

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2014 ANALYSIS AND RECOMMENDATIONS RHODE ISLAND

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

#### *Legal Components:*

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

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

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

Rhode Island directly addresses domestic minor sex trafficking under R.I. Gen. Laws Ann. § 11-67-6(b) (Sex trafficking of a minor), which makes it a crime when a person

(1) Recruits, employs, entices, solicits, isolates, harbors, transports, provides, persuades, obtains, or maintains, or so attempts, any minor for the purposes of commercial sex acts;<sup>2</sup> or

<sup>1</sup> Unless otherwise specified, all references to Rhode Island statutes were taken from Rhode Island General Laws Annotated (LEXIS through the January 2013 Session) and all federal statutes were taken from United States Code (LEXIS through PL 113-165, approved 9/19/14). This report includes legislation enacted as of August 1, 2014.

<sup>2</sup> R.I. Gen. Laws Ann. § 11-67-6(a)(1) defines a “commercial sex act” as “any sex act or sexually explicit performance on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.” A “sex act” is defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse, and digital intrusion or intrusion by any object into the genital opening or anal opening of another person’s body or the stimulation by hand of another’s genitals for the purposes of arousing or gratifying the sexual desire of either person,” and a “sexually-explicit performance” means “an act or show, intended to arouse, satisfy the sexual desires of, or appeal to the

- (2) Sells or purchases a minor for the purposes of commercial sex acts; or
- (3) Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subdivision (1) or (2).<sup>3</sup>

Under the provisions of R.I. Gen. Laws Ann. § 11-67-6, there is no requirement to show that the minor<sup>4</sup> was forced, coerced, or deceived into committing the commercial sex act.

An offender who “commit[s] sex trafficking of a minor, shall be guilty of a felony” punishable by imprisonment up to 40 years, a fine not to exceed \$40,000, or both.<sup>5</sup> R.I. Gen. Laws Ann. § 11-67-6(c). In addition, pursuant to R.I. Gen. Laws Ann. § 11-67-6(d), anyone who “[o]bstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section shall be guilty of a felony” punishable by imprisonment up to 20 years, a fine not to exceed \$20,000, or both.

*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.*

Four laws treat CSEC as distinct crimes in Rhode Island:

1. R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes) makes it illegal for a person to “exhibit, use, employ or . . . in any manner or under pretense so exhibit, use, or employ any child under the age of eighteen (18) years to any person for the purpose of prostitution or for any other lewd or indecent act.” A violation of R.I. Gen. Laws Ann. § 11-9-1(c) is punishable by imprisonment up to 20 years, a fine not to exceed \$20,000, or both. R.I. Gen. Laws Ann. § 11-9-1(c).
2. R.I. Gen. Laws Ann. § 11-9-1(b) (Exploitation for commercial or immoral purposes) makes it illegal to in any manner or under any pretense sell, distribute, let out or otherwise permit any child under eighteen (18) years of age to be used in any book, magazine, pamphlet, or other publication, or in any motion picture film, photograph or pictorial representation, in a setting which taken as a whole suggests to the average person that the child has engaged in, or is about to engage in any sexual act, which shall include, but not be limited to, sodomy, oral copulation, sexual intercourse, masturbation, or bestiality . . . .

A first violation of R.I. Gen. Laws Ann. § 11-9-1(b) is punishable by imprisonment up to 10 years, a fine

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prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, or videotaped.” R.I. Gen. Laws Ann. § 11-67-6(a)(4), (5).

<sup>3</sup> R.I. Gen. Laws Ann. § 11-67-6(b) does not expressly state that the specified conduct constitutes “sex trafficking of a minor;” however, this report assumes such conduct is considered “sex trafficking” under R.I. Gen. Laws Ann. § 11-67-6(c).

<sup>4</sup> R.I. Gen. Laws Ann. § 11-67-6(a)(2) provides that a minor includes all persons under 18.

<sup>5</sup> Enhanced penalties apply to “habitual criminals” under R.I. Gen. Laws Ann. § 12-19-21 (Habitual criminals). A “habitual criminal” is defined in R.I. Gen. Laws Ann. § 12-19-21(a) as “any person who has been previously convicted in this or any other state of two (2) or more felony offenses arising from separate and distinct incidents and sentenced on two (2) or more occasions to serve a term in prison [who] is, after the convictions and sentences, convicted in this state of any offense punished by imprisonment for more than one year.” A hearing must be held after the conviction of the most recent offense to determine if the person is a habitual criminal. R.I. Gen. Laws Ann. § 12-19-21(b). A finding that a person is a habitual criminal subjects that person to imprisonment up to 25 years, “in addition to any sentence imposed for the offense of which he or she was last convicted.” R.I. Gen. Laws Ann. § 12-19-21(a). Rhode Island law also provides that “[a]s a part of or in lieu of the sentences otherwise provided by law,” unless a statute specifies to the contrary, the court may sentence a person to conditional or unconditional probation, supervised probation, intensive supervision probation, community confinement, a minimum security facility, a fine, or any combination of those already listed. R.I. Gen. Laws Ann. § 12-19-23.2(a).

not to exceed \$10,000, or both, while a subsequent violation is punishable by imprisonment up to 15 years, a fine not to exceed \$15,000, or both. R.I. Gen. Laws Ann. § 11-9-1(b).

3. R.I. Gen. Laws Ann. § 11-9-2 (Employment of children for unlawful purposes) makes it illegal for a person to “take, receive, hire, employ, exhibit, or have in custody, or . . . cause to be taken, hired, employed, exhibited, or held in custody, any child under the age of sixteen (16) years, for any of the purposes prohibited in § 11-9-1 [Exploitation for commercial or immoral purposes].” A violation of R.I. Gen. Laws Ann. § 11-9-2 is a misdemeanor punishable “for every such offense in the manner provided in that section.” R.I. Gen. Laws Ann. § 11-9-2.
4. R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) provides that “[a] person is guilty of indecent solicitation of a child if he or she knowingly solicits<sup>6</sup> another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution.” A violation is punishable by imprisonment of at least 5 years. R.I. Gen. Laws Ann. § 11-37-8.9.

Several other laws, although not expressly commercial in nature, also may be applicable in cases involving the commercial sexual exploitation of a child:

1. R.I. Gen. Laws Ann. § 11-37-6 (Third degree sexual assault) states, “A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years.” A violation is punishable by imprisonment up to 5 years. R.I. Gen. Laws Ann. § 11-37-7.
2. R.I. Gen. Laws Ann. § 11-37-8.1 (First degree child molestation sexual assault) states, “A person is guilty of first degree child molestation sexual assault if he or she engages in sexual penetration with a person fourteen (14) years of age or under.” A violation is punishable by imprisonment between 25 years to life.<sup>7</sup> R.I. Gen. Laws Ann. § 11-37-8.2.<sup>8</sup>
3. R.I. Gen. Laws Ann. § 11-37-8.3 (Second degree child molestation sexual assault) states, “A person is guilty of a second degree child molestation sexual assault if he or she engages in sexual contact<sup>9</sup> with another person fourteen (14) years of age or under.” A violation is punishable by imprisonment between 6–

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<sup>6</sup> R.I. Gen. Laws Ann. § 11-37-8.8(b) defines “solicit” and “solicitation” as “to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.”

<sup>7</sup> Additionally, a person who commits first degree child molestation assault against a child 12 or under after January 1, 2007 “shall be electronically monitored via an active global positioning system for life and, as a condition of parole and probation, and for the duration of any period of his or her probation following his or her parole shall attend a sex offender treatment program to address his or her criminally offensive behavior.” R.I. Gen. Laws Ann. § 11-37-8.2.1(b)(1). The same requirements may apply if a person commits the offense against a child 14 or under if that person has previously been convicted of first or second degree child molestation sexual assault. R.I. Gen. Laws Ann. § 11-37-8.2.1(b)(2), (g).

<sup>8</sup> Pursuant to R.I. Gen. Laws Ann. § 11-37-10 (Subsequent offenses),

If a person is convicted of a second or subsequent offense under the provisions of §§ 11-37-2 (First degree sexual assault), 11-37-4 (Second degree sexual assault), 11-37-8 (Indecent solicitation of a child), 11-37-8.1 (First degree child molestation sexual assault), and 11-37-8.3 (Second degree child molestation sexual assault), the sentence imposed under these sections for the second or subsequent offenses shall not be less than twice the minimum number of years of sentence for the most recent offense.

<sup>9</sup> R.I. Gen. Laws Ann. § 11-37-1(7) defines “sexual contact” as “the intentional touching of the victim’s or accused’s intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault.”

30 years.<sup>10</sup> R.I. Gen. Laws Ann. § 11-37-8.4.

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

Rhode Island's prostitution offense R.I. Gen. Laws Ann. § 11-34.1-2 (Prostitution) does not refer to the human trafficking law when the person charged is a minor.

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.*

Rhode Island's laws regarding racketeering activity also may be used to prosecute traffickers. R.I. Gen. Laws Ann. § 7-15-2(a)–(c) (Prohibited activities) states,

(a) It is unlawful for any person who has knowingly received any income derived directly or indirectly from a racketeering activity or through collection of an unlawful debt, to directly or indirectly use or invest any part of that income, or the proceeds of that income in the acquisition of an interest in, or the establishment or operation of any enterprise.<sup>11</sup>

(b) It is unlawful for any person through a racketeering activity or through collection of an unlawful debt to directly or indirectly acquire or maintain any interest in or control of any enterprise.

(c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate in the conduct of the affairs of the enterprise through racketeering activity or collection of an unlawful debt.

R.I. Gen. Laws Ann. § 7-15-1(c) (Definitions) defines “racketeering activity” to include “any act or threat involving . . . prostitution, or . . . child exploitations for commercial or immoral purposes in violation of § 11-9-1(b) or (c) [Exploitation for commercial or immoral purposes] or § 11-9-1.1 [Child nudity prohibited in publications].”

A violation of R.I. Gen. Laws Ann. § 7-15-2 is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. R.I. Gen. Laws Ann. § 7-15-3(a). Additionally, a conviction subject the offender to asset forfeiture. Pursuant to R.I. Gen. Laws Ann. § 7-15-3(a), an offender forfeits all of the following:

- (1) Any property acquired or maintained in violation of this chapter [Racketeer influenced and corrupt organizations];
- (2) Any property constituting, or derived from, any proceeds which were obtained directly or indirectly from the commission of an offense in violation of this chapter;
- (3) Any: (i) interest in; (ii) security of; (iii) claim against; or (iv) property or contractual right of any kind affording a source of influence over; any enterprise that the person has established, participated in, operated, controlled, or conducted in violation of this chapter; provided that the value of the property forfeited shall not exceed the sum of the money invested in violation [sic] of § 7-15-2(a) plus the appreciated value of the money.

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<sup>10</sup> See *supra* note 8.

<sup>11</sup> R.I. Gen. Laws Ann. § 7-15-1(a) defines an “enterprise” as “any sole proprietorship, partnership, corporation, association, or other legal entity, and any union or group of individuals associated for a particular purpose although not a legal entity.”

### **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.*
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### **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.*

R.I. Gen. Laws Ann. § 11-67-6(b)(2) (Sex trafficking of a minor), applies to buyers of sex with domestic minor sex trafficking victims. That section expressly makes it a crime when a person “purchases a minor for the purposes of commercial sex acts.” A buyer of sex with a minor will be guilty without regard to whether the victim was forced, deceived, or coerced into committing the commercial sex act.<sup>12</sup> A violation is punishable by imprisonment up to 40 years, a fine not to exceed \$40,000, or both. R.I. Gen. Laws Ann. § 11-67-6(c).

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

The CSEC offense under R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) applies to buyers by making it illegal for a person to solicit<sup>13</sup> a child “or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution.” R.I. Gen. Laws Ann. § 11-37-8.9.

Several sex offenses may also apply to buyers of sex with minors.<sup>14</sup>

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

Rhode Island law differentiates between buying sex with an adult and buying sex with a minor. R.I. Gen. Laws

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<sup>12</sup> See *supra* Section 1.1 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-67-6.

<sup>13</sup> See definition of “solicit” *supra* note 6.

<sup>14</sup> See *supra* Section 1.2.

Ann. § 11-37-8.8(a) (Indecent solicitation of a child) applies where a buyer “solicits” a child under 18 for prostitution purposes.<sup>15</sup> A conviction of solicitation is punishable by imprisonment for at least 5 years.

In contrast, Rhode Island’s age-neutral solicitation statute, R.I. Gen. Laws Ann. § 11-34.1-3(a) (Procurement of sexual conduct for a fee) is punishable by imprisonment up to 1 year, a fine of \$250–\$1,000, or both, but a subsequent violation is punishable by imprisonment up to 1 year, a fine of \$500–\$1,000, or both. R.I. Gen. Laws Ann. § 11-34.1-3(a), (b). Additionally, R.I. Gen. Laws Ann. § 11-34.1-6(a) (Soliciting from motor vehicles for indecent purposes—Forfeiture of motor vehicle) may apply regardless of the age of the person solicited, and makes it “unlawful for any person, while an operator or passenger in a motor vehicle to stop, or attempt to stop another vehicle or pedestrian, or to engage or attempt to engage persons in another vehicle or pedestrians in conversation, for the purposes of prostitution or other indecent act, or to patronize, induce, or otherwise secure another person to commit any commercial sexual activity.” A violation is punishable by imprisonment up to 6 months, a fine of \$500–\$1,000, or both, but a subsequent conviction is punishable by imprisonment up to 1 year and a fine of \$750–\$1,000. The fine for a subsequent conviction may not be suspended. R.I. Gen. Laws Ann. § 11-34.1-6(a), (b).

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

A violation of R.I. Gen. Laws Ann. § 11-67-6(b)(2) (Sex trafficking of a minor) is punishable by imprisonment up to 40 years, a fine not to exceed \$40,000, or both. R.I. Gen. Laws Ann. § 11-67-6(c). A conviction for violating a R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) is punishable by imprisonment of at least 5 years. R.I. Gen. Laws Ann. § 11-37-8.9.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA),<sup>16</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>17</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>18</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>19</sup>

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<sup>15</sup> See *supra* Section 1.2 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-37-8.8(a), § 11-9-1, and § 11-9-2.

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

<sup>17</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>18</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>19</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or

- 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.*

R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) makes it a crime when a person “knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution.”<sup>20</sup> This statute applies when a buyer solicits a child “by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.” A conviction for solicitation is punishable by imprisonment of at least 5 years, and there is no separate or heightened penalty for using the Internet as opposed to any other communication method. R.I. Gen. Laws Ann. §§ 11-37-8.8, 11-37-8.9.

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

R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), and § 11-37-8.8(a) (Indecent solicitation of a child) are silent regarding the availability of the mistake of age defense. However, R.I. Gen. Laws Ann. § 11-67-6(e) (Sex trafficking of a minor) states, “In a prosecution under this section, the government need not prove that the defendant knew the victim’s age.”

- 2.6.1 Recommendation: Amend Rhode Island’s CSEC laws to expressly provide that the mistake of age defense is not available to a buyer of commercial sex with a 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.*

Rhode Island’s sex trafficking and CSEC laws protect all minors under 18 and do not stagger penalties based on the age of the minor. A conviction under R.I. Gen. Laws Ann. § 11-67-6(b)(2) (Sex trafficking of a minor) is punishable by imprisonment up to 40 years, a fine not to exceed \$40,000, or both, regardless of the minor’s age. R.I. Gen. Laws Ann. § 11-67-6(a)(2), (b)(2), (c). Similarly, a conviction under R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) is punishable by imprisonment of at least 5 years regardless of the minor’s age. R.I. Gen. Laws Ann. §§ 11-9-1(c), 11-37-8.9.

- 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.*

Specifically, a buyer convicted of violating R.I. Gen. Laws Ann. § 11-67-6(b)(2) (Sex trafficking of a minor) may be required to pay a fine up to \$40,000. R.I. Gen. Laws Ann. § 11-67-6(c). A buyer convicted of violating either R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes) or R.I. Gen. Laws Ann. § 11-9-2 (Employment of children for unlawful purposes) may be ordered to pay a fine up to \$20,000, while a buyer convicted of violating R.I. Gen. Laws Ann. § 11-9-1.3(a)(4) (Child pornography prohibited) may have to pay a fine up to \$5,000. R.I. Gen. Laws Ann. §§ 11-9-1(c), 11-9-2, 11-9-1.3(b)(2). Notably, no fine is imposed upon a buyer convicted of violating R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child). R.I. Gen. Laws Ann. § 11-37-8.9.

R.I. Gen. Laws Ann. § 11-34.1-6(c) (Soliciting from motor vehicles for indecent purposes—Forfeiture of motor vehicle), Rhode Island’s age-neutral solicitation from motor vehicles statute, provides for the discretionary,

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both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>20</sup> *See supra* Section 1.2 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-37-8.8(a) and the definition of “solicit” provided in R.I. Gen. Laws Ann. § 11-37-8.8(b).

criminal forfeiture of any motor vehicle used by a buyer in committing the crime upon a buyer's subsequent conviction. Forfeiture is within the court's discretion and proceeds go to the victims of crimes identity fund. R.I. Gen. Laws Ann. § 11-34.1-6(c). No forfeiture provisions, however, apply for violations of R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child), § 11-9-1(c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.3 (Child pornography prohibited), or § 11-67-6 (Sex trafficking of a child). R.I. Gen. Laws Ann. §§ 11-34.1-6(c), 11-37-8.8, 11-37-8.9, 11-9-1(c), 11-9-2, 11-9-1.3(b)(2), 11-67-5 (providing forfeiture for violating § 11-67-2 and § 11-67-3, but not § 11-67-6).

Buyers are subject to mandatory criminal asset forfeiture following a conviction for involuntary servitude or trafficking of persons. R.I. Gen. Laws Ann. § 11-67-5 (Forfeitures) requires the forfeiture of "any profits or proceeds and any interest or property . . . acquired or maintained in violation of" R.I. Gen. Laws Ann. § 11-67-2 (Involuntary servitude) or § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity). R.I. Gen. Laws Ann. § 11-67-3 makes it a crime when a person

- (a) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport[,] provide, or obtain by any means, another person, intending or knowing that the person will be subjected to forced labor in order to commit a commercial sexual activity; or
- (b) Benefits, financially or by receiving anything of value, from knowing participation in a venture which has engaged in an act described in violation of § 11-67-2, or 11-67-3 . . . .

No specific seizure procedure is authorized under this statute. "All monies forfeited and the sale proceeds of all other property forfeited and seized under this section shall be deposited in the general fund." R.I. Gen. Laws § 11-67-5(d).

Restitution is mandatory for buyers who violate R.I. Gen. Laws Ann. § 11-67-2 (Involuntary servitude) or § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity) pursuant to R.I. Gen. Laws Ann. § 11-67-4 (Restitution), which states,

In addition to any other amount of loss identified, the court shall order restitution including the greater of:

- (a) The gross income or value to the defendant of the victim's labor or commercial sexual activity;<sup>21</sup> or
- (b) The value of the victim's labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act (FLSA) or the minimum wage law, whichever is greater.

Buyers who commit other crimes are subject to discretionary orders of restitution. R.I. Gen. Laws Ann. § 12-19-32 (Restitution) provides that "[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution," and if the court orders a buyer to make restitution, R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution) provides that "a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount."

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

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<sup>21</sup> A "victim," for purposes of R.I. Gen. Laws Ann. § 11-67-4 (Restitution), is defined in R.I. Gen. Laws Ann. § 11-67-1(8) (Definitions) as "a person subject to the practices set forth in § 11-67-2 [Involuntary servitude] or 11-67-3 [Trafficking of persons for forced labor or commercial sexual activity]." Because several of the practices set forth in R.I. Gen. Laws Ann. § 11-67-3 are similar to those criminalized under R.I. Gen. Laws Ann. § 11-67-6(b) (Sex trafficking of a minor), it is possible that a sex trafficked child could be considered a "victim" under R.I. Gen. Laws Ann. § 11-67-1(8) to the extent that the conduct prohibited by § 11-67-6 is also prohibited by § 11-67-3.

R.I. Gen. Laws Ann. § 11-9-1.3(a)(4) (Child pornography prohibited) makes it illegal for a person to “[k]nowingly possess any book, magazine, periodical, film, videotape, computer disk, computer file or any other material that contains an image of child pornography.” R.I. Gen. Laws Ann. § 11-9-1.3(c)(1) defines “child pornography” as

any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

- (i) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;<sup>22</sup>
- (ii) Such visual depiction is a digital image, computer image, or computer-generated image of a minor engaging in sexually explicit conduct; or
- (iii) Such visual depiction has been created, adapted, or modified to display an identifiable minor<sup>23</sup> engaging in sexually explicit conduct.

A violation of R.I. Gen. Laws Ann. § 11-9-1.3(a)(4) is punishable by imprisonment up to 5 years, a fine not to exceed \$5,000, or both. R.I. Gen. Laws Ann. § 11-9-1.3(b)(2).

In comparison, a federal conviction for possession of child pornography<sup>24</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>25</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>26</sup>

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<sup>22</sup> R.I. Gen. Laws Ann. § 11-9-1.3(c)(6) defines “sexually explicit conduct” as

- (i) Graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, or lascivious sexual intercourse where the genitals, or pubic area of any person is exhibited;
- (ii) Bestiality;
- (iii) Masturbation;
- (iv) Sadistic or masochistic abuse; or
- (v) Graphic or lascivious exhibition of the genitals or pubic area of any person;

<sup>23</sup> R.I. Gen. Laws Ann. § 11-9-1.3(c)(4) defines an “identifiable minor” as the following:

- (i) Means a person:
  - (A)(I) Who was a minor at the time the visual depiction was created, adapted, or modified; or
  - (II) Whose image as a minor was used in creating, adapting, or modifying the visual depiction; and
- (ii) Who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) Shall not be construed to require proof of the actual identity of the identifiable minor.

<sup>24</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>25</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>26</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme

2.9.1 Recommendation: Raise the penalty for possessing child pornography to more closely match the federal penalty and the penalty for sex trafficking of a minor.

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

R.I. Gen. Laws Ann. § 11-37.1-3(a) states,

Any person who, in this or any other jurisdiction: (1) has been convicted of a criminal offense against a victim who is a minor, (2) has been convicted of a sexually violent offense, (3) has been determined to be a sexually violent predator,<sup>27</sup> (4) has committed an aggravated offense as defined in § 11-37.1-2, or (5) is a recidivist, as defined in § 11-37.1-4, shall be required to register his or her current address with the local law enforcement agency having jurisdiction over the city or town in which the person having the duty to register resides for the time period specified in § 11-37.1-4.

R.I. Gen. Laws Ann. § 11-37.1-2(e) defines a “criminal offense against a victim who is a minor” to include the following:

- (2) Enticement of a child in violation of § 11-26-1.5 [Enticement of children] with the intent to violate §§ 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], 11-37-8.3 [Second degree child molestation sexual assault];
- (3) Any violation of § 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], or 11-37-8.3 [Second degree child molestation sexual assault];
- ...
- (6) Any violation of § 11-9-1.3 [Child pornography prohibited];
- (7) Any violation of § 11-37.1-10 [Penalties];
- (8) Any violation of § 11-37-8.8 [Indecent solicitation of a child];
- ....

R.I. Gen. Laws Ann. § 11-37.1-2(k) defines a “sexually violent offense” as

any violation of § 11-37-2 [First degree sexual assault], 11-37-4 [Second degree sexual assault], 11-37-6 [Third degree sexual assault], 11-37-8 [Penalty for assault with intent to commit first degree sexual assault], 11-37-8.1 [First degree child molestation sexual assault], 11-37-8.3 [Second degree child molestation sexual assault], or 11-5-1 [Assault with intent to commit specified felonies] where the specified felony is sexual assault . . . .

Thus, R.I. Gen. Laws Ann. § 11-37.1-3(a) (Registration required, persons covered) expressly requires buyers convicted of violating R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) or § 11-9-1(c) (Exploitation for commercial or immoral purposes) to register as sex offenders but does not expressly require a buyer convicted of violating R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) or § 11-9-2 (Employment of children for unlawful purposes) to register.

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for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>27</sup> R.I. Gen. Laws Ann. § 11-37.1-2(l) defines a “sexually violent predator” as “a person who has been convicted of a sexually violent offense and who has a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.”

However, an “aggravated offense” is defined as including “offenses involving sexual penetration of victims of any age through the use of force or the threat of use of force or offenses involving sexual penetration of victims who are fourteen (14) years of age or under.” R.I. Gen. Laws Ann. § 11-37.1-2(a). Therefore, some buyers may still be required to register as sex offenders even if the crimes they committed are not otherwise listed.

- 2.10.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-37.1-2(e) (Definitions) to include R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor).

***Legal Components:***

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

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***Legal Analysis:***

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

Traffickers of children for commercial sexual exploitation are subject to prosecution under several criminal statutes. A violation of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor),<sup>28</sup> which makes sex trafficking of a minor under 18 a crime, is punishable by imprisonment up to 40 years, a fine not to exceed \$40,000, or both. R.I. Gen. Laws Ann. § 11-67-6(c). In addition, pursuant to R.I. Gen. Laws Ann. § 11-67-6(d), anyone who “[o]bstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section shall be guilty of a felony” can be punished by imprisonment up to 20 years, a fine not to exceed \$20,000, or both.

It is a violation of R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes) to “employ any child under the age of eighteen (18) years to any person for the purpose of prostitution.” A conviction may be punishable by imprisonment up to 20 years, a fine not to exceed \$20,000, or both. R.I. Gen. Laws Ann. § 11-9-1(c). A trafficker who does the same with a child under 16 in violation of R.I. Gen. Laws Ann. § 11-9-2 (Employment of children for unlawful purposes) is guilty of a misdemeanor that is punishable “for every such offense in the manner provided in [11-9-1(c)].”<sup>29</sup> R.I. Gen. Laws Ann. § 11-9-2.

Lastly, R.I. Gen. Laws Ann. § 11-9.1-15 (Laundering of monetary instruments) may be used to prosecute traffickers. R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) makes it a crime when a trafficker

- (a) . . . conducts or attempts to conduct a financial transaction: (1) with the intent to promote the carrying on of specified unlawful activity; or . . . .
- (b) . . . conducts or attempts to conduct a financial transaction: (1) knowing that the property involved in the transaction represents the proceeds of some form of unlawful activity, or has been or is being used to conduct or facilitate some form of unlawful activity; or (2) involving property represented as the proceeds of some form of unlawful activity, by a law enforcement officer or other person working at the direction or with the approval of an official authorized to investigate or prosecute violations of this section . . . .

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<sup>28</sup> See *supra* Section 1.1 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor).

<sup>29</sup> See *supra* Section 1.2 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9-1(c) and § 11-9-2.

“Specified unlawful activity” is defined in part in R.I. Gen. Laws Ann. § 11-9.1-15(d)(6) as

(C) Any act or acts prohibited by the Rhode Island Racketeer Influenced and Corrupt Organizations Act (RICO), chapter 15 [Racketeer influenced and corrupt organizations] of title 7 [Corporations, associations, and partnerships];

(D) Any act constituting a felony pursuant to this title [Criminal offenses].

This definition of “specified unlawful activity” could be used to make R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) applicable to a trafficker who violates R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1(c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), or § 7-15-2(a)–(c) (Prohibited activities). Violations of R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) are punishable by imprisonment up to 20 years, fines up to the greater of \$500,000 or “twice the value of the property involved in the transaction,” or both fine and imprisonment. R.I. Gen. Laws Ann. § 11-9.1-15(a), (b). A trafficker convicted of R.I. Gen. Laws Ann. § 11-9.1-15(a), (b) also will be civilly liable to Rhode Island for “the greater of: (1) The value of the property, funds, or monetary instruments involved in the transaction; or (2) Ten thousand dollars (\$ 10,000).” R.I. Gen. Laws Ann. § 11-9.1-15(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>30</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>31</sup> against a minor.

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

Traffickers who distribute child pornography or permit a child to be used in child pornography may be prosecuted under R.I. Gen. Laws Ann. § 11-9-1(b) (Exploitation for commercial or immoral purposes).<sup>32</sup> A first violation of R.I. Gen. Laws Ann. § 11-9-1(b) is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both, while a subsequent violation is punishable by imprisonment up to 15 years, a fine not to exceed \$15,000, or both. R.I. Gen. Laws Ann. § 11-9-1(b).

Additionally, it is a crime to “[k]nowingly produce” or to “[k]nowingly mail, transport, deliver or transfer by any means” child pornography. R.I. Gen. Laws Ann. § 11-9-1.3(a)(1), (2). Violations are punishable by imprisonment up to 15 years, a fine not to exceed \$5,000, or both. R.I. Gen. Laws Ann. § 11-9-1.3(b)(1).

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>33</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>34</sup>

<sup>30</sup> See *supra* note 16.

<sup>31</sup> See *supra* note 17.

<sup>32</sup> See *supra* Section 1.2 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9-1(b).

<sup>33</sup> See *supra* note 17.

<sup>34</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).

is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>35</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>36</sup>

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.*

R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) makes it a crime when a person “knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution or in any act in violation of chapter 9 [Children], 34 [Prostitution and lewdness][Repealed],<sup>37</sup> or 37 [Sexual assault] of this title.”<sup>38</sup> This statute applies when a trafficker solicits a child “by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.” R.I. Gen. Laws Ann. § 11-37-8.8(b). A violation is punishable by imprisonment of at least 5 years, and there is no separate or heightened penalty for using the Internet as opposed to any other communication method. R.I. Gen. Laws Ann. §§ 11-37-8.8, 11-37-8.9.

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

Traffickers may be required to pay fines ranging from \$2,000–\$40,000. R.I. Gen. Laws Ann. §§ 11-34.1-7(c), 11-67-6(c). Specifically, a trafficker convicted of violating R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) may be ordered to pay a fine up to \$40,000, a trafficker convicted of violating R.I. Gen. Laws Ann. § 11-67-6(d) may be required to pay a fine up to \$20,000, and a trafficker convicted of violating R.I. Gen. Laws Ann. § 11-9-1(c) (Exploitation for commercial or immoral purposes) or R.I. Gen. Laws Ann. § 11-9-2 (Employment of children for unlawful purposes) may be required to pay a fine up to \$20,000. R.I. Gen. Laws Ann. §§ 11-67-6(c), (d), 11-9-1(c), 11-9-2. Lastly, a trafficker convicted under R.I. Gen. Laws Ann. § 11-9-1 (Exploitation for commercial or immoral purposes) may have to pay a fine up to \$10,000 for the first conviction and a fine up to \$15,000 for any subsequent conviction. R.I. Gen. Laws Ann. § 11-9-1(b). In contrast, a trafficker convicted under R.I. Gen. Laws Ann. § 11-9-1.3(a)(1) (Child pornography prohibited) may be required to pay a fine up to \$5,000. R.I. Gen. Laws Ann. § 11-9-1.3(b)(1).

Restitution is mandatory for traffickers who violate R.I. Gen. Laws Ann. §§ R.I. Gen. Laws Ann. § 11-67-2 (Involuntary servitude) or § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity), pursuant to R.I. Gen. Laws § 11-67-4 (Restitution) which states,

In addition to any other amount of loss identified, the court shall order restitution including the greater

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<sup>35</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>36</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>37</sup> This law was last amended in 2004 and appears to not have been updated to refer to 11-34.1 (Commercial sexual activity), which replaced 11-34 in 2009.

<sup>38</sup> *See supra* Section 1.2 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-37-8.8(a) and *supra* note 6 the definition of “solicit.”

of:

- (a) The gross income or value to the defendant of the victim’s labor or commercial sexual activity,<sup>39</sup>  
or
- (b) The value of the victim’s labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act (FLSA) or the minimum wage law, whichever is greater.

Traffickers who commit other crimes are subject to discretionary orders of restitution. R.I. Gen. Laws Ann. § 12-19-32 (Restitution) provides that “[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution,” and if the court orders a buyer to make restitution, R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution) provides that “a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount.”

Traffickers are also subject to mandatory criminal asset forfeiture for violations of R.I. Gen. Laws § 11-67-2 (Involuntary servitude) and § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity). R.I. Gen. Laws Ann. § 11-67-5 (Forfeitures) requires the forfeiture of “any profits or proceeds and any interest or property . . . acquired or maintained in violation of” R.I. Gen. Laws Ann. § 11-67-2 (Involuntary servitude) or § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity).<sup>40</sup> To the extent that a trafficker convicted of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) is also found guilty of R.I. Gen. Laws Ann. § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity),<sup>41</sup> the trafficker should be subject to the forfeiture requirements of R.I. Gen. Laws Ann. § 11-67-5. Otherwise, asset forfeiture is not available for convictions under R.I. Gen. Laws Ann. § 11-67-6.

Notably, although R.I. Gen. Laws Ann. § 11-34.1-2(c) (Prostitution) requires prostituted persons to forfeit “[a]ny proceeds derived directly from a violation of” R.I. Gen. Laws Ann. § 11-34.1-2, no similar forfeiture provisions are imposed on traffickers under R.I. Gen. Laws Ann. § 11-34.1-7 (Pandering or permitting prostitution—not allowed).

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

A trafficker convicted of violating R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) or § 11-9-2 (Employment of children for unlawful purposes) is not required to register as a sex offender under R.I. Gen. Laws Ann. § 11-37.1-3(a) (Sexual offender registration and community notification).<sup>42</sup> A person convicted of violating R.I. Gen. Laws Ann. § 11-9-1(b) or (c) (Exploitation for commercial or immoral purposes), § 11-37-8.8 (Indecent solicitation of a child), or § 11-9-1.3(a)(1) or (2) (Child pornography prohibited), however, will be required to register. R.I. Gen. Laws Ann. §§ 11-37.1-3(a)(1), 11-37.1-2(e)(5), (6), (8).

- 3.5.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-37.1-2(e) to include § 11-67-6 (Sex trafficking of a minor), and § 11-9-2 (Employment of children for unlawful purposes).

### 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.*

R.I. Gen. Laws Ann. § 15-7-7(a) (Termination of parental rights) does not expressly include violations of R.I.

<sup>39</sup> See *supra* note 21.

<sup>40</sup> See *supra* Section 2.8 for a more in-depth discussion of the applicability of R.I. Gen. Laws Ann. § 11-67-5 (Forfeitures) to persons who violate R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor).

<sup>41</sup> See *supra* Section 2.8 for the specific offenses listed in R.I. Gen. Laws Ann. § 11-67-3.

<sup>42</sup> See *supra* Section 2.10 for a full description of the substantive provisions of R.I. Gen. Laws Ann. § 11-37.1-3(a) and related definitions.

Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) or any of Rhode Island’s CSEC laws as grounds for terminating parental rights. Instead, R.I. Gen. Laws Ann. § 15-7-7(a)(2) authorizes the court to terminate parental rights to a child where

(2) The parent is unfit by reason of conduct or conditions seriously detrimental to the child; such as, but not limited to, the following:

(i) Institutionalization of the parent, including imprisonment, for a duration as to render it improbable for the parent to care for the child for an extended period of time;

(ii) Conduct toward any child of a cruel or abusive nature;

....

(iv) The child has been placed with the department for children, youth, and families and the court has previously involuntarily terminated parental rights to another child of the parent and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent and provided further that the court finds it is improbable that an additional period of services would result in reunification within a reasonable period of time considering the child’s age and the need for a permanent home;

(v) The parent has subjected the child to aggravated circumstances, which circumstances shall be abandonment, torture, chronic abuse and sexual abuse;

....

(vii) The parent has exhibited behavior or conduct that is seriously detrimental to the child, for a duration as to render it improbable for the parent to care for the child for an extended period of time.

3.6.1 Recommendation: Amend R.I. Gen. Laws Ann. § 15-7-7(a)(2) (Termination of parental rights) to include a violation of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) or any of Rhode Island’s CSEC laws as grounds for terminating parental rights.

## Framework Issue 4: Criminal provisions for facilitators

### *Legal Components:*

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

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

R.I. Gen. Laws Ann. § 11-67-6(b)(3) (Sex trafficking of a minor) applies the trafficking statute to those who benefit financially from participating in the sex trafficking of a minor.<sup>43</sup> A violation is punishable by imprisonment up to 40 years, a fine not to exceed \$40,000, or both. R.I. Gen. Laws Ann. § 11-67-6(c). In addition, pursuant to R.I. Gen. Laws Ann. § 11-67-6(d), anyone who “[o]bstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section shall be guilty of a felony” punishable by imprisonment up to 20 years, a fine not to exceed \$20,000, or both.

Lastly, R.I. Gen. Laws Ann. § 11-9.1-15 (Laundering of monetary instruments)<sup>44</sup> may be used to prosecute a facilitator who commits a violation of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-34.1-7(a) or (b) (Pandering or permitting prostitution—not allowed), or § 7-15-2 (Prohibited activities). A violation is punishable by imprisonment up to 20 years, a fine up to the greater of \$500,000 or “twice the value of the property involved in the transaction,” or both. R.I. Gen. Laws Ann. § 11-9.1-15(a),(b). A facilitator would also be civilly liable to Rhode Island for “the greater of: (1) The value of the property, funds, or monetary instruments involved in the transaction; or (2) Ten thousand dollars (\$ 10,000).” R.I. Gen. Laws Ann. § 11-9.1-15(c).

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

Facilitators may be required to pay fines ranging from \$2,000–\$40,000. R.I. Gen. Laws Ann. §§ 11-34.1-7(c), 11-67-6(c). Specifically, a facilitator convicted of violating R.I. Gen. Laws Ann. § 11-67-6(b)(3) (Sex trafficking a minor) may be ordered to pay a fine up to \$40,000, while a facilitator convicted of violating R.I. Gen. Laws Ann. § 11-67-6(d) may be required to pay a fine up to \$20,000. R.I. Gen. Laws Ann. § 11-67-6(c), (d).

Facilitators are subject to mandatory restitution for violations of R.I. Gen. Laws Ann. § 11-67-2 (Involuntary servitude) or § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity) pursuant to R.I. Gen. Laws Ann. § 11-67-4 (Restitution), which states,

In addition to any other amount of loss identified, the court shall order restitution including the greater

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<sup>43</sup> See *supra* Section 1.1 for the substantive provisions of R.I. Gen. Laws Ann. § 11-67-6(b)(3).

<sup>44</sup> See *supra* Section 3.1 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9.1-15.

of:

- (a) The gross income or value to the defendant of the victim’s labor or commercial sexual activity;<sup>45</sup>  
or
- (b) The value of the victim’s labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act (FLSA) or the minimum wage law, whichever is greater.

Facilitators who commit other crimes are subject to discretionary orders of restitution. R.I. Gen. Laws Ann. § 12-19-32 (Restitution) provides that “[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution,” and if the court orders a buyer to make restitution, R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution) provides that “a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount.”

Additionally, facilitators are subject to mandatory criminal asset forfeiture for violations of R.I. Gen. Laws § 11-67-2 (Involuntary servitude) and § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity). R.I. Gen. Laws Ann. § 11-67-5 (Forfeitures) calls for the forfeiture of “any profits or proceeds and any interest or property . . . acquired or maintained in violation of” R.I. Gen. Laws Ann. § 11-67-2 (Involuntary servitude) or § 11-67-3 (Trafficking of persons for forced labor or commercial sexual activity).<sup>46</sup> However, forfeiture does not apply to violations of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor).

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

Rhode Island does not have a law related to sex tourism.

- 4.3.1 Recommendation: Enact a law making it a crime to sell or offer 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 offer, sale, or travel occurs in Rhode Island.

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

A facilitator who distributes child pornography may be prosecuted under R.I. Gen. Laws Ann. § 11-9-1(b) (Exploitation for commercial or immoral purposes).<sup>47</sup> A first violation is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both, while a subsequent violation is punishable by imprisonment up to 15 years, a fine not to exceed \$15,000, or both. Additionally, R.I. Gen. Laws Ann. § 11-9-1.3(a)(2) (Child pornography prohibited) makes it illegal for a facilitator to “[k]nowingly mail, transport, deliver or transfer by any means, including by computer, any child pornography.” A violation is punishable by imprisonment up to 15 years, a fine not to exceed \$5,000, or both. R.I. Gen. Laws Ann. § 11-9-1.3(b)(1).

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<sup>45</sup> See *supra* note 21.

<sup>46</sup> See *supra* Section 2.8 for a more in-depth discussion of the applicability of R.I. Gen. Laws Ann. § 11-67-5 (Forfeitures) to persons who violate R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor).

<sup>47</sup> See *supra* Section 1.2 for the substantive provisions of R.I. Gen. Laws Ann. § 11-9-1(b).

**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 *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.*
- 5.6 *Commercial sexual exploitation or sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

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**Legal Analysis:**

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

Under R.I. Gen. Laws Ann. § 12-28-4(b) (Right to address court prior to sentencing) of the chapter entitled, “Victim’s Rights,” a “victim” is a person “who has sustained personal injury or loss of property directly attributable to the felonious conduct of which the defendant has been convicted.” Very similar definitions of “victim” are included in R.I. Gen. Laws Ann. § 12-28-4.1(b) (Right to address court regarding plea negotiation), § 12-28-4.3(b) (Pretrial conferences—misdemeanors in district court), § 12-28-5(b) (Civil judgment against defendant), and § 12-28-6(d) (Right to address parole board). R.I. Gen. Laws Ann. §§ 12-28-4.1(b), 12-28-4.3(b), 12-28-5(b), 12-28-6(d). Under this chapter, child victims are identified as those under the age of fifteen. R.I. Gen. Laws Ann. § 12-28-8(b).

For purposes of Title 12, Chapter 25 (Criminal Injuries Compensation), a “victim” is “a person who is injured or killed by any act of a person or persons which is within the description of any of the offenses specified in

§ 12-25-20 [Offenses to which chapter applies] and which act occurs in the state of Rhode Island.”<sup>48</sup> R.I. Gen. Laws Ann. § 12-25-17(12). However, domestic minor sex trafficking victims are not considered victims for criminal injuries compensation since only victims of certain crimes, not including R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) and other CSEC crimes are eligible for compensation.<sup>49</sup>

A “victim,” for purposes of restitution under R.I. Gen. Laws Ann. § 11-67-4 (Restitution), is defined in R.I. Gen. Laws Ann. § 11-67-1(8) (Definitions) as “a person subject to the practices set forth in § 11-67-2 [Involuntary servitude] or 11-67-3 [Trafficking of persons for forced labor or commercial sexual activity].” Because several of the practices set forth in R.I. Gen. Laws Ann. § 11-67-3 are similar to those criminalized under R.I. Gen. Laws Ann. § 11-67-6(b), it is possible that a sex trafficked child could be considered a “victim” under R.I. Gen. Laws Ann. § 11-67-1(8), but the failure to specifically refer to § 11-67-6(b) may result in ineligibility for some CSEC victims.

5.1.1 Recommendation: Amend the definitions of “victim” and “child victim” in R.I. Gen. Laws Ann. § 12-28-4(b) (Right to address court prior to sentencing) and § 12-28-8(b) (Child victims) to include all CSEC victims under the age of 18.

5.1.2 Recommendation: Amend the definitions of “victim” in R.I. Gen. Laws Ann. § 12-25-20 (Offenses to which chapter applies) and R.I. Gen. Laws Ann. § 11-67-4 (Restitution) to expressly include victims of domestic minor sex trafficking and CSEC offenses under R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), or § 11-9-1.3(a)(4) (Child pornography prohibited).

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.*

R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1(c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), and § 11-37-8.8(a) (Indecent solicitation of a child) are all silent regarding whether the minor’s consent to a commercial sex act is a defense to the crime.

5.2.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor) and Rhode Island’s CSEC laws to expressly provide that the consent of a minor to a commercial sex act is not a defense to the crime.

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

R.I. Gen. Laws Ann. § 11-34.1-2(a), (b) (Prostitution) is age-neutral, and therefore, applies to minors. R.I. Gen. Laws Ann. § 11-34.1-2(a) states, “A person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee. Any person found guilty under this section shall be deemed guilty of a misdemeanor . . . .” However, R.I. Gen. Laws Ann. § 11-34.1-2(d) provides an affirmative defense by stating,

[I]t shall be an affirmative defense if the accused was forced to commit a commercial sexual activity by:

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<sup>48</sup> See *infra* Section 5.7 for a discussion of the applicability of R.I. Gen. Laws Ann. § 12-25-20 (Offenses to which chapter applies) to domestic minor sex trafficking victims.

<sup>49</sup> See *infra* Section 5.7 for a discussion of the applicability of R.I. Gen. Laws Ann. § 12-25-20 (Offenses to which chapter applies) to domestic minor sex trafficking victims.

- (1) Being threatened or, subjected to physical harm;
- (2) Being physically restrained or threatened to be physically restrained;
- (3) Being subject to threats of abuse of law or legal process;
- (4) Being subject to destruction, concealment, removal or confiscation, of any passport or other immigration document, or any other actual or purported governmental identification document; or
- (5) Being subject to intimidation in which the accused's physical well being was perceived as threatened.

A first conviction under R.I. Gen. Laws Ann. § 11-34.1-2(a) is punishable by imprisonment up to 6 months, a fine of \$250–\$1,000, or both. R.I. Gen. Laws Ann. § 11-34.1-2(a). A subsequent conviction is punishable by imprisonment up to 1 year, a fine of \$500–\$1,000, or both. R.I. Gen. Laws Ann. § 11-34.1-2(b). Additionally, under R.I. Gen. Laws Ann. § 11-34.1-2(c), “Any proceeds derived directly from a violation of this section are subject to seizure and forfeiture . . . .”

R.I. Gen. Laws Ann. § 11-34.1-4(a) (Loitering for prostitution) also is not limited in applicability to adults, stating,

It shall be unlawful for any person to stand or wander in or near any public highway or street, or any public or private place, and attempt to engage passersby in conversation, or stop or attempt to stop motor vehicles, for the purpose of prostitution or other commercial sexual activity. . . .

A first conviction under R.I. Gen. Laws Ann. § 11-34.1-4(a) is punishable by imprisonment up to 6 months, a fine of \$250–\$1,000, or both, and a subsequent conviction is punishable by imprisonment up to 1 year, a fine of \$500–\$1,000, or both. R.I. Gen. Laws Ann. § 11-34.1-4(a), (b).

5.3.1 Recommendation: Amend R.I. Gen. Laws Ann. § 11-34.1-2(a), (b) (Prostitution) and § 11-34.1-4 (Loitering for prostitution) to make the laws inapplicable to minors under 18.

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.*

R.I. Gen. Laws Ann. § 40-11-3(a) (Duty to report—deprivation of nutrition or medical treatment) requires that “[a]ny person who has reasonable cause to know or suspect that any child has been abused or neglected as defined in § 40-11-2 or has been a victim of sexual abuse by another child” must report the information to the Department of Children, Youth and Families (DCYF) within 24 hours.<sup>50</sup>

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

Pursuant to [], a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under R.I. Gen. Laws Ann. § 40-11-2, the definition of “caregiver” under R.I. Gen. Laws Ann. § 40-11-2(9) is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

For purposes of R.I. Gen. Laws Title 40 (Human services), Chapter 11 (Abused and neglected children), R.I. Gen. Laws Ann. § 40-11-2(1) defines an “abused and/or neglected child” as

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<sup>50</sup> R.I. Gen. Laws Ann. § 40-11-3.1 (Duty to report death of child due to child abuse or neglect) separately mandates the reporting of the known or suspected death of a child due to child abuse or neglect. The failure to make a report required under R.I. Gen. Laws Ann. § 40-11-3 or § 40-11-3.1 is punishable by imprisonment up to 1 year, a fine up to \$500, or both, and the person will be liable for any civil damages “proximately caused by that failure.” R.I. Gen. Laws Ann. § 40-11-6.1.

a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare:

- ...
- (iii) Commits or allows to be committed, against the child, an act of sexual abuse; or
- ...
- (vii) Sexually exploits the child in that the person allows, permits or encourages the child to engage in prostitution as defined by the provisions in § 11-34.1-1 et seq., entitled “Commercial Sexual Activity”; or
- (viii) Sexually exploits the child in that the person allows, permits, encourages or engages in the obscene or pornographic photographing, filming or depiction of the child in a setting which taken as a whole suggests to the average person that the child is about to engage in or has engaged in, any sexual act, or which depicts any such child under eighteen (18) years of age, performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or
- (ix) Commits or allows to be committed any sexual offense against the child as such sexual offenses are defined by the provisions of chapter 37 [Sexual assault] of title 11 [Criminal offenses], entitled “Sexual Assault”, as amended; or
- (x) Commits or allows to be committed against any child an act involving sexual penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen (15) years or older, and (1) force or coercion is used by the perpetrator, or (2) the perpetrator knows or has reason to know that the victim is a severely impaired person as defined by the provisions of § 11-5-11 [Assault on persons with severe impairments], or physically helpless as defined by the provisions of § 11-37-6 [Third degree sexual assault].

## I. Initial Custody

### a. Authority for Initial Custody

If the DCYF determines that “a child has been abused or neglected; which results in a child [sic] death, serious physical or emotional harm, sexual abuse or exploitation or an act or failure to act which represents an imminent risk of serious harm,” the DCYF has “the duty to petition the family court for removal of the child from the care and custody of the parents, or any other person having custody or care of the child.” R.I. Gen. Laws Ann. § 40-11-7(c).

R.I. Gen. Laws Ann. § 40-11-5(b) (Protective custody by physician or law enforcement officer) separately allows any law enforcement officer to “take a child into protective custody without the consent of the parents, or others exercising control over the child.” § 40-11-5(c).

### b. Placement

An officer who takes a child into custody and “has reasonable cause to believe that there exists an imminent danger to the child’s life or health” must “immediately notify and place the child with the director of the department of children, youth, and families or his or her designated agent who shall care for the child,” but the child may not “be detained in protective custody longer than forty-eight (48) hours without the express approval of a justice of the family court.” R.I. Gen. Laws Ann.

Under R.I. Gen. Laws Ann. § 14-1-27(c) (Temporary detention in public or private institutions), when DCYF applies for temporary custody of a child due to abuse or neglect allegations, DCYF must, within 30 days, consider placing the child with a relative who does not live with the child’s parents, “unless the particular needs of the child make the placement contrary to the child’s best interests.” R.I. Gen. Laws Ann. § 40-11-12(b) (Award of custody) provides that, where the court determines a child to be an abused or neglected child, the court may allow the department custody of the child until the conditions in the child’s own home are “consistent

with the child’s safety.”

## II. Process Following Initial Custody

Within 12 months of the date the child was placed in DCYF’s care, the DCYF must “file a motion in the family court requesting a permanency hearing on the status of the child.” R.I. Gen. Laws Ann. § 40-11-12.1(a).

## III. Outcomes

At the permanency hearing, the court will enter an order for a permanency plan, which, pursuant to R.I. Gen. Laws Ann. § 40-11-12.1(e), may include one of the following options:

- (1) In the case of a child whose care and custody have been transferred to the department of children, youth, and families, direct that the child be returned to and safety maintained in the home of the parent, guardian, or relative; or
- (2) Direct that the child’s placement in foster care continue on a long-term basis or that the child be placed in an independent living facility; or
- (3) Direct that foster care of the child and reunification efforts be continued if the department of children, youth, and families, after a hearing, has demonstrated to the court that continuation of the child in foster care and continued reunification efforts for a determinate period is in the child’s best interests. If the court does not return the child to the care and custody of the parent, guardian or relative and the court does not direct that foster care of the child and reunification efforts be continued, the department shall institute a proceeding within thirty (30) days of the permanency hearing pursuant to chapter 7 of title 15 to legally free the child for adoption; or

....

For children determined to be dependent or neglected, under R.I. Gen. Laws Ann. § 14-1-34(a) (Placement of dependent and neglected children—criminal records of foster parents made available), the court must grant custody of the child to the DCYF, which may be revoked “for good cause shown” by decree at any time. If custody is granted to the DCYF, “the court shall authorize the provision of suitable treatment, rehabilitation and care for each child in the least restrictive and community-based setting.” R.I. Gen. Laws Ann. § 14-1-36.2.

### **Child Identified as Delinquent**

Children may be treated as delinquent and be arrested and detained by law enforcement for actions related to their trafficking conditions. R.I. Gen. Laws Ann. § 14-1-25.

A “delinquent” child is defined as one “who has committed any offense which, if committed by an adult, would constitute a felony, or who has on more than one occasion violated any of the other laws of the state or of the United States or any of the ordinances of cities and towns, other than ordinances relating to the operation of motor vehicles.” R.I. Gen. Laws Ann. § 14-1-3(5). A “wayward” child is defined in R.I. Gen. Laws Ann. § 14-1-3(9)(vi) to include a child “[w]ho has on any occasion violated any of the laws of the state or of the United States or any of the ordinances of cities and towns, other than ordinances relating to the operation of motor vehicles.”

Under these definitions, a commercially sexually exploited child who has violated R.I. Gen. Laws Ann. § 11-34.1-2 (Prostitution) or § 11-34.1-4 (Loitering for prostitution) would be considered a wayward child upon a first violation and a delinquent child upon a subsequent violation and could be arrested under R.I. Gen. Laws

## I. Initial Custody

### a. Authority for Initial Custody

R.I. Gen. Laws Ann. § 11-9-3 (Seizure and custody of exploited child—proceedings as against neglected child) states,

The town sergeant of any town, the chief of police of any city, or any agent of the director of children, youth and families may enter any place where any child may be held, detained or employed in violation of §§ 11-9-1 [Exploitation for commercial or immoral purposes]—11-9-8 [Appropriations for prevention of cruelty to children], and, without process of law, seize and detain the child and hold him or her as a witness to testify upon the trial of any person charged with violating the provisions of §§ 11-9-1—11-9-8; and if prior to or upon conviction of the offender, no person shall appear who is entitled to the custody of the child, the officer having the child in custody may bring proceedings against the child as a neglected child under the provisions of chapter 1 [Proceedings in family court] of title 14 [Delinquent and dependent children].

### b. Placement

After taking a child into custody, R.I. Gen. Laws Ann. § 14-1-20 (Release or placement of child in custody of officer) requires an officer, on the parent's, guardian's, or other custodian's written promise, to bring the child to court at the appointed time, to release the child to a parent, guardian, or other custodian. If the officer does not release the child to the parent, guardian, or custodian, he may place the child with a probation counselor or in another place of detention. The child may be detained in "a suitable place or places not directly connected with any jail or lockup . . . so long as detention may be necessary." R.I. Gen. Laws Ann. § 14-1-23. However, R.I. Gen. Laws Ann. § 14-1-26.1 (Temporary custody of status and non-offenders) provides that when law enforcement holds juveniles who are considered status offenders, dependent children, or neglected children in custody, they may only be held in "an unlocked, multi-purpose room that is not designated for residential use or secure detention." Furthermore, these children "shall not be handcuffed to a stationary object and must remain in continuous visual supervision of an agency representative." R.I. Gen. Laws Ann. § 14-1-26.1. Delinquent or wayward children may not, pursuant to R.I. Gen. Laws Ann. § 14-1-26, be held in any prison, jail, lockup, or reformatory, or be transported with, or compelled or permitted to associate or mingle with, criminal, vicious, or dissolute persons, but shall be kept under the care of the person arresting the child, or of a police matron as provided in § 14-1-24 [Care of girls detained], until by order of the court other disposition is made of the child as provided in this chapter; and if the child is ordered to be detained or confined in any of the institutions mentioned in this chapter, the child shall not be conveyed to or from the institution with adult offenders.

## II. Adjudication or Referral to Alternative Process

Under R.I. Gen. Laws Ann. § 14-1-27(a) (Temporary detention in public or private institutions), a child may also be held at the training school for youth, in the custody of the DCYF, or in a private home, institution, or

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<sup>51</sup> R.I. Gen. Laws Ann. § 14-1-22 (Taking child into immediate custody) further provides,

Nothing contained in this chapter [Proceedings in family court] shall be construed as forbidding any police officer or probation counselor from immediately taking into custody any child who is found violating any law or ordinance, or whose surroundings are such as to endanger his health, morals, or welfare, unless immediate action is taken. In each of these cases, the officer taking the child into custody shall immediately report the fact to the court and the case shall then be proceeded with as provided in this chapter.

agency licensed by the DCYF, pending a hearing within 30 days. If the hearing determines that the child is “delinquent, wayward, neglected or dependent,” pursuant to R.I. Gen. Laws Ann. § 14-1-32 (Power of court to order disposition of child), the child may be placed in the custody of a parent, relative, or the DCYF, subject to terms decided by the court, which may include probation, additional supervision, or parental counseling.

Under R.I. Gen. Laws Ann. § 14-1-36 (Commitment of delinquent and wayward children), delinquent and wayward children specifically may be “committed to the training school for youth for a sentence no longer than the youth’s nineteenth birthday.”

5.4.1 Recommendation: Establish a mandatory response law that directs any minor involved in prostitution or who is a victim of trafficking for sexual servitude away from the criminal justice system and into a protective system.

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

R.I. Gen. Laws Ann. § 40-11-2(1) (Definitions) expressly identifies commercial sexual exploitation as a type of child abuse or neglect. R.I. Gen. Laws Ann. § 40-11-2(1) defines an “abused and/or neglected child” as,

a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare:

...

(iii) Commits or allows to be committed, against the child, an act of sexual abuse; or

...

(vii) Sexually exploits the child in that the person allows, permits or encourages the child to engage in prostitution as defined by the provisions in § 11-34.1-1 et seq., entitled “Commercial Sexual Activity”; or

(viii) Sexually exploits the child in that the person allows, permits, encourages or engages in the obscene or pornographic photographing, filming or depiction of the child in a setting which taken as a whole suggests to the average person that the child is about to engage in or has engaged in, any sexual act, or which depicts any such child under eighteen (18) years of age, performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or

(ix) Commits or allows to be committed any sexual offense against the child as such sexual offenses are defined by the provisions of chapter 37 [Sexual assault] of title 11 [Criminal offenses], entitled “Sexual Assault”, as amended; or

(x) Commits or allows to be committed against any child an act involving sexual penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen (15) years or older, and (1) force or coercion is used by the perpetrator . . . .

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.*

R.I. Gen. Laws Ann. § 40-11-2(9) (Definitions) defines a “person responsible for child’s welfare” as

the child’s parent, guardian, any individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian and has unsupervised access to a child, foster parent, an employee of a public or private residential home or facility, or any staff person providing out-of-home care (out-of-home care means child day care to include family day care, group day care, and center-based day care). . . .

5.5.1 Recommendation: Amend the definition of “person responsible for child’s welfare” in R.I.

Gen. Laws Ann. § 40-11-2(9) (Definitions) to include any person with custody and control of a child to ensure child welfare can provide services to all commercially sexually minors.

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.*

Although not specifically listed as a crime for which victim's compensation is available, a child sex trafficking victim may receive an award under the discretionary authority of the office of the general treasurer. R.I. Gen. Laws Ann. §§ 12-25-19, 12-25-20, 12-25-22. R.I. Gen. Laws Ann. § 12-25-19(a) states that a victim who "is injured or killed by any act . . . within the description of the offenses listed in § 12-25-20 . . . may apply to the office for compensation." Offenses listed in R.I. Gen. Laws Ann. § 12-25-20 (Offenses to which chapter applies) include:

- (7) Kidnapping;
- . . .
- (11) First or second degree sexual assault;
- (12) Child molestation, first or second degree;
- . . .
- (18) Any other crime excluding motor vehicle offenses other than those enumerated in this section which results in personal injury<sup>52</sup> or death; . . .
- . . . .

This statute does not expressly mention violations of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), or § 11-9-1.3(a)(4) (Child pornography prohibited). R.I. Gen. Laws Ann. § 12-25-20. However, the inclusion in subsection (18) of "[a]ny other crime . . . which results in personal injury or death" should include the offenses.

But barriers to accessing crime compensation funds exist. R.I. Gen. Laws Ann. § 12-25-22(a) (Limitations upon awarding compensation) requires a victim to both report the crime to law enforcement within 10 days of the crime's occurrence and commence an "action for compensation" within 3 years of the occurrence of the crime. A claim may be allowed, however, where the "victim was below the age of eighteen (18) years of age or of unsound mind, or for good cause shown." The office of the general treasurer also "may reduce or deny" a victim's award based on "compliance by the victim with the reasonable requests of law enforcement," and the victim's behavior "which directly or indirectly contributed to his or her injury or death." R.I. Gen. Laws Ann. § 12-25-19(d)(1)(i), (d)(1)(iv).

5.7.1 Recommendation: Amend R.I. Gen. Laws Ann. § 12-25-20 (Offenses to which chapter applies) to include expressly R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), and § 11-37-6 (Third degree sexual assault) as offenses for which a victim may be eligible for compensation.

5.7.2 Recommendation: Amend R.I. Gen. Laws Ann. § 12-25-22(a) (Limitations upon awarding

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<sup>52</sup> R.I. Gen. Laws Ann. § 12-25-17(7) defines "personal injury" as "actual bodily harm, mental or nervous shock, and a pregnancy resulting from sexual attack."

compensation) to clarify that good cause exists for victims of domestic minor sex trafficking or commercial sexual exploitation.

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

R.I. Gen. Laws Ann. § 12-28-8(b), (c) (Child victims) provides the following rights to children under 15 years old who are victims of felonies:

- (1) To have explanations, in language understandable to a child of the victim's age, of all investigative and judicial proceedings in which the child will be involved;
- (2) To be accompanied at all investigative and judicial proceedings by a relative, guardian, or other person who will contribute to the child's sense of well being, unless it is determined by the party conducting the proceeding that the presence of the particular person would substantially impede the investigation or prosecution of the case;
- (3) To have all investigative and judicial proceedings in which the child's participation is required arranged so as to minimize the time when the child must be present;
- (4) To be permitted to testify at all judicial proceedings in the manner which will be least traumatic to the child, consistent with the rights of the defendant;
- (5) To be provided information about and referrals to appropriate social service programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

Additional rights are provided to children under R.I. Gen. Laws Ann. § 42-72-15 (Children's bill of rights). Included, among other rights, under R.I. Gen. Laws Ann. § 42-72-15 are the following rights:

- (g) Each child may receive his or her clergyman, attorney, guardian ad litem, special advocate, or child advocate at any reasonable time.  
.....
- (i) Each child under the supervision of the department shall have the right to counsel, and the right to receive visits from physicians and mental health professionals.  
.....
- (n) A child victim or witness shall be afforded the protections of § 12-28-9 [Victims' services unit] under the direction of the department of children, youth, and families, and the department shall advise the court and the police and the prosecutor on the capacity of the child victim to understand and participate in the investigation and in the court proceedings and of the potential effect of the proceedings on the child.  
.....

Rhode Island's general victim rights, under R.I. Gen. Laws Ann. § 12-28-3(a) (General rights), further provide the following rights, among others, to all crime victims:

- (3) To receive protection from harm and threats of harm arising out of the victim's cooperation with law enforcement and prosecution efforts, and to be provided with information as to the means of protection available;  
....
- (5) To be provided, whenever feasible, with a secure waiting area during court proceedings that does not require the victim to be in close proximity to the defendant and the family and friends of the defendant;  
.....

Additionally, R.I. Gen. Laws Ann. § 12-28-9(a) (Victims' services unit) establishes a victims' services unit

whose services include, among others, “(4) Assistance in preparing for and making court appearances and in making victim impact statements . . . .”

Under R.I. Gen. Laws Ann. § 11-37-13.2(a) (Alternative methods of victim testimony—child victim), victims of sexual assault who are under 18 years of age may provide testimony via videotape or closed circuit television, “upon a showing that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm.” If the child victim is 14 years old or younger, “there shall be a rebuttable presumption that the child is unable to testify before the court without suffering unreasonable and unnecessary mental or emotional harm.” R.I. Gen. Laws Ann. § 11-37-13.2(a). When the court permits a child to give testimony outside the court room, “[o]nly the judge, attorneys for the parties, persons necessary to operate the recording or broadcasting equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his or her testimony.” R.I. Gen. Laws Ann. § 11-37-13.2(a).

Under R.I. Gen. Laws Ann. § 11-37-13 (Prior sexual conduct of complainant—admissibility of evidence) and R.I. R. Evid. 412, where a defendant is charged with sexual assault, evidence of the victim’s past sexual behavior with persons other than the defendant may be admissible, provided that specified notice requirements are met and the evidence is relevant. Additionally, under R.I. Gen. Laws Ann. § 11-34.1-10 (Reputation testimony as evidence), “In the trial of any person charged with a violation of this chapter [Chapter 11-34.1 (Commercial sexual activity)], testimony concerning the reputation of the place where the violation occurred or of persons who frequent or reside in it shall be admissible in evidence in support of the charge.”

Pursuant to R.I. Gen. Laws Ann. § 40-11-14 (Right to representation in court proceedings), abused or neglected children also are afforded the right to “have a guardian ad litem and/or a court-appointed special advocate appointed by the court to represent this child, all in the discretion of the court.”

5.8.1. Recommendation: Amend R.I. Gen. Laws Ann. § 12-28-8(b), (c) (Child victims) to provide victims’ rights to all victims under the age of 18.

5.8.2. Recommendation: Amend R.I. Gen. Laws Ann. § 11-37-13.2(a) (Alternative methods of victim testimony—child victim), R.I. Gen. Laws Ann. § 11-37-13 (Prior sexual conduct of complainant—admissibility of evidence), and R.I. Gen. Laws Ann. § 40-11-14 (Right to representation in court proceedings) to extend heightened protections to victims of CSEC offenses.

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.*

Rhode Island law does not provide for the automatic sealing of juvenile records upon application by the minor at age 18. R.I. Gen. Laws Ann. § 14-1-6.1(a)(i)–(ii) (Records) provides,

(i) All police records relating to the arrest, detention, apprehension and disposition of the juvenile and all records of identification maintained pursuant to chapter 12-1 of the general laws shall be treated as family court records in accordance with §§ 14-1-64 [Disposition of juvenile records] and 38-2-2 [Definitions] of the general laws . . . and

(ii) All court records of such proceedings shall be sealed upon final disposition of the case in the event of a no information, dismissal or not guilty finding or upon the completion of any sentence, probation and/or parole imposed therein.

R.I. Gen. Laws Ann. § 14-1-64(a) (Disposition of juvenile records) further states,

All police records relating to the arrest, detention, apprehension, and disposition of any juveniles shall be kept in files separate and apart from the arrest records of adults and shall be withheld from public inspection, but the police report relating to the arrest or detention of a juvenile shall be open to inspection and copying upon request and upon payment of copying costs . . . by the parent, guardian, or attorney of the juvenile involved. After disposition of an offense and upon execution of an appropriate release and upon payment of copying costs . . . by the parent, guardian or attorney of the juvenile involved, records relating to the arrest, detention, apprehension and disposition of the juveniles shall be open to inspection and copying by the parent, guardian, or attorney of the juvenile involved.

Apart from the provisions of R.I. Gen. Laws Ann. § 14-1-6.1 and § 14-1-64(a), the records of any person found guilty of a violation of R.I. Gen. Laws Ann. § 11-34.1-2 (Prostitution), at the discretion of the court, “may be expunged one year after completion of that person’s sentence.” R.I. Gen. Laws Ann. § 11-34.1-5(a).

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.*

R.I. Gen. Laws Ann. § 12-19-32 (Restitution) provides that “[i]n addition to or in lieu of any non-mandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community restitution.” If the court orders a defendant to make restitution, pursuant to R.I. Gen. Laws Ann. § 12-28-5.1 (Restitution), “a civil judgment shall automatically be entered by the trial court against the defendant on behalf of the victim for that amount.” R.I. Gen. Laws Ann. § 11-67-4 (Restitution)<sup>53</sup> specifically requires the court to order a defendant to pay as restitution the greater of,

- (a) The gross income or value to the defendant of the victim’s labor or commercial sexual activity; or
- (b) The value of the victim’s labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act (FLSA) or the minimum wage law, whichever is greater.

However, since “victim,” as defined in R.I. Gen. Laws Ann. § 11-67-1(8) (Definitions), only includes persons “subject to the practices set forth in § 11-67-2 or 11-67-3” and does not include persons subject to the practices set forth in § 11-67-6 (Sex trafficking of a minor), minor victims of sex trafficking may have difficulty accessing restitution under this provision.

No civil remedies are expressly authorized under Title 11, Chapter 67 (Trafficking of persons and involuntary servitude); however, R.I. Gen. Laws Ann. § 9-1-2 (Civil liability for crimes and offenses) states,

Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made; . . . .

- 5.10.1 Recommendation: Enact a law providing a civil cause of action for domestic minor sex trafficking victims.
- 5.10.2 Recommendation: Amend R.I. Gen. Laws Ann. § 11-67-1 (Definitions) to specifically include persons “subject to the practices set forth in” § 11-67-6 (Sex trafficking of a minor).

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<sup>53</sup> See *supra* note 21 for a discussion regarding the applicability of these provisions.

5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

For criminal prosecutions, R.I. Gen. Laws Ann. § 12-12-17(a)–(c) (Statute of limitations) provides,

- (a) There shall be no statute of limitations for the following offenses: . . . first degree child molestation sexual assault, second degree child molestation sexual assault . . .
- (b) The statute of limitations for the following offenses shall be ten (10) years: . . . any violation of chapter 15 of title 7 (racketeer influenced and corrupt organizations); any violation of chapter 57 of title 11 (racketeer violence) . . .
- (c) The statute of limitations for any other criminal offense shall be three (3) years unless a longer statute of limitations is otherwise provided for in the general laws.

Because no statute of limitations is provided under R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), or § 11-9-1.3(a)(4) (Child pornography prohibited), prosecutions for these crimes must commence within 3 years of the commission of the offense.

Generally, under R.I. Gen. Laws Ann. § 9-1-19 (Disability postponing running of statute), where the plaintiff in a civil action is a minor, the statute of limitations tolls until the minor turns 18. However, pursuant to R.I. Gen. Laws Ann. § 9-1-51 (Limitation on actions based on sexual abuse or exploitation of a child),

- (a) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within seven (7) years of the act alleged to have caused the injury or condition, or seven (7) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act, whichever period expires later.
- (b) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents cause the injury complained of, but may compute the date of discovery from the date of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse or exploitation.
- (c) The knowledge of a custodial parent or guardian shall not be imputed to a person under the age of eighteen (18) years.
- (d) For purposes of this section, “child” means a person under the age of eighteen (18) years.
- (e) As used in this section, “childhood sexual abuse” means any act committed by the defendant against a complainant who was less than eighteen (18) years of age at the time of the act and which act would have been a criminal violation of chapter 37 [Sexual assault] of title 11 [Criminal offenses].

R.I. Gen. Laws Ann. § 9-1-51 supersedes the tolling provisions under R.I. Gen. Laws Ann. § 9-1-19, as R.I. Gen. Laws Ann. § 9-1-24 (Special limitations provisions unaffected) states that “[t]he provisions of §§ 9-1-14–9-1-23 shall not apply to any case in which a different time is limited by special provisions.”

- 5.11.1 Recommendation: Amend R.I. Gen. Laws Ann. § 12-12-17(a) (Statute of limitations) to include R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1(b), (c) (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), § 11-37-8.8(a) (Indecent solicitation of a child), and § 11-9-1.3(a)(4) (Child pornography prohibited).

***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.*
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***Legal Analysis:***

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

Law enforcement officers are required to receive several types of training, but training on human trafficking and domestic minor sex trafficking are not among them. R.I. Gen. Laws Ann. § 42-28-25(a) (State and municipal police training school established) provides for the establishment of a “state and municipal police training academy.” Similarly, R.I. Gen. Laws Ann. § 42-28.2-2 (Municipal police training academy school established) creates “a municipal training school, for the use of all municipal police departments with the exception of the Providence police department.”

- 6.1.1 Recommendation: Amend R.I. Gen. Laws Ann. § 12-29-6 (Training) to require law enforcement officers to receive training on human trafficking and domestic minor sex trafficking, or enact a law that authorizes the development of a training curriculum on human trafficking for law enforcement officers.

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

Rhode Island allows single party consent to audiotaping. R.I. Gen. Laws Ann. § 11-35-21(a) (Unauthorized interception, disclosure or use of wire, electronic, or oral communication) generally makes it a crime for a “person to intercept or attempt to intercept, any wire, electronic, or oral communication.” However, pursuant to R.I. Gen. Laws Ann. § 11-35-21(c), it is not a crime for

- (2) A person acting under color of law to intercept a wire, electronic, or oral communication, where that person is a party to the communication, or where one of the parties to the communication has given prior consent to the interception; or
- (3) A person not acting under color of law to intercept a wire, electronic, or oral communication, where the person is a party to the communication, or one 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 the violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

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

Rhode Island law does not expressly authorize the use of wiretapping in the investigation of R.I. Gen. Laws

Ann. § 11-67-6 (Sex trafficking of a minor) or any CSEC laws. R.I. Gen. Laws Ann. § 12-5.1-2(a) (Application for orders) states that “[t]he attorney general, or an assistant attorney general specially designated by the attorney general, may apply ex parte to the presiding justice of the superior court of competent jurisdiction for an order authorizing the interception of any wire, electronic, or oral communications.” R.I. Gen. Laws Ann. § 12-5.1-4(a) (Issuance of orders) allows an order authorizing wiretapping if

- (1) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular designated offense;
- (2) There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;
- (3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried, or to be too dangerous;
- (4) There is probable cause for belief that the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted, are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the individual.

The only crime included in the definition of “designated offense” in R.I. Gen. Laws Ann. § 12-5.1-1(4) (Definitions) that could be relevant to domestic minor sex trafficking is kidnapping. No other trafficking or CSEC crime is listed among the designated offenses.

- 6.3.1 Recommendation: Amend R.I. Gen. Laws Ann. § 12-5.1-1(4) (Definitions) to include violations of R.I. Gen. Laws Ann. § 11-67-6 (Sex trafficking of a minor), § 11-9-1 (Exploitation for commercial or immoral purposes), § 11-9-2 (Employment of children for unlawful purposes), § 11-9-1.1 (Child nudity prohibited in publications), and § 11-37-8.8(a) (Indecent solicitation of a child) as “designated offenses” for purposes of using wiretapping in an investigation.

- 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.*

R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) applies where a defendant “knowingly solicits<sup>54</sup> another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution” or another specified crime. Because a violation of R.I. Gen. Laws Ann. § 11-37-8.8(b) occurs where the defendant believes the person solicited is a minor, Rhode Island appears to permit law enforcement to use a decoy.

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

R.I. Gen. Laws Ann. § 11-37-8.8(a) (Indecent solicitation of a child) applies where a defendant “knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution” or another specified crime. R.I. Gen. Laws § 11-37-8.8(b) defines “solicit” as “to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to . . . by computer, [or] through the Internet.” Because a violation of R.I. Gen. Laws Ann. § 11-37-8.8(a) occurs where the defendant believes the person solicited is a minor, Rhode Island appears to permit the use of the Internet to investigate buyers and traffickers.

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

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<sup>54</sup> See *supra* note 6 for the definition of “solicit.”

Rhode Island has established a missing children's information center, pursuant to R.I. Gen. Laws Ann. § 42-28.8-1 (Missing children's information center), with the responsibility, pursuant to R.I. Gen. Laws Ann. § 42-28.8-2 to

- (1) Coordinate, file, and promptly investigate all missing children cases in the state and create a central office on missing children.
- (2) Collect and maintain data on missing children in the state and throughout the United States.
- (3) Coordinate with other states and with the federal government in investigating cases of missing children and unidentified bodies.
- (4) Provide special training to law enforcement officers and medical examiners to help them expeditiously handle cases of missing children and to prohibit any regulation requiring a twenty-four (24) hour waiting period prior to conducting a preliminary investigation of a complaint of a missing child.
- (5) Developing recommendations for better reporting and use of computer systems.
- (6) Providing the necessary equipment for the use of the national crime information center by state and municipal police departments.

Pursuant to R.I. Gen. Laws Ann. § 42-28.8-3 (Reporting and distribution of information), law enforcement must "immediately enter the information on the missing person into the National Crime Information Center computer of the Federal Bureau of Investigation and inform the National Center for Missing and Exploited Children" and "provide to the parents or guardians of the missing child information release forms from the National Center for Missing and Exploited Children and advise them of the services of the National Center for Missing and Exploited Children." R.I. Gen. Laws Ann. § 42-28.8-3 also states,

The missing children's information center shall send a report to the missing children's information center of the state police. The missing children's information center shall distribute the names of and other descriptive information about these children to the state registrar of vital statistics in the department of health, the commissioner of education, the school districts of the state, all branches of the United States Postal Service in the state, and all law enforcement agencies in the state.

Notice must be provided to "any school in which the person is currently or was previously enrolled" and "the local registrar" where the missing child was born in Rhode Island, so that the child's school records and birth certificate records may be flagged to alert the school and the local registrar that the child is missing whenever anyone requests the records. R.I. Gen. Laws Ann. §§ 42-28.8-7(a), 42-28.8-8(a).

Rhode Island law also requires that preventative measures be taken, by providing "statewide educational and public informational seminars for the purpose of developing public awareness of the problems regarding missing children" and establishing a hotline to "receive reports on missing children." R.I. Gen. Laws Ann. §§ 42-28.8-4, 42-28.8-6.

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