

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2015 ANALYSIS AND RECOMMENDATIONS NEBRASKA

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

#### *Legal Components:*

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

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

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

Nebraska's human trafficking law specifically addresses minors trafficked for commercial sexual exploitation and does not require force, fraud, or coercion. Neb. Rev. Stat. Ann. § 28-831<sup>2</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) states,

(1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class II felony if the actor uses overt force or the threat of force or if the trafficking victim has not yet attained the age of sixteen years. Any person who otherwise engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IIA felony.

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<sup>1</sup> This report includes legislation enacted as of August 1, 2015.

<sup>2</sup> The text of Neb. Rev. Stat. Ann. § 28-831 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 294 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 19, 2015).

(3) Any person who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section, is guilty of a Class IIIA felony.

Neb. Rev. Stat. Ann. § 28-830(14)(Human trafficking; forced labor or services; terms, defined) defines sex trafficking of a minor as:

knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity,<sup>3</sup> sexually explicit performance,<sup>4</sup> or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography.

A Class II felony is punishable by imprisonment for 1–50 years, while Class IIA felonies are punishable by imprisonment for up to 20 years. Aa Class IIIA felony is punishable by imprisonment up to 3 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1).<sup>5</sup>

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

Nebraska has several statutes specifically criminalizing CSEC, including the following:

1. Neb. Rev. Stat. Ann. § 28-707<sup>6</sup> (Child abuse; privileges not available; penalties) states,

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

....

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions . . .

....

(f) Placed in a situation to be a trafficking victim as defined in section 28-830.

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(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109<sup>7</sup> or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

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<sup>3</sup> “Commercial sex act” is defined as “any sex act on account of which anything of value is given, promised to, or received by any person.” Neb. Rev. Stat. Ann. § 28-830(2).

<sup>4</sup> “Sexually explicit performance” is defined as “a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests.” Neb. Rev. Stat. Ann. § 28-830(15).

<sup>5</sup> The text of Neb. Rev. Stat. Ann. § 28-105 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 605 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 27, 2015).

<sup>6</sup> The text of Neb. Rev. Stat. Ann. § 28-707 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 605 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 27, 2015).

<sup>7</sup> Neb. Rev. Stat. Ann. § 28-109(20) (Terms, defined) defines “serious bodily injury” as “bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.”

- (5) Child abuse is a Class IIIA felony if the offense is committed negligently<sup>8</sup> and results in serious bodily injury as defined in section 28-109.
- (6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.
- (7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.
- (8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.
- (9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Pursuant to Neb. Rev. Stat. Ann. § 28-106(1), a Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. A Class IIIA felony is punishable by imprisonment up to 3 years, a fine not to exceed \$10,000, or both; a Class II felony is punishable by imprisonment for 1–50 years; and a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).<sup>9</sup>

2. Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) states,

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct<sup>10</sup> which has a child<sup>11</sup> as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

...

A conviction under this statute by a person 18 years of age or younger is punishable as a Class III felony by imprisonment for up to 4 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID felony<sup>12</sup> punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is punishable as a Class IC felony<sup>13</sup> by

<sup>8</sup> Neb. Rev. Stat. Ann. § 28-707(9) defines “negligently” as referring to “criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.”

<sup>9</sup> See *supra* note 5.

<sup>10</sup> Neb. Rev. Stat. Ann. § 28-1463.02(5) (Terms, defined) defines “sexually explicit conduct” as

(a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved.

<sup>11</sup> Neb. Rev. Stat. Ann. § 28-1463.02(1) (Terms, defined) defines “child” as “in the case of a participant, . . . any person under the age of eighteen years and, in the case of a portrayed observer, . . . any person under the age of sixteen years.”

<sup>12</sup> According to Neb. Rev. Stat. Ann. § 28-105(1) Class IC and ID felonies are subject to mandatory minimum sentences of 5 and 3 years, respectively. Pursuant to Neb. Rev. Stat. Ann. § 28-105(4), “A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.”

<sup>13</sup> See *supra* note 12.

imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.<sup>14</sup> Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

3. Neb. Rev. Stat. Ann. § 28-802<sup>15</sup> (Pandering) states,

- (1) A person commits pandering if such person:
  - (a) Entices another person to become a prostitute; or
  - (b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; or
  - (c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or
  - (d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.
- (2) Pandering is a Class III felony for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class II felony for a first offense. Pandering is a Class II felony for a second or subsequent offense.

A Class III felony is punishable by imprisonment for up to 4 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-320.01(2), 28-105(1).

4. Neb. Rev. Stat. Ann. § 28-801.01<sup>16</sup> (Solicitation of prostitution) states,

- (1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.
- (2) Any person convicted of violating subsection (1) of this section shall be punished as follows:
  - (a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars, unless the person solicited is under the age of eighteen years, in which case such person violating this section shall be guilty of a Class IV felony. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars and such person shall

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<sup>14</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-1463.04(3),

Any person who violates section 28-1463.03 and has previously been convicted of a violation of section 28-1463.03 or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] shall be guilty of a Class IC felony for each offense.

<sup>15</sup> The text of Neb. Rev. Stat. Ann. § 28-802 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 294 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 19, 2015).

<sup>16</sup> The text of Neb. Rev. Stat. Ann. § 28-801.01 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 294 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 19, 2015).

satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community . . . .

A Class IV felony is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1).

4. Neb. Rev. Stat. Ann. § 28-804<sup>17</sup> (Keeping a place of prostitution) states,

(1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class IV felony, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class III felony.

A Class IV felony is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class III felony is punishable by imprisonment for up to 4 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. § 28-105(1).

Several other laws, while not expressly commercial in nature, may also be applicable in cases involving the commercial sexual exploitation of a child. Some of those statutes are as follows:

1. Neb. Rev. Stat. Ann. § 28-805(1)(a) (Debauching a minor; penalty)<sup>18</sup> states, “(1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by: (a) Lewdly inducing such boy or girl carnally to know any other person.”<sup>19</sup> A conviction under Neb. Rev. Stat. Ann. § 28-805(1) is punishable as a Class I misdemeanor by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1).

2. Neb. Rev. Stat. Ann. § 28-833 (Enticement by electronic communication device; penalty) states,

(1) A person commits the offense of enticement by electronic communication<sup>20</sup> device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:

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<sup>17</sup> The text of Neb. Rev. Stat. Ann. § 28-804 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 294 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 19, 2015).

<sup>18</sup> This statute clearly implicates adults who solicit minors under the age of 17 to visit a house of prostitution for the purpose of the minor engaging in sexual penetration with a prostitute, but it is not clear whether this statute also implicates adult buyers or traffickers who solicit a minor under the age of 17 to enter a house of prostitution for purposes of engaging in sexual penetration with a buyer. Therefore, because it is possible that a violation of this statute may involve a commercial transaction, it has been listed as a CSEC offense.

<sup>19</sup> See *State v. Parmer*, 313 N.W.2d 237, 240 (Neb. 1981) (“We therefore construe ‘any other person’ to mean any person other than the victim.”).

<sup>20</sup> For purposes of Neb. Rev. Stat. Ann. § 28-833, “electronic communication” is defined as “any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device.” Neb. Rev. Stat. Ann. § 28-833(4).

- (a) Uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound;
- (b) Transmits or otherwise disseminates any visual depiction of sexually explicit conduct as defined in section 28-1463.02 [Terms, defined];<sup>21</sup> or
- (c) Offers or solicits any indecent, lewd, or lascivious act.

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-833(2), 28-105(1).

3. Neb. Rev. Stat. Ann. § 28-319.01(1) (Sexual assault of a child; first degree; penalty) states,

- (1) A person commits sexual assault of a child in the first degree:
  - (a) When he or she subjects another person under twelve years of age to sexual penetration<sup>22</sup> and the actor is at least nineteen years of age or older; or
  - (b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

A first conviction under this statute is punishable as a Class IB felony by imprisonment for 15 years to life. Neb. Rev. Stat. Ann. §§ 28-319.01(2), 28-105(1). The penalty is enhanced to 25 years to life imprisonment, however, if an offender has a prior conviction under this statute or a number of other specific statutes.<sup>23</sup> Neb. Rev. Stat. Ann. §§ 28-319.01(3), 28-105(1).

4. Neb. Rev. Stat. Ann. § 28-320.01 (Sexual assault of a child; second or third degree; penalties) states,

- (1) A person commits sexual assault of a child in the second or third degree if he or she subjects another person fourteen years of age or younger to sexual contact<sup>24</sup> and the actor is at least nineteen years of age or older.

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<sup>21</sup> See *supra* note 10.

<sup>22</sup> Neb. Rev. Stat. Ann. § 28-318(6) (Terms, defined) states,

Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen.

<sup>23</sup> Neb. Rev. Stat. Ann. § 28-319.01(3) states,

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

<sup>24</sup> Neb. Rev. Stat. Ann. § 28-318(5) defines "sexual contact" as

the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the

- (2) Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in the second degree is a Class II felony for the first offense.
- (3) Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim. Sexual assault of a child in the third degree is a Class IIIA felony for the first offense.
- ....

A first conviction for second degree sexual assault of a child is punishable as a Class II felony by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-320.01(2), 28-105(1). A conviction is punishable as a class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.<sup>25</sup> Neb. Rev. Stat. Ann. §§ 28-320.01(4), 28-105(1). A first conviction for third degree sexual assault of a child is a Class IIIA felony punishable by imprisonment up to 3 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-320.01(3), 28-105(1). A conviction is punishable as a class IC felony punishable by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.<sup>26</sup> Neb. Rev. Stat. Ann. §§ 28-320.01(5), 28-105(1).

5. Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) states,

No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty].<sup>27</sup>

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by

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purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor’s sexual or intimate parts on any part of the child’s body for purposes of sexual assault of a child under sections 28-319.01 [Sexual assault of a child; first degree; penalty] and 28-320.01 [Sexual assault of a child; second or third degree; penalties];

<sup>25</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-320.01(4),

Any person who is found guilty of second degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-319.01 shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of twenty-five years in prison.

<sup>26</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-320.01(5),

(5) Any person who is found guilty of third degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or 28-319.01 shall be guilty of a Class IC felony.

<sup>27</sup> Neb. Rev. Stat. Ann. § 28-320.02(1) also states, “A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.”

imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes.<sup>28</sup> Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

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

Nebraska’s prostitution law, Neb. Rev. Stat. Ann. § 28-801(Prostitution; penalty) refers to the human trafficking law to provide an affirmative defense for victims of human trafficking. Pursuant to Neb. Rev. Stat. Ann. § 28-801.01(3),<sup>29</sup> “It is an affirmative defense to prosecution under this section [28-831] that such person was a trafficking victim as defined in section 28-830.” Pursuant to Neb. Rev. Stat. Ann. § 28-830(16) (Human trafficking; forced labor or services; terms, defined), “[t]rafficking victim means a person subjected to any act or acts prohibited by section 28-831(Human trafficking; forced labor or services; prohibited acts; penalties).”

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.*

Nebraska’s Public Protection Act,<sup>30</sup> codified at Neb. Rev. Stat. Ann. § 28-1355 (Pattern of racketeering activity or collection of an unlawful debt; prohibited acts) provides,

(1) It shall be unlawful for any person<sup>31</sup> who has received any proceeds that such person knew were derived, directly or indirectly, from a pattern of racketeering activity<sup>32</sup> or through collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any right, interest, or equity in real property or in the establishment or operation of any enterprise.<sup>33</sup> . . . .

(2) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

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<sup>28</sup> Neb. Rev. Stat. Ann. § 28-320.02(2) states,

If a person who violates this section has previously been convicted of a violation of this section or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty], the person is guilty of a Class IC felony.

<sup>29</sup> See *supra* note 16.

<sup>30</sup> Neb. Rev. Stat. Ann. §§ 28-1352 to -1356.

<sup>31</sup> “Person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property.” Neb. Rev. Stat. Ann. § 28-1354(3).

<sup>32</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-1354(2),

Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.

<sup>33</sup> “Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities.” Neb. Rev. Stat. Ann. § 28-1354(1).



(3) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(4) It shall be unlawful for any person to conspire or attempt to violate any of the provisions of subsection (1), (2), or (3) of this section.

Pursuant to Neb. Rev. Stat. Ann. § 28-1354(5) (Terms, defined),

Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

...

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act;<sup>34</sup>

....

Sex trafficking and commercial sexual exploitation of children constitute predicate crimes under the racketeering law, making this law an available tool for combatting criminal enterprises that engage in domestic minor sex trafficking. A conviction under Neb. Rev. Stat. Ann. § 28-1355 is punishable as a Class III felony by imprisonment for up to 4 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-1356(1), 28-105(1).<sup>35</sup> Although Neb. Rev. Stat. Ann. § 28-1356(1)<sup>36</sup> additionally states that "if the violation is based upon racketeering activity which is punishable as a Class IA or IB felony," a conviction is punishable as a Class IB felony, convictions for prostitution are not punishable as Class IA or IB felonies.

A conviction is also punishable by a fine not to exceed \$25,000. However, under Neb. Rev. Stat. Ann. § 28-1356(2),

In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. . . .

Gangs and criminal enterprises may face additional penalties under Neb. Rev. Stat. Ann. § 28-1351 (Unlawful membership recruitment into an organization or association; penalty). Neb. Rev. Stat. Ann. §28-1351(1) makes it a crime if a person

knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of

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<sup>34</sup> Neb. Rev. Stat. Ann. §§ 28-1463.01 to -1463.05. This includes offenses under Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) or § 28-1463.05 (Visual depiction of sexually explicit acts related to possession; violation; penalty).

<sup>35</sup> See *supra* note 11.

<sup>36</sup> The text of Neb. Rev. Stat. Ann. § 28-1356 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 268 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 19, 2015).

the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

...

(m) Kidnapping under section 28-313;

(r) Pandering under section 28-802 [Pandering; penalty];

....

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-1351(2), 28-105(1).

**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 or electronic communications 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.*

Neb. Rev. Stat. Ann. § 28-831(1)<sup>37</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) prohibits sex trafficking of a minor, which is defined under Neb. Rev. Stat. Ann. § 28-830(14) (Human trafficking; forced labor or services; terms, defined) as “knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity,<sup>38</sup> sexually explicit performance,<sup>39</sup> or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography.”

The statute’s use of “cause or attempt to cause a minor to engage in commercial sexual activity” is language that could be applied to buyers of sex with minors. Neb. Rev. Stat. Ann. § 28-830(14). In addition, Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) can apply to buyers of sex with minors following federal precedent through the term “obtain.”<sup>40</sup>

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<sup>37</sup> See *supra* note 2.

<sup>38</sup> “Commercial sex act” is defined as “any sex act on account of which anything of value is given, promised to, or received by any person.” Neb. Rev. Stat. Ann. § 28-830(2).

<sup>39</sup> “Sexually-explicit performance” is defined as “a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests.” Neb. Rev. Stat. Ann. § 28-830(15).

<sup>40</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified

- 2.1.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) to clarify that buyer conduct is included as a violation of Neb. Rev. Stat. Ann. § 28-831.<sup>41</sup>

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

Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution; penalty) provides, “Any person who solicits another person who is not his spouse to perform any act of sexual contact or sexual penetration . . . in exchange for money or other thing of value, commits solicitation of prostitution.” When the victim is a minor, this offense is punishable as a Class IV felony by imprisonment up to 2 years, 12 months post-release supervision, and a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1).

Neb. Rev. Stat. Ann. § 28-802(1)(d)<sup>42</sup> (Pandering) also applies to buyers of sex with minors. It states, “A person commits pandering if such person . . . gives or agrees to . . . give any money or other thing of value for procuring or attempting to procure any person to . . . commit an act of prostitution or come into this state or leave this state for the purpose of prostitution . . . .”

Pursuant to Neb. Rev. Stat. Ann. § 28-802(2), “[p]andering is a Class III felony for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class II felony for a first offense. Pandering is a Class II felony for a second or subsequent offense.”

Several sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.<sup>43</sup> These statutes, however, do not specifically criminalize the commercial sexual exploitation of a child and do not refer to Neb. Rev. Stat. Ann. § 28-831(1)(Human trafficking; forced labor or services; prohibited acts; penalties).

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Jungers clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

<sup>41</sup> See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include buyer conduct in core sex trafficking offense regardless of whether victim is under control of a third party and explaining negative impact on victims and victim-identification when buyers are excluded as sex trafficking offenders).

<sup>42</sup> See *supra* note 15.

<sup>43</sup> See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute some buyers.

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

Nebraska’s general solicitation law differentiates between buying sex with an adult and buying sex with a minor. Neb. Rev. Stat. Ann. § 28-801.01(1)<sup>44</sup> (Solicitation of prostitution; penalty) provides, “Any person who solicits another person who is not his spouse to perform any act of sexual contact or sexual penetration . . . in exchange for money or other thing of value, commits solicitation of prostitution.” A first conviction under this statute is punishable as a Class I misdemeanor. However if the victim is a minor, then it is a Class IV felony.<sup>45</sup> A Class IV felony provides for imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1). A subsequent conviction is also a Class IV felony punishable by imprisonment up to 2 years and a fine of \$500–\$10,000.<sup>46</sup> Neb. Rev. Stat. Ann. §§ 28-801.01(2)(b), 28-105(1).<sup>47</sup>

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

If a victim is under 16 years of age or the offender “uses overt force or the threat of force,” a conviction under Neb. Rev. Stat. Ann. § 28-831(1)<sup>48</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) is punishable as a Class II felony by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-831(1), (b), 28-105(1). If the victim is between the age of 16 and 17 years and the buyer did not use force or the threat of force, a conviction is punishable as a Class IIA felony by imprisonment for up to 20 years. Neb. Rev. Stat. Ann. §§ 28-831(1), 28-105(1).<sup>49</sup>

If convicted under Neb. Rev. Stat. Ann. § 28-801.01(1)<sup>50</sup> (Solicitation of prostitution; penalty) a buyer would be guilty of a Class IV felony which is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1). If a buyer is convicted of pandering under Neb. Rev.

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<sup>44</sup> See *supra* note 16.

<sup>45</sup> Neb. Rev. Stat. Ann. § 28-801.01(2)(a) also states,

If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars, and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community . . . .

See *supra* note 16.

<sup>46</sup> Neb. Rev. Stat. Ann. § 28-801.01(2)(b) similarly states,

If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than five hundred dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community . . . .

See *supra* note 16.

<sup>47</sup> See *supra* note 11.

<sup>48</sup> See *supra* note 2.

<sup>49</sup> See *supra* note 11.

<sup>50</sup> See *supra* note 16.

Stat. Ann. § 28-802(2),<sup>51</sup> and the “person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years,” pandering is a Class III felony for a first offense.

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child.<sup>52</sup>

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>53</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>54</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>55</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>56</sup>

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

Although neither is expressly commercial in nature, two of Nebraska’s laws criminalize the use of the Internet to lure, entice, or recruit a child to engage in sexual conduct.

Neb. Rev. Stat. Ann. § 28-833(1) (Enticement by electronic communication device; penalty) states,

(1) A person commits the offense of enticement by electronic communication device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:

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. See *supra* note 15.

<sup>52</sup> See *supra* Section 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

<sup>53</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>54</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as,

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

<sup>55</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>56</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(a)(2), (4) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

...  
(c) Offers or solicits any indecent, lewd, or lascivious act.

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-833(2), 28-105(1).<sup>57</sup>

Additionally, Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) states,

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty].

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

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

Neb. Rev. Stat. Ann. § 28-831(1)<sup>58</sup> (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-802<sup>59</sup> (Pandering), § 28-801.01(1)<sup>60</sup> (Solicitation of prostitution; penalty) and § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) do not expressly prohibit an offender from asserting a mistake of age defense.

2.6.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-802 (Pandering), § 28-801.01(1) (Solicitation of prostitution; penalty) and § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) to expressly prohibit an offender 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.*

Neb. Rev. Stat. Ann. § 28-831(1)<sup>61</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) staggers its penalties and bases them, in part, on the age of the victim. If a victim is under 16 years of age or the offender “uses overt force or the threat of force,” a conviction is punishable as a Class II felony by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-831(1), 28-105(1).<sup>62</sup> If the victim is 16 years of age or older and the buyer did not use force or the threat of force, however, a conviction is punishable as a Class IIA felony by imprisonment up to 20 years. Neb. Rev. Stat. Ann. §§ 28-831(1), 28-105(1).

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<sup>57</sup> See *supra* note 11.

<sup>58</sup> See *Supra* note 2.

<sup>59</sup> See *supra* note 15.

<sup>60</sup> See *supra* note 16.

<sup>61</sup> See *Supra* note 2.

<sup>62</sup> See *supra* note 11.

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.*

A buyer will not be required to pay a fine if convicted under Neb. Rev. Stat. Ann. § 28-831(1)<sup>63</sup> (Human trafficking; forced labor or services; prohibited acts; penalties)<sup>64</sup> or pandering under Neb. Rev. Stat. Ann. § 28-802(2).<sup>65</sup> A buyer's first conviction for soliciting prostitution with a minor under Nebraska's general solicitation law, Neb. Rev. Stat. Ann. § 28-801.01<sup>66</sup> (Solicitation of prostitution; penalty), carries a fine not to exceed \$10,000. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1). Subsequent convictions, however, are subject to a fine of \$500–\$10,000. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), (2)(b), 28-105(1).

Buyers are also subject to a discretionary restitution order. Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) states,

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. . . .

The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

While other criminal laws in Nebraska authorize the seizure of contraband,<sup>67</sup> no similar asset forfeiture provisions apply to violations of Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or other Nebraska CSEC laws.

- 2.8.1 Recommendation: Enact a law requiring buyers who violate Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or other Nebraska CSEC laws to forfeit property used in the commission of the crime.

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

Nebraska law prohibits both the possession and purchasing of child pornography. Neb. Rev. Stat. Ann. § 28-1463.03(2) (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) makes it illegal for “a person knowingly to purchase rent . . . trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.” A violation under this statute by a person 18 years of age or younger is a Class III felony punishable by imprisonment for up to 4 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID

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<sup>63</sup> See *Supra* note 2.

<sup>64</sup> See *supra* note 11.

<sup>65</sup> See *supra* note 15.

<sup>66</sup> See *supra* note 16,

<sup>67</sup> See, e.g., Neb. Rev. Stat. Ann. § 29-440(1)(a) (Domestic assault; weapons; seizure and disposition) (authorizing the seizure of “weapons that are alleged to have been involved or threatened to be used” in a domestic assault); Neb. Rev. Stat. Ann. § 37-809(3) (Violations; penalties; conservation or peace officer; powers and duties; regulations) (authorizing seizure of “business records, wildlife, wild plants, or other contraband taken, used, or possessed in connection with any violation of the Nongame and Endangered Species Conservation Act”).



felony punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1).<sup>68</sup> A conviction under this statute is a Class IC felony punishable by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes. Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

Neb. Rev. Stat. Ann. § 28-813.01(1) (Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense) makes it illegal for a person “to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02,<sup>69</sup> which has a child, as defined in such section,<sup>70</sup> as one of its participants or portrayed observers.” If the offender is under 19 year old, a first conviction under this statute is punishable as a Class IV felony by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-813.01(2)(a), 28-105(1). If the offender is 19 years of age or older, a first conviction is punishable as a Class IIA felony by imprisonment for up to 4 years, a fine up to \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-813.01(2)(b), 28-105(1). In instances where the offender has a prior conviction under this statute or other specific criminal statutes,<sup>71</sup> a conviction is punishable as a Class IC felony by imprisonment for 5–50 years.

In comparison, a federal conviction for possession of child pornography<sup>72</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>73</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>74</sup>

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<sup>68</sup> See *supra* note 11.

<sup>69</sup> See *supra* note 10.

<sup>70</sup> “Child, in the case of a participant, means any person under the age of eighteen years and, in the case of a portrayed observer, means any person under the age of sixteen years.” Neb. Rev. Stat. Ann. § 28-1463.02(1).

<sup>71</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-813.01(2)(c),

Any person who violates this section and has previously been convicted of a violation of this section or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] shall be guilty of a Class IC felony for each offense.

<sup>72</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>73</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>74</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

Neb. Rev. Stat. Ann. § 29-4004(1) (Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment) states, “Any person subject to the Sex Offender Registration Act<sup>75</sup> shall register within three working days after becoming subject to the act . . . .” Neb. Rev. Stat. Ann. § 29-4003(1)(Applicability of act) states,

- (a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:
  - (i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:
    - . . . .
    - (D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;
    - (E) Sexual assault of a child in the first degree pursuant to section 28-319.01;
    - . . . .
    - (H) Pandering of a minor pursuant to section 28-802;
    - (I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;
    - (J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;
    - . . . .
    - (K) Criminal child enticement pursuant to section 28-311.
    - (L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;
    - (N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;
    - . . . .
- (b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:
  - (i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:
    - . . . .
    - (XVI) Enticement by electronic communication device pursuant to section 28-833; or
    - (XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.
    - . . . .

Buyers convicted under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or § 28-801.01(1) (Solicitation of prostitution), however, are not required to register as sex offenders under Nebraska law.

- 2.10.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 29-4003(1) (Applicability of act) to make the Sex Offender Registration Act applicable to buyers convicted under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), or § 28-801.01 (Solicitation of prostitution) in instances where the person trafficked, abused, or solicited is a minor under the age of 18.

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<sup>75</sup> Neb. Rev. Stat. Ann. §§ 29-4001–4014.

**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 or electronic communications 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.

If a victim is under 16 years of age or the offender “uses overt force or the threat of force,” a trafficker convicted under Neb. Rev. Stat. Ann. § 28-831(1)<sup>76</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) is guilty of a Class II felony punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-831(3)(a), (b), 28-105(1).<sup>77</sup> If the victim is 16–17 years of age and the trafficker did not use force or the threat of force, however, a conviction is punishable as a Class IIA felony by imprisonment for up to 20 years. Neb. Rev. Stat. Ann. §§ 28-831(1), 28-105(1).

Under Neb. Rev. Stat. Ann. § 28-802(1)<sup>78</sup> (Pandering; penalty), traffickers face heightened penalties for pandering a minor. Pandering is a Class III felony “unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class II felony for a first offense,” punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-320.01(2), 28-105(1). Neb. Rev. Stat. Ann. §§ 28-802(2). A second or subsequent pandering offense is also a Class II felony. Neb. Rev. Stat. Ann. § 28-802(2).

Traffickers also may be convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d)<sup>79</sup> (Child abuse; privileges not available; penalties), which may be used to prosecute a trafficker who commits child abuse by placing a child “in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to . . . engage in prostitution,” or placing the child “in a situation to be a trafficking victim.” A violation of this statute is a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-707(1)(3)–(8). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 3 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class III felony is punishable by imprisonment for up to 4 years, a \$25,000 fine, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1). Lastly, a

<sup>76</sup> See *supra* note 2.

<sup>77</sup> See *supra* note 11.

<sup>78</sup> See *supra* note 15.

<sup>79</sup> See *supra* note 6.

trafficker may be convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty),<sup>80</sup> which is punishable as a Class I misdemeanor by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1).

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

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

Nebraska prohibits both the creation and distribution of child pornography. Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) states,

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct<sup>81</sup> which has a child<sup>82</sup> as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to . . . sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

. . . .

A violation of this statute by a person 18 years of age or younger is a Class III felony punishable by imprisonment for 4 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID felony punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1).<sup>83</sup> A conviction under this statute is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes. Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense against a minor. Additionally, a federal conviction for distribution of child pornography<sup>84</sup> is generally punishable by imprisonment for 5–20 years

<sup>80</sup> See *supra* note 18 discussing the applicability of this statute to traffickers.

<sup>81</sup> See *supra* note 10.

<sup>82</sup> See *supra* note 11.

<sup>83</sup> See *supra* note 11.

<sup>84</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

and a fine not to exceed \$250,000.<sup>85</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>86</sup>

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

While not expressly commercial in nature, Neb. Rev. Stat. Ann. § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties) may be used to prosecute a trafficker who uses the Internet to lure, entice, or recruit a child for use in commercial sex acts. Neb. Rev. Stat. Ann. § 28-320.02(1) states,

- (1) No person shall knowingly solicit, coax, entice, or lure
  - (a) a child sixteen years of age or younger or
  - (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833 [Enticement by electronic communication device; penalty], to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty].

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).<sup>87</sup> A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

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

Traffickers may be required to pay fines ranging from \$1,000–\$10,000. Traffickers do not face fines if convicted under Neb. Rev. Stat. Ann. § 28-831(1)<sup>88</sup> (Human trafficking; forced labor or services; prohibited acts; penalties)<sup>89</sup> or Neb. Rev. Stat. Ann. § 28-802(1)<sup>90</sup> (Pandering; penalty). Traffickers convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty) are subject to a possible fine not to exceed \$1,000. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1). A trafficker convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d)<sup>91</sup> (Child abuse; privileges not available; penalties) is subject to a possible fine not to exceed \$1,000 if the offense was “committed negligently,” a possible fine not to exceed \$10,000 if the offense was “committed knowingly and intentionally and does not result in serious bodily injury,” or no fine if the offense was

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<sup>85</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>86</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>87</sup> *See supra* note 11.

<sup>88</sup> *See supra* note 2.

<sup>89</sup> *See supra* note 11.

<sup>90</sup> *See supra* note 15.

<sup>91</sup> *See supra* note 6.

“committed knowingly and intentionally and results in serious bodily injury” or in the death of the child. Neb. Rev. Stat. Ann. §§ 28-707(1)(3)–(8), 28-106(1), 28-105(1).

Additionally, traffickers who cause “actual physical injury or property damage or loss” to their victim may have to pay restitution pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when).<sup>92</sup> The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

While other criminal laws in Nebraska authorize the seizure of contraband,<sup>93</sup> no similar asset forfeiture provisions apply to violations of Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or other Nebraska CSEC laws.

3.4.1 Recommendation: Amend Nebraska’s human trafficking and CSEC laws to provide for asset forfeiture.

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

Neb. Rev. Stat. Ann. § 29-4004(1) (Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment) (Operative Jan. 1, 2012)<sup>94</sup> states, “Any person subject to the Sex Offender Registration Act<sup>95</sup> shall register within three working days after becoming subject to the act . . . .” and Neb. Rev. Stat. Ann. § 29-4003(1) (Applicability of act) establishes when an offender becomes subject to the provisions of the Sex Offender Registration Act.<sup>96</sup>

Traffickers convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty), Neb. Rev. Stat. Ann. § 28-1463.03(2) (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense), Neb. Rev. Stat. Ann. § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties), Neb. Rev. Stat. Ann. § 28-1463.03 (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense), Neb. Rev. Stat. Ann. § 28-1463.05(1) (Visual depiction of sexually explicit acts related to possession; violation; penalty), Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties), or Neb. Rev. Stat. Ann. § 28-802(1)<sup>97</sup> (Pandering; penalty) (where the victim is a minor) are required to register as a sex offender. Neb. Rev. Stat. Ann. § 29-4003. Traffickers convicted under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or Neb. Rev. Stat. Ann. § 28-804(1)<sup>98</sup> (Keeping a place of prostitution; penalty), however, are not required to register as a sex offender under Nebraska law.

3.5.1 Recommendation: Require sex offender registration for convictions under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), and § 28-801.01 (Solicitation of prostitution) and § 28-804 (Keeping a place of prostitution; penalty) when a minor is involved.

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<sup>92</sup> See *supra* Section 2.8 for the provisions of Neb. Rev. Stat. Ann. § 29-2280.

<sup>93</sup> See *supra* note 67.

<sup>94</sup> See *supra* note 75.

<sup>95</sup> See *supra* note 75.

<sup>96</sup> See *supra* Section 2.10 for the provisions of Neb. Rev. Stat. Ann. § 29-4003(1).

<sup>97</sup> See *supra* note 15.

<sup>98</sup> See *supra* note 17.

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.*

Nebraska laws relating to the termination of parental rights do not include a violation of Neb. Rev. Stat. Ann. § 28-831<sup>99</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) or any of Nebraska’s CSEC laws as grounds for terminating parental rights. However, Neb. Rev. Stat. Ann. § 43-292 (Termination of parental rights; grounds) states,

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

...

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

...

(6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

...

(9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 [Sexual assault of a child; first degree; penalty] or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or a comparable crime in another state.

3.6.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 43-292(10) (Termination of parental rights; grounds) to include Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) and Nebraska’s CSEC laws as grounds for the termination of parental rights.

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<sup>99</sup> See *supra* note 2.

**Legal Components:**

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

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**Legal Analysis:**

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

Under Neb. Rev. Stat. Ann. § 28-831(1),<sup>100</sup> (Human trafficking; forced labor or services; prohibited acts; penalties), it is illegal for a person to “engages in labor trafficking of a minor or sex trafficking of a minor.” Additionally Neb. Rev. Stat. Ann. § 28-831(3) states, “Any person who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is violation of this section, is guilty of a Class IIIA felony.”

Some facilitators may also be prosecuted under Neb. Rev. Stat. Ann. § 28-802(1)(b), (c)<sup>101</sup> (Pandering; penalty) which states, “A person commits pandering if such person . . . procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed . . . or inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery.” Neb. Rev. Stat. Ann. § 28-802(2) states, “Pandering is a Class III felony for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class II felony for a first offense. Pandering is a Class II felony for a second or subsequent offense.”

Facilitators also face prosecution under Neb. Rev. Stat. Ann. § 28-804<sup>102</sup> (Keeping a place of prostitution) which states,

- (1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.
- (2) Keeping a place of prostitution is a Class IV felony, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class III felony.

A Class IV felony is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1).<sup>103</sup> A Class III felony is punishable by imprisonment up to 4 years, a fine not to exceed \$25,000, or both.

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<sup>100</sup> See supra note 2.

<sup>101</sup> See supra note 15.

<sup>102</sup> See supra note 17.

<sup>103</sup> See supra note 11.



A facilitator may also be convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d)<sup>104</sup> (Child abuse; privileges not available; penalties).<sup>105</sup> A violation of this statute is a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-707(1)(3)–(8). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 3 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class III felony is punishable by imprisonment for up to 4 years, a \$25,000 fine, or both. Neb. Rev. Stat. Ann. § 28-707(1). A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

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

A facilitator convicted under Neb. Rev. Stat. Ann. § 28-831(3)<sup>106</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) or Rev. Stat. Ann. § 28-802(1)(b)(c),(2)<sup>107</sup> (Pandering) do not face a fine. A facilitator convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) is subject to a possible fine not to exceed \$1,000 if the offense was “committed negligently,” a possible fine not to exceed \$10,000 if the offense was “committed knowingly and intentionally and does not result in serious bodily injury,” or no fine if the offense was “committed knowingly and intentionally and results in serious bodily injury” or in the death of the child. Neb. Rev. Stat. Ann. §§ 28-707(1)(3)–(8), 28-106(1), 28-105(1). Neb. Rev. Stat. Ann. §§ 28-804(2), 28-802(2), 28-106(1), 28-105(1). Facilitators convicted under Neb. Rev. Stat. 28-804<sup>108</sup> (Keeping a Place of Prostitution) face a fine not exceeding \$10,000.

Additionally, facilitators who cause “actual physical injury or property damage or loss” to their victim may have to pay restitution pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when).<sup>109</sup> The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.” While other criminal laws in Nebraska authorize the seizure of contraband,<sup>110</sup> no similar seizure or asset forfeiture provisions apply to violations of Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) or Nebraska’s CSEC laws.

- 4.2.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) to establish an asset forfeiture scheme that reaches facilitators’ assets.

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

There is no Nebraska law that addresses sex tourism.

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<sup>104</sup> See *supra* note 6.

<sup>105</sup> See *supra* Section 1.2 for the provisions of Neb. Rev. Stat. Ann. § 28-707.

<sup>106</sup> See *supra* note 2.

<sup>107</sup> See *supra* note 15.

<sup>108</sup> See *supra* note 17.

<sup>109</sup> See *supra* Section 2.8 for the provisions of Neb. Rev. Stat. Ann. § 29-2280.

<sup>110</sup> See *supra* note 67.

- 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 is sold or occurs in Nebraska.

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

Nebraska prohibits both the promotion and distribution of child pornography. Neb. Rev. Stat. Ann. § 28-1463.03(2) (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) states that it is “unlawful for a person knowingly to . . . sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child<sup>111</sup> as one of its participants or portrayed observers.” A violation of this statute by a person 18 years of age or younger is a Class III felony punishable by imprisonment for 4 years, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID felony punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1).<sup>112</sup> A conviction under this statute is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes. Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

Furthermore, Neb. Rev. Stat. Ann. § 28-1463.05(1)<sup>113</sup> (Visual depiction of sexually explicit acts related to possession; violation; penalty) makes it illegal “for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.” A first conviction under this statute by an offender under 19 years of age is punishable as a Class IIIA felony by imprisonment up to 3 years, a fine not to exceed \$10,000, or both, while a first conviction by an offender 19 years of age or older is punishable as a Class IIA felony by imprisonment up to 4 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-1463.05(2)(a), (b), 28-105(1). In instances when the offender has a prior conviction under this statute or other specific criminal statutes,<sup>114</sup> a conviction is punishable as a Class IC felony by imprisonment for 5–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.05(2)(c), 28-105(1).

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<sup>111</sup> See *supra* note 11.

<sup>112</sup> See *supra* note 11.

<sup>113</sup> The text of Neb. Rev. Stat. Ann. § 28-1463.05 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 605 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 27, 2015).

<sup>114</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-1463.05(2)(c),

Any person who violates this section and has previously been convicted of a violation of this section or section 28-308 [Assault in the first degree; penalty], 28-309 [Assault in the second degree; penalty], 28-310 [Assault in the third degree; penalty], 28-311 [Criminal child enticement; attempt; penalties], 28-313 [Kidnapping; penalties], 28-314 [False imprisonment in the first degree; penalty], 28-315 [False imprisonment in the second degree; penalty], 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], 28-320.01 [Sexual assault of a child; second or third degree; penalties], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], or 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] shall be guilty of a Class IC felony for each offense.

**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, preventing criminalization of minors under 18 for prostitution offenses.*
- 5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*
- 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 another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC) without regard to ineligibility factors.*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened sufficiently to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

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**Legal Analysis:**

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

For purposes of victims’ rights as guaranteed by Neb. Rev. Stat. Ann. § 81-1848 (Victims and witnesses of crimes; rights; enumerated), “victim” is defined by Neb. Rev. Stat. Ann. § 29-119(2):

(a) Victim means a person who, as a result of a homicide under sections 28-302 to 28-306, a first degree sexual assault under section 28-319, a first degree assault under section 28-308, a sexual assault of a child in the second or third degree under section 28-320.01, a sexual assault of a child in the first degree under section 28-319.01, a second degree assault under section 28-309, a first degree false imprisonment under section 28-314, a second degree sexual assault under section 28-320, or a robbery under section 28-324, has had a personal confrontation with the offender and also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section.

.....

(c) In the case of a violation of section 28-813.01 [Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense], 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense], 28-1463.04 [Violation; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty], victim means a person who was a child as defined in section 28-1463.02 and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

For purposes of crime victims' compensation, Neb. Rev. Stat. Ann. § 81-1801(7) (Terms, defined) defines "victim" as "a person who is injured or killed as a result of conduct specified in section 81-1818 [Personal injury or death; situations for which compensation is permitted]." Neb. Rev. Stat. Ann. § 81-1818 (Personal injury or death; situations for which compensation is permitted) states,

The committee or hearing officer may order the payment of compensation from the Victim's Compensation Fund for personal injury or death which resulted from:

- (1) An attempt on the part of the applicant to prevent the commission of crime, to apprehend a suspected criminal, to aid or attempt to aid a police officer in the performance of his or her duties, or to aid a victim of a crime; or
- (2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska.

5.1.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 81-1801(7) to expressly include commercially sexually exploited minors under the age of 18 as victims for purposes of statutory benefits 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.*

Nothing in Neb. Rev. Stat. Ann. § 28-831<sup>115</sup> (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-801.01<sup>116</sup> (Solicitation of prostitution), § 28-804<sup>117</sup> (Keeping a place of prostitution), or § 28-707<sup>118</sup> (Child abuse; privileges not available; penalties) expressly prohibits a consent defense in instances where a minor is a victim of a commercial sex act.

5.2.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) and Nebraska's CSEC and child pornography laws to expressly prohibit a consent defense when the victim is a minor under the age of 18.

5.3 *Prostitution laws apply only to adults, preventing criminalization of minors under 18 for prostitution offenses.*

Neb. Rev. Stat. Ann. § 28-801(5) (Prostitution; penalty) provides that:

If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subjected to temporary custody under section 43-248 [Temporary custody of juvenile without warrant] . . . .

5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*

### **Child Identified as Juvenile<sup>119</sup> in Need of Assistance**

Neb. Rev. Stat. Ann. § 28-710(2)(b) (Act, how cited; terms, defined) defines "child abuse or neglect" as:

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<sup>115</sup> See *supra* note 2.

<sup>116</sup> See *supra* note 16.

<sup>117</sup> See *supra* note 17.

<sup>118</sup> See *supra* note 6.

<sup>119</sup> Pursuant to Neb. Rev. Stat. Ann. § 43-245(9), "Juvenile means any person under the age of eighteen."

(b) [K]nowingly, intentionally, or negligently causing or permitting a minor child to be:

....

(vi) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.<sup>120</sup>

....

## I. *Initial Custody*

### a. Authority for initial custody

Law enforcement officers who suspect a minor of engaging in prostitution can take the minor into custody and are statutorily required to direct them into a protective response. Neb. Rev. Stat. Ann. § 28-801(5) (Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties) states:

If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is a person under eighteen years of age, such a person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties] to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection Act.

Victims of domestic minor sex trafficking can also be taken into the abuse and neglect process through traditional reporting mechanisms. Neb. Rev. Stat. Ann. § 28-711(1) (Child subjected to abuse or neglect; report; contents; toll-free number) states that “any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 24 of this act,<sup>121</sup> or any other person [who] has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect . . . shall” report the suspected abuse to law enforcement or the department. Pursuant to § 28-713(1) (Reports of child abuse or neglect; law enforcement agency; department; duties), it is the duty of law enforcement agencies that receive a child abuse report “to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate.”

Pursuant to Neb. Rev. Stat. Ann. § 43-248 (Temporary custody of juvenile without warrant; when),

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

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<sup>120</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-710(2)(b)(vi) a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under Neb. Rev. Stat. Ann. § 28-710(2)(b)(vi) the definition of caregiver is not defined and, therefore, not sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

<sup>121</sup> Neb. Rev. Stat. Ann. § 43-4317 (Office of Inspector General of Nebraska child welfare) states, “(1) The office of Inspector General of Nebraska Child Welfare is created within the office of Public Counsel for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska child welfare system. The Inspector General shall be appointed by the Public Counsel with approval from the chairperson of the Executive Board of the Legislative Council and the chairperson of the Health and Human Services Committee of the Legislature.” Neb. Rev. Stat. Ann. § 43-4317(1).

....

(2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

....

(7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of section 28-801.

#### b. Placement

If a child is taken into law enforcement custody on suspicion of prostitution as provided in § 43-248(7),<sup>122</sup> the child shall be delivered to the Department of Health and Human Services which can authorize necessary emergency treatment and services. Neb. Rev. Stat. Ann. § 43-250(2) states,

When a juvenile is taken into temporary custody pursuant to subdivision (2) or (7) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

## II. *Process Following Initial Custody*

Pursuant to Neb. Rev. Stat. Ann. § 43-253(1) (Temporary custody; investigation; release; when), “[u]pon delivery to the probation officer of a juvenile who has been taken into temporary custody under section 29-401, 43-248, or 43-250, the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody.” If the officer “deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent,” except that “[i]n no case shall the court or probation

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<sup>122</sup> If a child is taken into temporary custody pursuant to 43-248(4) because the officer has reasonable grounds to believe that the juvenile has run away from his or her parent, the child may be released or the child may be delivered to a probation officer who will “determine the need for detention of the juvenile as provided in section 43-260.01 [Detention; factors].” Neb. Rev. Stat. Ann. § 43-250(1)(c). Pursuant to Neb. Rev. Stat. Ann. § 43-260.01 (Detention; factors),

The need for preadjudication placement or supervision and the need for detention of a juvenile and whether secure or nonsecure detention is indicated may be determined as follows:

- (1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;
- (2) If the results indicate that secure detention<sup>122</sup> is not required, nonsecure detention<sup>122</sup> placement or supervision options shall be pursued; and
- (3) If the results indicate that secure detention is required, detention at the secure level as indicated by the instrument shall be pursued.

If a child is detained, under Neb. Rev. Stat. Ann. § 43-250(1)(c)(iv), (1)(c)(vi) (Temporary custody; disposition; custody requirements), certain juveniles, including those under the age of 16, and those considered neglected, “shall not be placed [or held] within a secure area of a jail or other facility intended or used for the detention of adults.”

officer release such juvenile if it appears that further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile . . .” Neb. Rev. Stat. Ann. § 43-253(4), (5).

Pursuant to Ann. Neb. Rev. Stat. Ann. § 43-255 (Detention or placement; release required; exceptions), any juvenile placed in custody under Neb. Rev. Stat. Ann. § 43-250 (Temporary custody; disposition; custody requirements) must be released within 48 hours of the detention or placement “unless within such period of time . . . (2) a petition has been filed pursuant to section 43-274 [County attorney; preadjudication powers and duties; juvenile court petition, pretrial diversion, or mediation; procedures], or (3) a criminal complaint has been filed in a court of competent jurisdiction.” Neb. Rev. Stat. Ann. § 43-253(3) also prohibits a juvenile detained in custody pursuant to 43-250(1)(c) to be held in secure detention for more than 24-hours, excluding non-judicial days, “unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention is necessary. If continued secure detention is ordered, such detention shall be in a juvenile detention facility.”

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

While awaiting adjudication, Neb. Ann. § 43-254 (Placement or detention pending adjudication; restrictions; assessment of costs) states in part,

Pending the adjudication of any case . . . the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention, except that beginning October 1, 2013, no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the Department of Health and Human Services, or (6) beginning October 1, 2013, offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention.

Rev. Stat. Ann. § 43-250(1)(c)(iv), (1)(c)(vi) (Temporary custody; disposition; custody requirements), certain juveniles, including those under the age of 16, and a child considered neglected, “shall not be placed [or held] within a secure area of a jail or other facility intended or used for the detention of adults.”

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

Pursuant to Neb. Rev. Stat. Ann. § 43-260 (Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic or videoconference hearing; authorized),

Except as provided in sections 43-254.01,<sup>123</sup> . . . all cases filed under subdivision (3) of section 43-247 shall have an adjudication hearing not more than ninety days after a petition is filed. Upon a showing of

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<sup>123</sup> Neb. Rev. Stat. Ann. § 43-254.01 (Temporary mental health placement; evaluation; procedure) specifically deals with children placed in a mental health facility for evaluation and emergency treatment. Adjudication hearings in those cases must be held within 7 days. Neb. Rev. Stat. Ann. § 43-254.01(3).

good cause, the court may continue the case beyond the ninety-day period. The court shall also review every case filed under such subdivision which has been adjudicated or transferred to it for disposition not less than once every six months.

V. *Outcomes*

Neb. Rev. Stat. Ann. § 43-251.01<sup>124</sup> (Juveniles; placements and commitments; restrictions) states,

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

- (1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;
- (2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 [Juvenile court; jurisdiction] shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

. . .

- (4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center; and
- (5) A juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court . . . .
- (6) A juvenile alleged to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (3) of section 83-4,125 and the ingress and egress to the facility are restricted solely through staff supervision; and

- (7) A juvenile alleged to be a juvenile as described in subdivision (3)(b) of section 43-247 shall not be placed out of his or her home as a dispositional order of the court unless: (a) All available community-based resources have been exhausted to assist the juvenile and his or her family; and (b) Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

Additionally, pursuant to Neb. Rev. Stat. Ann. § 43-284 (Juvenile in need of assistance or special supervision; care and custody; payments for support; removal from home; restrictions),

When any juvenile is adjudged to be under . . . [Neb. Rev. Stat. Ann. § 43-247(3)], the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to (1) the care of some suitable institution, (2) inpatient or outpatient treatment at a mental health facility or mental health program, (3) the care of some reputable citizen of good moral character, (4) the care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, . . . (5) the care of a suitable family, or (6) the care and custody of the Department of Health and Human Services.

. . . .

The court may enter a dispositional order removing a juvenile from his or her home upon a written determination that continuation in the home would be contrary to the health, safety, or welfare of such

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<sup>124</sup> The text of Neb. Rev. Stat. Ann. § 43-251.01 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 482 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 19, 2015).



juvenile and that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01 [Preserve and reunify the family; reasonable efforts; requirements].

### **Child Identified as Juvenile Violator or Juvenile In Need of Special Supervision**

A child may be detained and taken into custody for violating a criminal statute. Neb. Rev. Stat. Ann. § 43-248(1) (Temporary custody of juvenile without warrant; when). Minors may not be prosecuted for prostitution under Neb. Rev. Stat. Ann. § 28-801(5)<sup>125</sup> (Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties), but DMST victims may still be brought into the juvenile justice process if they are suspected of other crimes.

#### *I. Initial Custody*

##### a. Authority for initial custody

Under Neb. Rev. Stat. Ann. § 43-248 (Temporary custody of juvenile without warrant):

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

(1) A juvenile has violated a state law or municipal ordinance and the officer has reasonable grounds to believe such juvenile committed such violation;

. . . .

(3) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court;

(4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

(5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger;

(6) The officer has reasonable grounds to believe the juvenile is truant from school. . . .

##### b. Placement

Neb. Rev. Stat. Ann. §43-250 (Temporary custody; disposition; custody requirements) provides for short-term placement of juveniles taken into temporary custody and allows for the possibility of both secure and non-secure detention:

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4),<sup>126</sup> or (5) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

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<sup>126</sup> If a child is taken into temporary custody pursuant to 43-248(4) because the officer has reasonable grounds to believe that the juvenile has run away from his or her parent, the child may be released or the child may be delivered to a probation officer who will “determine the need for detention of the juvenile as provided in section 43-260.01 [Detention; factors].” Neb. Rev. Stat. Ann. § 43-250(1)(c). Pursuant to Neb. Rev. Stat. Ann. § 43-260.01 (Detention; factors),

The need for preadjudication placement or supervision and the need for detention of a juvenile and whether secure or nonsecure detention is indicated may be determined as follows:

(1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;

(2) If the results indicate that secure detention<sup>126</sup> is not required, nonsecure detention<sup>126</sup> placement or supervision options shall be pursued; and

- (a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248;
- (b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or
- (c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:
- (i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
  - (ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
  - (iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;
  - (iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

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(3) If the results indicate that secure detention is required, detention at the secure level as indicated by the instrument shall be pursued.

If a child is detained, under Neb. Rev. Stat. Ann. § 43-250(1)(c)(iv), (1)(c)(vi) (Temporary custody; disposition; custody requirements), certain juveniles, including those under the age of 16, and those considered neglected, "shall not be placed [or held] within a secure area of a jail or other facility intended or used for the detention of adults."

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

....

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

### *I. Process Following Initial Custody*

Under Neb. Rev. Stat. Ann. §43-258 (Preadjudication physical and mental evaluation; placement; restrictions; reports; costs; responsibility), the court may order an interim process to evaluate the needs of juveniles detained under its jurisdiction:

Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

....

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section [43-246](#). The juvenile shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

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

While awaiting adjudication, Neb. Rev. Stat. Ann. § 43-254 (Placement or detention pending adjudication; restrictions; assessment of costs) states in part,

Pending the adjudication of any case . . . the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention, except that beginning October 1, 2013, no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the Department of Health and Human Services, or (6) beginning October 1, 2013, offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile

is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention.

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

Formal adjudication under Neb. Rev. Stat. Ann. § 43-278 (Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic or videoconference hearing; authorized) must be held within 90 days of the filing of a petition. Further, under Neb. Rev. Stat. Ann. § 43-280 (Adjudication; effect; use of in-court statements):

No adjudication by the juvenile court upon the status of a juvenile shall be deemed a conviction nor shall the adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction. The adjudication and the evidence given in the court shall not operate to disqualify such juvenile in any future civil or military service application or appointment. Any admission, confession, or statement made by the juvenile in court and admitted by the court, in a proceeding under section 43-279, shall be inadmissible against such juvenile in any criminal or civil proceeding but may be considered by a court as part of a presentence investigation involving a subsequent transaction.

Some counties in Nebraska may offer diversion as an alternative to the formal adjudication process. Under Neb. Rev. Stat. Ann. § 43-260.02 (Juvenile pretrial diversion program; authorized):

A county attorney may establish a juvenile pretrial diversion program with the concurrence of the county board. If the county is part of a multicounty juvenile services plan under the Nebraska County Juvenile Services Plan Act, the county attorney may establish a juvenile pretrial diversion program in conjunction with other county attorneys from counties that are a part of such multicounty plan. A city attorney may establish a juvenile pretrial diversion program with the concurrence of the governing body of the city. Such programs shall meet the requirements of sections 43-260.02 to 43-260.07.

Neb. Rev. Stat. Ann. § 43-260.04 (Juvenile pretrial diversion program; requirements) requires that a diversion program shall:

- (1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:
  - (a) The juvenile's age;
  - (b) The nature of the offense and role of the juvenile in the offense;
  - (c) The number and nature of previous offenses involving the juvenile;
  - (d) The dangerousness or threat posed by the juvenile to persons or property; or
  - (e) The recommendations of the referring agency, victim, and advocates for the juvenile;
- (2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;
- (3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;
- (4) Be offered to the juvenile when practicable prior to the filing of a juvenile petition or a criminal charge but after the arrest of the juvenile or issuance of a citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;
- (5) Provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile;
- (6) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;
- (7) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07; and

(8) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law.

## VI. Outcome

When a juvenile has been adjudicated guilty of a misdemeanor or felony, Neb. Rev. Stat. Ann. § 43-286 (Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure) governs the outcome:

(ii) . . . The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(A) Place the juvenile on probation subject to the supervision of a probation officer; or

(B) Permit the juvenile to remain in his or her own home or be placed in a suitable family home or institution, subject to the supervision of the probation officer.

If the court has placed a juvenile under the supervision of a probation officer, the Office of Probation Administration shall pay the costs of the suitable family home or institution which are not otherwise paid by the juvenile's parents.

5.4.1 Recommendation: Enact a law to ensure domestic minor sex trafficking victims have access to specialized services appropriate to their status as sex trafficking victims.

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

Commercial sexual exploitation is expressly identified as a type of abuse or neglect within Nebraska's Child Protection and Family Safety Act.<sup>127</sup> Specifically, Neb. Rev. Stat. Ann. § 28-710(2)(b) (Act, how cited; terms, defined) defines "child abuse or neglect" to include the following:

(b) [K]nowingly, intentionally, or negligently causing or permitting a minor child to be:

. . . .

(vi) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.

. . . .

5.6 *The definition of "caregiver" or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*

Nebraska's child welfare statutes do not define the term "caregiver" or "custodian." Nebraska's Child Protection and Family Safety Act,<sup>128</sup> however, does refer to the "subject of the investigation or report of child abuse or neglect" and defines "subject of the report of child abuse or neglect" as "the person or persons identified in the report as responsible for the child abuse or neglect." Neb. Rev. Stat. Ann. § 28-710(2)(j) (Act, how cited; terms, defined).

Nonetheless, the person identified as responsible for the abuse of the child is not a barrier to services for juvenile sex trafficking victims. On the contrary, pursuant to Neb. Rev. Stat. Ann. § 28-801(5) (Prostitution;

<sup>127</sup> Neb. Rev. Stat. Ann. §§ 28-710 to -727.

<sup>128</sup> See *supra* note 127.

penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties), when a law enforcement suspects that a minor is engaged in prostitution, the minor must be referred to the Department Health and Human Services, and the Department must open an investigation. Additionally, under Neb. Rev. Stat. Ann. § 43-250(2) (Temporary custody; disposition; custody requirements), the Department must place the child in the least restrict environment and consent to necessary services.<sup>129</sup>

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

A commercially sexually exploited child may be eligible to receive compensation under Nebraska's Crime Victim's Reparation Act.<sup>130</sup> Specifically, Neb. Rev. Stat. Ann. § 81-1801(7) defines a "victim" as "a person who is injured or killed as a result of conduct specified in section 81-1818 [Personal injury or death; situations for which compensation is permitted]." Neb. Rev. Stat. Ann. § 81-1818 (Personal injury or death; situations for which compensation is permitted) states,

The committee or hearing officer may order the payment of compensation from the Victim's Compensation Fund for personal injury or death which resulted from:

....

(2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska.

Neb. Rev. Stat. Ann. § 81-1807 (Victim; compensation; application) provides that "[a]ny person who may be eligible for compensation under the Nebraska Crime Victim's Reparations Act may make application to the committee on forms provided by the committee."

Neb. Rev. Stat. Ann. § 81-1819 (Payment of compensation; order; losses covered) provides that a victim may receive compensation for

- (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim, including expenses for mental health counseling and care;
- (2) Loss of wages and future earning capacity as a result of total or partial incapacity of the victim and reasonable expenses of job retraining or similar employment-oriented rehabilitative services for the victim;
- (3) Pecuniary loss to the dependents of the deceased victim;
- (4) Funeral and burial expenses actually and reasonably incurred as a result of the death of the victim; and
- (5) Any other loss resulting from the personal injury or death of the victim which the committee determines to be reasonable.

Even if a commercially sexually exploited child suffers compensable losses, certain other eligibility requirements may make it difficult for a domestic minor sex trafficking victim to receive compensation. For example, Neb. Rev. Stat. Ann. § 81-1821 (Application; statute of limitations) requires both that the crime be reported to law enforcement and a claim for compensation be filed within specified time limits. Specifically, Neb. Rev. Stat. Ann. § 81-1821 states,

No order for the payment of compensation shall be entered under the Nebraska Crime Victim's Reparations Act unless the application has been submitted to the committee within two years after the date of the personal injury or death and the personal injury or death was the result of an incident or offense which had been reported to the police within three days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within three days of the time when a report could reasonably have been made.

<sup>129</sup> See *supra* Section 5.4 for discussion regarding access to services for juvenile sex trafficking victims.

<sup>130</sup> Neb. Rev. Stat. Ann. §§ 81-1801 to -1842.

Additionally, Neb. Rev. Stat. Ann. § 81-1822 (Compensation; situations when not awarded) states,

No compensation shall be awarded from the Victim's Compensation Fund:

(1) If the victim aided or abetted the offender in the commission of the unlawful act;

. . . .

(3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death . . . .

5.7.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 81-1821 (Application; statute of limitations) and Neb. Rev. Stat. Ann. § 81-1822 (Compensation; situations when not awarded) to create exceptions to the listed items for commercially exploited minors under the age of 18.

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

Children 11 years of age or younger, who are the victims of any crime under Nebraska's laws are afforded some protections under Nebraska law.<sup>131</sup> The testimony of a child who is 11 years of age or younger may be admitted through a videotaped deposition. Neb. Rev. Stat. Ann. § 29-1926(1)(a) (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) provides in part, "(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need,<sup>132</sup> the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child." Under the procedures set out for this type of testimony, only specified persons, including the defendant and a person who is familiar to the child, are permitted to be present during the child's testimony.

Neb. Rev. Stat. Ann. § 81-1848 (Victims and witnesses of crimes; rights; enumerated) enumerates rights afforded to "[v]ictims as defined in section 29-119,"<sup>133</sup> which does not expressly include victims of human

<sup>131</sup> Neb. Rev. Stat. Ann. § 29-1926(1)(g) (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) provides that "[f]or purposes of this section, child shall mean a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial."

<sup>132</sup> Pursuant to Neb. Rev. Stat. Ann. § 29-1926(1)(h),

Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

(i) The nature of the offense;

(ii) The significance of the child's testimony to the case;

(iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;

(iv) The child's age;

(v) The child's psychological maturity and understanding; and

(vi) The nature, degree, and duration of potential injury to the child from testifying.

<sup>133</sup> Pursuant to Neb. Rev. Stat. Ann. § 29-119(2) (Plea agreement; terms, defined),

(a) Victim means a person who, as a result of . . . a sexual assault of a child in the second or third degree under section 28-320.01, a sexual assault of a child in the first degree under section 28-319.01 . . . has had a personal confrontation with the offender . . .

trafficking. These rights include the right to receive information regarding the case, a schedule of hearings, protection from threats, and to be provided a secure waiting area. Neb. Rev. Stat. Ann. § 81-1848(1)(b),(2)(c), (2)(f).

While victims of sexual assault are eligible for additional protections, they do not apply specifically to domestic minor sex trafficking victims unless they are also victims of sexual assault.<sup>134</sup> Sexual assault victims may receive certain additional protections. For example, in a criminal case, evidence of a sexual assault victim's past sexual behavior or sexual predisposition is inadmissible in sexual assault cases unless the information proves another source of semen or injury or other physical evidence, the victim consented, or the exclusion of such evidence would violate the constitutional rights of the accused. Neb. Rev. Stat. Ann. § 27-412(1), (2)(a). Additionally, pursuant to Neb. Rev. Stat. Ann. § 29-2028 (Sexual assault; testimony; corroboration not required), the testimony of victims of offenses under Neb. Rev. Stat. Ann. § 28-319.01 (Sexual assault of a child; first degree; penalty) to § 28-320.01 (Sexual assault of a child; second or third degree; penalties) does not require corroborating evidence.

- 5.8.1 Recommendation: Expand Neb. Rev. Stat. Ann. § 29-1926 (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) to allow children older the age of 11 to testify via a videotaped deposition.
- 5.8.2 Recommendation: Specify application of the “rape shield” law in prosecutions of domestic minor sex trafficking or commercial sexual exploitation of children to reduce trauma in the cross-examination of testifying victims.

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.*

Domestic minor sex trafficking victims can have certain juvenile criminal records sealed pursuant to Neb. Rev. Stat. Ann. § 43-2,108.01 (Sealing of records; juveniles eligible), which states,

Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or

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.....

(c) In the case of a violation of section 28-813.01 [Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense], 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense], 28-1463.04 [Violation; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty], victim means a person who was a child as defined in section 28-1463.02 [Terms, defined] and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

<sup>134</sup> Neb. Rev. Stat. Ann. § 27-413 (Offense of sexual assault, defined) provides that sexual assault includes “sexual assault of a child under section 28-319.01 [Sexual assault of a child; first degree; penalty] or 28-320.01 [Sexual assault of a child; second or third degree; penalties], sexual assault by use of an electronic communication device under section 28-320.02 [Sexual assault; use of electronic communication device; prohibited acts; penalties] . . . [and] an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.” The text of Neb. Rev. Stat. Ann. § 27-413 included here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 294 during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 20, 2015).



referred for prosecution without citation, the county attorney or city attorney (1) released the juvenile without filing a juvenile petition or criminal complaint, (2) offered juvenile pretrial diversion or mediation to the juvenile under the Nebraska Juvenile Code, (3) filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 [Juvenile court; jurisdiction], (4) filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia, or (5) filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense that may be waived.

Upon receiving notice pursuant to Neb. Rev. Stat. Ann. § 43-2,108.03(1)–(3) (Sealing of records; county attorney or city attorney; duties; motion to seal record authorized) that a juvenile arrested or brought into custody was not referred for prosecution, charges were dismissed, or the juvenile completed a diversion or mediation, Neb. Rev. Stat. Ann. § 43-2,108.03(4) states that “the government agency or court shall immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, or mediation.”

Neb. Rev. Stat. Ann. § 43-2,108.03(5) further states,

If a juvenile described in section 43-2,108.01 has satisfactorily completed such juvenile’s probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed such juvenile’s diversion or sentence in county court:

- (a) The court may initiate proceedings pursuant to section 43-2,108.04 [Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations] to seal the record pertaining to such disposition or adjudication under the juvenile code or sentence of the county court; and
- (b) If the juvenile has attained the age of seventeen years, the court shall initiate proceedings pursuant to section 43-2,108.04 to seal the record pertaining to such disposition or adjudication under the juvenile code or diversion or sentence of the county court, except that the court is not required to initiate proceedings to seal a record pertaining to a misdemeanor or infraction not described in subdivision (4) of section 43-2,108.01 under a city or village ordinance that has no possible jail sentence. Such a record may be sealed under subsection (6) of this section.

Neb. Rev. Stat. Ann. § 43-2,108.03(6) allows a juvenile’s parent or guardian to petition the court to seal the juvenile’s records where the juvenile “has satisfactorily completed diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed the diversion or sentence ordered by a county court.” Pursuant to Neb. Rev. Stat. Ann. § 43-2,108.04(5), (6), a court will seal a juvenile’s records

- (5) . . . if it finds that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:
  - (a) The age of the juvenile;
  - (b) The nature of the offense and the role of the juvenile in the offense;
  - (c) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile’s response to diversion, mediation, probation, supervision, other treatment or rehabilitation program, or sentence;
  - (d) The education and employment history of the juvenile; and
  - (e) Any other circumstances that may relate to the rehabilitation of the juvenile.
- (6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile’s parent or guardian may not move the court to seal the record for one year after the court’s decision not to seal the record is made, unless such time restriction is waived by the court.

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

The Human Trafficking Victims Civil Remedies Act allows both minor and adult victims of human trafficking, as defined by Neb. Rev. Stat. Ann § 28-830 (Human trafficking; forced labor or services; terms, defined), to bring civil claims against traffickers, buyers, or facilitators. Enacted Legislative Bill 294 § 1.<sup>135</sup> Section 3 states,

(1) Any trafficking victim and his or her parents who suffered or continues to suffer personal or psychological injury as a result of such trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Civil Remedies Act may recover his or her actual damages plus any and all attorney's fees and costs reasonably associated with the civil action. In addition to all other remedies available under the Act, the court may also award temporary, preliminary, or permanent injunction as the court deems necessary and appropriate.

Additionally, under the Exploited Children's Civil Remedy Act,<sup>136</sup> Nebraska provides a civil cause of action for sex trafficked minors who were sexually exploited through child pornography. Neb. Rev. Stat. Ann. § 25-21,292 (Civil action authorized; recovery; attorney's fees and costs; injunctive relief) states,

(1) Any participant<sup>137</sup> or portrayed observer<sup>138</sup> in a visual depiction of sexually explicit conduct<sup>139</sup> or his or her parent or legal guardian who suffered or continues to suffer personal or psychological injury as a result of such participation or portrayed observation may bring a civil action against any person who knowingly and willfully (a) created, distributed, or actively acquired such visual depiction while in this state or (b) aided or assisted with the creation, distribution, or active acquisition of such visual depiction while such person or the person aided or assisted was in this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Exploited Children's Civil Remedy Act may recover his or her actual damages, which are deemed to be a minimum of one hundred fifty thousand dollars, plus any and all attorney's fees and costs reasonably associated with the civil action. In addition to all other remedies available under the act, the court may also award temporary, preliminary, and permanent injunctive relief as the court deems necessary and appropriate.

(3) This section does not create a cause of action if the participant was sixteen years of age or older at the time the visual depiction was created and the participant willfully and voluntarily participated in the creation of the visual depiction.

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<sup>135</sup> Legislative Bill 294 was enacted during the 104th Leg. Assemb. Second Sess. (Neb. 2015) (effective May 19, 2015).

<sup>136</sup> Neb. Rev. Stat. Ann. §§ 25-21,290 to -21,296.

<sup>137</sup> Neb. Rev. Stat. Ann. § 25-21,291(8) (Terms, defined) defines "participant" as "a child who appears in any visual depiction of sexually explicit conduct and is portrayed or actively engaged in acts of sexually explicit conduct appearing therein."

<sup>138</sup> Neb. Rev. Stat. Ann. § 25-21,291(9) (Terms, defined) defines "portrayed observer" as "a child who appears in any visual depiction where sexually explicit conduct is likewise portrayed or occurring within the child's presence or in the child's proximity."

<sup>139</sup> Pursuant to Neb. Rev. Stat. Ann. § 25-21,291(10), "Sexually explicit conduct has the same meaning as in section 28-1463.02." Neb. Rev. Stat. Ann. § 28-1463.02(5) defines "sexual explicit conduct" as

(a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved.

. . . .

Restitution may also be available to a commercially sexually exploited child. Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) states,

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations. . . .

The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

5.10.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) to make restitution mandatory in human trafficking and CSEC offenses.

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

Generally, felony prosecutions must be commenced within 3 years of the offense, and misdemeanor prosecutions must begin within one year and 6 months. Neb. Rev. Stat. Ann. § 29-110(1)–(2). While statutes of limitations are eliminated for some sexual offenses against children,<sup>140</sup> Neb. Rev. Stat. Ann. § 29-110(1) (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions), the statute of limitations is not eliminated for violations of Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) and CSEC offenses. Neb. Rev. Stat. Ann. § 29-110(3) states,

Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01 [Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defenses], or 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense] when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim’s sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim’s sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

To receive a civil remedy under the Exploited Children’s Civil Remedy Act, Neb. Rev. Stat. Ann. § 25-21,293 (Time for bringing action; limitation) states that an action “shall be filed within three years of the

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<sup>140</sup> Neb. Rev. Stat. Ann. § 29-110(7) (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions) provides, “There shall not be any time limitations for prosecution or punishment for . . . sexual assault of a child in the second or third degree under section 28-320.01 . . . or sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.”

later of” the conclusion of criminal prosecution of the offender, the date the victim is able to identify the offender, or the victim’s 18 birthday.

According to Enacted Legislative Bill 294 § 4,<sup>141</sup> the statute of limitations on civil claims under the Human Trafficking Victims Civil Remedies Act is ten years from the later of:

- (1) The conclusion of any related criminal prosecution against the person or persons from whom recovery is sought;
- (2) The receipt of any actual or constructive notice sent or given to the trafficking victim or his or her parent or legal guardian by a member of a law enforcement entity informing the victim or his or her parent or legal guardian that the entity has identified the person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in human trafficking of such victim within this state;
- (3) The time at which the human trafficking of the trafficking victim ended if he or she was eighteen years of age or older; or
- (4) The victim reaching the age of majority if he or she was under eighteen years of age at the time he or she was a victim of human trafficking.

5.11.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 29-110 (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions) to eliminate statutes of limitations for prosecutions under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-707 (Child abuse; privileges not available; penalties) and § 28-802 (Pandering).

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<sup>141</sup> See *supra* note 135.

**Legal Components:**

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*
  - 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
  - 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking.*
  - 6.4 *Using a law enforcement 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 or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*
  - 6.6 *Law enforcement and child welfare agencies are mandated to promptly report missing and recovered children.*
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**Legal Analysis:**

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

Neb. Rev. Stat. Ann. § 81-1402 (Nebraska Law Enforcement Training Center; created; purposes) establishes the Nebraska Law Enforcement Training Center to oversee training of law enforcement, conduct certification of law enforcement, and test law enforcement candidates “to ensure they meet pre-certification and certification requirements.” Under 2012 Legislative Bill 1145 (Sec. 3),

(1) It is the intent of the Legislature that law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff, and others involved in the juvenile justice system and the criminal justice system and other relevant officials be provided mandatory training regarding issues in human trafficking. The task force established in section 2 of this act shall work with such agencies, persons, and staff to develop a proper curriculum for the training and to determine how the training should be provided. The determination and accompanying legislative recommendations shall be made by December 1, 2012. Such training shall focus on:

- (a) State and federal law regarding human trafficking;
- (b) Methods used in identifying victims of human trafficking who are United States citizens and foreign nationals, including preliminary interview techniques and appropriate questioning methods;
- (c) Methods for prosecuting human traffickers;
- (d) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
- (e) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and the special needs of women and minor victims;
- (f) The necessity of treating victims of human trafficking as crime victims rather than as criminals; and
- (g) Methods for promoting the safety and well-being of all victims of human trafficking.

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

Neb. Rev. Stat. Ann. § 86-290(2)(b), (c) (Unlawful acts; penalty) permits single-party consent to audio-taping by stating,

(b) It is not unlawful under sections 86-271 to 86-295 for a person acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It is not unlawful under sections 86-271 to 86-295 for a person not acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or when one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

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

An order authorizing wiretapping may be issued for investigations related to the sex trafficking of minors, including investigations related to child pornography, the sexual assault of a child, and the enticement of a child through the use of the Internet. Nebraska law, however, does not expressly authorize law enforcement to receive an order authorizing wiretapping in an investigation under Neb. Rev. Stat. Ann. § 28-831<sup>142</sup> (Human trafficking; forced labor or services; prohibited acts; penalties). Neb. Rev. Stat. Ann. § 86-291 (Interception; court order) specifically states,

The Attorney General or any county attorney may make application to any district court of this state for an order authorizing or approving the interception of wire, electronic, or oral communications, and such court may grant, subject to sections 86-271 to 86-295, an order authorizing or approving the interception of wire, electronic, or oral communications by law enforcement officers having responsibility for the investigation of the offense as to which application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, robbery, bribery, extortion, dealing in narcotic or other dangerous drugs, sexual assault of a child or a vulnerable adult, visual depiction or possessing a visual depiction of sexually explicit conduct of a child, or child enticement by means of a computer, or any conspiracy to commit any such offense.

At the same time a county attorney first makes application to the district court for an initial order authorizing or approving the interception of wire, electronic, or oral communications, the county attorney shall submit the application to the Attorney General or his or her designated deputy or assistant. Within twenty-four hours of receipt by the office of the Attorney General of the application from the county attorney, the Attorney General or his or her designated deputy or assistant, as the case may be, shall state to the district court where the order is sought his or her recommendation as to whether the order should be granted. The court shall not issue the order until it has received the recommendation or until seventy-two hours after receipt of the application from the county attorney, whichever is sooner, unless the court finds exigent circumstances existing which necessitate the immediate issuance of the order. The court may issue the order and disregard the recommendation of the Attorney General or his or her designated deputy or assistant.

6.3.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 86-291 (Interception; court order) to include Neb. Rev. Stat. Ann. § 28-831(3) (Human trafficking; forced labor or services; prohibited acts; penalties) and all other Nebraska CSEC laws

### 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.*

Nebraska's laws do not specifically permit or forbid the use of a law enforcement decoy during investigations under Neb. Rev. Stat. Ann. § 28-831<sup>143</sup> (Human trafficking; forced labor or services; prohibited acts; penalties) or CSEC laws.

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<sup>142</sup> See *supra* note 2.

<sup>143</sup> See *supra* note 2.

- 6.4.1 Recommendation: Enact a law expressly permitting the use of a law enforcement decoy during the investigation or prohibiting a defense to prosecution based on the “minor” being in fact a person posing as a minor for purposes of the investigation of a violation under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) and CSEC laws.

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

While neither is expressly commercial in nature, two of Nebraska’s laws appear to authorize law enforcement to use the Internet in investigating buyers and traffickers. Neb. Rev. Stat. Ann. § 28-833(1) (Enticement by electronic communication device; penalty) makes it illegal for a person to knowingly and intentionally use “an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing . . . [o]ffers or solicits any indecent, lewd, or lascivious act.” Similarly, Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) makes it illegal for a person to knowingly

solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device . . . to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty]. . . .

The inclusion of the language “or a peace officer who is believed by such person to be a child” under 16 suggests that law enforcement may pose as a child on the Internet while investigating violations of Neb. Rev. Stat. Ann. § 28-833(1) and § 28-320.02(1).

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

Neb. Rev. Stat. Ann. § 29-214.01(1), (4) (Missing Persons Information Clearinghouse; Nebraska State Patrol; powers and duties) establishes a Missing Persons Information Clearinghouse (Clearinghouse) to serve as a central repository for information and investigation of missing persons. Neb. Rev. Stat. Ann. § 29-214.01(2) states that the Nebraska State Patrol shall do the following:

- (a) Collect, process, maintain, and disseminate information about missing persons in Nebraska through hard copy or electronic means;  
....
- (c) Cooperate with other states and the National Crime Information Center in the exchange of information on missing persons;
- (d) Maintain a statewide, toll-free telephone line, twenty-four hours a day, to receive and disseminate information related to missing persons;
- (e) Maintain an Internet web site accessible to law enforcement agencies and to the public with information on missing persons and with information about the resources available through the clearinghouse. . . .  
....
- (h) Distribute through hard copy or electronic means monthly missing persons bulletins to local law enforcement agencies and to other interested individuals, agencies, and media outlets which request such information. The bulletins shall contain information on missing persons in Nebraska, including names, photographs or other images, if available, descriptions of missing persons, the law enforcement agencies or persons to contact with information regarding missing persons, and the names of persons reported missing whose locations have been determined and confirmed;  
....

Neb. Rev. Stat. Ann. § 29-213 (Missing persons information clearinghouse; missing person report; law enforcement agency; duties) states that a law enforcement agency that receive a missing person report shall notify other law enforcement agencies and the Clearinghouse, and if the report “involves an unemancipated minor,” Neb. Rev. Stat. Ann. § 29-214 (Missing persons information clearinghouse; missing person report; unemancipated minor; law enforcement agencies; duties), states that the law enforcement agency that receives the report shall “immediately transmit the proper information for inclusion in the National Crime Information Center computer and the Missing Persons Information Clearinghouse.” When a missing person has been found, Neb. Rev. Stat. Ann. § 29-214.01(5) provides that “[t]he Missing Persons Information Clearinghouse shall be notified after the location of a missing person has been determined and confirmed.”

Under the provisions of the Missing Children Identification Act,<sup>144</sup> additional requirements apply when the missing person is “sixteen years of age or younger reported to any law enforcement agency as abducted or lost.” Neb. Rev. Stat. Ann. § 43-2003(3). In such a case, law enforcement shall “immediately notify the patrol which shall notify the school in which such missing person is enrolled and the department. The department shall notify the county agency if such missing person was born in such county.” Neb. Rev. Stat. Ann. § 43-2004.

Neb. Rev. Stat. Ann. § 43-2005 (Flagging birth certificate) states that law enforcement shall flag the missing child’s birth certificate, “and if such person was born in a county where a county agency records and maintains birth certificates, such agency shall also flag the birth certificate in its custody.” Neb. Rev. Stat. Ann. § 43-2006 (Flagged birth certificate; inquiry and request; how handled) sets up a procedure for handling requests or inquires about flagged birth certificates. Neb. Rev. Stat. Ann. § 43-2007(1) (Schools; exempt school; duties) similarly states that schools in which the missing child was enrolled shall flag the child’s records and report any inquiry regarding the records. When the missing child is located, the flag on the child’s birth certificate and school records must be removed pursuant to Neb. Rev. Stat. Ann. § 43-2009 (Removal of flag).

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<sup>144</sup> Neb. Rev. Stat. Ann. §§ 43-2001 to -2012.