault with intent to ravish;
- (iv) Section 97-3-95 relating to sexual battery; however, conviction or adjudication under Section 97-3-95(1)(c) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;
- (v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;
- (vi) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;
- (vii) Section 97-5-27 relating to the dissemination of sexually oriented material to children;
- (viii) Section 97-5-33 relating to the exploitation of children;
- ...
- (xi) Section 97-29-59 relating to unnatural intercourse;
- (xii) Section 43-47-18 relating to sexual abuse of a vulnerable person;
- (xiii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor; and Section 97-3-54.3 relating to aiding, abetting or conspiring to violate Section 97-3-54.1(1)(c);
- ...
- (xviii) Section 97-5-39(1)(e) relating to contributing to the neglect or delinquency of a child, felonious abuse or battery of a child, if the victim was sexually abused;
- xix) Section 97-1-7 relating to attempt to commit any of the above-referenced offenses;
- (xx) Any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;
- (xxi) Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had;
- (xxii) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section;
- (xxiii) Capital murder when one (1) of the above-described offenses is the underlying crime.

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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).

Miss. Code Ann. § 45-33-25(1)(b) also requires offenders adjudicated delinquent by the youth court for sex offenses to register as sex offenders if force was used against the victim in committing any of the following sex offenses:

- (i) Section 97-3-71 relating to rape and assault with intent to ravish;
- (ii) Section 97-3-95 relating to sexual battery;
- (iii) Section 97-3-65 relating to statutory rape; or
- (iv) Conspiracy to commit, accessory to the commission of, or attempt to commit any offense listed in this paragraph.

**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.

Miss. Code Ann. § 97-3-54.1(1)(c)<sup>50</sup> (Mississippi Human Trafficking Act; prohibited conduct; penalty) carries a sentence of 5–30 years and a possible fine of \$50,000–\$500,000. Miss. Code Ann. § 97-3-54.1(1)(c). A trafficker may also be convicted under Miss. Code Ann. § 97-29-51(2)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) for promoting prostitution and a conviction when a minor is victimized is punishable by imprisonment for “not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(2)(c).

Traffickers may also be convicted under other criminal statutes for their crimes. Under Miss. Code Ann. § 97-5-5<sup>51</sup> (Enticing child for concealment, prostitution or marriage), convicted traffickers “shall, on conviction, be imprisoned in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years, or fined not more than Ten Thousand Dollars (\$10,000.00), or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Sections 97–3–54 et seq.” A conviction under Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) is punishable by imprisonment for 5–40 years and \$50,000–\$500,000 fine. Miss Code Ann. § 97-5-35. A subsequent conviction is punishable by imprisonment of 20 years to life and a \$100,000–\$1,000,000 fine. Miss Code Ann. § 97-5-35. A conviction under Miss. Code Ann. § 97-5-39(1)(a) (Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child) is punishable as a misdemeanor by up to 1 year in jail, a fine of up to \$1,000, or both. A conviction under Miss Code Ann. § 97-5-39(1)(e) is punishable by imprisonment of up to 10 years, a fine of up to \$10,000, or both. Miss. Code Ann. § 97-5-39(1)(e).

A trafficking enterprise<sup>52</sup> and its agents or employees are also subject to criminal liability under Mississippi law. Miss. Code Ann. § 97-3-54.1 (Mississippi Human Trafficking Act) states that

(3) An enterprise may be prosecuted for an offense under this chapter if:

<sup>51</sup> See *supra* note 12.

<sup>52</sup> “Enterprise” is defined to mean “any individual, sole proprietorship, partnership, corporation, union or other legal entity, or any association or group of individuals associated in fact regardless of whether a legal entity has been formed pursuant to any state, federal or territorial law. It includes illicit as well as licit enterprises and governmental as well as other entities.” Miss. Code Ann. § 97-3-54.4(e). See *supra* note 2.

- (a) An agent of the enterprise knowingly engages in conduct that constitutes an offense under this chapter while acting within the scope of employment and for the benefit of the entity.
- (b) An employee of the enterprise engages in conduct that constitutes an offense under this chapter and the commission of the offense was part of a pattern of illegal activity for the benefit of the enterprise, which an agent of the enterprise either knew was occurring or recklessly disregarded, and the agent failed to take effective action to stop the illegal activity.

Trafficking enterprises are subject to enhanced fines. Pursuant to Miss. Code Ann. § 97-3-54.1(d), “[t]he court may consider the severity of the enterprise's offense and order penalties, including: (i) a fine of not more than One Million Dollars (\$1,000,000.00); (ii) disgorgement of profit; and (iii) debarment from government contracts. Additionally, the court may order any of the relief provided in Section 97–3–54.7 [Forfeiture of assets and disposition of proceeds].”

A conviction under Miss. Code Ann. § 97-5-27(3)(a) (Use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) is punishable as a felony by commitment up to 3 years to the Department of Corrections and a fine not exceeding \$10,000. Miss. Code Ann. § 97-5-27(3)(e).

Lastly, traffickers could be found guilty of money laundering under Miss. Code Ann. § 97-23-101, which prohibits the following conduct:

- (1) (a) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity,<sup>53</sup> conducts or attempts to conduct such a financial transaction<sup>54</sup> which in fact involves the proceeds of specified unlawful activity:
  - (i) With the intent to promote the carrying on of specified unlawful activity; or
- (2) With intent to engage in conduct constituting a violation of Section 7201 or 7206 of the Internal Revenue Code of 1986; or
  - (ii) Knowing that the transaction is designed in whole or in part:
    - 1. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
    - 2. To avoid a transaction reporting requirement under state or federal law, shall be sentenced to a fine of not more than Five Hundred Thousand Dollars (\$ 500,000.00) or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty (20) years, or both.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>55</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C.

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<sup>53</sup> Miss. Code Ann. § 97-23-101(3)(a) states, “The term ‘knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity’ means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law.”

<sup>54</sup> Miss. Code Ann. § 97-23-101(3)(c) states, “The term ‘transaction’ includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.”

<sup>55</sup> See *supra* note 35.

§§ 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>56</sup> against a minor.

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

Miss. Code Ann. § 97-5-33(1)-(2), (7) (Exploitation of children; prohibitions) makes it a crime to create and distribute child pornography. A first-time offender faces imprisonment for 5–40 years and a \$50,000–\$500,000 fine. Miss. Code Ann. § 97-5-35. The penalty increases for subsequent offenses to 20 years to life and a \$100,000–\$1,000,000 fine. Miss. Code Ann. § 97-5-35.

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>57</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>58</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>59</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>60</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.*

Although not expressly commercial, Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) penalizes a person who knowingly engages in sexually-oriented communication with a minor by use of a computer. Miss. Code Ann. § 97-5-27(3)(a) states,

A person is guilty of computer luring when:

- (i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and

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<sup>56</sup> See *supra* note 36.

<sup>57</sup> See *supra* note 36.

<sup>58</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>59</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>60</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).

(ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

The penalty for conviction under Miss. Code Ann. § 97-5-27(3)(a) is commitment up to 3 years to the Department of Corrections and a maximum fine of \$10,000. Miss. Code Ann. § 97-5-27(3)(e). Pursuant to Miss. Code Ann. § 97-5-27(4), “[i]nvestigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97–3–54 et seq.”

Neither Miss. Code Ann. §§ 97-3-54 to 97-3-54.9 (Mississippi Human Trafficking Act) nor Miss. Code Ann. § 97-5-35 (Exploitation of Children; penalties) specifically provide enhanced penalties when the offender uses the Internet to commit these crimes.

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

A conviction under Miss. Code Ann. § 97-3-54.1(1)(c)<sup>61</sup> (Human Trafficking Act; prohibited conduct; penalty) carries a fine of \$50,000–\$500,000. A conviction for promoting the prostitution of a minor under Miss. Code Ann. § 97-29-51(2)(c) is punishable with a fine of \$50,000.00–\$500,000.00. If convicted under Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions), a trafficker faces a fine of \$50,000–\$500,000, or \$100,000–\$1,000,000 for a subsequent conviction, and traffickers convicted under Miss. Code Ann. § 97-5-5<sup>62</sup> (Enticing child for concealment, prostitution or marriage) face a fine up to \$10,000. Miss Code Ann. § 97-5-35, 97-5-5. Pursuant to Miss. Code Ann. § 99-19-75 (Assessment on certain offenses against children to be deposited in Mississippi Children’s Trust Fund), the court shall impose a special assessment of \$1,000 against persons convicted of certain listed crimes, including statutory rape and convictions under § 97-5-1 et. seq. (Offenses affecting children) in addition to any fines that the court levies as part of the judgment. The special assessment is paid into the Mississippi Children’s Trust fund. Miss. Code Ann. § 99-19-75.

In addition to fines, traffickers are also subject to forfeiture under Miss. Code Ann. § 97-3-54.7<sup>63</sup> (Forfeiture of assets and disposition of proceeds). Miss. Code Ann. § 97-3-54.7 states,

- (1) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.
  - (a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:
    - (i) Conveyances, including aircraft, vehicles or vessels;
    - (ii) Books, records, telecommunication equipment, or computers;
    - (iii) Money or weapons;
    - (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
    - (v) Negotiable instruments and securities;
    - (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
    - (vii) Any property traceable to proceeds from a violation; and
    - (viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

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<sup>62</sup> See *supra* note 12.

Traffickers are also subject to mandatory restitution and a possible civil judgment pursuant to Miss Code Ann. § 97-3-54.6,<sup>64</sup> which states,

(2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.

(3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

Discretionary restitution to victims of any crime is authorized under Miss Code Ann. § 99-37-3 (Imposition and amount of restitution), which states in part, “(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$ 5,000.00).” The discretionary decision by the court must take into account, among other things, the defendant’s ability to pay. Miss Code Ann. § 99-37-3(2).

A trafficker convicted under the money laundering statute may be fined up to \$500,000 or “twice the value of the property involved in the transaction, whichever is greater.” Miss. Code Ann. § 97-23-101(1)(a).

Human trafficking enterprises may be subject to court ordered restraints on future enterprises. Miss Code Ann. § 97-3-54.6<sup>65</sup> (Injunctive and other relief for victims of trafficking; confidentiality) states that any circuit court may, after making due provision for the rights of trafficked persons, enjoin violations of the provisions of this act by issuing appropriate orders and judgments, including, but not limited to:

- (a) Ordering any defendant to divest himself of any interest in any enterprise, including real property.
- (b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of this act.
- (c) Ordering the dissolution or reorganization of any enterprise.
- (d) Ordering the suspension or revocation of a license or permit granted to any enterprise by any agency of the state.
- (e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of this chapter and that, for the prevention of future criminal activity, the public interest

requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

Trafficking enterprises<sup>66</sup> are also subject to fines, asset forfeiture, and rescission of government contracts. Pursuant to Miss. Code Ann. § 97-3-54.1(d), “[t]he court may consider the severity of the enterprise's offense and order penalties, including: (i) a fine of not more than One Million Dollars (\$1,000,000.00); (ii) disgorgement of profit; and (iii) debarment from government contracts. Additionally, the court may order any of the relief provided in Section 97-3-54.7 [Forfeiture of assets and disposition of proceeds].”<sup>67</sup>

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

Miss. Code Ann. § 45-33-23(h) (Registration of sex offenders; definitions), includes Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty), § 97-3-54.3 (Human Trafficking Act; aiding, abetting, or conspiring to violate human trafficking provisions), § 97-5-5 (Enticing a child for concealment, prostitution or marriage) and Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) in its definition of “registrable offense,” but not promoting prostitution in violation of Miss. Code Ann. § 97-29-51(1)(c) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties).

### 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.*

Miss. Code Ann. § 93-15-103 (Factors justifying adoption; grounds for termination of parental rights; alternatives) sets out the grounds for terminating parental rights. Pursuant to Miss. Code Ann. § 93-15-103,

(1) When a child has been removed from the home of its natural parents and cannot be returned to the home of his natural parents within a reasonable length of time because returning to the home would be damaging to the child or the parent is unable or unwilling to care for the child, relatives are not appropriate or are unavailable, and when adoption is in the best interest of the child, taking into account whether the adoption is needed to secure a stable placement for the child and the strength of the child's bonds to his natural parents and the effect of future contacts between them, the grounds listed in subsections (2) and (3) of this section shall be considered as grounds for the termination of parental rights. The grounds may apply singly or in combination in any given case.

...  
(3) Grounds for termination of parental rights shall be based on one or more of the following factors:

...  
(g) When a parent has been convicted of any of the following offenses against any child: (i) rape of a child under the provisions of Section 97-3-65, (ii) sexual battery of a child under the provisions of Section 97-3-95(c), (iii) touching a child for lustful purposes under the provisions of Section 97-5-23, (iv) exploitation of a child under the provisions of Section 97-5-31, (v) felonious abuse or battery of a child under the provisions of Section 97-5-39(2), (vi) carnal knowledge of a step or adopted child or a child of a cohabitating partner under the provisions of Section 97-5-41, or (vii) murder of another child of such parent, voluntary manslaughter of another child of such parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary

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<sup>67</sup> Miss. Code Ann. § 97-3-54.1(c) stipulates that “It is an affirmative defense to a prosecution of an enterprise that the enterprise had in place adequate procedures, including an effective complaint procedure, designed to prevent persons associated with the enterprise from engaging in the unlawful conduct and to promptly correct any violations of this chapter.”

manslaughter, or a felony assault that results in the serious bodily injury to the surviving child or another child of such parent.

(h) The child has been adjudicated to have been abused or neglected and custody has been transferred from the child's parent(s) for placement pursuant to Section 43-15-13, and a court of competent jurisdiction has determined that reunification shall not be in the child's best interest.

....

Convictions under Miss. Code Ann. § 97-3-54.1(1)(c) (Mississippi Human Trafficking Act; prohibited conduct; penalty) are not among the bases for terminating 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.*

Miss. Code Ann. § 97-3-54.3<sup>68</sup> (Human Trafficking Act; aiding, abetting, or conspiring to violate human trafficking provisions) makes persons who aid or abet traffickers criminally liable as principals under the human trafficking law. Miss. Code Ann. § 97-3-54.3 states that “[a] person who knowingly aids, abets or conspires with one or more persons to violate the Mississippi Human Trafficking Act shall be considered a principal in the offense and shall be indicted and punished as such whether the principal has been previously convicted or not.” Thus, a person who aids or abets the commission of procuring sexual servitude of a minor pursuant to Miss. Code Ann. § 97-3-54.1(1)(c) faces a sentence of 5–30 years and a possible fine of \$50,000–\$500,000. Miss. Code Ann. §§ 97-3-54.1(1)(c), 99-19-32. In addition, Miss. Code Ann. § 97-3-54.1(2) provides in part, “A person who is convicted of an offense set forth in subsection (1)(a) or (b) [Trafficking for forced labor or services and involuntary servitude] of this section, or who benefits, whether financially or by receiving anything of value, from participation in a venture that has engaged in an act described in this section” is subject to a maximum sentence of 20 years and a possible maximum fine of \$10,000. Miss. Code Ann. §§ 97-3-54.1(2), 99-19-32. In addition, Miss. Code Ann. § 97-3-54.1(c) contains the words “harbors” and “transports,” which could reach the conduct of some facilitators.

An enterprise that facilitates human trafficking is also subject to criminal liability under Mississippi law. Miss. Code Ann. § 97-3-54.1 (Mississippi Human Trafficking Act) states that

- (3) An enterprise<sup>69</sup> may be prosecuted for an offense under this chapter if:
  - (a) An agent of the enterprise knowingly engages in conduct that constitutes an offense under this chapter while acting within the scope of employment and for the benefit of the entity.
  - (b) An employee of the enterprise engages in conduct that constitutes an offense under this chapter and the commission of the offense was part of a pattern of illegal activity for the benefit of the enterprise, which an agent of the enterprise either knew was occurring or recklessly disregarded, and the agent failed to take effective action to stop the illegal activity.

In addition to the Mississippi Human Trafficking Act, there are other laws that may apply to a facilitator of domestic minor sex trafficking. Pursuant to Miss. Code Ann. §§ 97-5-27(3)(d)(i)-(ii) (Dissemination of

sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact),<sup>70</sup>

(i) No person shall be held to have violated this subsection (3) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(ii) No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency or the employer, having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.

However, under subsection (3)(d)(iii), "The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications, [or] a person who provides access or connection to a facility, system or network engaged in the violation of such provisions that is owned or controlled by such person." Miss. Code Ann. § 97-5-27(3)(d)(iii).

Facilitators could also be convicted for promoting prostitution. Miss. Code Ann. § 97-29-51(2)(a)<sup>71</sup> (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states that a person commits the felony of promoting prostitution if the person:

A person commits the felony of promoting prostitution if the person:

.....

(ii) Knowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution;

(iii) Knowingly induces, persuades, or encourages a person to come into or leave this state for the purpose of prostitution;

(iv) Having control over the use of a place or vehicle, knowingly or intentionally permits another person to use the place or vehicle for prostitution;

(v) Accepts, receives, levies or appropriates money or other property of value from a prostitute, without lawful consideration, with knowledge or reasonable cause to know it was earned, in whole or in part, from prostitution; or

(vi) Conducts, directs, takes, or transports, or offers or agrees to take or transport, or aids or assists in transporting, any person to any vehicle, conveyance, place, structure, or building, or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution.

Finally, facilitators could be found guilty of money laundering under Miss. Code Ann. § 97-23-101, which in subsection (1)(a) prohibits the following conduct:

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<sup>70</sup> Pursuant to Miss. Code Ann. § 99-19-75 (Assessment on certain offenses against children to be deposited in Mississippi Children's Trust Fund), the court shall impose a special assessment of \$1,000 against persons convicted of certain listed crimes, including statutory rape and convictions under § 97-5-1 et. seq. (Offenses affecting children) in addition to any fines that the court levies as part of the judgment. The special assessment is paid into the Mississippi Children's Trust fund. Miss. Code Ann. § 99-19-75.

<sup>71</sup> See *supra* note 11.

(a) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity,<sup>72</sup> conducts or attempts to conduct such a financial transaction<sup>73</sup> which in fact involves the proceeds of specified unlawful activity:

- (i) 1. With the intent to promote the carrying on of specified unlawful activity; or  
2. With intent to engage in conduct constituting a violation of Section 7201 or 7206 of the Internal Revenue Code of 1986; or
- (ii) Knowing that the transaction is designed in whole or in part:
  1. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
  2. To avoid a transaction reporting requirement under state or federal law shall be sentenced to a fine of not more than Five Hundred Thousand Dollars (\$ 500,000.00) or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty (20) years, or both.

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.*

A facilitator convicted under Miss. Code Ann. § 97-3-54. 3 (Aiding or abetting human trafficking) or Miss. Code Ann. § 97-29-51(2)(a)<sup>74</sup> (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) faces a fine of \$50,000-\$500,000. Miss. Code Ann. §§ 97-3-54.1(1)(c), 97-29-51(2)(a)(vi), 97-29-51(2)(c). Facilitators convicted of conspiracy to commit computer luring pursuant to Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) face up to a \$10,000 fine. Miss. Code Ann. §§ 99-19-32, 97-5-27(3)(d)(iii), (3)(e).

If an enterprise is convicted under the Mississippi Human Trafficking Act,

“[T]he court may consider the severity of the enterprise's offense and order penalties, including:

- (i) a fine of not more than One Million Dollars (\$1,000,000.00);
- (ii) disgorgement of profit; and
- (iii) debarment from government contracts.

Similarly, pursuant to Miss. Code Ann. § 97-29-51(4) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties), “Any partnership, association, corporation or other entity violating any provision of subsection (2) against the promotion of prostitution shall, upon conviction, be punished by a fine not exceeding Fifty Thousand Dollars (\$50,000.00). If the person whose services are promoted is under eighteen (18) years of age, the partnership, association, corporation or other legal entity convicted shall be punished by a fine not exceeding One Million Dollars (\$1,000,000.00).”

In addition, facilitators are also subject to forfeiture under Miss. Code Ann. § 97-3-54.7<sup>75</sup> (Forfeiture of assets and disposition of proceeds). Miss. Code Ann. § 97-3-54.7 states,

(1) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.

- (a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:
  - (i) Conveyances, including aircraft, vehicles or vessels;

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<sup>72</sup> See *supra* note 53.

<sup>73</sup> See *supra* note 54.

<sup>74</sup> See *supra* note 11.

- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money or weapons;
- (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
- (v) Negotiable instruments and securities;
- (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
- (vii) Any property traceable to proceeds from a violation; and
- (viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

Facilitators convicted of engaging in a human trafficking enterprise may be subject to court ordered restraints on future enterprises. Miss Code Ann. § 99-3-54.6<sup>76</sup> (Injunctive and other relief for victims of trafficking; confidentiality) states that any circuit court may, after making due provision for the rights of trafficked persons, enjoin violations of the provisions of this act by issuing appropriate orders and judgments, including, but not limited to:

- (a) Ordering any defendant to divest himself of any interest in any enterprise, including real property.
- (b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of this act.
- (c) Ordering the dissolution or reorganization of any enterprise.
- (d) Ordering the suspension or revocation of a license or permit granted to any enterprise by any agency of the state.
- (e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of this chapter and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

Facilitators also face mandatory restitution and a possible civil judgment for threefold the actual damages sustained by the victim under Miss Code Ann. § 97-3-54.6 (Injunctive and other relief for victims of trafficking; confidentiality) which states,

- (2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.
- (3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this

chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

Discretionary restitution to victims of any crime is authorized under Miss Code Ann. § 99-37-3 (Imposition and amount of restitution), which states in part, “(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$ 5,000.00).” The discretionary decision by the court must take into account, among other things, the defendant’s ability to pay. Miss Code Ann. § 99-37-3(2).

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

Mississippi has no provision related to sex tourism.

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

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

Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) makes it a crime to promote or sell child pornography. Under subsection (4), “No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” Under subsection (3), “No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.”

Miss. Code Ann. § 97-29-101 (Distribution or wholesale distribution of obscene materials or performances; character and reputation as evidence; prosecutor’s bond) states in part,

A person commits the offense of distributing obscene materials or obscene performances when he sells, rents, leases, advertises, publishes or exhibits to any person any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. A person commits the offense of wholesale distributing obscene materials or obscene performances when he distributes for the purpose of resale any obscene material or obscene performance of any description knowing<sup>77</sup> the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so.

Under Miss. Code Ann. § 97-29-109 (Penalties), the penalty for conviction under Miss. Code Ann. § 97-29-101 depends on whether the defendant is convicted of distribution or wholesale distribution. Distribution, for the first offense, is a misdemeanor punishable by a maximum fine of \$5,000, or up to 6 months in jail, or both. If the defendant has previously been convicted for violating § 97-29-101, § 97-29-105 (Distribution or wholesale distribution of unlawful sexual devices), § 97-5-27 (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of

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<sup>77</sup> Pursuant to Miss. Code Ann. § 97-29-101, “The word ‘knowing’ as used in this section means either actual or constructive knowledge of the obscene contents of the subject matter, and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material.”

age to engage in sexual contact), or § 97-5-29 (Public display of sexually oriented materials), the defendant may be fined between \$2,500–\$10,000, imprisoned for up to one year, or both. Wholesale distribution<sup>78</sup> of obscene materials is punishable by a maximum fine of \$10,000, up to a year in jail for the first offense, or both. If the defendant has previously been convicted for violating § 97-29-101, § 97-29-105, § 97-5-27, or § 97-5-29, the defendant may be fined between \$2,500–\$50,000, imprisoned for up to one year, or both. If the defendant is a corporation or partnership, the penalty is a fine of \$1,000–\$10,000. If the non-individual entity defendant is a subsequent offender, the penalty is a fine of \$5,000–\$50,000. Miss. Code Ann. § 97-29-109.

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<sup>78</sup> Under Miss. Code Ann. § 97-29-103(5) (Definitions), “wholesale distributes” means “to distribute for the purpose of resale.”

**Legal Components:**

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

**Legal Analysis:**

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

Pursuant to Miss. Code Ann. § 99-43-3(t) (Definitions) in the Mississippi Crime Victims’ Bill of Rights, “Victim” means a person against whom the criminal offense has been committed, or if the person is deceased or incapacitated, the lawful representative.” “Criminal offense” is defined as “conduct that gives a law enforcement officer or prosecutor probable cause to believe that a felony involving physical injury, the threat of physical injury, a sexual offense, any offense involving spousal abuse or domestic violence has been committed.” Miss. Code Ann. § 99-43-3(g).

Miss. Code Ann. § 99-41-5(l) (Definitions), which provides the definitions for the Mississippi Crime Victims’ Compensation Act, defines a victim as

a person who suffers personal injury or death as a result of criminally injurious conduct, regardless of whether that person was the intended victim of the criminally injurious conduct.<sup>79</sup> This definition may

<sup>79</sup> Miss. Code Ann. § 99-41-5(d) defines “criminally injurious conduct” as “an act occurring or attempted within the geographical boundaries of this state, or to a resident of Mississippi while that resident is within any other state of

include a person who suffers personal injury or death as a result of criminally injurious conduct while going to the aid of another person or a duly sworn law enforcement officer, or while attempting to prevent a crime from occurring.

For purposes of victim restitution under Miss. Code Ann. title 99, chapter 37 (Restitution to victims of crime), “victim” is defined as “any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. ‘Victim’ shall not include any coparticipant in the defendant's criminal activities, or any person knowingly participating in a criminal act at the time he became a victim.” Miss. Code Ann. § 99-37-1(d). This definition may exclude CSEC victims due to their participation in prostitution offenses as part of their exploitation.

5.1.1 Recommendation: Amend the definition of “criminal offense” in Miss. Code Ann. § 99-43-3(g) to expressly include domestic minor trafficking and CSEC victims by including the following offenses: Miss. Code Ann. §§ 97-3-54 through 97-3-54.9 (Mississippi Human Trafficking Act), § 97-5-5 (Enticing child for concealment, prostitution or marriage), and § 97-5-33 (Exploitation of children; prohibitions).

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.*

Under Miss. Code Ann. § 97-3-54.1(1)(c)<sup>80</sup> (Human Trafficking Act; prohibited conduct; penalty) the minor’s consent is specifically prohibited as a defense. “It is not a defense in a prosecution under this section that a minor consented to engage in the commercial sexual activity, sexually explicit performance, or the production of sexually oriented material . . .” Miss. Code Ann. § 97-3-54.1(1)(c).

Defendants charged under Miss. Code Ann. § 97-29-51(1)(c) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) are barred from raising the consent of a minor as a defense. Miss. Code Ann. §§ 97-29-51(1)(d), 97-29-51(2)(c),<sup>81</sup> and 97-29-51(4).

The minor’s consent is not listed as a defense, and lack of consent is not listed as an element of proof, in prosecuting charges brought under Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions), § 97-5-5 (Enticing child for concealment, prostitution or marriage) and § 97-5-27 (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact). However, none of these statutes specifically provide that the victim’s consent cannot be a defense.

Miss. Code Ann. § 97-3-65(2) (Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances) provides that “[n]either the victim’s consent nor the victim’s lack of chastity is a defense to a charge of statutory rape.” However, for the enhanced penalty in Miss. Code Ann. § 97-3-65(4)(a) to apply, the defendant must be shown to have used force or to have administered without

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the United States or any foreign country, which state or foreign country does not provide compensation for those injuries caused by an act for which compensation would be available had the act occurred in Mississippi, and which act results in personal injury or death to a victim for which punishment by fine, imprisonment or death may be imposed.” The definition “also include[s] federal offenses committed within the state that result in personal injury or death to a victim and which are punishable by fine, imprisonment or death, and delinquent acts as defined in Section 43-21-105 which result in personal injury or death to a victim and which, if committed by an adult, would be a crime punishable by fine, imprisonment or death.”

<sup>81</sup> See *supra* note 11.

consent “any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance.”

Miss. Code Ann. § 97-5-23(1) and § 97-5-23(2) (Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person) are violated whether the defendant acts “with or without the child’s consent.”

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

Under Miss. Code Ann. § 97-29-49(4) (Prostitution), minors under 18 are specifically immune from prosecution as trafficking victims. Miss. Code Ann. § 97-29-49(4) states,

If it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person, as defined by Section 97-3-54.4, that person shall be immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97-3-54.1(4)<sup>82</sup> shall be applicable.

Pursuant to Miss. Code Ann. § 97-3-54.4(p) (Human Trafficking Act; definitions), ‘[t]rafficked person’ means a person subjected to the practices prohibited by this act regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted, and is a term used interchangeably with the terms ‘victim,’ ‘victim of trafficking’ and ‘trafficking victim.’” Since anyone who “causes or attempts to cause a minor to engage in commercial sexual activity . . .” commits an offense under § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty), any minor who engages in prostitution would qualify for immunity under Miss. Code Ann. § 97-29-49(4) as a victim of trafficking.

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

**Child Identified as Abused/Neglected**

Under Miss. Code Ann. § 43-21-105(m) (Definitions),<sup>83</sup> an “abused child” is defined as “a child whose parent, guardian or custodian or any person responsible for his care or support,<sup>84</sup> whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment.”<sup>85</sup> Although “sexual exploitation” is not defined in this chapter, “sexual abuse” is defined as “obscene or pornographic

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<sup>82</sup> Miss. Code. Ann. § 97-3-54.1(4) states,

In addition to the mandatory reporting provisions contained in Section 97-5-51, any person who has reasonable cause to suspect a minor under the age of eighteen (18) is a trafficked person shall immediately make a report of the suspected child abuse or neglect to the Department of Human Services and to the Statewide Human Trafficking Coordinator. The Department of Human Services shall then immediately notify the law enforcement agency in the jurisdiction where the suspected child abuse or neglect occurred as required in Section 43-21-353, and the department shall also commence an initial investigation into the suspected abuse or neglect as required in Section 43-21-353 . . . .

<sup>84</sup> Pursuant to Miss. Code Ann. § 43-21-105(m), a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under Miss. Code Ann. § 43-21-105(m) the definition of caregiver under Miss. Code Ann. § 43-21-105(g) may be sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

<sup>85</sup> “However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.” Miss. Code Ann. § 43-21-105(m).

photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened." Miss. Code Ann. § 43-21-105(n).

*I. Initial Custody*

a. Authority for initial custody

Law enforcement officers who take minors suspected of being engaged in prostitution into custody must file a report of suspected child sexual abuse. Under Miss. Code Ann. § 97-29-49(3) (Prostitution), "any law enforcement officer who takes a minor under eighteen (18) years of age into custody for suspected prostitution shall immediately make a report to the Department of Human Services as required in Section 43-21-353 [Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations] for suspected child sexual abuse or neglect, and the department shall commence an initial investigation into suspected child sexual abuse or neglect as required in Section 43-21-353."

Special mandatory reporting requirements and procedures for assisting minor victims of sex trafficking are also provided under the human trafficking law. Miss. Code Ann. § 97-3-54.1(4)<sup>86</sup> (Mississippi Human Trafficking Act) states:

any person who has reasonable cause to suspect a minor under the age of eighteen (18) is a trafficked person shall immediately make a report of the suspected child abuse or neglect to the Department of Human Services and to the Statewide Human Trafficking Coordinator. The Department of Human Services shall then immediately notify the law enforcement agency in the jurisdiction where the suspected child abuse or neglect occurred as required in Section 43-21-353 [Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations], and the department shall also commence an initial investigation into the suspected abuse or neglect as required in Section 43-21-353. . .

In addition to the above, numerous individuals are required to report possible cases of abuse or neglect.<sup>87</sup> These reports may create the basis for the probable cause by which law enforcement may take a child into custody. Miss. Code Ann. § 43-21-353 (Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations) sets out the duty to report child abuse, which requires certain persons who have reasonable cause to suspect that a child is neglected or abused to report to the Department of Human Services, which then makes an immediate referral to the youth court intake unit. Miss. Code Ann. § 43-21-353(1) states,

Upon receiving a report that a child has been sexually abused, or burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving any report of abuse that would be a felony under state or federal law, the Department of Human Services shall immediately notify the law enforcement agency in whose jurisdiction the abuse occurred and shall notify the appropriate prosecutor within forty-eight (48) hours, and the Department of Human Services

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<sup>87</sup> Miss. Code Ann. § 97-5-51(5)(a)(i)<sup>87</sup> (Mississippi Child Protection Act of 2012) also stipulates a reporting requirement for "[w]hen an abortion is performed on a minor who is less than fourteen (14) years of age at the time of the abortion procedure, fetal tissue extracted during the abortion shall be collected in accordance with rules and regulations adopted pursuant to this section if it would be reasonable to suspect that the pregnancy being terminated is the result of a sex crime against a minor." Additionally, § 97-5-51(5)(a)(ii)<sup>87</sup> "[w]hen a minor who is under sixteen (16) years of age gives birth to an infant, umbilical cord blood shall be collected, if possible, in accordance with rules and regulations adopted pursuant to this section if it would be reasonable to suspect that the minor's pregnancy resulted from a sex crime against a minor."

shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report; this duty shall be of a continuing nature. The law enforcement agency and the Department of Human Services shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. The Department of Human Services shall advise the clerk of the youth court and the youth court prosecutor of all cases of abuse reported to the department within seventy-two (72) hours and shall update such report as information becomes available.

Additionally, pursuant to the "Mississippi Child Protection Act of 2012," mandatory reporting to law enforcement is also required for sex crimes against a minor. Miss. Code Ann. § 97-5-51(a)<sup>88</sup> defines "sex crime against a minor" as:

[A]ny offense under at least one (1) of the following statutes when committed by an adult against a minor who is under the age of sixteen (16):

- (i) Section 97-3-65 relating to rape;
- (ii) Section 97-3-71 relating to rape and assault with intent to ravish;
- (iii) Section 97-3-95 relating to sexual battery;
- (iv) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or incapacitated person or physically helpless person for lustful purposes;
- (v) Section 97-5-41 relating to carnal knowledge of a stepchild, adopted child or child of a cohabitating partner;
- (vi) Section 97-5-33 relating to the exploitation of children;
- (vii) Section 97-3-54.1(1) (c) relating to procuring sexual servitude of a minor;
- (viii) Section 43-47-18 relating to sexual abuse of a vulnerable person;
- (ix) Section 97-1-7 relating to the attempt to commit any of the offenses listed in this subsection.

Under Miss. Code Ann. § 97-5-51(2)(a), "[a] mandatory reporter shall make a report if it would be reasonable for the mandatory reporter to suspect that a sex crime against a minor has occurred." Miss. Code Ann. § 97-5-51(1)(b) defines "mandatory reporter" as "any of the following individuals performing their occupational duties: health care practitioner,<sup>89</sup> clergy member,<sup>90</sup> teaching or child care provider,<sup>91</sup> law enforcement officer, or commercial image processor."<sup>92</sup>

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<sup>89</sup> Miss Code Ann. § 97-5-51(1)(c) defines "health care practitioner" as "any individual who provides health care services, including a physician, surgeon, physical therapist, psychiatrist, psychologist, medical resident, medical intern, hospital staff member, licensed nurse, midwife, and emergency medical technician or paramedic."

<sup>90</sup> Miss Code Ann. § 97-5-51(1)(d) defines "clergy member" as "any priest, rabbi or duly ordained deacon or minister."

<sup>91</sup> Miss Code Ann. § 97-5-51(1)(e) defines "teaching or child care provider" as "anyone who provides training or supervision of a minor under the age of sixteen (16), including a teacher, teacher's aide, principal or staff member of a public or private school, social worker, probation officer, foster home parent, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider."

<sup>92</sup> Miss Code Ann. § 97-5-51(1)(f) defines "commercial image processor" as "any person who, for compensation:

- (i) develops exposed photographic film into negatives, slides or prints;
- (ii) makes prints from negatives or slides; or
- (iii) processed or stores digital media or images from any digital process, including, but not limited to, website applications, photography, live streaming of video, posting, creation of power points or any other

Since the reporting system established under the “Mississippi Child Protection Act of 2012” focuses on notification of law enforcement<sup>93</sup> without specifying a protective response for minor victims, such as mandatory referrals for treatment and specialized services, a minor would still have to be identified and reported as abused under Miss. Code Ann. § 43-21-353 in order to come under the jurisdiction of the Department of Human Services. However, this may be accomplished in some cases because the reporting requirement under Miss. Code Ann. § 97-5-51(2)(a) will be met if the report is made “in good faith” to the Department of Human Services instead of reporting directly to law enforcement.<sup>94</sup>

Pursuant to Miss. Code Ann. § 43-21-301(2) (Custody orders), “Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.” Custody is necessary when a child is in danger or is endangering another, when it is to secure the child’s appearance in court, or when there is no parent or guardian available. Miss. Code Ann. § 43-21-301(3)(a)(ii). However, pursuant to Miss. Code Ann. § 43-21-303 (Taking into custody without a custody order), a child may be taken into custody without a custody order if:

- ....
- (b) [A] law enforcement officer or an agent of the department of public welfare may take a child into custody if:
    - (i) there is probable cause to believe that the child is in immediate danger of personal harm; and
    - (ii) such law enforcement officer or agent has probable cause to believe that immediate custody is necessary as defined in Section 43-21-301(3)(b); and
    - (iii) such law enforcement officer or agent can find no reasonable alternative to custody.

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b. Placement

Pursuant to Miss Code Ann. § 43-21-303(2) (Taking into custody without a custody order), “When it is necessary to take a child into custody, the least restrictive custody should be selected.” Additionally, a child may not be held for more than 24 hours, “unless the judge or his designee authorizes temporary custody.” Miss Code Ann. § 43-21-303(4). Mississippi code does not directly state where the child may be held during the

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means of intellectual property communication or media including conversion or manipulation of still shots or video into a digital show stored on a photography site or media storage site.”

<sup>93</sup> The procedure for the mandatory reporting under Miss. Code Ann. § 97-5-51(3)(a) is as follows:

A report under subsection (2) must be made immediately to the law enforcement agency in whose jurisdiction the reporter believes the sex crime against the minor occurred. Except as otherwise provided in this subsection (3), a mandatory reporter may not delegate to any other person the responsibility to report, but shall make the report personally.

<sup>94</sup> Miss. Code Ann. § 97-5-51(3) provides:

(3)(a)(i) The reporting requirement under this subsection (3) is satisfied if a mandatory reporter in good faith reports a suspected sex crime against a minor to the Department of Human Services under Section 43-21-353.

(ii) The reporting requirement under this subsection (3) is satisfied if a mandatory reporter reports a suspected sex crime against a minor by following a reporting procedure that is imposed:

- (1) By state agency rule as part of a licensure of any person or entity holding a state license to provide services that include the treatment or education of abused or neglected children; or
- (2) By statute.

initial custody. However, if a child is placed in temporary custody, pursuant to Miss. Code Ann. § 43-21-301, the court is required to file a written order, which

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(c) . . . state[s] the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and . . . also state[s] that (i) reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody. . . .

## *II. Process Following Initial Custody*

Pursuant to Miss. Code Ann. § 43-21-303 (Taking into custody without a custody order), a child may only be detained for 24 hours unless a judge allows for custody to be extended. Additionally, under Miss. Code Ann. § 43-21-301(3), a judge or his designee may order the custody of a child for up to 48 hours if there is probable cause that the child is within the court's jurisdiction, if custody is necessary, and there is no reasonable alternative. Miss. Code Ann. § 43-21-301(6)(a) (Custody orders).

A petition must be filed within 5 days of the shelter hearing if the child is detained and 10 days if the child is not in continued custody. § 43-21-451 (Commencement of formal proceedings). The filing of the petition, pursuant to Miss. Code Ann. § 43-21-151 gives the youth court "exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child," except in certain circumstances.

Additionally, Miss. Code Ann. § 43-15-51 (Formation of multidisciplinary child protection teams to evaluate and investigate reports of child abuse and neglect; membership; order of Youth Court prerequisite to formation of teams; participation by experts and child advocacy centers; disclosure of information obtained from task force meetings prohibited) provides for the creation of multidisciplinary teams to intervene in alleged instances of severe or potentially felonious exploitation, maltreatment, or physical or sexual child abuse.<sup>95</sup>

## *III. Placement Process Pending Adjudication/Investigation*

Pursuant to Miss. Code Ann. § 43-21-315(1) (Designation of facilities), the court designates the facility where the juvenile is placed. Additionally, specifically states that

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<sup>95</sup> Under Miss. Code Ann. § 43-15-51, "district attorneys or the Department of Human Services may initiate formal cooperative agreements with the appropriate agencies to create multidisciplinary child protection teams in order to implement a coordinated multidisciplinary team approach to intervention in reports involving alleged severe or potential felony child physical or sexual abuse, exploitation, or maltreatment. . . . The purpose of the team or task force shall be to assist in the evaluation and investigation of reports and to provide consultation and coordination for agencies involved in child protection cases." Miss. Code Ann. § 43-15-51(1). The "team or task force must be authorized by court order from the appropriate Youth Court . . . [which] will designate which agencies will participate in the cooperative multidisciplinary team." Miss. Code Ann. § 43-15-51(2). Under subsection 3(a), "Teams created under this section may invite other persons to serve on the team who have knowledge of and experience in child abuse and neglect matters. These persons may include licensed mental and physical health practitioners and physicians, dentists, representatives of the district attorney's office and the Attorney General's office, experts in the assessment and treatment of substance abuse or sexual abuse, the victim assistance coordinator of the district attorney's office and staff members of a child advocacy center."

(4) After a child is ordered into custody, the youth court may arrange for the custody of the child with any private institution or agency caring for children, may commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq., or may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of such child . . . .

#### *IV. Adjudication or Referral to Alternate Process*

Pursuant to Miss. Code Ann. § 43-21-551 (Scheduling of adjudicatory hearings), “an adjudicatory hearing shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is . . . a neglected child or an abused child.” However, if the child is detained pending the adjudication, the hearing must be held within 21 days of the initial detention. Miss Code. Ann. § 43-21-551(2).

At the adjudication hearing, under Miss. Code Ann. § 43-21-561 (Adjudication of status, standard of proof, and findings), “. . . (3) If the court finds from a preponderance of the evidence that the child is a neglected child, an abused child, a dependent child or a child in need of special care the youth court shall enter an order adjudicating the child to be a neglected child, an abused child, dependent child or a child in need of special care.”

#### *V. Outcomes*

At a disposition hearing, the youth court determines if a child is “a delinquent child, a child in need of supervision, a neglected child or an abused child.” Miss. Code Ann. § 43-21-603(6) (Disposition hearing procedure). Before entering a disposition of a neglect or abuse case, under Miss. Code Ann. § 43-21-603(5) (Disposition hearing procedure) the youth court must consider, among other things, “[t]he manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse.” Miss. Code Ann. § 43-21-609 (Dispositional alternatives in neglect and abuse cases) sets out the options for disposition once the child is adjudicated neglected or abused. The court may, “giving precedence in the following sequence,” order the following:

- (a) Release the child without further action;
- (b) Place the child in the custody of his parents, a relative or other person subject to any conditions and limitations as the court may prescribe. . . .
- . . . .
- (d) Order youth court personnel, the Department of Human Services or child care agencies to assist the child and the child’s parent, guardian or custodian to secure social or medical services to provide proper supervision and care of the child;
- (e) Give legal custody of the child to any of the following but in no event to any state training school:
  - (i) The Department of Human Services for appropriate placement; or
  - (ii) Any private or public organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court. . . .

#### **Child Identified as In Need of Services (“CHINS”)**

A child in need of services is defined under Miss. Code Ann. § 43-21-105 (Definitions), which states that

- . . . .
- (k) "Child in need of supervision" means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

- (i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or
- (ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or
- (iii) Runs away from home without good cause; or
- (iv) Has committed a delinquent act or acts.

## *I. Initial Custody*

### *a. Authority for initial custody*

Pursuant to Miss. Code Ann. § 43-21-301(2) (Custody orders), “Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.” Generally, a warrant is required to take a child into custody; however, pursuant to Miss Code Ann. § 43-21-303 (Taking into custody without a custody order), a child may be taken into custody by law enforcement without a warrant if, “grounds exist for the arrest of an adult in identical circumstances,” or there is probable cause to believe the child is in immediate danger of personal harm,” and, in either circumstance, there is “no reasonable alternative to custody.”

### *b. Placement*

Pursuant to Miss Code Ann. § 43-21-303(2), “When it is necessary to take a child into custody, the least restrictive custody should be selected.” Additionally, a child may not be held for more than 24 hours, “unless the judge or his designee authorizes temporary custody.” Miss Code Ann. § 43-21-303(4). Mississippi code does not directly state where the child may be held during the initial custody. However, it does state that, “No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.” Miss. Code Ann. § 43-21-301(6)(b).

Further, under Miss. Code Ann. § 43-21-301(3), a judge or his designee may order the custody of a child for up to 48 hours if there is probable cause that the child is within the court’s jurisdiction, if custody is necessary, and there is no reasonable alternative, except “[n]o child who has been accused or adjudicated of any offense that would not be a crime if committed by an adult shall be placed in an adult jail or lockup” and “[a]n accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance.” Miss. Code Ann. § 43-21-301(6)(a).

## *II. Process Following Initial Custody*

After initial custody there are a number scenarios that may occur for a DMST victim that has been identified as possibly a child in need of supervision. An investigation into suspected neglect may occur, the child may be released or continued in detention, or a petition alleging that the child is in need of supervision may be filed.

A “health care practitioner, clergy member, teaching or child care provider, law enforcement officer, or commercial image processor,” is required to report a suspected sex crime committed against a minor.

Miss. Code Ann. § 97-5-51<sup>96</sup> (Mandatory reporting of sex crimes against minors; definitions; procedure; report contents; forensic samples; penalties). If a child has been identified as a potential child in need of supervision an additional report may be required to be created when the child is taken into custody for a suspected involvement in prostitution. Specifically, pursuant to Miss. Code Ann. § 97-29-49 (Prostitution),

. . . .  
(3) . . . [A]ny law enforcement officer who takes a minor under eighteen (18) years of age into custody for suspected prostitution shall immediately make a report to the Department of Human Services as required in Section 43-21-353<sup>97</sup> for suspected child sexual abuse or neglect, and the department shall commence an initial investigation into suspected child sexual abuse or neglect as required in Section 43-21-353.<sup>98</sup>

(4) If it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person, as defined by Section 97-3-54.4,<sup>99</sup> that person shall be immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97-3-54.1(4)<sup>100</sup> shall be applicable.

Lastly, under Miss. Code Ann. § 43-21-451 (Commencement of formal proceedings), “All proceedings seeking an adjudication of . . . a child in need of supervision . . . shall be initiated by the filing of a petition.” This petition must be filed, “within five (5) days from the date of a detention hearing or shelter hearing continuing custody,” or “in noncustody cases the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition.” Miss. Code Ann. § 43-21-451. Additionally, Miss. Code Ann. § 43-21-151 gives the youth court “exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child,” except in certain circumstances.

### *III. Placement Process Pending Adjudication/Investigation*

Custody is necessary when a child is in danger or is endangering another, when it is to secure the child’s appearance in court, or when there is no parent or guardian available. Miss. Code Ann. § 43-21-301(3)(a)(ii) (Custody orders). However, pursuant to Miss. Code Ann. § 43-21-301(6)(a), “An accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure detention for violating a valid court order pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.”

Pursuant to Miss. Code Ann. § 43-21-315 (Designation of facilities), the youth court, “designate[s] the available detention or shelter facilities to which children shall be delivered when taken into custody.” A child may not be placed, “in any jail or place of detention of adults by any person or court unless the

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<sup>97</sup> Miss. Code Ann. § 43-21-353 (Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations) sets out the duty to report child abuse, which requires certain persons who have reasonable cause to suspect that a child is neglected or abused to report to the Department of Human Services, which then makes an immediate referral to the youth court intake unit.

<sup>98</sup> See *supra* section 5.4(I).

<sup>99</sup> See *supra* Section 1.1 for definition of “trafficked persons,” pursuant to Miss. Code Ann. § 97-3-54.4 (Anti-Human trafficking act; definitions).

<sup>100</sup> See *supra* Section 1.1.

child shall be physically segregated” from the adult inmates. Miss Code Ann. § 43-21-315(2). Additionally, a court may order a child to be placed in custody, “with any private institution or agency caring for children, may commit the child to the Department of Mental Health . . . or may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of such child.” Miss Code. Ann. § 43-21-315(4).

#### *IV. Adjudication or Referral to Alternate Process*

Pursuant to Miss. Code Ann. § 43-21-551 (Scheduling of adjudicatory hearings), “an adjudicatory hearing shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is . . . a child in need of supervision. . . .” However, if the child is detained pending the adjudication, the hearing must be held within 21 days of the initial detention. Miss Code. Ann. § 43-21-551(2).

At the adjudication hearing, under Miss. Code Ann. § 43-21-561 (Adjudication of status, standard of proof, and findings), “(1) If the youth court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision. . . .” However, pursuant to Miss. Code Ann. § 97-29-49 (Prostitution), “If it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person . . . that person shall be immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97-3-54.1(4) shall be applicable.”

#### *V. Outcomes*

At a disposition hearing, the youth court determines if a child is “a delinquent child, a child in need of supervision, a neglected child or an abused child.” Miss. Code Ann. § 43-21-603(6) (Disposition hearing procedure). A child in need of services may, among other dispositions, which are listed in the statute in “giving precedence in the following sequence,” be placed under youth court supervision pursuant to Miss. Code Ann. § 43-21-607(c), subject to “terms of supervision which may include participation in a constructive program of service or education or restitution not in excess of actual damages” under Miss. Code Ann. § 43-21-607(e), or placed in the custody of an entity other than a state training school pursuant to Miss. Code Ann. § 43-21-607(f), including a wilderness training program provided in Miss. Code Ann. § 43-21-625(1). Additionally, a trafficked child may be adjudicated in need of supervision and placed in a juvenile detention center pursuant to Miss. Code Ann. § 43-21-607 (Dispositional alternatives in children in need of supervision cases).

### **Child Identified as Delinquent**

Pursuant to Miss. Code Ann. § 43-21-105 (Definitions), a delinquent child is defined as a child who is at least 10 years of age and committed a delinquent act. A delinquent act is defined as, “any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. . . .” Miss. Code Ann. § 43-21-105(j) (Definitions). A victim of domestic minor sex trafficking who is taken into custody for suspected prostitution, however, is immune from adjudication as a juvenile delinquent and must be reported immediately to the Department of Health and Human Services for suspected child sexual abuse. Miss. Code Ann. § 97-29-49(3) (Prostitution).

#### *I. Initial Custody*

- a. Authority for initial custody

Pursuant to Miss. Code Ann. § 43-21-301(2) (Custody orders), “Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.” Generally, a warrant is required to take a child into custody; however, pursuant to Miss Code Ann. § 43-21-303 (Taking into custody without a custody order), a child may be taken into custody by law enforcement without a warrant if, “grounds exist for the arrest of an adult in identical circumstances,” or there is probable cause to believe the child is in immediate danger of personal harm,” and, in either circumstance, there is “no reasonable alternative to custody.”

#### b. Placement

Pursuant to Miss Code Ann. § 43-21-303(2), “When it is necessary to take a child into custody, the least restrictive custody should be selected.” Additionally, a child may not be held for more than 24 hours, “unless the judge or his designee authorizes temporary custody.” Miss Code Ann. § 43-21-303(4). Mississippi code does not directly state where the child may be held during the initial custody. However, it does state that, “No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.” Miss. Code Ann. § 43-21-301(6)(b).

Further, under Miss. Code Ann. § 43-21-301(3), a judge or his designee may order the custody of a child for up to 48 hours if there is probable cause that the child is within the court’s jurisdiction, if custody is necessary, and there is no reasonable alternative, except “[n]o child who has been accused or adjudicated of any offense that would not be a crime if committed by an adult shall be placed in an adult jail or lockup” and “[a]n accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance.” Miss. Code Ann. § 43-21-301(6)(a).

## II. *Process Following Initial Custody*

After initial custody there are a number scenarios that may occur for a DMST victim that has been identified as a delinquent child. An investigation into suspected neglect may occur, the child may be released or continued in detention, or a petition alleging that the child is delinquent may be filed.

A “health care practitioner, clergy member, teaching or child care provider, law enforcement officer, or commercial image processor,” is required to report a suspected sex crime committed against a minor. Miss. Code Ann. § 97-5-51<sup>101</sup> (Mandatory reporting of sex crimes against minors; definitions; procedure; report contents; forensic samples; penalties). If a child has been identified as a potential delinquent child an additional report may be required to be created when the child is taken into custody for a suspected involvement in prostitution. Specifically, pursuant to Miss. Code Ann. § 97-29-49 (Prostitution),<sup>102</sup>

....

(3) . . . [A]ny law enforcement officer who takes a minor under eighteen (18) years of age into custody for suspected prostitution shall immediately make a report to the Department of Human Services as required in Section 43-21-353<sup>103</sup> for suspected child sexual abuse or neglect, and the

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<sup>103</sup> Miss. Code Ann. § 43-21-353 (Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations) sets out the duty to report child abuse, which requires certain persons who have reasonable cause to suspect that a child is neglected or abused to report to the Department of Human Services, which then makes an immediate referral to the youth court intake unit.

department shall commence an initial investigation into suspected child sexual abuse or neglect as required in Section 43-21-353.<sup>104</sup>

(4) If it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person, as defined by Section 97-3-54.4<sup>105</sup>, that person shall be immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97-3-54.1(4)<sup>106</sup> shall be applicable.

Under Miss. Code Ann. § 43-21-451 (Commencement of formal proceedings), “All proceedings seeking an adjudication of a delinquent child . . . shall be initiated by the filing of a petition.” This petition must be filed, “within five (5) days from the date of a detention hearing or shelter hearing continuing custody,” or “in noncustody cases the petition shall be filed within ten (10) days of the court order authorizing the filing of a petition.” Miss. Code Ann. § 43-21-451. Additionally, Miss. Code Ann. § 43-21-151 gives the youth court “exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child,” except in certain circumstances. Additionally, Miss. Code Ann. § 43-21-151 gives the youth court “exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child,” except in certain circumstances.

### *III. Placement Process Pending Adjudication/Investigation*

Custody is necessary when a child is in danger or is endangering another, when it is to secure the child’s appearance in court, or when there is no parent or guardian available. Miss. Code Ann. § 43-21-301(3)(a)(ii). However, pursuant to Miss. Code Ann. § 43-21-301(6)(a), “An accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure detention for violating a valid court order pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.”

Pursuant to Miss. Code Ann. § 43-21-315 (Designation of facilities), the youth court, “designat[e]s] the available detention or shelter facilities to which children shall be delivered when taken into custody.” A child may not be placed, “in any jail or place of detention of adults by any person or court unless the child shall be physically segregated” from the adult inmates. Miss Code Ann. § 43-21-315(2). Additionally, a court may order a child to be placed in custody, “with any private institution or agency caring for children, may commit the child to the Department of Mental Health . . . or may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of such child.” Miss Code. Ann. § 43-21-315(4).

### *IV. Adjudication or Referral to Alternate Process*

Pursuant to Miss. Code Ann. § 43-21-551 (Scheduling of adjudicatory hearings), “an adjudicatory hearing shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a delinquent child. . . .” However, if the child is detained

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<sup>104</sup> See *supra* 5.4(I).

<sup>105</sup> See *supra* Section 1.1 for definition of “trafficked persons,” pursuant to Miss. Code Ann. § 97-3-54.4 (Anti-Human trafficking act; definitions).

<sup>106</sup> See *supra* Section 1.1.

pending the adjudication, the hearing must be held within 21 days of the initial detention. Miss Code Ann. § 43-21-551(2).

At the adjudication hearing, under Miss. Code Ann. § 43-21-561 (Adjudication of status, standard of proof, and findings), “(1) If the youth court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision. . . .” However, pursuant to Miss. Code Ann. § 97-29-49 (Prostitution), “If it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person . . . that person shall be immune from prosecution for prostitution as a juvenile or adult and, if a minor, the provisions of Section 97-3-54.1(4) shall be applicable.”

## V. *Outcomes*

At a disposition hearing, the youth court determines if a child is “a delinquent child, a child in need of supervision, a neglected child or an abused child.” Miss. Code Ann. § 43-21-603(6) (Disposition hearing procedure). If a child is adjudicated as a delinquent,<sup>107</sup> Miss. Code Ann. § 43-21-605 sets out disposition options. Miss. Code Ann. § 43-21-627 (Alternative work program; qualified offenders; volunteers; supervision; removal from program) provides an alternative work program for first-time non-violent offenders and Miss. Code Ann. § 43-21-625(1) provides a wilderness training program for “first time youth offenders sentenced or classified as delinquency cases or as children in need of supervision.” However, under Miss. Code Ann. § 43-21-605(1)(l), a child adjudicated delinquent may be sent to a juvenile detention center. Such detention must be reviewed after 45 days and cannot exceed 90 days. “No first-time nonviolent youth offender shall be committed to a detention center for a period in excess of ninety (90) days until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore commitment to a detention center is appropriate.” Miss. Code Ann. § 43-21-605(1)(l). Under subsection (1)(l)(i)-(iii), “If a child is committed to a detention center for ninety (90) days, the disposition order shall meet the following requirements: (i) The disposition order is the least restrictive alternative appropriate to the best interest of the child and the community; (ii) The disposition order allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and (iii) The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court.”

5.4.1 Recommendation: Enact a law to ensure that trafficking victims directed away from the juvenile justice process can access specialized services and placement.

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

Miss. Code Ann. § 43-21-105(m)<sup>108</sup> (Definitions) defines an “abused child” as “a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental physical injury or other maltreatment.” Although “sexual exploitation” is not specifically defined in Miss. Code Ann. § 43-21-105, “sexual abuse” is defined at Miss. Code Ann. § 43-21-105(n) as

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<sup>107</sup> Miss. Code Ann. § 43-21-105(i) defines “delinquent child” as “a child who has reached his tenth birthday and who has committed a delinquent act.”

“obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child’s health or welfare is harmed or threatened.”

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

Miss. Code Ann. § 43-21-105 (Definitions), which provides definitions for Mississippi’s chapter 21 (Youth court), “unless the context clearly otherwise requires,” defines “custodian” as “any person having the present care or custody of a child whether such person be a parent or otherwise.” Miss. Code Ann. § 43-21-105(g). “Custody” is defined as “the physical possession of the child by any person” at Miss. Code Ann. § 43-21-105(q). This definition may be broad enough to include traffickers. Additionally, “any person responsible for care or support” is defined as “the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.” Miss. Code Ann. § 43-21-105(v).

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

A prostituted child could fall under one or more of the ineligibility factors for compensation under Miss. Code Ann. § 99-41-17 (Compensation awards; conditions; exceptions; reduction). Pursuant to Miss. Code Ann. § 99-41-17(1),<sup>109</sup>

1. Compensation shall not be awarded under this chapter:
  - (a) Unless the criminally injurious conduct occurred after July 1, 1991;
  - (b) Unless the claim has been filed with the director within thirty-six (36) months after the crime occurred, or in cases of child sexual abuse, within thirty-six (36) months after the crime was reported to law enforcement or the Department of Human Services, but in no event later than the child’s twenty-fifth birthday. For good cause, the director may extend the time period allowed for filing a claim for an additional period not to exceed twelve (12) months;
  - (c) To a claimant or victim who was the offender or an accomplice to the offender, or, except in cases of children under the age of consent as specified in Section 97-3-65 [Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances], 97-3-97 [Sexual battery; definitions] or 97-5-23 [Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person], Mississippi Code of 1972, who encouraged or in any way knowingly participated in criminally injurious conduct;  
.....
  - (e) Unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or unless it is found that there was good cause for the failure to report within such time;  
.....
  - (j) To any claimant or victim who has been under the actual or constructive supervision of a department of corrections for a felony conviction within five (5) years prior to the injury or death for which application has been made;
  - (k) To any claimant or victim who, at the time of the criminally injurious conduct upon which the claim for compensation is based, engaged in conduct unrelated to the crime upon which the claim

for compensation is based that either was (i) a felony, or (ii) a delinquent act which, if committed by an adult, would constitute a felony.

(l) To any claimant or victim who knowingly furnishes any false and misleading information or knowingly fails or omits to disclose a material fact or circumstance.

Miss. Code Ann. § 99-41-17(2)-(4)<sup>110</sup> provides,

2. Compensation otherwise payable to a claimant shall be diminished to the extent:
  - (a) That the economic loss is recouped from other sources, including collateral sources; and
  - (b) Of the degree of responsibility for the cause of injury or death attributable to the victim or claimant.
3. Upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies and prosecuting attorneys, an award of compensation may be denied, withdrawn or reduced.
4. Compensation otherwise payable to a claimant or victim may be denied or reduced to a claimant or victim who, at the time of the crime upon which the claim for compensation is based, was engaging in or attempting to engage in other unlawful activity unrelated to the crime upon which the claim for compensation is based.

5.7.1 Recommendation: Amend Miss. Code Ann. § 99-41-17 (The Crime Victims Protection Act) to expressly provide compensation to minor victims of commercial sexual exploitation without regard to the listed ineligibility factors when the crimes are committed as part of the trafficking and create a good cause exception for the ineligibility factor in Miss. Code Ann. § 99-41-17(3).

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

Miss. Code Ann. § 13-1-405 (Use of closed circuit television to show child's testimony) provides for the use of closed circuit television for certain child victims or witnesses. Subsection (1) states, "Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her, or that he or she witnessed its perpetration upon another child, be taken outside of the courtroom and shown in the courtroom by means of closed circuit television, upon a finding based on specific behavioral indicators described in Section 13-1-411,<sup>111</sup> that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court." Pursuant to Miss. Code Ann. § 13-1-405(2), "The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, or any party to the case. The court may also raise the matter on its own motion." The court may exclude the defendant from the room where questioning is conducted if his presence is likely to cause "traumatic emotional or mental distress to the child." Miss. Code Ann. § 13-1-405(4). However, "In any case in which the defendant is so excluded, arrangements

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<sup>110</sup> See *supra* note 109.

<sup>111</sup> Miss. Code Ann. § 13-1-411 (Behavioral indicators used to determine applicability of evidentiary provisions), states,

The phrase "specific behavioral indicators" when used herein to refer to evidence (regardless of admissibility) that a child has suffered physical or sexual abuse or might suffer traumatic emotional or mental distress if required to testify in court, shall include, by way of illustration and not of limitation, indications of physical or psychological trauma which are (a) well defined, (b) positively correlated or causally linked with the likelihood of traumatic emotional or mental distress on testifying, and (c) rarely, if at all, present in children who have not suffered child abuse, considering the combination or intensity present in the child at issue.

The evidence described in this section shall be provided by competent witnesses, including but not limited to child psychologists, child psychiatrists and other qualified witnesses.

must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant and the jury must be able to observe the demeanor of the child witness at all times during the questioning.” Miss. Code Ann. § 13-1-405(4).

Miss. Code Ann. § 99-1-27 (Victim of sex offenses not required to submit to truth telling devices as condition for proceeding with investigation of offense) provides that victims of sex offenses are not required to submit to “truth telling device[s],” such as polygraph tests, for investigation of the offense to proceed. Miss. Code Ann. § 99-1-27(1), (2). This provision provides in part, “[n]o law enforcement officer, prosecutor or other government official shall ask or require an adult, youth or child victim of a sex offense [as defined in Miss. Code Ann. § 45-33-23(h)] to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of the offense.” Miss. Code Ann. § 99-1-27(1). The definition of “sex offense” provided in Miss. Code Ann. 45-33-23(h) includes the exploitation crimes in Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) and procuring sexual servitude of a minor in Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty).

The rape statute at Miss. Code Ann. § 97-3-68 (Rape; procedure for introducing evidence of sexual conduct of complaining witness; “complaining witness” defined) provides some evidentiary protection for complaining witnesses. Under this statute, the defense may not attack the complaining witness’s credibility by raising evidence of sexual conduct unless the defense first files a written motion accompanied by an affidavit with an offer of the proof regarding the evidence’s relevance. Miss. Code Ann. § 97-3-68 (1)(a). This protection applies to prosecutions under Miss. Code Ann. § 97-3-65 (Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances) and § 97-3-71 (Rape; assault with intent to ravish). Miss. Code Ann. § 97-3-68 (1). The court decides whether the offer of proof is sufficient to show that the evidence is relevant, and if the court finds it sufficiently relevant, the witness may be questioned in a closed hearing in chambers, outside the jury’s presence. Miss. Code Ann. § 97-3-68 (1)(c). After hearing the evidence, the court will then issue an order regarding what evidence the defense may offer. Miss. Code Ann. § 97-3-68(1)(d). This protection from inquiry relating to past sexual behavior is specifically extended to victims of human trafficking during a prosecution or civil action for damages under Miss. Code Ann. § 97-3-54.6(6)112 (Injunctive and other relief for victims of trafficking; confidentiality) which states,

In a prosecution or civil action for damages for an offense under this act [Mississippi Human Trafficking Act] in which there is evidence that the alleged victim was subjected to sexual servitude, reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible, unless admitted in accordance with the Mississippi Rules of Evidence.

Further, law enforcement and prosecutors are responsible for taking “all reasonable efforts to keep the identity of the victim and the victim's family confidential by ensuring that the names and identifying information of those individuals are not disclosed to the public.” Miss. Code Ann. § 97-3-54.6(7).

The Mississippi Crime Victims’ Bill of Rights, Miss. Code Ann. § 99-43-1 to § 99-43-49, sets out procedures intended to protect crime victims during the criminal justice process. Several provisions have particular relevance for minor victims of commercial sexual exploitation. Miss Code Ann. § 99-43-5(3) provides that “[i]f the victim is a minor, the parent, guardian or other immediate family of the victim, or a designated representative as determined by the court, may exercise all of the rights of the victim on behalf of the victim.” If practical, the court must provide a waiting area for the victim separate from the defendant and the defendant’s relatives and witnesses. Miss Code Ann. § 99-43-23 (Separate waiting area; minimizing contact with defendant, defendant’s relatives and defense witnesses) states, “If a separate waiting area is not available, or its use impractical, the court shall minimize contact of the victim with the defendant, relatives of the defendant, and defense witnesses during court proceedings.” Under Miss. Code Ann. § 99-43-25(1) (Victim residence and

identification information; petition, hearing and confidentiality), where the victim is reasonably apprehensive of “acts or threats of physical violence or intimidation by the defendant, the family of the defendant, or by anyone at the direction of the defendant, against the victim or the immediate family of the victim, the prosecutor may petition the court to direct that the victim or any other witness not be compelled to testify during pre-trial proceedings or in any trial, facts that could divulge the identity, residence, or place of employment of the victim, or other related information, without consent of the victim unless necessary to the prosecution of the criminal proceeding.” Under Miss. Code Ann. § 99-43-31 (Victim impact statements to probation officers; duty to consider victim impact), the victim may also “submit a written impact statement or make an oral impact statement to the probation officer for use in preparing a pre-sentence report. The probation officer shall consider the economic, physical, and psychological impact that the criminal offense has had on the victim and the immediate family of the victim.”

The Crime Victims’ Bill of Rights also requires prosecutors to confer with victims before the start of the trial and before disposition of the case pursuant to Miss. Code Ann. § 99-43-11 (Prosecutor’s duty to confer with victim prior to disposition) and § 99-43-13 (Prosecutor’s duty to confer with victim prior to trial; confidentiality). Under Miss. Code Ann. § 99-43-29 (Notice regarding disposition and sentencing), prosecutors shall keep victims informed, including whether there has been an acquittal, conviction or other disposition of the case.\

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.*

Certain criminal procedure and youth court laws provide for expungement or sealing of records for offenses potentially affecting minor victims of commercial sexual exploitation.<sup>113</sup>

Arrest records may be expunged if “the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.” Miss. Code Ann. § 99-19-71(4). A person may also apply for expungement under Miss. Code Ann. § 99-15-59 (Expunction of misdemeanor charges) if a person “is arrested, issued a citation, or held for any misdemeanor and not formally charged or prosecuted with an offense within twelve (12) months of arrest” or the charge is dismissed.

The youth court may order that children’s records be sealed under Miss. Code Ann. § 43-21-263(1) (Sealing of records) “(a) if the child who was the subject of the cause has attained twenty (20) years of age; (b) if the youth court dismisses the cause; or (c) if the youth court sets aside an adjudication in the cause.” Subsection (2) states, “The youth court may, at any time, upon its own motion or upon application of a party to a youth court cause, order the sealing or unsealing of the records involving children.” Records involving children, except medical or mental health examinations, may be destroyed by order of the youth court under Miss. Code Ann. § 43-21-265. In addition, Miss. Code Ann. § 43-21-261 provides rules for the disclosure of records involving

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<sup>113</sup> Human trafficking victims are eligible for vacation of human trafficking convictions under Miss. Code Ann. § 97-3-54.6(5) (Injunctive and other relief for victims of trafficking; confidentiality), which states,

At any time after a conviction under this act [Mississippi Human Trafficking Act], the court in which the conviction was entered may, upon appropriate motion, vacate the conviction if the court finds the defendant's participation in the offense was the result of being a victim. Official documentation from a federal, state or local government agency as to the defendant's status as a victim at the time of the offense creates a presumption that the defendant's participation in the offense was a result of being a victim, but official documentation is not required to grant a motion under this subsection.

children or an adult who was formerly the subject of a youth court delinquency proceeding, with some exceptions, are to be kept confidential.<sup>114</sup>

*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.*

The Mississippi Human Trafficking Act, Miss. Code Ann. § 97-3-54.6,<sup>115</sup> provides mandatory restitution and civil remedies for victims of any offense under the Act. Miss. Code Ann. § 97-3-54.6 states,

(2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.

(3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

(4) The application of one (1) civil remedy under any provision of this act shall not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental.

However, the exploitation laws, Miss. Code Ann. § 97-5-31 to § 97-5-37 (Exploitation of children), do not specifically provide restitution for victims or a statutory civil cause of action. Miss Code Ann. § 99-37-3 (Imposition and amount of restitution) permits a court, at its discretion, to order restitution for victims of any crime who have incurred pecuniary damages. “Pecuniary damages” is defined in Miss. Code Ann. § 99-37-1(b) as “all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant’s criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.” Restitution is capped at \$5,000.00, and the discretionary decision by the court must take into account, among other things, the defendant’s ability to pay. Miss Code Ann. § 99-37-3(1), (2).

Miss Code Ann. § 97-43-9(6), codified in the chapter entitled “Racketeer Influenced and Corrupt Organization Act,” provides a cause of action for persons injured as a result of violations of the chapter. Under this provision, “Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages.” Miss Code Ann. § 97-43-9(6). The person can also recover reasonable attorneys’ fees, investigation costs, and litigation costs. Miss Code Ann. § 97-43-9(6). Pursuant to Miss. Code Ann. § 97-43-9(6)(b), a civil plaintiff’s rights to the assets would be superior to the state’s forfeiture rights.

Miss. Code Ann. § 11-7-11 (Action for seduction of a child) states, “A parent may bring an action for the seduction of a child, although such child be not living with nor in the service of the plaintiff, and though there be no loss of service; but a recovery by the parent or child shall bar any other action for the same cause.”

*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.*

With regard to civil claims, Miss. Code Ann. § 15-1-59 (Saving in favor of persons under disabilities) provides that the statute of limitations is tolled until after a minor reaches the age of majority.

With regard to criminal sex trafficking offenses, Miss. Code Ann. § 99-1-5<sup>116</sup> (Limitations; exceptions) eliminates the statute of limitations for the following sex offenses: “rape, . . . felonious abuse or battery of a child as described in Section 97-5-39 [Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child], touching or handling a child for lustful purposes as described in Section 97-5-23 [Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual conduct], sexual battery of a child as described in Section 97-3-95(1)(c), (d) or (2) [Sexual battery], or exploitation of children as described in Section 97-5-33 [Exploitation of children; prohibitions], promoting prostitution under Section 97-29-51(2) when the person involved is a minor, or for any human trafficking offense described in Section 97-3-54.1(1)(a), (1)(b) or (1)(c) [Mississippi Human Trafficking Act; offenses], Section 97-3-54.2 [Human Trafficking Act; destruction, concealment, or confiscation of passport or other immigration document for purpose of preventing person's freedom of movement or ability to travel; penalties], or Section 97-3-54.3 [Human Trafficking Act; aiding, abetting, or conspiring to violate human trafficking provisions].” Trafficking-related offenses are therefore not subject to the general statute of limitations and prosecution can be brought at any time. Miss. Code Ann. § 99-1-5.

**Legal Components:**

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

**Legal Analysis:**

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

Training or development of training materials for law enforcement officers on human trafficking has not been statutorily mandated or authorized in Mississippi. However, money received from the Relief for Victims of Human Trafficking Fund under Miss. Code Ann. §97-3-54.8 is to be used in part for law enforcement training. Miss. Code Ann. §97-3-54.8(2)<sup>117</sup> states,

The monies in the Relief for Victims of Human Trafficking Fund shall be used by the Mississippi Attorney General's office solely for the administration of programs designed to assist victims of human trafficking, to conduct training on human trafficking to law enforcement, court personnel, attorneys, and nongovernmental service providers, and to support the duties of the statewide human trafficking coordinator as set forth in this act.

- 6.1.1 Recommendation: Enact a statute specifically authorizing or mandating training, or the development of training materials, for law enforcement on human trafficking, including domestic minor sex trafficking.

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

Single party consent to audiotaping is permitted in Mississippi. Miss. Code Ann. § 41-29-531(d), (e) (Exceptions to civil liability for violation of this article) states that Mississippi's article on "Interception of Wire or Oral Communications" does not apply to, among others,

- (d) A person acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one (1) of the parties to the communication has given prior consent to the interception; or
- (e) A person not acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one (1) of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this state, or for the purpose of committing any other injurious act.

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

The wiretapping statutes, Miss. Code Ann. § 41-29-501 to § 41-29-536 (Interception of wire or oral communications) only permit wiretapping and use of the resulting evidence in cases involving a suspected violation of the Controlled Substances Law. Miss. Code Ann. § 41-29-515(1)(a) (Granting of order; grounds; form; compensation of those furnishing assistance; time limit; authorization for covert entry; reports to judge; recusal of judge).

6.3.1 Recommendation: Amend the wiretapping statutes, Miss. Code Ann. § 41-29-501 to § 41-29-536 (Interception of wire or oral communications) to permit wiretapping when there is probable cause to believe that the wiretapping will provide evidence of a violation of Miss. Code Ann. § 97-3-54.1(1)(c) (Mississippi Human Trafficking Act; prohibited conduct; penalty).

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

Use of a law enforcement decoy is not a defense to human trafficking. Miss. Code. § Ann. 97-3-54.5<sup>118</sup> (Use of undercover operative in detection of offense permitted) states, “[t]he fact that an undercover operative or law enforcement officer was involved in any manner in the detection and investigation of an offense under this act shall not constitute a defense to a prosecution under this act.” Additionally, Miss. Code Ann. § 97-5-33<sup>119</sup> (Exploitation of children) specifically provides that using a decoy is not a defense. Subsection (8) states, “The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.”

Miss. Code Ann. § 99-1-25(2) (Entrapment; affirmative defense to criminal prosecution; burden of proof) sets out the necessary elements for a defendant to establish the affirmative defense of entrapment:

- (2) A person who asserts an entrapment defense has the burden of proving each of the following by clear and convincing evidence:
- (a) The idea of committing the offense was initiated by law enforcement officers or their agents rather than by the person.
  - (b) The law enforcement officers or their agents urged and induced the person to commit the offense.
  - (c) The person was not predisposed to commit the type of offense charged before the law enforcement officers or their agents urged and induced the person to commit the offense.

However, Miss. Code Ann. § 99-1-25(3) explains, “A person does not establish entrapment if the person was predisposed to commit the offense and the law enforcement officers or their agents merely provided the person with an opportunity to commit the offense. It is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identity.”

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

While Miss. Code. § Ann. 97-3-54.5 (Use of undercover operative in detection of offense permitted) and Miss. Code Ann. § 97-5-33(8) (Exploitation of children) specifically provide that it is not a defense that “an undercover operative or law enforcement officer [posed as a child or] was involved in [any] other manner in the detection and investigation of an offense under this section,” the offense that could apply to use of the Internet to commit human trafficking or CSEC offenses, Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually

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<sup>119</sup> See *supra* note 13.

oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact), does not prohibit this defense.

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

No statute relating to the reporting of missing children or rescued children was located in the Mississippi Code.<sup>120</sup>

- 6.6.1 Recommendation: Enact a statute to mandate reporting of missing and rescued children to help identify trafficked children as missing and reunite them with their families.

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<sup>120</sup> Although Mississippi does not mandate reporting of missing and recovered children, law enforcement is required to report investigations of human trafficking to a statewide coordinator within the Attorney General's office, which may include some missing or recovered children. Miss. Code Ann. § 97-3-54.9 (Statewide human trafficking coordinator; duties) states,

(4) Every investigation of an offense under this chapter shall be reported to the coordinator by the initiating law enforcement agency pursuant to guidelines established by the coordinator.

(5) Notwithstanding the provisions of Section 43-21-261, disclosure by any state agency, nongovernmental agency, service provider or local or state law enforcement agency of nonidentifying information regarding a minor victim to the coordinator for the purposes of evaluating and collecting data regarding trafficking offenses in the state is specifically authorized.