

PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

2014 ANALYSIS AND RECOMMENDATIONS WYOMING

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 Analysis¹:

- 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.*

Wyoming Statutes Annotated (Wyo. Stat. Ann.), Title 6, Article 7 contains the provisions related to human trafficking, including the offenses of Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), § 6-2-703 (Human trafficking in the second degree), § 6-2-706 (Sexual servitude of a minor), and § 6-2-707 (Patronizing a victim of sexual servitude), all of which criminalize sex trafficking of a minor.²

¹ Unless otherwise specified, all references to Wyoming statutes were taken from Wyoming Statutes Annotated (LEXIS through the 2014 Budget Session of the Legislature) 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.

² Wyo. Stat. Ann. § 6-2-701 (a)(ix) defines “minor” as “any natural person younger than eighteen (18) years of age.”

Pursuant to Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), a person commits human trafficking in the first degree “when the person³ intentionally or knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains or entices an individual for the purpose of: . . . (iii) Sexual servitude of a minor in violation of W.S. 6-2-706.” Wyo. Stat. Ann. § 6-2-702. Pursuant to Wyo. Stat. Ann. § 6-2-703 (Human trafficking in the second degree), a person commits human trafficking in the second degree when a person “recklessly recruits, transports, transfers, harbors, receives, provides, obtains isolates, maintains or entices an individual for the purpose of: . . . (iii) Sexual servitude of a minor in violation of W.S. 6-2-706.” Wyo. Stat. Ann. § 6-2-703.

Wyo. Stat. Ann. § 6-2-706(a) (Sexual servitude of a minor) states, “A person is guilty of sexual servitude of a minor when the person intentionally, knowingly or recklessly offers, obtains, procures or provides an individual less than eighteen (18) years of age to engage in commercial sexual services.”⁴

Proof of force, fraud or coercion is not required when the victim of Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), § 6-2-703 (Human trafficking in the second degree) and § 6-2-706 (Sexual servitude of a minor) is a minor under 18 used in commercial sexual activity.⁵ However, “commercial sexual activity,” as used in § 6-2-706 (Sexual servitude of a minor), is classified as “services,” which is defined in Wyo. Stat. Ann. § 6-2-701 (a)(xiv) as “activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor.” This definition narrows the application of the trafficking statutes to those cases in which a minor is under the control of a third party trafficker, essentially introducing the elements of force, fraud or coercion.

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

The following laws treat CSEC as distinct crimes.

1. Pursuant to Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties), “Except as provided in W.S. 6-2-701 through 6-2-710, a person commits a felony if he: (i) Knowingly or intentionally entices or compels another person to become a prostitute. . . .” Where the “person enticed or compelled is under eighteen (18) years of age,” a conviction for violating Wyo. Stat. Ann. § 6-4-103(a) is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$5,000, or both. Wyo. Stat. Ann. § 6-4-103(b).
2. Pursuant to Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) (Sexual exploitation of children; penalties; definitions),

A person is guilty of sexual exploitation of a child⁶ if, for any purpose, he knowingly:
(i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;⁷

³ Wyo. Stat. Ann. § 6-2-701 (a)(xi) defines “person” as “an individual, partnership, corporation, joint stock company or any other association or entity, public or private.”

⁴ Wyo. Stat. Ann. § 6-2-701 (a)(xiv) defines “services” as “activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity is ‘services’ in this article.”

⁵ Wyo. Stat. Ann. § 6-2-701 (a)(xv) defines “victim” as “the person alleged to have been subjected to human trafficking.”

⁶ Wyo. Stat. Ann. § 6-4-303(a)(i) defines “child” as “a person under the age of eighteen (18) years.”

(ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct⁸;

....

A first time conviction under Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). A subsequent conviction for violating Wyo. Stat. Ann. § 6-4-303(b)(i), (ii) is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

Several other non-commercial sex offenses may be applicable in cases involving the commercial sexual exploitation of a child. Such laws include the following:

1. Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) states,

Except under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 through 6-2-317, anyone who has reached the age of majority and who solicits,⁹ procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 is guilty of a felony

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

2. Under Wyo. Stat. Ann. § 6-2-314(a)(i) (Sexual abuse of a minor in the first degree; penalties) a person commits a crime when “[b]eing sixteen (16) years of age or older, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age.”¹⁰ A conviction under this statute is

⁷ Wyo. Stat. Ann. § 6-4-303(a)(ii) states:

(ii) “Child pornography” means any visual depiction, including any photograph, film, video, picture, computer or computer-generated image or picture, whether or not made or produced by electronic, mechanical or other means, of explicit sexual conduct, where:

(A) The production of the visual depiction involves the use of a child engaging in explicit sexual conduct;

(B) The visual depiction is of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child; or

(C) The visual depiction has been created, adapted or modified to depict explicit sexual conduct involving a child or an individual virtually indistinguishable from a child.

....

⁸ Wyo. Stat. Ann. § 6-4-303(a)(iii) defines “explicit sexual conduct” as “actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse or lascivious exhibition of the genitals or pubic area of any person.”

⁹ “Solicit” is not defined in either Wyo. Stat. § 6-2-301 (the definitions for the sexual offenses) or Wyo. Stat. § 6-1-104 (the general definitions for all criminal laws). In *Blakeman v. State*, 100 P.3d 1229, 1234–36 (Wyo. 2004) (decided under prior law), the Supreme Court of Wyoming held that the district court made no error in instructing the jury on the definition of “solicit,” which defined “solicit” as “(1) to ask or seek earnestly or pleadingly, (2) to tempt or to entice someone to do wrong, (3) to approach for some immoral purpose.”

¹⁰ Wyo. Stat. Ann. § 6-2-301(a)(vii) (Definitions) defines “sexual intrusion” as follows:

generally punishable by imprisonment up to 50 years, “unless the person convicted qualifies under W.S. 6-2-306(e) [Penalties for sexual assault],” which requires a defendant with prior convictions for specific sex crimes to receive life imprisonment without the possibility of parole if the convictions were for offenses committed after the actor reached the age of 18.¹¹ Wyo. Stat. Ann. §§ 6-2-314(b), 6-2-306(e). However, if the person convicted for violating this statute is 21 years of age or older, the defendant will receive imprisonment for 25–50 years, “unless the person convicted qualified under W.S. 6-2-306(e).” Wyo. Stat. Ann. § 6-2-314(c). In either case, the court may order the defendant to pay a possible fine not to exceed \$10,000 in addition to his sentence. Wyo. Stat. Ann. § 6-10-102.¹²

3. Pursuant to Wyo. Stat. Ann. § 6-2-315(a)(i), (ii) (Sexual abuse of a minor in the second degree),

Except under circumstance constituting sexual abuse of a minor in the first degree as defined by W.S. 6-2-314, an actor commits the crime of sexual abuse of a minor in the second degree if:

- (i) Being seventeen (17) years of age or older, the actor inflicts sexual intrusion on a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;
- (ii) Being sixteen (16) years of age or older, the actor engages in sexual contact¹³ of a victim who is less than thirteen (13) years of age;

A conviction for violating Wyo. Stat. Ann. § 6-2-315(a)(i), (ii) is punishable by imprisonment up to 20 years and a possible fine not to exceed \$10,000, “unless the person convicted qualifies under W.S. 6-2-306(e),” to be punished by life imprisonment without the possibility of parole for convictions where the offense was committed after the actor reached the age of 18.¹⁴ Wyo. Stat. Ann. §§ 6-2-315(b), 6-2-306(e), 6-10-102.

4. Wyo. Stat. Ann. § 6-2-316(a) (Sexual abuse of a minor in the third degree) states in part,

Except under circumstance constituting sexual abuse of a minor in the first or second degree as defined by W.S. 6-2-314 and 6-2-315, an actor commits the crime of sexual abuse of a minor in the third degree if:

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- (A) Any intrusion, however slight, by any object or any part of a person’s body, except the mouth, tongue or penis, into the genital or anal opening of another person’s body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or
 - (B) Sexual intercourse, cunnilingus, fellatio, anilingus or anal intercourse with or without emission.

¹¹ Wyo. Stat. Ann. § 6-2-306(e) provides,

An actor who is convicted of sexual abuse of a minor under W.S. 6-2-314 or 6-2-315 shall be punished by life imprisonment without parole if the actor has one (1) or more previous convictions for a violation of W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], 6-2-314 or 6-2-315, or a criminal statute containing the same or similar elements as the crimes defined by W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, which convictions resulted from charges separately brought, which arose out of separate occurrences in this state or elsewhere and were committed after the actor reached 18 years of age.

¹² Although Wyo. Stat. Ann. § 6-2-314 through § 6-2-317 do not specifically classify the offenses listed in each statute as felonies, the fact that each of the offenses are punishable by imprisonment for more than one year make them felonies according to Wyo. Stat. Ann. § 6-10-101 and subject to the fines listed in Wyo. Stat. Ann. § 6-10-102.

¹³ Wyo. Stat. Ann. § 6-2-301(a)(vi) defines “sexual contact” as “touching, with the intention of sexual arousal, gratification or abuse, of the victim’s intimate parts by the actor, or of the actor’s intimate parts by the victim, or of the clothing covering the immediate area of the victim’s or actor’s intimate parts.”

¹⁴ See *supra* note 11 for the text of Wyo. Stat. Ann. § 6-2-306(e).

(i) Being seventeen (17) years of age or older, the actor engages in sexual contact with a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;

....

(iii) Being less than sixteen (16) years of age, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or

(iv) Being seventeen (17) years of age or older, the actor knowingly takes immodest, immoral or indecent liberties with a victim who is less than seventeen (17) years of age and the victim is at least four (4) years younger than the actor.

A conviction for violating Wyo. Stat. Ann. § 6-2-316(a) is punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-316(b), 6-10-102.

5. Wyo. Stat. Ann. § 6-2-317(a) (Sexual abuse of a minor in the fourth degree) states,

Except under circumstance constituting sexual abuse of a minor in the first, second or third degree as defined by W.S. 6-2-314 through 6-2-316, an actor commits the crime of sexual abuse of a minor in the fourth degree if:

(i) Being less than sixteen (16) years of age, the actor engages in sexual contact with a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or

(ii) Being twenty (20) years of age or older, the actor engages in sexual contact with a victim who is either sixteen (16) or seventeen (17) years of age, and the victim is at least four (4) years younger than the actor, and the actor occupies a position of authority in relation to the victim.

A conviction for violating Wyo. Stat. Ann. § 6-2-317(a) is punishable by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-317(b), 6-10-102.

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

Wyoming's prostitution laws, Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties), § 6-4-102 (Soliciting an act of prostitution; penalties) and § 6-4-103 (Promoting prostitution; penalties) refer to the human trafficking statutes, Wyo. Stat. Ann. § 6-2-706 (Sexual servitude of a minor), § 6-2-707 (Patronizing a victim of sexual servitude), and other related statutes, helping to clarify that a commercially sexually exploited child is a victim of sex trafficking.

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.*

Wyoming has not enacted a racketeering statute. However, gangs engaged in commercial sexual exploitation of children may face prosecution under Wyo. Stat. Ann. § 6-2-403(a) (Intimidation in furtherance of the interests of a criminal street gang), which provides the following:

A person is guilty of intimidation in furtherance of the interests of a criminal street gang if he threatens or intimidates by word or conduct to cause physical injury to another person or damage to the property

of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang.

A “criminal street gang” is “an ongoing formal or informal organization, association or group of five (5) or more persons having as one (1) of its primary activities the commission of” one of the offenses listed under the definition of “pattern of criminal street gang activity” and “having a common name or identifying sign or symbol and whose members or associates individually or collectively engage in or have been engaged in a pattern of criminal street gang activity.” Wyo. Stat. Ann. § 6-1-104(a)(xiv) (Definitions). A “pattern of criminal street gang activity” includes “the commission of, conviction or adjudication for or solicitation, conspiracy or attempt to commit two (2) or more of the offenses listed in this paragraph [includes § 6-4-103, promoting prostitution] on separate occasions within a three (3) year period.” Wyo. Stat. Ann. § 6-1-104(a)(xv). A violation of Wyo. Stat. Ann. § 6-2-403(a) is a high misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Wyo. Stat. Ann. § 6-2-403(b).

Legal Components:

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

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

Wyo. Stat. Ann. § 6-2-707(a) (Patronizing a victim of sexual servitude) applies directly to buyers of sex acts with minors in certain cases. It states,

A person is guilty of patronizing a victim of sexual servitude when the person pays, agrees to pay or offers to pay anything of value so that the person or another may engage in sexual activity with an individual when the person knows that the individual is a victim of sexual servitude in violation of . . . W.S. 6-2-706.¹⁵

To be convicted under this provision, the government must prove that the buyer knew the person patronized was a victim of sexual servitude. “Commercial sexual activity,” as used in § 6-2-706 (Sexual servitude of a minor), is classified as “services,” which is defined in Wyo. Stat. Ann. § 6-2-701 (a)(xiv) as “activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor.” This definition narrows the application of Wyo. Stat. Ann. § 6-2-707(a) (Patronizing a victim of sexual servitude) to those cases in which the buyer knew the minor was under the control of a third party trafficker, a very high evidentiary burden for prosecutors.

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

Wyoming has not enacted a separate CSEC law specifically criminalizing the buying of sex with a minor. If an action is not brought under Wyo. Stat. Ann. § 6-2-707(a) (Patronizing a victim of sexual servitude), a buyer

¹⁵ See *supra* note 3 (defining “person”). See *supra* note 5 (defining “victim”).

would likely be prosecuted under Wyoming’s generally applicable solicitation law, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties). Pursuant to Wyo. Stat. Ann. § 6-4-102, “Except as provided in W.S. 6-2-701 through 6-2-710 [Title 6, Article 7, Human trafficking], a person is guilty of soliciting an act of prostitution if, with the intent that an act of sexual intrusion . . . be committed, that person knowingly or intentionally pays, or offers or agrees to pay money or other property to another person under circumstances strongly corroborative of the intention that an act of prostitution be committed.” A conviction for violating Wyo. Stat. Ann. § 6-4-102 is punishable as a misdemeanor by imprisonment up to 6 months, a fine not to exceed \$750, or both. Wyo. Stat. Ann. § 6-4-102.

Although the statute is not expressly commercial in nature, buyers could be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty).¹⁶ A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment up to 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

Several sexual offense laws could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to a human trafficking law.¹⁷

2.2.1 Recommendation: Enact a law that makes it a crime to purchase sex with a minor and imposes penalties consistent with the severity of the crime.

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

Wyoming’s solicitation statute, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties), directs cases of trafficking to Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree; penalty), § 6-2-703 (Human trafficking in the second degree; penalty), § 6-2-706 (Sexual servitude of a minor), and § 6-2-707 (Patronizing a victim of sexual servitude) which criminalizes buying sex acts with a victim of sexual servitude. This effectively differentiates cases of buying sex acts with an adult who is not a victim of human trafficking from cases of buying sex acts with a minor under 18 who is a victim of sexual servitude.

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

Buyers of commercial sex acts with minors may be prosecuted for crimes ranging from misdemeanors to felonies. Misdemeanors are punishable by imprisonment up to 6 months, fines not to exceed \$750, or both, to felonies punishable by varying ranges of imprisonment and fines not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-4-102, 6-2-314(c), 6-2-306(e), 6-10-102, 6-2-707.

Under Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude), a person who purchases sex with someone he or she knows to be a victim of sexual servitude of a minor is guilty of a felony and faces imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Wyo. Stat. Ann. § 6-2-707. A conviction under Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties) is punishable as a misdemeanor by imprisonment up to 6 months, a fine not to exceed \$750, or both. Buyers convicted of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalties),¹⁸ a felony offense, face imprisonment up to 5

¹⁶ See *supra* Section 1.2 for a full discussion of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty).

¹⁷ See *supra* Section 1.2 for a full description of the sexual offenses laws that may be used to prosecute buyers.

¹⁸ Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalties) makes it a crime when a person “solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301.”

years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102. Buyers face similar or greater penalties under Wyoming's sexual offense laws.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)¹⁹ 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 offense²⁰ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²¹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²²

2.4.1 Recommendation: Increase the penalties for patronizing a victim of sexual servitude and other offenses that cover buying sex with minors to align with the penalties available for federal trafficking offenders.

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.*

The use of the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor is not a separate crime and does not result in an enhanced penalty for buyers. However, buyers who use the Internet to lure, entice, recruit, or purchase commercial sex acts with minors may be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Wyo. Stat. Ann. § 6-2-318 makes it unlawful when an adult buyer

[e]xcept under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 [Sexual abuse of a minor in the first degree] through 6-2-317 [Sexual abuse of a minor in the fourth

¹⁹ 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.).

²⁰ 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).

²¹ 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).

²² 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

degree] . . . solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 [Definitions]

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment not to exceed 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

2.5.1 Recommendation: Enact a law that makes it a separate crime for a buyer of sex with a minor to use the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor or amend Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) to impose enhanced penalties where the crime is commercial sexual exploitation using the Internet.

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

A mistake of age defense is not prohibited under Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude). In cases in which the buyer cannot be prosecuted under Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) due to the knowledge requirement, buyers would likely be prosecuted under the generally applicable solicitation law, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution; penalties) which is age neutral making age an irrelevant element.

2.6.1 Recommendation: Amend Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) to prohibit buyers from asserting a mistake of age defense.

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

Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) impose the same penalty for all offenses against a minor under 18.

Wyoming has not enacted a separate CSEC law that specifically criminalizes buying sex with a minor. The solicitation statute, Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution), applies the same penalties regardless of the age of person solicited.

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

Buyers may be ordered to pay fines up to \$10,000. Specifically, a buyer convicted under Wyo. Stat. Ann. § 6-4-102 (Soliciting an act of prostitution) may be ordered to pay a fine not to exceed \$750 while a buyer convicted under Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) faces a fine of up to \$5,000. A buyer convicted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty), or Wyo. Stat. Ann. § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions), may be ordered to pay a fine of up to \$10,000. Wyo. Stat. Ann. §§ 6-2-707, 6-2-318, 6-4-102, 6-4-303(d), (e).

Buyers are also subject to mandatory orders of restitution pursuant to Wyo. Stat. Ann. § 7-9-102 (Order to pay upon conviction) and § 6-2-710 (Restitution). Under Wyo. Stat. Ann. §6-2-710,

(a) In addition to any other punishment prescribed by law, upon conviction for any misdemeanor or felony under this article, the court shall order a defendant to pay mandatory restitution to each victim as determined under W.S. 7-9-103 and 7-9-114.

- (b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative provided that the heir or legal representative has not benefited in any way from the trafficking.
- (c) The return of the victim of human trafficking to victim's home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.²³

Wyo. Stat. Ann. § 7-9-102 states,

In addition to any other punishment prescribed by law the court shall, upon conviction for any misdemeanor or felony, order a defendant to pay restitution to each victim as determined under W.S. 7-9-103 and 7-9-114 unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.

Specifically, under Wyo. Stat. Ann. § 7-9-103(b) (Determination of amount owed; execution),

In every case in which a claim for restitution is submitted, the court shall fix a reasonable amount as restitution owed to each victim for actual pecuniary damage resulting from the defendant's criminal activity, and shall include its determination of the pecuniary damage as a special finding in the judgment of conviction In determining the amount of restitution, the court shall consider and include as a special finding, each victim's reasonably foreseeable actual pecuniary damage that will result in the future as a result of the defendant's criminal activity. A long-term physical health care restitution order shall be entered as provided in W.S. 7-9-113 [Restitution for long-term care] through 7-9-115 [Modification of order].

Buyers who possess child pornography in violation of Wyo. Stat. Ann. § 6-4-303(b) (Sexual exploitation of children; penalties; definitions) are subject to additional fines and mandatory criminal asset forfeiture. A violation is subject to a fine of not more than \$10,000. Wyo. Stat. Ann. § 6-4-303(d). Additionally, pursuant to Wyo. Stat. Ann. § 6-4-303(f), a convicted offender shall forfeit

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

The property shall be forfeited directly to the state. There are no specific seizure provisions authorized. Wyo. Stat. Ann. § 6-4-303(f).

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

Under Wyo. Stat. Ann. § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions), it is illegal if a person "possesses child pornography."²⁴ A first conviction under Wyo. Stat. Ann. § 6-4-303(b)(iv) is punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-

²³ See *supra* note 5 (defining "victim").

²⁴ See *supra* note 7.

303(d). A second or subsequent conviction is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

In comparison, a federal conviction for possession of child pornography²⁵ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁶ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²⁷

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

Wyo. Stat. Ann. § 7-19-302(a) (Registration of offenders; procedure; verification) requires offenders who reside in Wyoming, enter Wyoming “for the purpose of residing,” attend school, or are employed in Wyoming to “register with the sheriff of the county in which he resides, attends school or is employed, or other relevant entity specified in subsection (c) of this section.” Offenses requiring sex offender registration are included under Wyo. Stat. Ann. § 7-19-301 (Definitions). Buyers of commercial sex acts convicted of Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude) are not required to register as sex offenders, but buyers are required to register if they are convicted of Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree), §6-2-703 (Human trafficking in the second degree), §6-2-706 (Sexual servitude of a minor), § 6-4-102 (Soliciting an act of prostitution; penalties) (where the person solicited is a minor), § 6-2-318 (Soliciting to engage in illicit relations; penalty), § 6-2-314(a)(i) (Sexual abuse of a minor in the first degree; penalties), § 6-2-315(a)(i), (ii) (Sexual abuse of a minor in the second degree; penalties), § 6-2-316 (a)(i), (iii), (iv) (Sexual abuse of a minor in the third degree), § 6-2-317(a)(i),(ii) (Sexual abuse of a minor in the fourth degree), and § 6-4-303(b)(iv) (Sexual exploitation of children; penalties; definitions). Wyo. Stat. Ann. §§ 7-19-301(a)(xiii), 7-19-302(g)–(j).

²⁵ 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).

²⁶ 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).

²⁷ 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

Legal Components:

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

Legal Analysis:

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

Under Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree; penalty), if the victim is a minor, the offense is a felony punishable by imprisonment for not less than twenty-five (25) nor more than fifty (50) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.²⁸

An offense under Wyo. Stat. Ann. § 6-2-703 (Human trafficking in the second degree; penalty) is a felony punishable by imprisonment for not less than two (2) nor more than twenty (20) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.²⁹

Traffickers of a child for commercial sex acts can also be prosecuted under the “sexual servitude of a minor” statute, within the human trafficking statute. Wyo. Stat. Ann. § 6-2-706(a). A person commits sexual servitude of a minor when he or she “intentionally, knowingly or recklessly offers, obtains, procures or provides an individual less than eighteen (18) years of age to engage in commercial sexual services.” Wyo. Stat. Ann. § 6-2-706(a). Sexual servitude of a minor is punishable as a felony by imprisonment up to 5 years, a fine not to exceed \$5,000, or both. Wyo. Stat. Ann. § 6-2-706(b).

Traffickers can also be prosecuted under Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), “Except as provided in W.S. 6-2-701 through 6-2-710 . . .”, if the trafficker “[k]nowingly or intentionally entices or compels another person to become a prostitute” who “is under eighteen (18) years of age,” then “the crime is a felony punishable by imprisonment for not more than five (5) years, a fine of not more than five thousand dollars (\$5,000.00), or both.” Wyo. Stat. Ann. § 6-4-103(a)(i), (b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³⁰ 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.

²⁸ See *supra* Section 1.1 for a more detailed discussion of the statute’s provisions.

²⁹ See *supra* Section 1.1 (quoting the relevant statute to understand when the statute is applicable).

³⁰ See *supra* note 19.

§§ 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 offense³¹ against a minor.

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

A trafficker of children for the making of child pornography and sexual performance could be prosecuted under Wyo. Stat. Ann. § 6-4-303(b)(i)-(iii) (Sexual exploitation of children; penalties; definitions). Wyo. Stat. Ann. § 6-4-303(b) states, in part,

A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly:

- (i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;
- (ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;
- (iii) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography.

A conviction under Wyo. Stat. Ann. § 6-4-303(b)(i)-(iii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). Subsequent convictions are punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

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 offense³² against a minor. Additionally, a federal conviction for distribution of child pornography³³ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³⁴ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁵

³¹ See *supra* note 20.

³² *Id.*

³³ 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).

³⁴ 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).

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

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

The use of the Internet to recruit or to sell commercial sex acts with a minor is not a separate crime and does not result in an enhanced penalty for buyers. However, traffickers who use the Internet to lure, entice, or recruit minors to perform commercial sex acts may be prosecuted under Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Wyo. Stat. Ann. § 6-2-318 makes it unlawful when an adult trafficker

[e]xcept under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-304 [Sexual assault in the third degree], or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 [Sexual abuse of a minor in the first degree] through 6-2-317 [Sexual abuse of a minor in the fourth degree] . . . solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 [Definitions]

A conviction for violating Wyo. Stat. Ann. § 6-2-318 is punishable as a felony by imprisonment not to exceed 5 years and a possible fine not to exceed \$10,000. Wyo. Stat. Ann. §§ 6-2-318, 6-10-102.

- 3.3.1 Recommendation: Amend Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) to impose enhanced penalties where the crime is commercial sexual exploitation using the Internet.

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

Pursuant to Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree; penalty) and § 6-2-703 (Human trafficking in the second degree; penalty), traffickers are subject to fines up to \$10,000. Under Wyo. Stat. Ann. § 6-2-706 (Sexual servitude of a minor), traffickers are subject to fines up to \$5,000.

Under Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), unless Wyo. Stat. Ann. §§ 6-4-701 through 6-2-710 provide otherwise, if the trafficker “[k]nowingly or intentionally entices or compels another person to become a prostitute” who “is under eighteen (18) years of age,” then “the crime is a felony punishable by . . . a fine of not more than five thousand dollars (\$5,000.00), or both.” Wyo. Stat. Ann. § 6-4-103(a)(i), (b). Additionally, Wyo. Stat. Ann. § 6-4-303(f) (Sexual exploitation of children; penalties; definitions) expressly provides for mandatory criminal asset forfeiture for traffickers who violate Wyo. Stat. Ann. § 6-4-303(b) and states,

Any person who is convicted of an offense under this section shall forfeit to the state the person’s interest in:

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

This statute does not provide specific seizure provisions. Assets forfeited go directly to the state.

Traffickers are also subject to mandatory orders of restitution for any misdemeanor or felony conviction, pursuant to Wyo. Stat. Ann. §§ 7-9-102 (Order to pay upon conviction), 6-2-710 (Restitution). Mandatory restitution is determined in accordance with Wyo. Stat. Ann. § 7-9-103 (Determination of amount owed; execution) and § 7-9-114 (Determination of long-term restitution; time for order; enforcement). Under Wyo. Stat. Ann. § 7-9-103(b), reasonable actual pecuniary and reasonably foreseeable future pecuniary damages are owed to victims.³⁶ Victims are also owed monthly fixed amounts of restitution under Wyo. Stat. Ann. § 7-9-114(a), for long-term physical health care for as long as the victim requires the care.³⁷

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

Wyo. Stat. Ann. §7-19-302(a) (Registration of offenders; procedure; verification) requires offenders who reside in Wyoming, enter Wyoming “for the purpose of residing,” attend school, or are employed in Wyoming to “register with the sheriff of the county in which he resides, attends school or is employed, or other relevant entity specified in subsection (c) of this section.” Pursuant to Wyo. Stat. Ann. § 7-19-301(a)(viii), “[A] person convicted of a criminal offense specified in . . . 6–2–702 [Human trafficking in the first degree; penalty], 6–2–703[Human trafficking in the second degree; penalty] . . . or 6–2–706 [Sexual servitude of a minor] or convicted of a criminal offense from Wyoming or any other jurisdiction containing the same or similar elements, or arising out of the same or similar facts or circumstances, as a criminal offense specified in 6–2–702, 6–2–703 . . . or 6–2–706” is required to register under Wyo. Stat. Ann. §7-19-302(a). An offender can also be required to register if they are convicted of Wyo. Stat. Ann. § 6-4-103 (Promoting prostitution; penalties), Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit relations; penalty), and Wyo. Stat. Ann. § 6-4-303(b)(i)–(iii) (Sexual exploitation of children; penalties; definitions). Wyo. Stat. Ann. § 7-19-302(h).

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

Under Wyo. Stat. Ann. § 14-2-309(a) (Grounds for termination of parent-child relationship; clear and convincing evidence),

(a) The parent-child legal relationship may be terminated if any one (1) or more of the following facts is established by clear and convincing evidence:

....

(iii) The child has been abused or neglected by the parent and reasonable efforts by an authorized agency or mental health professional have been unsuccessful in rehabilitating the family or the family has refused rehabilitative treatment, and it is shown that the child’s health and safety would be seriously jeopardized by remaining with or returning to the parent;

(iv) The parent is incarcerated due to the conviction of a felony and a showing that the parent is unfit to have the custody and control of the child;

....

Therefore, under Wyo. Stat. Ann. § 14-2-309(a)(iv), if a person is incarcerated because they have been convicted of a felony related to domestic minor sex trafficking, such as Wyo. Stat. Ann. § 6-2-702 (Human Trafficking in the first degree; penalties), § 6-2-703 (Human Trafficking in the second degree; penalties), § 6-2-

³⁶ See *supra* Section 2.8 (quoting Wyo. Stat. Ann. § 7-9-103(b)). Wyo. Stat. Ann. §6-2-701(x) defines “Pecuniary damage” as “all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, including damages for wrongful death. It does not include punitive damages and damages for pain, suffering, mental anguish and loss of consortium. . . .”

³⁷ See *supra* Section 2.8 (quoting Wyo. Stat. Ann. § 7-9-114(a)).

706 (Sexual servitude of a minor), § 6-4-103 (Promoting prostitution; penalties), § 6-4-303(b) (Sexual exploitation of children; penalties; definitions), or § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty), and the court finds that “the parent is unfit to have the custody and control of the child,” the court may terminate the convicted parent’s parental rights. “Proof by clear and convincing evidence that the parent has been convicted of “a felony assault, in which the child suffers “serious bodily injury,” “may constitute grounds that the parent is unfit to have custody or control of any child and may be grounds for terminating the parent-child relationship as to any child with no requirement that reasonable efforts be made to reunify the family.” Wyo. Stat. Ann. § 14-2-309(b)(ii).

Additionally, because “abuse,” as used in Wyo. Stat. Ann. § 14-2-309(a)(iii) includes sexual abuse, the parental rights of a trafficker may also be terminated pursuant to Wyo. Stat. Ann. § 14-2-309(a)(iii).³⁸ Wyo. Stat. Ann. § 14-2-309(a)(iii) requires evidence that reasonable efforts be made to “preserve and reunify the family” for parental rights to be terminated. However, under Wyo. Stat. Ann. § 14-2-309(c), this requirement is eliminated,

[I]n any case in which the court determines any one (1) or more of the following by clear and convincing evidence:

- (i) The parental rights of the parent to any other child have been terminated involuntarily;
- (ii) The parent abandoned, chronically abused or sexually abused the child; or
- (iii) The parent has been convicted of committing one (1) or more of the following crimes against the child or another child of that parent:
 - (A) Sexual assault under W.S. 6–2–302 through 6–2–304;
 - (B) Sexual battery under W.S. 6–2–313;
 - (C) Sexual abuse of a minor under 6–2–314 through 6–2–317.
- (iv) The parent is required to register as a sex offender pursuant to W.S. 7–19–302 if the offense involved the child or another child of that parent. This shall not apply if the parent is only required to register for conviction under W.S. 6–2–201;
- (v) Other aggravating circumstances exist indicating that there is little likelihood that services to the family will result in successful reunification.

³⁸ Wyo. Stat. Ann. § 14-2-308 (Definitions) incorporates the definition of “abuse” from Wyo. Stat. Ann. § 14-3-202 (Definitions) for the purposes of chapter 2 (Parents). Specifically, Wyo. Stat. Ann. § 14-3-202(a)(ii) (Definitions) provides that “abuse” means the following:

[I]nflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, . . . excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

. . .
D. “Imminent danger” includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. . . .

Legal Components:

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

Legal Analysis:

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

The acts of assisting, enabling or benefitting from child sex trafficking are not included in the human trafficking or sexual servitude of a minor laws.³⁹ None of Wyoming’s CSEC laws apply to facilitators. In the absence of CSEC laws, other laws may apply to facilitators.

Under Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv) (Promoting prostitution; penalties), a facilitator who has “control over the use of a place, [and] knowingly or intentionally permits another person to use the place for prostitution” or who “[r]eceives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution” is guilty of a felony punishable by imprisonment up to 3 years, a fine not to exceed \$3,000, or both. Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv), (b).

- 4.1.1 Recommendation: Amend the human trafficking laws to reach the actions of facilitators of sex trafficking.

- 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 subject to Wyo. Stat. Ann. § 6-4-103(a)(iii), (iv) (Promoting prostitution; penalties) which imposes a possible fine not to exceed \$3,000. Wyo. Stat. Ann. § 6-4-103(b).

Facilitators are also subject to mandatory orders of restitution following any misdemeanor or felony conviction pursuant to Wyo. Stat. Ann. § 7-9-102.⁴⁰ Under Wyo. Stat. Ann. § 7-9-103(b) (Determination of amount owed; execution), reasonable actual pecuniary and reasonably foreseeable future pecuniary damages are owed to victims.⁴¹ Victims are also owed monthly fixed amounts of restitution under Wyo. Stat. Ann. § 7-9-114(a) (Determination of long-term restitution; time for order; enforcement), for long-term physical health care for as long as the victim requires the care.⁴²

³⁹ See *supra* Section 1.1.

⁴⁰ See *supra* Section 2.8 (quoting Wyo. Stat. Ann. § 7-9-102).

⁴¹ *Id.* (quoting Wyo. Stat. Ann. § 7-9-103(b)).

⁴² *Id.* (quoting Wyo. Stat. Ann. § 7-9-114(a)).

Additionally, facilitators are subject to mandatory criminal asset forfeiture following a conviction for sexual exploitation of children. Wyo. Stat. Ann. § 6-4-303(f) (Sexual exploitation of children; penalties; definitions) expressly provides,

Any person who is convicted of an offense under this section shall forfeit to the state the person's interest in:

- (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;
- (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;
- (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

Pursuant to Wyo. Stat. Ann. § 6-4-303(f), a facilitator who “distributes, reproduces, delivers or possesses with the intent to deliver” child pornography under Wyo. Stat. Ann. § 6-4-303(b)(iii), if convicted, shall forfeit any proceeds obtained from the crime and any property used in the commission of the crime.

- 4.2.1 Recommendation: Amend offenses applicable to facilitators to require mandatory fines when these offenses involve domestic minor sex trafficking.

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

Wyoming has not enacted a law prohibiting the promotion or sale of child sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

Wyo. Stat. Ann. § 6-4-303(b)(iii) (Sexual exploitation of children; penalties; definitions) states, “A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly: . . . receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography.”⁴³ A conviction for violating Wyo. Stat. Ann. § 6-4-303(b)(iii) is punishable as a felony by imprisonment for 5–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(c). A subsequent conviction is punishable by imprisonment for 7–12 years, a fine not to exceed \$10,000, or both. Wyo. Stat. Ann. § 6-4-303(e).

⁴³ See *supra* note 6.

Legal Components:

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

Legal Analysis:

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

Under Wyo. Stat. Ann. § 6-2-709⁴⁴ (Victims’ rights; services), when a person reasonably appears to be a victim of human trafficking, a duty arises for a law enforcement agency, prosecuting attorneys’ or attorney general’s office to take immediate mandated action in regards to victims’ rights and services.

Human trafficking victims are also considered victims for purposes of the Crime Victims Compensation Act and entitlement to restitution and compensation. Wyo. Stat. Ann. § 6-2-709(d).

Additionally, Wyoming’s Victim and Witness Bill of Rights defines a “victim” to mean “an individual who has suffered direct or threatened physical, emotional or financial harm as the result of the commission of a criminal

⁴⁴ The text of Wyo. Stat. Ann. § 6-2-709 included here and elsewhere in this report includes amendments made by the passage of House Bill 133 during the session of the 62nd Wyoming Legislature.

act⁴⁵ or a family member of a victim who is a minor or an incompetent or a surviving family member of a homicide victim.” Wyo. Stat. Ann. § 1-40-202(a)(ii) (Definitions).

For purposes of Title 7, Chapter 9 Victim Restitution, Wyo. Stat. Ann. § 7-9-101(a)(v) defines victim as “a person who has suffered pecuniary damage as a result of a defendant's criminal activities. . . .” For purposes of this chapter, criminal activity is defined by Wyo. Stat. Ann. § 7-9-101(a)(i) as

any crime for which there is a plea of guilty, nolo contendere or verdict of guilty upon which a judgment of conviction may be rendered and includes any other crime which is admitted by the defendant, whether or not prosecuted. In the case of restitution ordered under W.S. 7-13-301 [Placing person found guilty, but not convicted, on probation.], “criminal activity” also includes a crime charged against the defendant

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

Under Wyo. Stat. Ann. § 6-2-706(c) (Sexual servitude of a minor), a predicate offense to Wyo. Stat. Ann. § 6-2-702 (Human trafficking in the first degree; penalty) and § 6-2-703 (Human trafficking in the second degree; penalty), “[i]t is not a defense in a prosecution under this section that the individual consented to engage in commercial sexual services” However, no such limitation exists for the section of the statute that expressly covers buyers. Wyo. Stat. Ann. § 6-2-707 (Patronizing a victim of sexual servitude).

The CSEC laws, Wyo. Stat. Ann. § 6-4-103(a)(i) (Promoting prostitution; penalties) and § 6-4-303(b) (Sexual exploitation of children; penalties; definitions), do not indicate whether consent is available as a defense in a prosecution for the crime. Similarly, Wyoming’s laws criminalizing sexual abuse of a minor, Wyo. Stat. Ann. § 6-2-314 (Sexual abuse of a minor in the first degree; penalties), § 6-2-315 (Sexual abuse of a minor in the second degree), § 6-2-316 (Sexual abuse of a minor in the third degree), and § 6-2-317 (Sexual abuse of a minor in the fourth degree), do not specifically state that the consent of a minor is immaterial to the crime.

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

Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) provides an exception to the offense for victims of trafficking crimes. Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) states, “[e]xcept as provided in W.S. 6-2-701 through 6-2-710, [Wyo. Stat. Ann § 6-2-701(Definitions), § 6-2-702 (Human trafficking in the first degree; penalty), § 6-2-703 (Human trafficking in the second degree; penalty), § 6-2-706 (Sexual servitude of a minor), § 6-2-707 (Patronizing a victim of sexual servitude), § 6-2-708 (Victim defenses; vacating convictions)] a person who knowingly or intentionally performs or permits, or offers or agrees to perform or permit an act of sexual intrusion . . . for money or other property commits prostitution”

5.3.1 Recommendation: Amend Wyo. Stat. Ann. § 6-4-101 (Prostitution; penalties) to make minors under the age of 18 specifically immune from prosecution for prostitution and to refer to any minor involved in prostitution as a victim of human trafficking.

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

⁴⁵ A “criminal act” is defined as “conduct which would constitute a crime as defined by the laws of [Wyoming].” Wyo. Stat. § 1-40-202(a)(i).

Child Identified as Abused/Neglected

Commercial sexual exploitation is not specifically identified as a type of abuse and neglect within Wyoming's child protection statutes; however, sexual abuse is identified generally as a type of abuse. Protective provisions may be available to commercially sexually exploited children if they are identified as abused or neglected.⁴⁶ Specifically, Wyo. Stat. Ann. § 14-3-202(a)(ii) (Definitions), which provides the definitions for Wyoming's statutes on child abuse reporting, defines "abuse" as

inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, . . . excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

. . .

(D) "Imminent danger" includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. . . .

Under Wyo. Stat. Ann. § 14-3-202(a)(vii), "neglect" is defined as

a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's wellbeing. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone.

I. Initial Custody

a. Authority for initial custody

Pursuant to Wyo. Stat. Ann. § 14-3-205(a) (Child abuse or neglect; persons required to report), "[a]ny person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected . . . shall immediately report it to the child protective agency or local law enforcement agency" Once law enforcement or child protective agencies receive a report of child abuse, the information must be "[c]onveyed immediately by the agency receiving the report to the appropriate local child protective agency or local law enforcement agency. . . ." Wyo. Stat. Ann. § 14-3-206(a)(i). A local child protective agency that receives a report of child abuse must "initiate an investigation or assessment to verify" the report within 24 hours of its receipt. Wyo. Stat. Ann. § 14-3-204(a)(iii) (Duties of local child protective agency).

Under Wyo. Stat. Ann. § 14-3-405(a) (Taking of child into custody; when permitted),

A child may be taken into custody by a law enforcement officer without a warrant or court order and without the consent of the parents, guardians or others exercising temporary or permanent control over the child when:

⁴⁶ Pursuant to Wyo. Stat. Ann. § 14-3-202, a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under Wyo. Stat. Ann. § 14-3-202 the definition of caregiver pursuant to 14-3-202(a)(i) may not sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

- (i) There are reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody appears to be necessary for his protection; or
- (ii) The child's conduct or behavior seriously endangers himself and immediate custody appears necessary.

Additionally, under Wyo. Stat. Ann. § 14-3-405(c),

A district attorney may file an emergency petition, or the department of family services, a local law enforcement officer . . . may request the court for a protective order. After considering the emergency petition or request, the judge or commissioner, upon finding that there is reasonable cause to believe that a child has been abused or neglected and that the child, by continuing in his place of residence or in the care and custody of the person responsible for his health, safety and welfare, would be in imminent danger of his life, health or safety, may:

- (i) Issue an ex parte order or search warrant. The order shall place the child in the temporary protective custody of the local child protection agency;
- (ii) Issue an emergency order or search warrant upon application and hearing, authorizing ordinary or emergency care of the child

b. Placement

Pursuant to Wyo. Stat. Ann. § 14-3-208(a)(iii) (Temporary protective custody; order; time limitation; remedial health care), a child who is taken into custody must be taken to the local department of family services, who will

. . . .
[a]rrange for care and supervision of the child in the most appropriate and least restrictive setting necessary to meet the child's needs, including foster homes or other child care facilities certified by the department or approved by the court. When it is in the best interest of the child, the department shall place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts or uncles. Prior to approving placement with the child's noncustodial birth parent or extended family, the department shall determine whether anyone living in the home has been convicted of a crime involving serious harm to children or has a substantiated case listed on the central registry established pursuant to W.S. 14-3-213. The department may leave the child in the care of a physician or hospital when necessary to ensure the child receives proper care. A neglected child shall not be placed in a jail or detention facility other than for a delinquent act. . . .

II. Process Following Initial Custody

A service response may be initiated by a law enforcement agency or state's attorney's office if a child appears to be a victim of human trafficking. Wyo. Stat. Ann. § 6-2-709 (Victims' rights; services). Pursuant to Wyo. Stat. Ann. § 6-2-709(a), if the agency or office has a reasonable belief a child is a victim of trafficking, the agency or office shall

- (i) Notify the victim services division within the office of the attorney general that the person may be eligible for services under this article; and
- (ii) Make a preliminary assessment of whether the victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in the Trafficking Victims Protection Act, 22 U.S.C. section 7105, or appears to be otherwise eligible for any federal, state or local benefits and services. If it is determined that the victim appears to meet such criteria, the agency or office shall report the finding to the victim and shall refer the victim to services available, including legal service providers. If the possible victim is a minor or is a vulnerable adult, the agency or office shall also notify the department of family services.

A child taken into temporary protective custody pursuant to Wyo. Stat. Ann. § 14-3-405 (Taking of child into custody; when permitted) may not be held in temporary protective custody for more than 48 hours and may not be placed in shelter care, absent court order, “unless, shelter care is required to: (i) [p]rotect the child’s person; (ii) [p]revent the child from being removed from the jurisdiction of the court; or (iii) [p]rovide the child having no parent, guardian, custodian or other responsible adult with supervision and care” Wyo. Stat. Ann. §§ 14-3-405(d), 14-3-406(a) (Child in custody; no shelter care placement without court order; exceptions; notice to parent or guardian; release). After a child is taken into protective custody under Wyo. Stat. Ann. § 14-3-405(a), “the person taking custody shall immediately notify the local department of family services office and place or transfer temporary protective custody to the local department of family services office as soon as practicable.” Wyo. Stat. Ann. § 14-3-208 (Temporary protective custody; order; time limitation; remedial health care). Pursuant to Wyo. Stat. Ann. § 14-3-208(a),

The local department of family services office shall:

- (i) Accept physical custody of the child;
- (ii) Make reasonable efforts to inform the parent, noncustodial parent or other person responsible for the child’s welfare that the child has been taken into temporary protective custody, unless otherwise ordered by a court of competent jurisdiction;
-
- (iv) Initiate an investigation of the allegations; and
- (v) Assess the child’s mental and physical needs, provide for the child’s ordinary and emergency medical care and seek emergency court authorization for any extraordinary medical care that is needed prior to the shelter care hearing.

When shelter care “appears necessary to the person taking custody of the child,” a petition must be promptly filed. Wyo. Stat. Ann. §§ 14-3-407(a) (Shelter care; delivery of child pending hearing; placing children; notice if no court order), 14-3-409(a) (Taking of child into custody; shelter care hearing where no court order; conditional release; evidence; rehearing). Then, a shelter hearing must be held by the court or, “in the absence or incapacity of the judge,” a district court commissioner within 48 hours of the time the child is taken into temporary protective custody. Wyo. Stat. Ann. §§ 14-3-410(a) (Shelter care hearing conducted by commissioner; authority and duty; review by court), 14-3-409(a). At the shelter care hearing, the court will decide whether “full-time shelter care is required to protect the child’s welfare pending further proceedings” and, if it finds that it would not be in the interests of the child’s welfare to return home, the court may order that the child be placed in the legal custody of the department of family services. Wyo. Stat. Ann. § 14-3-409(d). “If the court finds that full-time shelter care is not required,” it may place the child in “the custody and supervision of his parents, guardian or custodian, under the supervision of the department of family services or under the protective supervision of any individual or organization approved by the court that agrees to supervise the child.” Wyo. Stat. Ann. § 14-3-409(d)(i). The court may also impose any other conditions of release necessary to protect the child from harm. Wyo. Stat. Ann. § 14-3-409(d)(ii).

A complaint alleging that a child is neglected “shall be referred” to the district attorney, who, after an investigation, may commence a proceeding in juvenile court by filing a petition alleging that the child is a neglected child.⁴⁷ Wyo. Stat. Ann. § 14-3-411 (Complaints alleging neglect; investigation and determination by district attorney).

III. Placement Process Pending Adjudication/Investigation

Under Wyo. Stat. Ann. § 14-3-407(d) (Shelter care; delivery of child pending hearing; placing children; notice if no court order), “[t]he department of family services shall care for the child under this section pursuant to temporary protective custody provisions as specified in W.S. 14-3-208 [Temporary protective custody; order; time limitation; remedial health care].” Wyo. Stat. Ann. § 14-3-208(a)(iii) states that a child who is taken into custody must be taken to the local department of family services, who will

...
[a]rrange for care and supervision of the child in the most appropriate and least restrictive setting necessary to meet the child's needs, including foster homes or other child care facilities certified by the department or approved by the court. When it is in the best interest of the child, the department shall place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts or uncles. Prior to approving placement with the child's noncustodial birth parent or extended family, the department shall determine whether anyone living in the home has been convicted of a crime involving serious harm to children or has a substantiated case listed on the central registry established pursuant to W.S. 14-3-213. The department may leave the child in the care of a physician or hospital when necessary to ensure the child receives proper care. A neglected child shall not be placed in a jail or detention facility other than for a delinquent act. . . .

IV. Adjudication or Referral to Alternate Process

Pursuant to Wyo. Stat. Ann. § 14-6-426 (Initial appearance; adjudicatory hearing; entry of decree and disposition; evidentiary matters; continuance of disposition hearing), an initial appearance may be held after the detention hearing. At that hearing, the child’s parents or guardians will be advised of the allegations stated in the petition and will be given the opportunity to admit or deny those allegations. Wyo. Stat. Ann. § 14-6-426(a). Subsequently, under Wyo. Stat. Ann. § 14-6-426,

...
(a) If the allegations of the petition are denied, the court may, with consent of the parties, proceed immediately to hear evidence on the petition or it may set a later time not to exceed sixty (60) days for an adjudicatory hearing, unless the court finds good cause to delay or postpone the hearing. In no case shall the court hold the adjudicatory hearing more than ninety (90) days after the date the petition is filed. Only competent, relevant and material evidence shall be admissible at an adjudicatory hearing to determine the truth of the allegations in the petition. If after an adjudicatory hearing the court finds that the allegations in the petition are not established as required by this act, it shall dismiss the petition and order the child released from any detention or shelter care.
...

⁴⁷ For purposes of Wyoming’s Child Protection Act, under Wyo. Stat. Ann. § 14-3-402(a)(xii) (Definitions) a “neglected child” is one “(A) Who has been subjected to neglect as defined in W.S. 14-3-202(a)(vii) [Definitions]; (B) Who has been subjected to abuse as defined in W.S. 14-3-202(a)(ii) [which includes sexual abuse].”

V. *Outcomes*

At an adjudicatory hearing, if the court determines that the child is neglected, it may make a disposition that the child is a neglected child and order the child placed in “the least restrictive environment consistent with what is best suited to the public interest of preserving families and the physical, mental and moral welfare of the child.” Wyo. Stat. Ann. §§ 14-3-426(c), 14-3-429(a)(iii).

Additionally, pursuant to Wyo. Stat. Ann. § 14-3-429(b),

If the child is found to be neglected the court may:

- (i) Permit the child to remain in the legal custody of his parents, guardian or custodian without protective supervision, subject to terms and conditions prescribed by the court;
- (ii) Place the child under protective supervision;
- (iii) Transfer temporary legal custody to a relative or other suitable adult the court finds qualified to receive and care for the child, with or without supervision, subject to terms and conditions prescribed by the court;
- (iv) Transfer temporary legal custody to the department of family services or a state or local public agency responsible for the care and placement of neglected children, provided the child shall not be committed to the Wyoming boys’ school, the Wyoming girls’ school or the Wyoming state hospital.

Child Identified as In Need of Supervision

Generally, domestic minor sex trafficking victims are treated as “children in need of supervision.” Wyo. Stat. Ann. § 6-2-708(b) (Victim defenses; vacating convictions). A child in need of supervisions is defined in Wyo. Stat. Ann. § 14-6-402(a)(iv) (Definitions) to include

any child who has not reached his eighteenth birthday who is habitually truant or has run away from home or habitually disobeys reasonable and lawful demands of his parents, guardian, custodian or other proper authority or is ungovernable and beyond control. “Child in need of supervision” includes any child who has not reached his eighteenth birthday who has committed a status offense.

I. *Initial Custody*

a. Authority for initial custody

Wyo. Stat. Ann. § 14-6-405(a)(i), (iii), (iv) (Taking of child into custody; when permitted) authorizes law enforcement to take a child into custody when

- (i) The circumstances would permit an arrest without a warrant under W.S. 7-2-102;
- ...
- (iii) There are reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody appears to be necessary for his protection;

- (iv) The child's conduct or behavior seriously endangers himself and immediate custody appears necessary; or
- (v) There are reasonable grounds to believe the child has run away from his parents, guardian or custodian.

b. Placement

After being taken into custody pursuant to Wyo. Stat. Ann. § 14-6-405(a) (Taking of child into custody; when permitted), Wyo. Stat. Ann. § 14-6-406(a) (Child in custody; no detention or shelter care placement without court order; exceptions; notice to parent or guardian; release) states,

A child taken into custody shall not be placed in detention or shelter care without a court order unless shelter care is required to:

- (i) Protect the child's person;
- (ii) Prevent the child from being removed from the jurisdiction of the court; or
- (iii) Provide the child having no parent, guardian, custodian or other responsible adult with supervision and care and return him to the court when required.

If it is found necessary to place the child in detention or shelter care, under Wyo. Stat. Ann. § 14-6-407(b) (Detention or shelter care; delivery of child pending hearing; placing children; notice if no court order),

- (i) A child alleged to be in need of supervision shall be placed for detention or shelter care in the least restrictive environment reasonably available, which may be a foster home or other child care facility certified by the department of family services or approved by the court;
- (ii) If facilities or services are not immediately available to house and protect the child, the judge may order the child held in a temporary holding area at the local law enforcement complex. No child in need of supervision shall be placed in a jail, but may be placed in a juvenile detention facility if the child has been adjudicated under article 2 [Juvenile Justice Act] of this chapter for having committed a delinquent act;
- (iii) A child alleged to be in need of supervision shall, if necessary, be detained in a separate detention home or facility, provided the child shall not be detained in the Wyoming boys' school or the Wyoming girls' school.

II. Process Following Initial Custody

If a child in need of supervision is held in detention or shelter care under Wyo. Stat. Ann. § 14-6-407(b) (Detention or shelter care; delivery of child pending hearing; placing children; notice if no court order), "[T]he district attorney shall immediately review the need for detention or shelter care and may order the child released unless he determines detention or shelter care is necessary under the provisions of W.S. 14-6-406(a) (Child in custody; no detention or shelter care placement without court order; exceptions; notice to parent or guardian; release) or unless ordered by the court." Wyo. Stat. Ann. § 14-6-408(b) (Notice of detention or shelter care to be given district attorney; written statement required; duty of district attorney). Proceedings against the child will commence through the filing of a petition with the court providing the basis for why the child is alleged to be a child in need of supervision and "[a]n informal detention or shelter care hearing" must be held within 48 hours after taking the child into custody. Wyo. Stat. Ann. §§ 14-6-409(a) (Taking of child into custody; informal hearing where no court order; conditional release; evidence; rehearing), 14-6-412(a), (b) (Commencement of proceedings; contents of petition). At the hearing, the court will determine whether the child will be held in full-time detention or shelter care during the pendency of the proceedings. Wyo. Stat. Ann. § 14-6-409(d). Where the court finds that returning home is not in the interests of the child's welfare, the court will order the child placed in the legal custody of the department of family services, otherwise the court will

order the child released subject to any restrictions or conditions the court deems reasonably necessary. Wyo. Stat. Ann. § 14-6-409(d).

Pursuant to Wyo. Stat. Ann. § 14-6-411 (Complaints alleging child in need of supervision; investigation and determination by district attorney), the district attorney decides whether to take judicial action, and, under subsection (b),

In determining the action necessary to protect the interest of the public or the child with regard to a petition alleging a child in need of supervision, the prosecuting attorney shall consider the following:

- (i) Alternative community programs;
- (ii) Mental health counseling services available to the family;
- (iii) Family preservation services offered by the department of family services;
- (iv) Use of truancy statute enforcement;
- (v) Municipal and circuit court remedies;
- (vi) If the child has reached his sixteenth birthday, whether or not the child presents a clear and present danger to himself, his family or the community.

III. Placement Process Pending Adjudication/Investigation

Pursuant to Wyo. Stat. Ann. § 14-6-406(a) (Child in custody; no detention or shelter care placement without court order; exceptions; notice to parent or guardian; release),

A child taken into custody shall not be placed in detention or shelter care without a court order unless shelter care is required to:

- (i) Protect the child's person;
- (ii) Prevent the child from being removed from the jurisdiction of the court; or
- (iii) Provide the child having no parent, guardian, custodian or other responsible adult with supervision and care and return him to the court when required.

If it is found necessary to place the child in detention or shelter care, under Wyo. Stat. Ann. § 14-6-407(b) (Detention or shelter care; delivery of child pending hearing; placing children; notice if no court order),

- (i) A child alleged to be in need of supervision shall be placed for detention or shelter care in the least restrictive environment reasonably available, which may be a foster home or other child care facility certified by the department of family services or approved by the court;
- (ii) If facilities or services are not immediately available to house and protect the child, the judge may order the child held in a temporary holding area at the local law enforcement complex. No child in need of supervision shall be placed in a jail, but may be placed in a juvenile detention facility if the child has been adjudicated under article 2 [Juvenile Justice Act] of this chapter for having committed a delinquent act;
- (iii) A child alleged to be in need of supervision shall, if necessary, be detained in a separate detention home or facility, provided the child shall not be detained in the Wyoming boys' school or the Wyoming girls' school.

IV. Adjudication or Referral to Alternate Process

Pursuant to Wyo. Stat. Ann. § 14-6-426 (Initial appearance; adjudicatory hearing; entry of decree and disposition; evidentiary matters; continuance of disposition hearing), an initial appearance may be held after the detention hearing. At that hearing, the child will be advised of the allegations stated in the

petition and will be given the opportunity to admit or deny those allegations. Wyo. Stat. Ann. § 14-6-426(a). Subsequently, under Wyo. Stat. Ann. § 14-6-426,

....

(b) If the allegations of the petition are denied, the court may, with consent of the parties, proceed immediately to hear evidence on the petition or it may set a later time not to exceed sixty (60) days for an adjudicatory hearing, unless the court finds good cause to delay or postpone the hearing. In no case shall the court hold the adjudicatory hearing more than ninety (90) days after the date the petition is filed. Only competent, relevant and material evidence shall be admissible at an adjudicatory hearing to determine the truth of the allegations in the petition. If after an adjudicatory hearing the court finds that the allegations in the petition are not established as required by this act, it shall dismiss the petition and order the child released from any detention or shelter care.

(c) If after an adjudicatory hearing or a valid admission or confession the court or jury finds that a child is in need of supervision, it shall enter a decree to that effect stating the jurisdictional facts upon which the decree is based. It may then proceed immediately or at a postponed hearing within sixty (60) days to make proper disposition of the child, unless the court finds good cause to delay or postpone the hearing.

....

V. *Outcomes*

If the court adjudicates the child to be a child in need of supervision, “the court shall enter its decree to that effect and make a disposition as provided in this section that places the child in the least restrictive environment consistent with what is best suited to the public interest of preserving families, the physical, mental and moral welfare of the child.” Wyo. Stat. Ann. § 14-6-429(a)(iii) (Decree where child adjudged in need of supervision; dispositions; terms and conditions; legal custody).

The court may, under Wyo. Stat. Ann. § 14-6-429(b),

- (i) Permit the child to remain in the custody of his parents, guardian or custodian under protective supervision, subject to terms and conditions prescribed by the court;
- (ii) Transfer temporary legal custody to a relative or other suitable adult the court finds qualified to receive and care for the child, with supervision, subject to terms and conditions prescribed by the court;
- (iii) Transfer temporary legal custody to a state or local public agency responsible for the care and placement of children in need of supervision, provided:
 - (A) The child shall not be committed to the Wyoming boys’ school or the Wyoming girls’ school unless the child has attained the age of twelve (12) years and is also found delinquent;
 - (B) The court may not transfer the temporary legal custody to a state agency for out-of-community placement unless the child or the child’s family has failed to perform under a court supervised consent decree or the department of family services has certified that a community treatment plan has proven unsuccessful.

Child Identified as Delinquent

In Wyoming, a child found to be a victim of domestic minor sex trafficking may not be charged with a crime stemming from the trafficking. Pursuant to Wyo. Stat. Ann. § 6-2-708(a), “[a] victim of human trafficking is not criminally liable for any commercial sex act or other criminal acts committed as a direct result of, or incident to, being a victim of human trafficking. . . .” Therefore, a domestic minor trafficking victim will not be identified as delinquent.

A child may be taken into custody pursuant to Wyo. Stat. Ann. § 14-6-405(a)(i), (iii), (iv) (Taking of child into custody; when permitted), which authorizes law enforcement to take a child into custody when

(i) The circumstances would permit an arrest without a warrant under W.S. 7-2-102;

....

(iii) There are reasonable grounds to believe a child is abandoned, lost, suffering from illness or injury or seriously endangered by his surroundings and immediate custody appears to be necessary for his protection;

(iv) The child's conduct or behavior seriously endangers himself and immediate custody appears necessary; or

(v) There are reasonable grounds to believe the child has run away from his parents, guardian or custodian.

Generally, if the detained child is found to be a victim of human trafficking, the child will be considered a child in need of supervision. Wyo. Stat. Ann. § 6-2-708(b) (Victim defenses; vacating convictions).

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 is identified as a type of abuse and neglect within child protection statutes.*

Commercial sexual exploitation is not specifically identified as a type of abuse and neglect within Wyoming's child protection statutes; however, sexual abuse is identified generally as a type of abuse. Specifically, Wyo. Stat. Ann. § 14-3-202(a)(ii) (Definitions), which provides the definitions for Wyoming's statutes on child abuse reporting, defines "abuse" as

inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, . . . excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof by reason of intentional or unintentional neglect, and the commission or allowing the commission of a sexual offense against a child as defined by law:

....

(D) "Imminent danger" includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of sexual abuse or physical or mental injury. . . .

Under Wyo. Stat. Ann. § 14-3-202(a)(vii), "neglect" is defined as

a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's wellbeing. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone.

Further, Wyo. Stat. Ann § 6-2-708(b)⁴⁸ (Victim defenses; vacating convictions) provides, “A victim of human trafficking who is a minor shall be deemed a child in need of supervision in accordance with the Children in Need of Supervision Act or a neglected child in accordance with the Child Protection Act.”

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

Under Wyo. Stat. Ann. § 14-3-202(a)(i) (Definitions), which provides the definitions for the statutes on child abuse reporting, “a person responsible for a child’s welfare” is defined to include, “the child’s parent, noncustodial parent, guardian, custodian, stepparent, foster parent or other person, institution or agency having the physical custody or control of the child.”

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

Under Wyo. Stat. Ann. § 6-2-709 (Victims' rights; services), “Victims of human trafficking are entitled to . . . forms of compensation under the Crime Victims Compensation Act.”

Where not identified as a minor sex trafficking victim, a minor victim may still be eligible to receive compensation under the Wyoming Crime Victims Compensation Act, Wyo. Stat. Ann. § 1-40-101 et. seq. Pursuant to Wyo. Stat. Ann. § 1-40-106 (Eligibility for compensation) victims are “entitled to compensation under” the Wyoming Crime Victims Compensation Act if certain requirements are met. Wyo. Stat. Ann. § 1-40-106(a). For purposes of the Wyoming Crime Victims Compensation Act, Wyo. Stat. Ann. § 1-40-102(a)(ix) (Definitions) defines a “victim” to include the following:

- (A) A person who suffers personal injury or is killed in this state as a direct result of:
 - (I) A criminal act of another person;
 - (II) The person’s good faith and reasonable effort in attempting to prevent the commission of a criminal act, or to apprehend a person engaging in a criminal act or assisting a law enforcement officer to do so;
 - (III) Assisting or attempting to assist a person against whom a crime is being perpetrated or attempted;
 - (IV) A federal crime occurring in Wyoming.
- (B) A resident who is a victim of a crime occurring outside this state if:
 - (I) The crime would be compensable had it occurred inside this state; and
 - (II) The crime occurred in a state which does not have a crime victim compensation program, for which the victim is eligible as eligibility is set forth in W.S. 1-40-101 [Short title] through 1-40-119 [Surcharge to be assessed in certain criminal cases; paid to account].

.....

Even to the extent that a commercially sexually exploited child “suffers personal injury . . . as a direct result of” another’s crime, several other requirements for compensation may present difficulties for domestic minor sex trafficking victims not identified as human trafficking victims under Wyoming law. Wyo. Stat. Ann. § 1-40-102(a)(ix)(A). Specifically, to be eligible for compensation Wyo. Stat. Ann. § 1-40-106(a) requires,

⁴⁸ The text of Wyo. Stat. Ann §6-2-708 included here and elsewhere in this report includes amendments made by the passage of House Bill 133 during the session of the 62nd Wyoming Legislature.

- (i) The victim suffered personal injury as a result of a criminal act;
-
- (iii) The injury to or death of the victim was not attributable to his own wrongful act;
- (iv) The appropriate law enforcement authorities were notified of the criminal act allegedly causing the injury to or death of the victim as soon as practical under the circumstance after perpetration of the offense and the claimant cooperates with appropriate law enforcement authorities with respect to the crime for which compensation is sought; [and]
- (v) The application for compensation is filed with the division within one (1) year after the date of the injury to or death of the victim, or within any extension of time the division allows for good cause shown;
-

“Good cause” is not defined within Wyo. Stat. Ann. § 1-40-106, but 015-031-003 Wyo. Code R. § 4(b)(viii)(A) states,

Good cause in determining whether a victim has satisfied the requirement to report a crime to law enforcement, the Division may consider the victims age, physical condition and psychological state, and any compelling health or safety reason that would jeopardize the well being of the victim. The Division may waive the report to law enforcement or the 1 year filing date if good cause is shown.

Additionally, 015-031-003 Wyo. Code R. § 4(c)(i) provides guidance regarding what constitutes “reasonable cooperation with law enforcement.” Specifically, the regulations state,

In determining whether a victim reasonably cooperated with law enforcement the Division may consider the victims age, physical condition and psychological state and any compelling health and safety reasons that would jeopardize the well being of the victim.

- (i) Reasonable cooperation with law enforcement by the victim may include but not be limited to the following:
 - (A) providing law enforcement with a true, accurate and complete statement of the circumstances that led to the crime;
 - (B) participating in the investigation of the crime to assist law enforcement with the identification of a suspect;
 - (C) participating in prosecution procedures including deposition and trial testimony as requested;
 - (D) Sexual abuse victims shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual assault forensic exam.

5.7.1 Recommendation: Amend Wyo. Stat. Ann. § 1-40-106 (Eligibility for compensation) to exempt all CSEC victims from the listed requirements.

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

Wyoming law includes several victim-friendly criminal justice procedures and protections throughout the criminal justice process.

The human trafficking law provides, “In a prosecution for an offense under this article, police and prosecuting agencies shall keep the identity of the victim and the victim's family confidential. The prosecutor shall take reasonable steps to protect the victim and the victim's family from being revictimized.” Wyo. Stat. Ann. § 6-2-709(e).

The Wyoming Victim and Witness Bill of Rights, codified at Wyo. Stat. Ann. § 1-40-203 (Victim and witness bill of rights), sets out key rights of crime victims. Some of these rights are expounded in other statutes.

For example, under Wyo. Stat. Ann. § 1-40-205(a), crime victims specifically have the right to “be free from any form of harassment, intimidation or retribution.” To ensure this right, a victim may sit in a separate waiting room from other witness while waiting to testify in “any proceeding regarding a criminal act,” and law enforcement shall provide the victim information regarding other protections available to the victim. Wyo. Stat. Ann. § 1-40-205(b), (d).

Additionally, under Wyo. Stat. Ann. § 1-40-204(a) (Rights of victims and witnesses to be informed during the criminal justice process),

- (a) Victims of a criminal act shall be informed without undue delay by law enforcement about:
 - (i) The rights enumerated in this act;
 - (ii) The right to be informed of the status of the case from the initial police investigation to the final appellate review;
 - (iii) The fact that financial assistance or other social service options may be available to the victim;
 - (iv) The existence of the Crime Victims Compensation Act and that compensation may be available to the victim;
 - (v) The right to have an interpreter or translator to inform the victim of these rights;
 - (vi) The name and official telephone number of the primary law enforcement officer assigned to investigate the case together with the official address and telephone number of the criminal justice agency investigating the case;
 - (vii) The right to seek legal counsel and to employ an attorney.

Also, the victim has the right to information including the right to receive written notice of a certain event’s related to the defendant’s progress in the criminal justice system. Wyo. Stat. Ann. § 1-40-204(b).

Some additional protections are afforded in Wyo. Stat. Ann. § 7-11-408 (Videotape depositions) to children who are the victims of sexual abuse under Wyo. Stat. Ann. § 6-2-314 (Sexual abuse of a minor in the first degree; penalties) through Wyo. Stat. Ann. § 6-2-317 (Sexual abuse of a minor in the fourth degree), but not to victims of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). Specifically, under Wyo. Stat. Ann. § 7-11-408, a victim under the age of 12 may give testimony that may be admissible at trial⁴⁹ through a videotaped deposition if the judge finds the following, pursuant to subsection (c),

- (i) The child’s testimony would be relevant and material;
- (ii) The best interests of the child would be served by permitting the videotape deposition;
- (iii) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial; and

⁴⁹ Pursuant to Wyo. Stat. Ann. § 7-11-408(e):

- (e) A videotape deposition may be admitted at trial in lieu of the direct testimony of the child, if the judge finds, after hearing, that:
 - (i) The visual and sound qualities of the videotape are satisfactory;
 - (ii) The videotape is not misleading;
 - (iii) All portions of the videotape that have been ruled inadmissible have been deleted; and
 - (iv) A potential physical or psychological harm to the child is likely to occur if the child is required to testify which would effectively render the child incapable to testify at the trial.

(iv) The defendant or his legal counsel has the opportunity to be present and to cross-examine the child at the videotape deposition.

Only video technicians, “the child, the judge, prosecutor, defendant and defense counsel, [and] a family member who was not a witness to the offense or a support person for the child” may be present at the child’s videotaped deposition. Wyo. Stat. Ann. § 7-11-408(b). However, pursuant to Wyo. Stat. Ann. § 7-11-408(d), the judge may “deny the defendant’s face-to-face confrontation of the child” if

- (i) The defendant is alleged to have inflicted physical harm or is alleged to have threatened to inflict physical harm upon the child, and physical or psychological harm to the child is likely to occur if there is a face-to-face confrontation of the child by defendant;
- (ii) The defendant’s legal counsel will have reasonable opportunity to confer with his client before and at any time during the videotape deposition; and
- (iii) The defendant will have opportunity to view and hear the proceedings while being taken.

In addition, a child who is “unable to articulate what was done to them will be permitted to demonstrate the sexual act or acts committed against them with the aid of anatomically correct dolls.” Wyo. Stat. Ann. § 7-11-408(f). These “demonstrations will be under the supervision of the court and shall be videotaped to be viewed at trial, and shall be received into evidence as demonstrative evidence.” Wyo. Stat. Ann. § 7-11-408(f).

Wyo. Stat. Ann. § 6-2-312 (Evidence of victim’s prior sexual conduct or reputation; procedure for introduction) also provides limited protection to victims of sexual assault, without regard to their age, including victims of Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty). However, the protection does not extend to victims of Wyoming’s CSEC laws, Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties) and Wyo. Stat. Ann. § 6-4-303(b)(i)–(ii) (Sexual exploitation of children; penalties; definitions). Pursuant to Wyo. Stat. Ann. § 6-2-312(a), where a defendant is prosecuted under Wyoming’s sexual assault laws, or “lesser included offense[s],” evidence of the victim’s prior sexual conduct and reputation or opinion evidence regarding the victim’s character may only be admitted when “the court finds that the probative value of the evidence substantially outweighs the probability that its admission will create prejudice.” Wyo. Stat. Ann. § 6-2-312(a)(iv). However, nothing in Wyo. Stat. Ann. § 6-2-312(a) prevents a defendant from introducing “evidence as to prior sexual conduct of the victim with the actor.” Wyo. Stat. Ann. § 6-2-312(b).

Another victim-friendly criminal justice procedure is found in Wyo. Stat. Ann. § 6-2-311 (Corroboration unnecessary), which states, “Corroboration of a victim’s testimony is not necessary to obtain a conviction for sexual assault.” Wyo. Stat. Ann. § 6-2-311.

- 5.8.1 Recommendation: Amend Wyo. Stat. Ann. § 6-2-312 (Evidence of victim’s prior sexual conduct or reputation; procedure for introduction) to apply to minor victims of Wyo. Stat. Ann. § 6-4-103(a) (Promoting prostitution; penalties) and § 6-4-303(b)(i)–(ii) (Sexual exploitation of children; penalties; definitions).

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.*

Under Wyo. Stat. Ann. § 14-6-241(a) (Expungement of records in juvenile and municipal courts), once 18 years old, a person “adjudicated delinquent as a result of having committed a delinquent act other than a violent

felony⁵⁰ may petition to have the court expunge the person's juvenile court records. Under Wyo. Stat. Ann. § 14-6-241(a),

If after investigation the court finds that the petitioner has not been convicted of a felony since adjudication, that no proceeding involving a felony is pending or being instituted against the petitioner and the rehabilitation of the petitioner has been attained to the satisfaction of the court or the prosecuting attorney, it shall order expunged all records in the custody of the court or any agency or official, pertaining to the petitioner's case. . . .

Once the court enters an order of expungement, "the proceedings in the petitioner's case are deemed never to have occurred and the petitioner may reply accordingly upon any inquiry in the matter." Wyo. Stat. Ann. § 14-6-241(a). Records related to the conviction of a juvenile for a misdemeanor in circuit court also may be expunged, subject to the requirements of Wyo. Stat. Ann. § 14-6-241(a). Wyo. Stat. Ann. § 14-6-241(c).

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.

Wyoming law does not provide specific civil remedies for victims of domestic minor sex trafficking; however, Wyo. Stat. Ann. § 7-9-110(a) (Civil action) provides that any restitution received by a victim of a crime does not preclude them from bringing a civil suit, but "[a]ny restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim, however, in a civil action arising out of the same facts or event." Additionally, Wyo. Stat. Ann. § 1-3-105(b) (Actions other than recovery of real property) suggests that there is a "a civil action based upon sexual assault as defined by W.S. 6-2-301(a)(v)⁵¹ against a minor" under Wyoming law.

Domestic minor sex trafficking victims also are able to receive mandatory restitution from their offender under the human trafficking statute as well as for any misdemeanor or felony conviction, pursuant to Wyo. Stat. Ann. § 6-2-709(d) (Victims' rights; services), § 7-9-102 (Order to pay upon conviction), and § 6-2-710 (Restitution). Mandatory restitution should be determined in accordance with Wyo. Stat. Ann. §§ 7-9-103 (Determination of amount owed; execution), 7-9-114 (Determination of long-term restitution; time for order; enforcement). Wyo. Stat. Ann. § 7-9-103(b) provides reasonable actual pecuniary and reasonably foreseeable future pecuniary damages to victims.⁵² Pursuant to Wyo. Stat. Ann. § 7-9-114(a), victims are also owed monthly fixed amounts of restitution for long-term physical health care for as long as the victim requires the care.⁵³

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.

⁵⁰ Pursuant to Wyo. Stat. Ann. § 6-1-104(a)(xii) (Definitions) a "violent felony" includes "murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, aircraft hijacking, arson in the first or second degree or aggravated burglary or a violation of W.S. 6-2-314(a)(i) [Sexual abuse of a minor in the first degree; penalties] or 6-2-315(a)(ii) [Sexual abuse of a minor in the second degree; penalties]."

⁵¹ Sexual assault is defined in Wyo. Stat. Ann. § 6-2-301(a)(v) (Definitions) as "any act made criminal pursuant to W.S. 6-2-302 [Sexual assault in the first degree] through 6-2-319 [Names not to be released; restrictions on disclosures or publication of information; violations; penalties]."

⁵² See *supra* Section 2.8. Under Wyo. Stat. Ann. §6-2-701(x), "'Pecuniary damage' means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, including damages for wrongful death. It does not include punitive damages and damages for pain, suffering, mental anguish and loss of consortium. . . ." See *supra* note 2.

⁵³ See *supra* Section 2.8.

No statutes of limitations apply to the prosecution of any crimes in Wyoming;⁵⁴ however civil actions are subject to certain statutes of limitations. Wyo. Stat. Ann. § 1-3-102.

The most relevant provision to victims of domestic minor sex trafficking is, “an action for . . . [a]n injury to the rights of the plaintiff, not arising on contract and not herein enumerated” must be commenced within four years of the date the plaintiff’s cause of action accrues. Wyo. Stat. Ann. § 1-3-105(a)(iv)(C). Actions for “[a]ssault or battery not including sexual assault” shall be brought within one year. Wyo. Stat. Ann. § 1-3-105(a)(v)(B). Additionally, for “a civil action based upon sexual assault as defined by W.S. 6-2-301(a)(v) (Definitions)⁵⁵ against a minor” a claim “may be brought within the later of: (i) Eight (8) years after the minor’s eighteenth birthday; or (ii) Three (3) years after the discovery.” Wyo. Stat. Ann. § 1-3-105(b). Moreover, under Wyo. Stat. Ann. § 1-3-114 (Legal disabilities),

If a person entitled to bring any action except for an action arising from error or omission in the rendering of licensed or certified professional or health care services or for a penalty or forfeiture, is, at the time the cause of action accrues, a minor . . . the person may bring the action within three (3) years after the disability is removed or within any other statutory period of limitation, whichever is greater.

⁵⁴ See *Boggs v. State*, 484 P.2d 711, 714 (Wyo. 1971). Wyoming Representatives Vranish, Byrd, and Madden and Senator Driskill introduced House Bill 0134, “Statute of Limitations for Criminal Offenses,” in the 2011 General Session of the 61st Legislature, however, the bill did not make it out of committee.

⁵⁵ See *supra* note 51.

Legal Components:

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

Legal Analysis:

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

Wyoming addresses training of law enforcement and other individuals through its human trafficking law. Pursuant to Enacted House Bill 133, Sec. 3,

(a) The division of victim services shall continue to provide training regarding provisions of this act to be used for presentation to law enforcement agencies, the law enforcement academy, prosecutors, public defenders, judges and others involved in the juvenile and criminal justice systems. The training may include:

- (i) State and federal laws on human trafficking;
- (ii) Methods used to identify United States citizen and foreign national victims of human trafficking;
- (iii) Methods of prosecuting human traffickers; and
- (iv) Methods of protecting the rights of victims of human trafficking, including collaboration with nongovernmental and other social service agencies in the course of investigating and prosecuting human trafficking cases.

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

Single party consent to audiotaping is permitted in Wyoming. Wyo. Stat. Ann. § 7-3-702(a)(i), (b)(iv) (Prohibition against interception or disclosure of wire, oral or electronic communications; exceptions; penalties) provides,

- (a) Except as provided in subsection (b) of this section, no person shall intentionally:
 - (i) Intercept, attempt to intercept, or procure any other person to intercept or attempt to intercept any wire, oral or electronic communication;
 -
- (b) Nothing in subsection (a) of this section prohibits:
 -
 - (iv) Any person from intercepting an oral, wire or electronic communication where the person is a party to the communication or where one (1) of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act.

Therefore, if one party to the communication consents, audiotaping the communication is permissible under Wyo. Stat. Ann. § 7-3-702(a).

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

Offenses related to domestic minor sex trafficking are not included as crimes for which a wiretapping order may be issued. Under Wyo. Stat. Ann. § 7-3-705(a) (Authorization for interception of wire, oral or electronic communications), applications for orders authorizing the use of wiretapping may only be requested when the investigation involves a violation of the Wyoming Controlled Substances Act of 1971 or a specified crime incident to or discovered while investigating a violation of the Wyoming Controlled Substances Act of 1971.

6.3.1 Recommendation: Amend Wyo. Stat. Ann. § 7-3-705(a) (Authorization for interception of wire, oral or electronic communications) to specifically authorize the attorney general or district attorney to seek a court order permitting the use of wiretapping where the interception may provide evidence of domestic minor sex trafficking.

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

No statute explicitly permits the use of a decoy by law enforcement to investigate sex trafficking of minors. However, because Wyo. Stat. Ann. § 6-2-318 (Soliciting to engage in illicit sexual relations; penalty) applies where a defendant “solicits, procures or knowingly encourages . . . a person purported to be less than the age of fourteen (14) years,” the use of a decoy by law enforcement in the investigation of a violation of Wyo. Stat. Ann. § 6-2-318 seems to be permissible.

6.4.1 Recommendation: Amend § 6-4-103 (Promoting prostitution) to expressly authorize law enforcement’s use of a decoy posing as a minor to investigate offenses of sex trafficking in which a minor is used in prostitution and live sexual performance.

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

No statute expressly authorizes law enforcement to use the Internet to investigate buyers and traffickers of sex with minors.

6.5.1 Recommendation: Enact a law expressly criminalizing use of the Internet to commit or attempt to commit a CSEC offense and prohibit a defense to prosecution based on the “minor” being a law enforcement officer or other adult.

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

Reporting of missing children and rescued domestic minor sex trafficking victims is not mandated by the Wyoming Legislature. However, “[d]uring the 1990 Wyoming legislative session, the legislature mandated ‘The Office of the Attorney General shall establish and operate a central repository of information and clearinghouse on missing children and missing persons.’”⁵⁶ Under Wyoming’s current “Amber Alert Plan”:

⁵⁶ Wyoming Division of Criminal Investigation, Office of the Attorney General, *Wyoming Missing Person Clearinghouse: 2010 Annual Report*, 4 (2010), <http://attorneygeneral.state.wy.us/dci/pdf/AnnualReportMissingPerson.pdf>.

Each state or local program establishes its own AMBER Plan criteria; however, the National Center for Missing & Exploited Children suggests the following criteria should be met before an Alert is activated:

- Law enforcement confirms a child has been abducted.
- A child is considered seventeen years old or younger.
- Law enforcement will only activate an Amber Alert if it is believed the circumstances surrounding the abduction indicate that the child is in danger of serious bodily harm or death.
- There is enough descriptive information about the child, abductor, and/or suspect's vehicle to believe an immediate broadcast alert will help in the safe return of the child.⁵⁷

6.6.1 Recommendation: Enact a law requiring law enforcement and child welfare services to report missing and recovered children to the clearinghouse on missing children and to the National Crime Information Center (NCIC) database to ensure law enforcement have information to identify missing and runaway children who are at high risk for sex trafficking,

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⁵⁷ Wyoming Division of Criminal Investigation, Office of the Attorney General, *Current Wyoming Amber Alert Plan*, <http://attorneygeneral.state.wy.us/dci/amberalert/amberalert.html> (last visited Jan. 27, 2012).