

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2015 ANALYSIS AND RECOMMENDATIONS OREGON

### 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.*

Oregon's trafficking in persons criminalizes domestic minor sex trafficking but only eliminates the requirement to prove force, fraud or coercion when the minor victim is under 15. Or. Rev. Stat. § 163.266 (Trafficking in persons) states,

- (1) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:
  - (a) The person knows that the other person will be subjected to involuntary servitude as described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree] or 163.264 [Subjecting another person to involuntary servitude in the first degree];

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

- (b) The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or
  - (c) The person knows or recklessly disregards the fact that the other person is under 15 years of age and will be used in a commercial sex act.
- (2) A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 or 163.264.

Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree) states,

- (1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:
- (a) Abusing or threatening to abuse the law or legal process;
  - (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
  - (c) Threatening to report a person to a government agency for the purpose of arrest or deportation;
  - (d) Threatening to collect an unlawful debt; or
  - (e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.
- (2) Subjecting another person to involuntary servitude in the second degree is a Class C felony.

Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree) states,

- (1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:
- (a) Causing or threatening to cause the death of or serious physical injury to a person; or
  - (b) Physically restraining or threatening to physically restrain a person.
- (2) Subjecting another person to involuntary servitude in the first degree is a Class B felony.

Or. Rev. Stat. § 163.261 (Definitions) provides the definition of “services” for § 163.263 (Subjecting another person to involuntary servitude in the second degree) and § 163.264 (Subjecting another person to involuntary servitude in the first degree) by stating, “As used in ORS § 163.263 and § 163.264, ‘services’ means activities performed by one person under the supervision or for the benefit of another person.” This definition limits application to traffickers and facilitators.

A conviction under Or. Rev. Stat. §§ 163.266(1)(b) or (c) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.605(1), 161.625(1)(b). A conviction under (1)(a) or (2) of this section is a Class B felony punishable by a maximum imprisonment of 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.605(2), 161.625(1)(c). However, under Or. Rev. Stat. § 161.625(3)(a), “If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized . . . may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant’s gain from the commission of the crime.”

- 1.1.1 Recommendation: Amend Or. Rev. Stat. § 163.266(1) (Trafficking in persons) to raise the minimum age for requiring proof of force, fraud, or coercion from 15 to 18 years of age.<sup>2</sup>

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<sup>2</sup> Subsequent recommendations in this report referring to the state human trafficking laws are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

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.*

Three laws treat CSEC as distinct crimes in Oregon:

1. Or. Rev. Stat. § 167.017(1) (Compelling prostitution) makes it illegal if a person
  - (a) Uses force or intimidation to compel another to engage in prostitution or attempted prostitution;
  - (b) Induces or causes a person under 18 years of age to engage in prostitution;
  - (c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or
  - (d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

A conviction under Or. Rev. Stat. § 167.017(1) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. §§ 167.017(2), 161.605(2), 161.625(1)(c).

2. Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct) states in part, “A person commits the crime of using a child<sup>3</sup> in a display of sexually explicit conduct<sup>4</sup> if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.”<sup>5</sup> A conviction under Or. Rev. Stat. § 163.670 is punishable as a class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.670(2), 161.605(1), 161.625(1)(b).

3. Or. Rev. Stat. § 163.413<sup>6</sup> (Purchasing sex with a minor) states,

(1) A person commits the crime of purchasing sex with a minor<sup>7</sup> if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.

(2) (a) If the person does not have a prior conviction under this section at the time of the offense,

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<sup>3</sup> Or. Rev. Stat. § 163.665(1) (Definitions) defines “child” as “a person who is less than 18 years of age, and any reference to a child in relation to a visual recording of the child is a reference to a person who was less than 18 years of age at the time the original image in the visual recording was created and not the age of the person at the time of an alleged offense relating to the subsequent reproduction, use or possession of the visual recording.”

<sup>4</sup> Or. Rev. Stat. § 163.665(3) (Definitions) states,

“Sexually explicit conduct” means actual or simulated:

- (a) Sexual intercourse or deviant sexual intercourse;
- (b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;
- (c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or treatment or as part of a personal hygiene practice;
- (d) Masturbation;
- (e) Sadistic or masochistic abuse; or
- (f) Lewd exhibition of sexual or other intimate parts.

<sup>5</sup> Or. Rev. Stat. § 163.665(5) (Definitions) states, “‘Visual recording’ includes, but is not limited to, photographs, films, videotapes and computer and other digital pictures, regardless of the manner in which the recording is stored.”

<sup>6</sup> The text of Or. Rev. Stat. § 163-413 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2206 and House Bill 2385 during the 2015 Regular session of the 78th Oregon legislature. (Or. 2015) (effective January 1, 2016).

<sup>7</sup> “Minor” is defined as “a person under 18 years of age” under Or. Rev. Stat. § 163.413(4)(b). *See supra* note 6.

purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS 163.325<sup>8</sup> only if the minor or, in the case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant, was at least 16 years of age.

(b) If the person has one or more prior convictions under this section at the time of the offense, purchasing sex with a minor is a Class B felony, the state need not prove that the person knew the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor was under 18 years of age and the person may not use a defense described in ORS 163.325.

A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 (Definitions for 181.800 to 181.845).” Or. Rev. Stat. § 163.413(3). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).<sup>9</sup>

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

1. Or. Rev. Stat. § 163.355(1) (Rape in the third degree) states, “A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.” A conviction under Or. Rev. Stat. § 163.355(1) is punishable as a Class C felony by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.355(2), 161.605(3), 161.625(1)(d).
2. Or. Rev. Stat. § 163.365(1) (Rape in the second degree) states, “A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.” A conviction under Or. Rev. Stat. § 163.365(1) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000.” Or. Rev. Stat. §§ 163.365(2), 161.605(2), 161.625(1)(c).
3. Or. Rev. Stat. § 163.375(1) (Rape in the first degree) states,
  - (1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:
    - (a) The victim is subjected to forcible compulsion by the person;
    - (b) The victim is under 12 years of age;
    - .....

A conviction under Or. Rev. Stat. § 163.375(1) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.375(2), 161.605(1), 161.625(1)(b).

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<sup>8</sup> Or. Rev. Stat. § 163.325 states, in relevant part,

(1) In any prosecution under ORS 163.355 to 163.445 [Sexual offenses chapter] in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

<sup>9</sup> A buyer is subject to mandatory minimum fines and penalties under Or. Rev. Stat. § 163.413(3) and a first conviction results in a fine no less than \$10,000, imprisonment for at least 30 days, and completion of a john school program. A second or subsequent conviction shall result in a fine no less than \$20,000 and the court's designation of the offense as a sex crime pursuant to Or. Rev. Stat. § 181.805. Or. Rev. Stat. § 163.413(3)(b)(A), (B).

4. Or. Rev. Stat. § 163.408(1) (Unlawful sexual penetration in the second degree) states that “a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.” A conviction under Or. Rev. Stat. § 163.408(1) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000.” Or. Rev. Stat. §§ 163.408(2), 161.605(2), 161.625(1)(c).
5. Or. Rev. Stat. § 163.411(1) (Unlawful sexual penetration in the first degree) states,
  - (1) Except as permitted under ORS 163.412 [Exceptions to unlawful sexual penetration prohibition], a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:
    - (a) The victim is subjected to forcible compulsion;
    - (b) The victim is under 12 years of age; or
    - (c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

A conviction under Or. Rev. Stat. § 163.411(1) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.411(2), 161.605(1), 161.625(1)(b).

6. Or. Rev. Stat. § 163.415(1)(a)(B) (Sexual abuse in the third degree) makes it illegal if any person “subjects another person to sexual contact and: . . . (B) The victim is incapable of consent by reason of being under 18 years of age.” A conviction under Or. Rev. Stat. § 163.415(1) is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$6,250. Or. Rev. Stat. §§ 163.415(2), 161.615(1), 161.635(a).
7. Or. Rev. Stat. § 163.427(1)(a)(A) (Sexual abuse in the first degree) makes it illegal if any person “[s]ubjects another person to sexual contact and: (A) The victim is less than 14 years of age.” A conviction under Or. Rev. Stat. § 163.427(1)(a)(A) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.427(2), 161.605(2), 161.625(1)(c).
8. Or. Rev. Stat. § 163.435(1) (Contributing to the sexual delinquency of a minor) states,
  - (1) A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:
    - (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or
    - (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or
    - (c) The person engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse.

A conviction under Or. Rev. Stat. § 163.435(1) is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$6,250. Or. Rev. Stat. §§ 163.435(2), 161.615(1), 161.635(a).
9. Or. Rev. Stat. § 163.445(1) (Sexual misconduct) states, “A person commits the crime of sexual misconduct if the person engages in sexual intercourse or deviate sexual intercourse with an unmarried person under 18 years of age. A conviction under Or. Rev. Stat. 163.445(1) is punishable as a Class C misdemeanor by imprisonment up to 30 days and a possible fine not to exceed \$1,250. Or. Rev. Stat. §§ 163.445(2), 161.615(3), 161.635(c).

10. Or. Rev. Stat. § 167.057<sup>10</sup> (Luring a minor) states in part that

(1) A person commits the crime of luring a minor if the person furnishes to, or uses with, a minor, a police officer posing as a minor or an agent of a police officer posing as a minor, a visual representation or explicit verbal description or narrative account of sexual conduct for the purpose of inducing the minor or purported minor to engage in sexual conduct.

...

(4) Luring a minor is a Class C felony.

A Class C felony is punishable by imprisonment for up to 5 years. Or. Rev. Stat. § 161.605(3).

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

Or. Rev. Stat. § 167.007 (Prostitution) does not refer to the human trafficking law when the person charged is a minor, however an affirmative defense provision in the trafficking chapter refers to the trafficking laws to provide an affirmative defense to prostitution charges for trafficking victims if force or threat of force was used to cause the prostitution. Pursuant to Or. Rev. Stat. § 163.269 (Victim assertion of defense of duress),

A person who is the victim of a crime described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree], or 163.266 [Trafficking in persons] may assert the defense of duress, as described in ORS 161.270 [Duress],<sup>11</sup> if the person is prosecuted for conduct that constitutes services under ORS 163.261,<sup>12</sup> that the person was caused to provide.

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.*

Oregon's racketeering provision, Or. Rev. Stat. § 166.720 (Racketeering activity unlawful; penalties) states,

(1) It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity<sup>13</sup> or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use

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<sup>10</sup> The text of Or. Rev. Stat. § 167.057 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2385 during the 2015 Regular session of the 78th Oregon legislature. (OR 2015) (effective January 1, 2016).

<sup>11</sup> Pursuant to Or. Rev. Stat. § 161.270 (Duress),

(1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

(2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

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<sup>12</sup> Pursuant to Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264), “‘services’ means activities performed by one person under the supervision or for the benefit of another person.”

<sup>13</sup> Or. Rev. Stat. § 166.715(4) (Definitions) defines “pattern of racketeering activity” as “engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity.”

thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise.

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

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

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsections (1), (2) or (3) of this section.

(5)(a) Any person convicted of engaging in activity in violation of the provisions of subsections (1) to (4) of this section is guilty of a Class A felony.

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Or. Rev. Stat. § 166.715(6)(a)(J), (T), (PP), (CCC) defines “racketeering activity” as including “ORS 163.665 to 163.693, relating to sexual conduct of children (ORS 163.670 [Using child in display of sexually explicit conduct]; ORS 163.684 – 163.687 [Encouraging child sexual abuse in the first, second or third degree]; ORS 163.688 – 163.689 [Possession of materials depicting sexually explicit conduct of a child in the first or second degree]) . . . 167.007 [Prostitution] to 167.017 [Compelling prostitution], 167.057 [Luring a minor], 167.062 [Sadomasochistic abuse or sexual conduct in live show] to 167.080 [Displaying obscene materials to minors], relating to prostitution, obscenity, sexual conduct . . . ORS 163.355 – 163.427 [Sexual offenses] . . . ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree] or 163.266 [Trafficking in persons].”

A conviction under the racketeering provisions is punishable by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 166.720(4), 161.605(1), 161.625(1)(b).

In addition, an offender convicted under the racketeering statute is subject to civil asset forfeiture.<sup>14</sup> Or. Rev. Stat. §§ 166.720(4), 161.605(1), 161.625(1)(b). Or. Rev. Stat. § 166.725(2) (Remedies for violation of ORS 166.720; time limitation) states in part,

(2) All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. . . .

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<sup>14</sup> Or. Rev. Stat. §§ 166.715–.735.

***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.*

***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.*

Or. Rev. Stat. § 163.266(1)(b) and (c) (Trafficking in persons) can apply to buyers of sex with minors following federal precedent through the term “obtain.”<sup>15</sup> However, Or. Rev. Stat. § 163.266(1)(b) also requires the buyer knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act and (1)(c) requires the buyer knows or recklessly disregards the fact that the other person is under 15 years of age and will be used in a commercial sex act. Or. Rev. Stat. § 163.266(1)(b), (c).

<sup>15</sup> See *United States v. Jungers*, 702 F.3d 1066 (8<sup>th</sup> 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 *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.



2.2.1 Recommendation: Amend Or. Rev. Stat. § 163.266(1)(b) and (c) (Trafficking in persons) to clarify that buyer conduct is included as a violation of Or. Rev. Stat. § 163.266(1)(b) and (c) (Trafficking in persons).<sup>16</sup>

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

Or. Rev. Stat. § 163.413<sup>17</sup> (Purchasing sex with a minor) specifically criminalizes purchasing sex with a minor and states,

(1) A person commits the crime of purchasing sex with a minor if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.

(2) (a) If the person does not have a prior conviction under this section at the time of the offense, purchasing sex with a minor is a Class C felony and the person may use a defense described in ORS 163.325<sup>18</sup> only if the minor or, in the case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant, was at least 16 years of age.

(b) If the person has one or more prior convictions under this section at the time of the offense, purchasing sex with a minor is a Class B felony, the state need not prove that the person knew the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor was under 18 years of age and the person may not use a defense described in ORS 163.325.

A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 (Definitions for 181.800 to 181.845).” Or. Rev. Stat. § 163.413(3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d)<sup>19</sup>.

Several sexual offenses might apply to certain buyers of sex acts with a minor.<sup>20</sup>

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

Pursuant to Or. Rev. Stat. § 163.413<sup>21</sup> (Purchasing sex with a minor), if a “person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor,” they commit a Class C felony, enhanced to a Class B felony if the offender has one or more prior convictions at the time of the offense. A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the

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<sup>16</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>17</sup> See *supra* note 6.

<sup>18</sup> See *supra* note 8.

<sup>19</sup> See *supra* note 9.

<sup>20</sup> See *supra* Section 1.2 for discussion of the sexual offenses that may apply to some buyers.

<sup>21</sup> See *supra* note 6.

court shall designate the offense as a sex crime under ORS 181.805 (Definitions for 181.800 to 181.845).” Or. Rev. Stat. § 163.413(3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).<sup>22</sup>

In contrast, a conviction under Or. Rev. Stat. § 167.007(1)(b) (Prostitution), which criminalizes any person who “pays or offers or agrees to pay a fee to engage in sexual conduct<sup>23</sup> or sexual contact,”<sup>24</sup> is punishable as a Class A misdemeanor by up to 1 year imprisonment and a possible fine not to exceed \$ 6,250. Or. Rev. Stat. §§ 167.007(2), 161.615(1), 161.635(a).

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

A conviction under Or. Rev. Stat. §§ 163.266(1)(b) or (c) (Trafficking in persons) is a Class A felony with a maximum imprisonment of 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.605(1), 161.625(1)(b).

Pursuant to Or. Rev. Stat. § 163.413<sup>25</sup> (Purchasing sex with a minor), the crime of purchasing sex with a minor is considered a Class C felony if a “person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.” A mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 (Definitions for 181.800 to 181.845).” Or. Rev. Stat. § 163.413(3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>26</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>27</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the

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<sup>22</sup> See *supra* note 9.

<sup>23</sup> Or. Rev. Stat. § 167.002(4) (Definitions) defines “sexual conduct” as “sexual intercourse or deviate sexual intercourse.”

<sup>24</sup> Or. Rev. Stat. § 167.002(5) (Definitions) defines “sexual contact” as “any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.”

<sup>25</sup> See *supra* note 6.

<sup>26</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>27</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).

extent buyers can be prosecuted under other federal CSEC laws,<sup>28</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>29</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.*

Use of the Internet or electronic communications to engage and to offer or agree to meet a minor sexually is prohibited in two statutes although neither specifically refers to a commercial sexual arrangement. Pursuant to Or. Rev. Stat. § 163.432(1) (Online sexual corruption of a child in the second degree),

(1) A person commits the crime of online sexual corruption of a child<sup>30</sup> in the second degree if the person is 18 years of age or older and:

(a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication<sup>31</sup> to solicit<sup>32</sup> a child to engage in sexual contact<sup>33</sup> or sexually explicit conduct;<sup>34</sup> and

(b) Offers or agrees to physically meet with the child.

A conviction under Or. Rev. Stat. § 163.432(1) is punishable as a Class C felony punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.432(2), 161.605(3), 161.625(1)(d).

Pursuant to Or. Rev. Stat. § 163.433(1) (Online sexual corruption of a child in the first degree), “A person commits the crime of online sexual corruption of a child in the first degree if the person violates ORS 163.432 and intentionally takes a substantial step toward physically meeting with or encountering the child.” A conviction under Or. Rev. Stat. § 163.433 is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.433(2), 161.605(2), 161.625(1)(c).

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<sup>28</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>29</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), (b)(1),(2) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>30</sup> Pursuant to Or. Rev. Stat. § 163.431(1), “child” means “a person who the defendant reasonably believes to be under 16 years of age.”

<sup>31</sup> Pursuant to Or. Rev. Stat. § 163.431(2), “online communication” means “communication that occurs via telephone text messaging, electronic mail, personal or instant messaging, chat rooms, bulletin boards or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.”

<sup>32</sup> Pursuant to Or. Rev. Stat. § 163.431(5), “solicit” means “to invite, request, seduce, lure, entice, persuade, prevail upon, coax, coerce or attempt to do so.”

<sup>33</sup> Or. Rev. Stat. § 163.305(6)(Definitions) defines, for purposes of Or. Rev. Stat. § 163.431(3), “sexual contact” as “any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.”

<sup>34</sup> Pursuant to Or. Rev. Stat. § 163.431(4) “sexually explicit conduct” has the meaning given that term in ORS 163.665; *see supra* note 4.

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

Mistake of age may not be a defense for purchasing sex with a minor depending on whether the buyer has a prior conviction. Under Or. Rev. Stat. § 163.413<sup>35</sup>(2) (Purchasing sex with a minor), “[i]f the person does not have a prior conviction under this section at the time of the offense, . . . the person may use a defense described in ORS 163.325 [Knowledge of victim’s age] only if the minor or, in case of a police officer or agent of a police officer posing as a minor, the age of the purported minor as reported to the defendant , was at least 16 years of age.” However, “[i]f the person has one or more prior convictions under this section at the time of the offense, . . . the state need not prove that the person knew the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor was under 18 years of age and the person may not use a defense described in ORS 163.325 [Knowledge of victim’s age].”

Or. Rev. Stat. § 163.325(1) (Ignorance or mistake as a defense) states, “(1) In any prosecution under ORS § 163.355 to 163.445 [Sexual offenses] in which the criminality of conduct depends on a child’s being under the age of 16, it is no defense that the defendant did not know the child’s age or that the defendant reasonably believed the child to be older than the age of 16.” However, subsection (2) states, “(2) When criminality depends on the child’s being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.”

With regard to Oregon’s pornography statutes, Or. Rev. Stat. § 163.690 (Lack of knowledge of age of child as affirmative defense) states “an affirmative defense to any prosecution under ORS 163.684 [Encouraging child sexual abuse in the first degree], 163.686 [Encouraging child sexual abuse in the second degree], 163.687 [Encouraging child sexual abuse in the third degree] or 163.693 [Failure to report child pornography] that the defendant, at the time of engaging in the conduct prohibited therein, did not know and did not have reason to know that the relevant sexually explicit conduct involved a child.”

- 2.6.1 Recommendation: Amend Or. Rev. Stat. § 163.413 (Purchasing sex with a minor) and Or. Rev. Stat. § 163.690 (Lack of knowledge of age of child as affirmative defense) to prohibit a mistake of age defense for buyers of sex with all minors, not just those under 16.

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

Or. Rev. Stat. § 163.266 (Trafficking in persons) can apply to buyers of sex with minors following federal precedent through the term “obtain.” However, Or. Rev. Stat. § 163.266 requires the buyer knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or the fact that the other person is under 15 years of age and will be used in a commercial sex act. Or. Rev. Stat. § 163.266(1)(b)(c). A conviction under Or. Rev. Stat. § 163.266(1)(a) (Trafficking in persons) is a Class B felony with a maximum imprisonment of 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.605(2), 161.625(1)(c). A conviction under Or. Rev. Stat. §§ 163.266(1)(b) or (c) (Trafficking in persons) is a Class A felony with a maximum imprisonment of 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.605(1), 161.625(1)(b).

Pursuant to Or. Rev. Stat. § 163.413<sup>36</sup> (Purchasing sex with a minor), a mandatory minimum sentence for a first conviction is “a fine in the amount of \$10,000, a term of incarceration of at least 30 days and completion of a john school program,” and the second or subsequent conviction is “a fine in the amount of \$20,000 and the court shall designate the offense as a sex crime under ORS 181.805 (Definitions for 181.800 to 181.845).” Or. Rev. Stat. § 163.413(3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a

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<sup>35</sup> See *supra* note 6.

<sup>36</sup> See *supra* note 6.

possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).

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 conviction under Or. Rev. Stat. §§ 163.266(1)(b) or (c) (Trafficking in persons) is punishable as Class A felony and includes a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.625(1)(b). A conviction under Or. Rev. Stat. § 163.433(1) (Online sexual corruption of a child in the first degree) is punishable as a Class B felony punishable by a possible fine not exceeding \$250,000. Or. Rev. Stat. § 161.625(1)(c). A conviction under Or. Rev. Stat. § 163.432 (Online sexual corruption of a child in the second degree) is punishable as a Class C felony punishable by a possible fine not to exceed \$125,000. Or. Rev. Stat. § 161.625(1)(d).

A buyer convicted under Or. Rev. Stat. § 163.413<sup>37</sup> (Purchasing sex with a minor), is subject to a Class C or B felony which carry a possible fine not to exceed \$125,000 or \$200,000, respectively. Or. Rev. Stat. §§ 161.605(2), (3), 161.625(1)(c), (d). However, a mandatory minimum sentence for a first conviction is a fine in the amount of \$10,000, and the second or subsequent conviction is a fine in the amount of \$20,000. Or. Rev. Stat. § 163.413 (3)(a). Otherwise, a Class C felony is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000, and a Class B felony is punishable by imprisonment up to 10 years and a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.413(2)(a), (b), 161.605(2), (3), 161.625(1)(c), (d).

Buyers may also be subject to discretionary, criminal asset forfeiture. Or. Rev. Stat. § 131.553(1)(e) (Legislative findings; effect on local laws; remedy not exclusive) calls “for the forfeiture of certain property subject to criminal forfeiture under ORS 131.550 to 131.600, to provide for the protection of the rights and interests of affected persons . . . that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct.”

Or. Rev. Stat. § 131.558 (Property subject to forfeiture) includes the following in the list of property that is subject to criminal forfeiture:

- (4) . . . all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct . . . .
- (5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;
- (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;
- (7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;
- . . . .
- (10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

“Prohibited conduct” is defined in Or. Rev. Stat. § 131.550(12) (Definitions) as the following: “(a) For purposes of proceeds, a felony or a Class A misdemeanor. (b) For purposes of instrumentalities, any crime listed in ORS

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<sup>37</sup> See *supra* note 6.

131.602.” Under Or. Rev. Stat. § 131.602<sup>38</sup> (Prohibited conduct for purposes of instrumentalities of crime) the following crimes are included:

- (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (17) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
- . . . .
- (90) Prostitution, as defined in ORS 167.007.
- (91) Commercial sexual solicitation, as defined in ORS 167.008.
- . . . .
- (93) Compelling prostitution, as defined in ORS 167.017.
- (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- . . . .
- (139) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.
- (140) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.
- (141) Trafficking in persons, as defined in ORS 163.266.
- (142) Luring a minor, as defined in ORS 167.057.
- (143) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- (144) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- (145) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (144) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

Where the seizing agency is the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.597 which provides that the property shall be distributed as follows: to pay costs and to the victim, any amount ordered. . . . Or. Rev. Stat. § 131.597.

A buyer may also be subject to restitution pursuant to Or. Rev. Stat. § 137.106 (Restitution to victims), which requires the district attorney to investigate and present to the court evidence of economic damages suffered as a result of human trafficking or CSEC offenses. The court is authorized to order restitution<sup>39</sup> as part of a criminal case when the victim “suffered economic damages.”<sup>40</sup> Or. Rev. Stat. § 137.106(1).

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<sup>38</sup> The text of Or. Rev. Stat. § 131.602 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2206 during the 2015 Regular session of the 78th Oregon legislature. (Or. 2015) (effective January 1, 2016).

<sup>39</sup> “Restitution” is defined in Or. Rev. Stat. § 137.103(3) (Definitions for ORS 137.101 to 137.109) as “full, partial or nominal payment of economic damages to a victim. Restitution is independent of and may be awarded in addition to a compensatory fine awarded under ORS § 137.101.”

<sup>40</sup> Or. Rev. Stat. § 137.103(2) states,

- (2) “Economic damages”:
  - (a) Has the meaning given that term in ORS 31.710, except that “economic damages” does not include future impairment of earning capacity; and
  - (b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes the greater of:
    - (A) The value to the defendant of the victim’s services as defined in ORS 163.261; or
    - (B) The value of the victim’s services, as defined in ORS 163.261, computed using the minimum wage

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

Or. Rev. Stat. § 163.686(1) (Encouraging child sexual abuse in the second degree) states,

- (1) A person commits the crime of encouraging child sexual abuse<sup>41</sup> in the second degree if the person:
- (a) (A) (i) Knowingly possesses or controls, or knowingly accesses with the intent to view, a visual recording<sup>42</sup> of sexually explicit conduct<sup>43</sup> involving a child<sup>44</sup> for the purpose of arousing or satisfying the sexual desires of the person or another person; or
    - (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and
  - (B) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse; or
  - (b) (A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and
    - (B) Knows or is aware of and consciously disregards the fact that the conduct constitutes child abuse.

A conviction under Or. Rev. Stat. § 163.686(1) is punishable as a Class C felony by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. § 163.686(2), 161.605(3), 161.625(1)(d).

Or. Rev. Stat. § 163.687(1) (Encouraging child sexual abuse in the third degree) states,

- A person commits the crime of encouraging child sexual abuse in the third degree if the person:
- (a) (A) (i) Knowingly possesses or controls, or knowingly accesses with the intent to view, a visual recording<sup>45</sup> of sexually explicit conduct<sup>46</sup> involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or
    - (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and
  - (B) Knows or fails to be aware of a substantial and unjustifiable risk that the creation of the visual recording of sexually explicit conduct involved child abuse; or
  - (b)(A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and
    - (B) Knows or fails to be aware of a substantial and unjustifiable risk that the conduct constitutes child abuse.

A conviction under Or. Rev. Stat. § 163.687(1) is punishable as a Class A misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$6,250. Or. Rev. Stat. §§ 163.687(2), 161.615(1), 161.635(a).

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established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

<sup>41</sup> Or. Rev. Stat. § 163.665(2) (Definitions) defines “child abuse” as “conduct that constitutes, or would constitute if committed in this state, a crime in which the victim is a child.”

<sup>42</sup> See *supra* note 5.

<sup>43</sup> See *supra* note 4.

<sup>44</sup> See *supra* note 3.

<sup>45</sup> See *supra* note 5.

<sup>46</sup> See *supra* note 4.

Or. Rev. Stat. § 163.688(1) (Possession of materials depicting sexually explicit conduct of a child in the first degree) states, “A person commits the crime of possession of materials depicting sexually explicit conduct of a child” if the person, “(a) Knowingly possesses, accesses or views a visual depiction of sexually explicit conduct involving a child or a visual depiction of sexually explicit conduct that appears to involve a child; and (b) Uses the visual depiction to induce a child to participate or engage in sexually explicit conduct.” A conviction under Or. Rev. Stat. § 163.688 is punishable as a Class B felony punishable by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.688(2), 161.605(2), 161.625(1)(c).

Or. Rev. Stat. § 163.689(1) (Possession of materials depicting sexually explicit conduct of a child in the second degree) states, “A person commits the crime of possession of materials depicting sexually explicit conduct” if the person, “(a) Knowingly possesses, accesses or views a visual depiction of sexually explicit conduct involving a child or a visual depiction of sexually explicit conduct that appears to involve a child; and (b) Intends to use the visual depiction to induce a child to participate or engage in sexually explicit conduct.” A conviction under Or. Rev. Stat. § 163.689(1) is punishable as a Class C felony by imprisonment up to 5 years and possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.689(2), 161.605(3), 161.625(1)(d).

In comparison, a federal conviction for possession of child pornography<sup>47</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>48</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>49</sup>

- 2.9.1 Recommendation: Amend Or. Rev. Stat. § 163.687(1) (Encouraging child sexual abuse in the third degree) and Or. Rev. Stat. § 163.689(1) (Possession of materials depicting sexually explicit conduct of a child in the second degree) to reflect the seriousness of each offense.

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

Pursuant to Or. Rev. Stat. §§ 181.805-181.814, a sex offender, or a person who has been convicted of a sex crime, must register as a sex offender. The definition of “sex crime” in Or. Rev. Stat. § 181.805(5)<sup>50</sup> includes several provisions that could be applicable to certain buyers of commercial sex with a minor, including, but not limited to the following:

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<sup>47</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>48</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>49</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).

<sup>50</sup> The text of Or. Rev. Stat. § 181.805 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2385 and House Bill 2356 during the 2015 Regular session of the 78th Oregon legislature. (Or. 2015) (both effective January 1, 2016).



- (a) Rape in any degree;
- (b) Sodomy in any degree;
- (c) Unlawful sexual penetration in any degree;
- (d) Sexual abuse in any degree;
- (e) Incest with a child victim;
- (f) Using a child in a display of sexually explicit conduct;
- (g) Encouraging child sexual abuse in any degree;
- (h) Transporting child pornography into the state;
- (i) Paying for viewing a child's sexually explicit conduct;
- ...
- (l) Kidnapping in the first degree if the victim was under 18 years of age;
- (m) Contributing to the sexual delinquency of a minor;
- (n) Sexual misconduct if the offender is at least 18 years of age;
- (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court;
- (q) Online sexual corruption of a child in any degree if the offender reasonably believed the child to be more than five years younger than the offender;
- (r) Luring a minor if,
  - (A) The offender reasonably believed the minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor to be more than five years younger than the offender or under 16 years of age; and
  - (B) The court designates in the judgment that the offense is a sex crime;
- ...
- (u) Trafficking in persons as described in ORS 163.266(1)(b) or (c);
- (v) Purchasing sex with a minor if the court designates the offense a sex crime pursuant to [section 4(3)(d) of Or. Rev. Stat. § 163.413], or the defendant's second or subsequent conviction under [section 4(3)(b)(B) of Or. Rev. Stat. § 163.413];
- (w) Invasion of personal privacy in the first degree, if the court designates the offense as a sex crime pursuant to section 2 (3) of this 2015 Act [Enacted House Bill 2356];
- (x) Any attempt to commit any of the crimes listed in paragraphs (a) to (w) of this subsection;
- ...
- (z) Criminal conspiracy if the offender agrees with one or more persons to engage in or cause the performance of an offense listed in paragraphs (a) to (w) of this subsection.

Under Or. Rev. Stat. § 181.806(2) (Reporting by sex offender discharged, paroled or released from correctional facility or another United States jurisdiction) sex offender registration also applies to a person who:

- (a) Is discharged, paroled or released on any form of supervised or conditional release from a jail, prison or other correctional facility or detention facility in this state at which the person was confined as a result of:
  - (A) Conviction of a sex crime or a crime for which the person would have to register as a sex offender under federal law; or
  - (B) Having been found guilty except for insanity of a sex crime;
- (b) Is paroled to this state under ORS 144.610 (Out-of-state supervision of parolees) after being convicted in another United States court of a crime:(A) That would constitute a sex crime if committed in this state; or

(B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law<sup>51</sup>, regardless of whether the crime would constitute a sex crime in this state . . .

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<sup>51</sup> Federal law requires sex offenders to register “and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.” 42 U.S.C.A. § 16913 (Registry requirements for sex offenders). Pursuant to 42 U.S.C.A. § 16911(1) (Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators), “The term “sex offender” means an individual who was convicted of a sex offense.” Furthermore, 42 U.S.C.A. § 16911(5)(A) states that the term “sex offense” generally means: “(i) a criminal offense that has an element involving a sexual act or sexual contact with another; (ii) a criminal offense that is a specified offense against a minor; . . . .” Under 42 U.S.C.A. § 16911(7), the definition of “specified offense of against a minor” is expanded “to include all offenses by child predators” and “an offense against a minor that involves any of the following:”

- . . . .
- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
  - (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
  - (C) Solicitation to engage in sexual conduct.
  - (D) Use in a sexual performance.
  - (E) Solicitation to practice prostitution.
  - (F) Video voyeurism as described in section 1801 of Title 18.
  - (G) Possession, production, or distribution of child pornography.
  - (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
  - (I) Any conduct that by its nature is a sex offense against a minor.

**Legal Components:**

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.
- 3.2 Creating and distributing child pornography carries penalties as high as similar federal offenses.
- 3.3 Using the Internet 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.

Traffickers of children for commercial sexual exploitation are subject to prosecution under several criminal statutes. A conviction under Or. Rev. Stat. §§ 163.266(1)(a), (2) (Trafficking in persons)<sup>52</sup> or Or. Rev. Stat. § 167.017 (Compelling prostitution)<sup>53</sup> is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.605(2), 161.625(1)(c).<sup>54</sup> A conviction under Or. Rev. Stat. §§ 163.266(1)(b), (c) (Trafficking in persons) or Or. Rev. Stat. § 163.670 (Using child in display of sexually explicit conduct)<sup>55</sup> is punishable as a Class A felony by imprisonment for up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 163.266(5), 161.605(1), 161.625(1)(b).

Traffickers could also face penalties under the money laundering provisions. Or. Rev. Stat. § 164.172 (Engaging in a financial transaction in property derived from unlawful activity) states,

- (1) A person commits the crime of engaging in a financial transaction<sup>56</sup> in property derived from unlawful activity<sup>57</sup> if the person knowingly engages in or attempts to engage in a financial transaction in property that:
  - (a) Constitutes, or is derived from, the proceeds of unlawful activity;
  - (b) Is of a value greater than \$ 10,000; and
  - (c) The person knows is derived from or represents the proceeds of some form, though not necessarily which form, of unlawful activity.
- (2) (a) Engaging in a financial transaction in property derived from unlawful activity is a Class C felony.

<sup>52</sup> See *supra* Section 1.1 for the substantive provisions of Or. Rev. Stat. § 163.266.

<sup>53</sup> See *supra* Section 1.2 for the substantive provisions of Or. Rev. Stat. § 167.017.

<sup>54</sup> Alternatively, under Or. Rev. Stat. § 161.625(3)(a), “If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant’s gain from the commission of the crime.”

<sup>55</sup> See *supra* Section 1.2 for the substantive provisions of Or. Rev. Stat. § 163.670.

<sup>56</sup> Or. Rev. Stat. § 164.172(3)(a) references 164.170 for the definition of “financial transaction.” Or. Rev. Stat. § 164.170(5)(d) states, “(d) ‘Financial transaction’ means a transaction involving: (A) The movement of funds by wire or other means; (B) One or more monetary instruments; (C) The transfer of title to any real property, vehicle, vessel or aircraft; or (D) The use of a financial institution.”

<sup>57</sup> Pursuant to Or. Rev. Stat. § 164.172(3)(b), “unlawful activity” is defined by Or. Rev. Stat. § 164.170(5)(h), which states, “‘Unlawful activity’ means any act constituting a felony under state, federal or foreign law.”

(b) In addition to any other sentence of imprisonment or fine that a court may impose and notwithstanding ORS 161.625, a court may include in the sentence of a person convicted under this section a fine in an amount equal to the value of the property involved in the unlawful transaction.

A conviction under the money laundering provisions is punishable by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 164.172(2)(a), 161.605(3), 161.625(1)(d).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>58</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>59</sup> against a minor.

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

Traffickers who permit a child to be used in child pornography may be prosecuted under Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct), which states, “A person commits the crime of using a child<sup>60</sup> in a display of sexually explicit conduct<sup>61</sup> if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.”<sup>62</sup> Pursuant to Or. Rev. Stat. § 163.670(2) a conviction under Or. Rev. Stat. § 163.670(1) is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 161.605(1), 161.625(1)(b).<sup>63</sup>

Under Or. Rev. Stat. § 163.684 (Encouraging child sexual abuse in the first degree) states,

- (1) A person commits the crime of encouraging child sexual abuse in the first degree if the person:
  - (a) (A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells a visual recording<sup>64</sup> of sexually explicit conduct<sup>65</sup> involving a child or knowingly possesses, accesses or views such a visual recording with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or
  - (B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, a visual recording of sexually explicit conduct involving a child; and
- (b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.

Pursuant to Or. Rev. Stat. § 163.684(2), a conviction of Or. Rev. Stat. § 163.684 is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c).

In comparison, if the victim is under the age of 14, a conviction under the TVPA<sup>66</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),

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<sup>58</sup> See *supra* note 26.

<sup>59</sup> See *supra* note 27.

<sup>60</sup> See *supra* note 3.

<sup>61</sup> See *supra* note 4.

<sup>62</sup> See *supra* note 5.

<sup>63</sup> See *supra* note 54.

<sup>64</sup> See *supra* note 5.

<sup>65</sup> See *supra* note 4.

<sup>66</sup> See *supra* note 26.

3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>67</sup> against a minor. Additionally, a federal conviction for distribution of child pornography<sup>68</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>69</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>70</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.*

Pursuant to Or. Rev. Stat. § 163.432(1) (Online sexual corruption of a child in the second degree),

(1) A person commits the crime of online sexual corruption of a child<sup>71</sup> in the second degree if the person is 18 years of age or older and:

- (a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication<sup>72</sup> to solicit<sup>73</sup> a child to engage in sexual contact<sup>74</sup> or sexually explicit conduct;<sup>75</sup> and
- (b) Offers or agrees to physically meet with the child.

A conviction under Or. Rev. Stat. § 163.432(1) is punishable as a Class C felony by imprisonment up to 5 years and a possible fine not to exceed \$125,000. Or. Rev. Stat. §§ 163.432(2), 161.605(3), 161.625(1)(d).

Pursuant to Or. Rev. Stat. § 163.433(1) (Online sexual corruption of a child in the first degree), “A person commits the crime of online sexual corruption of a child in the first degree if the person violates ORS 163.432 [Online sexual corruption of a child in the second degree] and intentionally takes a substantial step toward physically meeting with or encountering the child.” A conviction under Or. Rev. Stat. § 163.433(1) is punishable as a class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.433(2), 161.605(2), 161.625(1)(c).

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<sup>67</sup> See *supra* note 27.

<sup>68</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>69</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>70</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>71</sup> See *supra* note 30.

<sup>72</sup> See *supra* note 31.

<sup>73</sup> See *supra* note 32.

<sup>74</sup> See *supra* note 33.

<sup>75</sup> See *supra* note 34.

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

A conviction under Or. Rev. Stat. §§ 163.266(1)(a) or (2) (Trafficking in persons) or § 167.017 (Compelling prostitution) is punishable as a Class B felony by a possible fine not exceeding \$250,000. Or. Rev. Stat. § 163.266(4), 161.625(1)(c).<sup>76</sup> A conviction under Or. Rev. Stat. §§ 163.266(1)(b), (c), or Or. Rev. Stat. § 163.670 (Using child in display of sexually explicit conduct) is punishable as a Class A felony by a possible fine not to exceed \$375,000. Or. Rev. Stat. § 161.625(1)(b). A conviction under Or. Rev. Stat. § 164.172 (Engaging in a financial transaction in property derived from unlawful activity) is punishable as a Class C felony by a possible fine not to exceed \$125,000. Or. Rev. Stat. § 161.625(1)(d).

Traffickers may also be subject to certain discretionary, criminal forfeiture provisions. Or. Rev. Stat. § 131.553(1)(e) (Legislative findings; effect on local laws; remedy not exclusive) calls “for the forfeiture of certain property subject to criminal forfeiture under ORS 131.550 to 131.600, to provide for the protection of the rights and interests of affected persons and to provide for uniformity throughout this state with respect to the laws of this state that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct.”

“Prohibited conduct” is defined in Or. Rev. Stat. § 131.550(12) (Definitions) as the following: “(a) For purposes of proceeds, a felony or a Class A misdemeanor. (b) For purposes of instrumentalities, any crime listed in ORS 131.602.” Or. Rev. Stat. § 131.602<sup>77</sup> (Prohibited conduct for purposes of instrumentalities of crime) includes the following crimes:

- (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (17) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
- ....
- (90) Prostitution, as defined in ORS 167.007.
- (91) Commercial sexual solicitation, as defined in ORS 167.008.
- (92) Promoting prostitution, as defined in ORS 167.012.
- (93) Compelling prostitution, as defined in ORS 167.017.
- (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- ....
- (139) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.
- (140) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.
- (141) Trafficking in persons, as defined in ORS 163.266.
- (142) Luring a minor, as defined in ORS 167.057.
- (143) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- (144) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- (145) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (144) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

Or. Rev. Stat. § 131.558 (Property subject to forfeiture) includes the following in the list of property that is subject to criminal forfeiture:

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<sup>76</sup> See *supra* note 54.

<sup>77</sup> See *supra* note 38.

(2) All raw materials, products and equipment of any kind that are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct;

(3) All property that is used, or intended for use, as a container for property described in subsection . . . (2) of this section;

. . . .

(4) All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct . . . .

(5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;

(6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;

(7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;

. . . .

(9) All property described in this section that is intended for use in committing or facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS 161.435 or a conspiracy as described in ORS 161.450; and

(10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

Seizure of forfeitable property is governed by Or. Rev. Stat. § 131.561, which states in relevant part,

(4)(a) A police officer may seize property pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

. . . .

(5) Property may be constructively seized by posting notice of seizure for criminal forfeiture on it or by filing notice of seizure for criminal forfeiture or notice of pending criminal forfeiture in the public records that impart constructive notice of matters relating to such property.

Where the seizing agency is the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.597, which provides that the property shall be distributed as follows: to pay costs and to the victim, any amount ordered. . . . Or. Rev. Stat. § 131.597.

A trafficker may also be subject to restitution pursuant to Or. Rev. Stat. § 137.106 (Restitution to victims), which requires the district attorney to investigate and present to the court evidence of economic damages suffered as a result of human trafficking or CSEC offenses. The court is authorized to order restitution<sup>78</sup> as part of a criminal case when the victim “suffered economic damages.”<sup>79</sup> Or. Rev. Stat. § 137.106(1).

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

Pursuant to Or. Rev. Stat. §§ 181.805-181.814 (Registration), a sex offender, or a person who has been convicted of a sex crime, must register as a sex offender. The definition of “sex crime” in Or. Rev. Stat. §

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<sup>78</sup> See *supra* note 39.

<sup>79</sup> See *supra* note 40.

181.805(5) includes several provisions that could be applicable to certain traffickers, including, but not limited to the following:

- (a) Rape in any degree;
- (b) Sodomy in any degree;
- (c) Unlawful sexual penetration in any degree;
- (d) Sexual abuse in any degree;
- (e) Incest with a child victim;
- (f) Using a child in a display of sexually explicit conduct;
- (g) Encouraging child sexual abuse in any degree;
- (h) Transporting child pornography into the state;
- ....
- (j) Compelling prostitution;
- (k) Promoting prostitution;
- (l) Kidnapping in the first degree if the victim was under 18 years of age;
- (m) Contributing to the sexual delinquency of a minor;
- (n) Sexual misconduct if the offender is at least 18 years of age;
- (o) Possession of materials depicting sexually explicit conduct of a child in the first degree;
- (p) Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court;
- (q) Online sexual corruption of a child in any degree if the offender reasonably believed the child to be more than five years younger than the offender; . . .
- (r) Luring a minor if,
  - (A) The offender reasonably believed the [*child*] minor or, in the case of a police officer or agent of a police officer posing as a minor, the purported minor to be more than five years younger than the offender or under 16 years of age; and
  - (B) The court designates in the judgment that the offense is a sex crime;
- ...
- (u) Trafficking in persons as described in ORS 163.266(1)(b) or (c);
- (v) Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to section 4(3)(d) of this 2013 Act [Or. Rev. Stat. § 163.413], or the offense is the defendant's second or subsequent conviction under section 4(3)(b)(B) of this 2013 Act [Or. Rev. Stat. § 163.413];
- (w) Invasion of personal privacy in the first degree, if the court designates the offense as a sex crime pursuant to section 2 (3) of this 2015 Act;
- (x) Any attempt to commit any of the crimes listed in paragraphs (a) to (w) of this subsection;
- (v) Burglary, when committed with intent to commit any of the offenses listed in paragraphs (a) to (t) or (w) of this subsection;
- ....

Under Or. Rev. Stat. § 181.806(2) (Reporting by sex offender discharged, paroled or released from correctional facility or another United States jurisdiction) sex offender registration also applies to a person who:

- (a) Is discharged, paroled or released on any form of supervised or conditional release from a jail, prison or other correctional facility or detention facility in this state at which the person was confined as a result of:
  - (A) Conviction of a sex crime or a crime for which the person would have to register as a sex offender under federal law; or
  - (B) Having been found guilty except for insanity of a sex crime;
- (b) Is paroled to this state under ORS 144.610 (Out-of-state supervision of parolees) after being convicted in another United States court of a crime:
  - (A) That would constitute a sex crime if committed in this state; or



(B) For which the person would have to register as a sex offender in that court's jurisdiction, or as required under federal law,<sup>80</sup> regardless of whether the crime would constitute a sex crime in this state . . .

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.*

Or. Rev. Stat. § 419B.502 (Termination upon finding of extreme conduct) states in part, “The rights of the parent or parents may be terminated as provided in ORS 419B.500 [Termination of parental rights generally] if the court finds that the parent or parents are unfit by reason of a single or recurrent incident of extreme conduct toward any child.” The actions that the court is directed to consider in determining extreme conduct include, “[r]ape, sodomy or sex abuse of any child by the parent” and “[a]buse or neglect by the parent of any child resulting in death or serious physical injury.” Or. Rev. Stat. § 419B.502(1), (3).

Or. Rev. Stat. § 419B.504 (Termination upon finding of unfitness) allows for termination of parental rights upon a finding that “the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child or ward and integration of the child or ward into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change.” “In determining such conduct and conditions” the court is directed to consider, among other things, “[c]onduct toward any child of an abusive, cruel or sexual nature” and “[c]riminal conduct that impairs the parent’s ability to provide adequate care for the child or ward.” Or. Rev. Stat. § 419B.504(2), (6).

Or. Rev. Stat. § 419B.502 and Or. Rev. Stat. § 419B.504 could apply in the case of traffickers, although there is no specific reference to a conviction for trafficking in persons, compelling prostitution, or promoting prostitution of a minor listed as grounds for termination of parental rights.

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<sup>80</sup> See *supra* note 51.

**Legal Components:**

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

**Legal Analysis:**

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

Or. Rev. Stat. § 163.266(2) states that “a person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263<sup>81</sup> or 163.264.”<sup>82</sup> If force or attempted force, fraud or coercion can be proven, facilitators may be in violation of Or. Rev. Stat § 163.263 (Subjecting another person to involuntary servitude in the second degree) or Or. Rev. Stat § 163.264 (Subjecting another person to involuntary servitude in the first degree), punishable as a Class C and a Class B felony respectively. Or. Rev. Stat §§ 163.263(2), 163.264(2). These offenses are underlying offenses for Or. Rev. Stat. § 163.266(1)(a) (Trafficking in persons), a Class B felony with a maximum imprisonment of 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.266(4), 161.605(2), 161.625(1)(c). A violation of Or. Rev. Stat. § 163.266(2) is punishable as a Class B felony by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c).<sup>83</sup>

Or. Rev. Stat. § 167.017(1)(c) (Compelling prostitution) makes it a crime if any person “[a]ids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age.” A conviction under Or. Rev. Stat. § 167.017(1)(c) is punishable as a Class B felony by imprisonment up to ten years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 161.605(2), 161.625(1)(c). Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct) could be applied to facilitators by its statement, “A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.” A conviction under Or. Rev. Stat. § 163.670 is punishable as a Class A felony by imprisonment up to 20 years and a possible fine not to exceed \$375,000. Or. Rev. Stat. §§ 161.605(1), 161.625(1)(b).<sup>84</sup>

Facilitators could also face penalties under the money laundering provisions. Or. Rev. Stat. § 164.172 (Engaging in a financial transaction in property derived from unlawful activity) states,

<sup>81</sup> See *supra* section 1.1 for a full discussion of the provisions of Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree).

<sup>82</sup> See *supra* section 1.1 for a full discussion of the provisions of Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree).

<sup>83</sup> See *supra* note 54.

<sup>84</sup> See *supra* note 54.

(1) A person commits the crime of engaging in a financial transaction<sup>85</sup> in property derived from unlawful activity<sup>86</sup> if the person knowingly engages in or attempts to engage in a financial transaction in property that:

- (a) Constitutes, or is derived from, the proceeds of unlawful activity;
- (b) Is of a value greater than \$ 10,000; and
- (c) The person knows is derived from or represents the proceeds of some form, though not necessarily which form, of unlawful activity.

- (2) (a) Engaging in a financial transaction in property derived from unlawful activity is a Class C felony.
- (b) In addition to any other sentence of imprisonment or fine that a court may impose and notwithstanding ORS 161.625, a court may include in the sentence of a person convicted under this section a fine in an amount equal to the value of the property involved in the unlawful transaction.

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

Facilitators convicted under Or. Rev. Stat. §§ 163.266(1)(a) or (2) (Trafficking in persons), or § 167.017(1)(c) (Compelling prostitution) are punishable as Class B felonies by a possible fine not to exceed \$250,000.<sup>87</sup> Or. Rev. Stat. §§ 163.266(4), 161.625(1)(c). A conviction under Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct) is punishable as a Class A felony by a possible fine not to exceed \$375,000. Or. Rev. Stat. §161.625(1)(b).

Under Oregon’s discretionary, criminal forfeiture provisions, Or. Rev. Stat. § 131.553(1)(c), (e) (Legislative findings; effect on local laws; remedy not exclusive) finds that “[p]erpetrators of crimes should not be allowed to keep the proceeds and instrumentalities of their crimes” and that “[t]here is a need to provide for the forfeiture of certain property subject to criminal forfeiture under ORS 131.550 to 131.600, to provide for the protection of the rights and interests of affected persons and to provide for uniformity throughout this state with respect to the laws of this state that pertain to the criminal forfeiture of real and personal property based upon prohibited conduct.”

Or. Rev. Stat. § 131.558 (Property subject to forfeiture) includes the following in the list of property that is subject to criminal forfeiture:

- (4) All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct . . .
- . . .
- (5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;
- (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;
- (7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;
- . . .
- (10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

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<sup>85</sup> See *supra* note 56.

<sup>86</sup> See *supra* note 57.

<sup>87</sup> See *supra* note 54.

“Prohibited conduct” is defined in Or. Rev. Stat. § 131.550(12) (Definitions) as the following: “(a) For purposes of proceeds, a felony or a Class A misdemeanor. (b) For purposes of instrumentalities, any crime listed in ORS 131.602.” Or. Rev. Stat. § 131.602<sup>88</sup> (Prohibited conduct for purposes of instrumentalities of crime) includes trafficking in persons. Notably for those facilitators providing common carrier transportation, Or. Rev. Stat. § 131.558 (Property subject to forfeiture) makes an exception for any common carrier conveyance from seizure in Subsection (4):

All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct . . .

. . .

Seizure of forfeitable property is governed by Or. Rev. Stat. § 131.561, which states in relevant part,

(4)(a) A police officer may seize property pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

. . . .

(5) Property may be constructively seized by posting notice of seizure for criminal forfeiture on it or by filing notice of seizure for criminal forfeiture or notice of pending criminal forfeiture in the public records that impart constructive notice of matters relating to such property.

Where the seizing agency is the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.597, which provides that the property shall be distributed as follows: to pay costs and to the victim, any amount ordered. Of the remaining amount, 3% to the Asset Forfeiture Oversight Account, 7% to the Illegal Drug Cleanup Fund, 10% to the General Fund, 40% to the Dept. of State Police, 40% to the Drug Prevention and Education Fund. Where the seizing agency is not the state, the forfeited property shall be distributed pursuant to Or. Rev. Stat. § 131.594.

Facilitators may also be subject to restitution pursuant to Or. Rev. Stat. § 137.106 (Restitution to victims), which requires the district attorney to investigate and present to the court before sentencing evidence of economic damages suffered as a result of the crime. The court is authorized to order restitution<sup>89</sup> as part of a criminal case when the crime “has resulted in economic damages.”<sup>90</sup> Or. Rev. Stat. § 137.106(1).

In addition to these provisions, Oregon’s racketeering provisions provide for civil asset forfeiture.<sup>91</sup> Or. Rev. Stat. § 166.725(2) (Remedies for violation of ORS 166.720; time limitation) states in part,

All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. . . .

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

There is no specific law prohibiting the promotion or sale of child sex tourism.

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<sup>88</sup> See *supra* note 38.

<sup>89</sup> See *supra* note 39.

<sup>90</sup> See *supra* note 40.

<sup>91</sup> Or. Rev. Stat. §§ 166.715–166.735.

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

4.4 *Promoting and selling child pornography is illegal.*

Under Or. Rev. Stat. § 163.684(1) (Encouraging child sexual abuse in the first degree),

- (a) A person commits the crime of encouraging child sexual abuse in the first degree if the person:
- (A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells a visual recording of sexually explicit conduct involving a child or knowingly possesses, accesses or views such a visual recording with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or
  - (B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, a visual recording of sexually explicit conduct involving a child; and
- (b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.

A conviction under Or. Rev. Stat. § 163.684 is punishable as a Class B felony punishable by imprisonment up to 10 years and a possible fine not to exceed \$250,000. Or. Rev. Stat. §§ 163.684(2), 161.605(2), 161.625(1)(c).

**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.*

**Legal Analysis:**

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

Under Oregon’s compensation of crime victim provisions, codified in Chapter 147 of Oregon Revised Statutes, a “victim” is defined in part as “[a] person: (A) Killed or injured in this state as a result of a compensable crime<sup>92</sup> perpetrated or attempted against that person; . . . (D) Killed or injured in another state as a result of a criminal episode that began in this state . . .” Or. Rev. Stat. § 147.005(15)(a) (Definitions).

For purposes of victim restitution, pursuant to Or. Rev. Stat. § Rev. Stat. § 137.103<sup>93</sup> (Definitions for ORS 137.101 to 137.109) “(4) Victim means: (a) The person or decedent against whom the defendant committed the criminal offense, if the court determines that the person or decedent has suffered or did suffer economic damages as a result of the offense. . . . (5) Victim does not include any coparticipant in the defendant s criminal activities.”

- 5.1.1 Recommendation: Amend the definition of victim in Or. Rev. Stat. § 147.005(15)(a) (Definitions) and § 137.03(4)-(5) (Definitions for ORS 137.101 to 137.109) to expressly include trafficking and CSEC victims, regardless of participation in criminal acts during their

<sup>92</sup> Or. Rev. Stat. § 147.005(4) (Definitions) defines “compensable crime” as “abuse of corpse in any degree or an intentional, knowing, reckless, or criminally negligent act that results in injury or death of another person and that, if committed by a person of full legal capacity, would be punishable as a crime in this state.”

<sup>93</sup> The text of Or. Rev. Stat. § 137.103 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2226 during the 2015 Regular session of the 78th Oregon legislature. (OR 2015) (effective January 1, 2016).

exploitation, by referring to Or. Rev. Stat. § 163.266(1) (Trafficking in persons), § 167.017(1)(b), (c), (d) (Compelling prostitution), § 163.670(1) (Using child in display of sexually explicit conduct), and § 167.008<sup>94</sup> (Commercial sexual solicitation).

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.*

Or. Rev. Stat. § 163.266 (Trafficking in persons) and CSEC laws do not refer to a defense based on the consent of the minor to the commercial sex act. However, the code does not specifically prohibit a defendant from raising such a defense.

- 5.2.1 Recommendation: Add a provision that expressly prohibits a consent defense for commercial sexual exploitation of children offenses, such as human trafficking and prostitution when the victim is a minor.

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

Or. Rev. Stat. § 167.007 (Prostitution) applies to adults as well as minors, leaving minors liable for prosecutions for prostitution and failing to specifically identify a minor engaged in prostitution as a victim of sex trafficking. However, victims of Or. Rev. Stat. § 163.266 (Trafficking in persons) may assert an affirmative defense to prostitution charges if force or threat of force was used to cause the prostitution. Pursuant to Or. Rev. Stat. § 163.269 (Victim assertion of defense of duress),

A person who is the victim of a crime described in ORS 163.263 [Subjecting another person to involuntary servitude in the second degree], 163.264 [Subjecting another person to involuntary servitude in the first degree], or 163.266 [Trafficking in persons] may assert the defense of duress, as described in ORS 161.270 [Duress],<sup>95</sup> if the person is prosecuted for conduct that constitutes services under ORS 163.261,<sup>96</sup> that the person was caused to provide.

- 5.3.1 Recommendation: Amend Or. Rev. Stat. § 167.007 (Prostitution) to eliminate liability for prostitution offenses for all minors under 18.

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<sup>94</sup> The text of Or. Rev. Stat. § 167.008 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2206 during the 2015 Regular session of the 78th Oregon legislature. (OR 2015) (effective January 1, 2016).

<sup>95</sup> Pursuant to Or. Rev. Stat. § 161.270 (Duress),

(1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

(2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

....

<sup>96</sup> Pursuant to Or. Rev. Stat. § 163.261 (Definitions for ORS 163.263 and 163.264), “‘services’ means activities performed by one person under the supervision or for the benefit of another person.”

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

**Child Identified as Abused**

Pursuant to Or Rev. Stat. § 419B.005<sup>97</sup> (Definitions),

(1)(a) “Abuse” means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child’s mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in Section 4 of this 2013 Act [Or. Rev. Stat. § 163.413] or to engage in commercial sexual solicitation as described in ORS 167.008.<sup>98</sup>

*I. Initial Custody*

a. Authority for initial custody

Officials must report child abuse pursuant to Or. Rev. Stat. § 419B.010(1) (Duty of officials to report child abuse; exceptions; penalty), which states, in part, “Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015. . . .” Upon receiving a report, the Department of Human Services or law enforcement agency, must investigate the claim. Or. Rev. Stat. § 419B.020(1)(a). Pursuant to Or. Rev. Stat. § 419B.020(3),

If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify by oral report followed by written report the local

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<sup>97</sup> The text of Or. Rev. Stat. § 419B.005 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2206 during the 2015 Regular session of the 78th Oregon legislature. (OR 2015) (effective January 1, 2016).

<sup>98</sup> Pursuant to Or Rev. Stat. § 419B.005, a sexually exploited child is likely to be identified as abused. If a child is identified as abused under Or Rev. Stat. § 419B.005 the definition of caregiver under Or. Admin. R. 413-015-0115(1) is not sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker. *See supra* note 97.



office of the department. The department shall provide protective social services of its own or of other available social agencies if necessary to prevent further abuses to the child or to safeguard the child's welfare.

Additionally, pursuant to Or. Rev. Stat. § 419B.150 (When protective custody authorized; disposition of runaway child taken into protective custody),

(1) A child may be taken into protective custody by a peace officer, counselor, employee of the Department of Human Services or any other person authorized by the juvenile court of the county in which the child is found, in the following circumstances:

- (a) When the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare;
- (b) When the juvenile court, by order indorsed on the summons as provided in ORS 419B.839 [Required and discretionary summons] or otherwise, has ordered that the child be taken into protective custody; or
- (c) When it reasonably appears that the child has run away from home.

(2) . . . .

- (c) The court may issue an order even though no services have been provided if the court makes written findings that no existing services could eliminate the need for protective custody of the child and that protective custody is in the best interests of the child.

“Protective custody shall not be deemed an arrest so far as the child is concerned.” Or. Rev. Stat. § 419B.155(1) (Protective custody not arrest).

Another route into protection is through Or. Rev. Stat. § 418.015(1) (Custody and care of needy children by department), which states that “[t]he Department of Human Services [DHS] may, in its discretion, accept custody of children and may provide care, support and protective services for children who are dependent or neglected, who have mental or physical disabilities or who for other reasons are in need of public service.” Additionally, pursuant to Or. Rev. Stat. § 418.015(2), DHS “shall accept any child placed in its custody by a court under, but not limited to ORS chapter 419B [Juvenile Code—Dependency] or 419C [Juvenile code Delinquency], and shall provide such services for the child as the department finds to be necessary.”

#### b. Placement

Under Or. Rev. Stat. § 419B.160 (Place of detention; record; parental notice required),

(1) A child or ward may not be detained at any time in a police station, jail, prison or other place where adults are detained, except that a child or ward may be detained in a police station for up to five hours when necessary to obtain the child or ward's name, age, residence and other identifying information.

. . . .

Generally, the child shall be released to the parent or other person responsible for the child's care unless an order for protective custody has been issued or “[w]here the person taking the child into custody has probable cause to believe that the welfare of the child or others may be immediately endangered by the release of the child.” Or. Rev. Stat. § 419B.165.

Pursuant to Or. Rev. Stat. § 419B.150 (When protective custody authorized; disposition of runaway child taken into protective custody),

(3) When a child is taken into protective custody as a runaway under subsection (1) of this section, the peace officer or other person who takes the child into custody:

- (a) (A) Shall release the child without unnecessary delay to the custody of the child's parent or guardian or to a shelter facility that has agreed to provide care and services to children who have run away from home and that has been designated by the juvenile court to provide such care and services; or
  - (B) Shall follow the procedures described in ORS 419B.160 [Place of detention; record; parental notice required], 419B.165 [Release of child taken into custody], 419B.168 [Procedure when child is not released] and 419B.171 [Report required when child is taken into custody];
- (b) Shall, if possible, determine the preferences of the child and the child's parent or guardian as to whether the best interests of the child are better served by placement in a shelter facility that has agreed to provide care and services to children who have run away from home and that has been designated by the juvenile court to provide such care and services or by release to the child's parent or guardian; and
- (c) Notwithstanding ORS 419B.165 and subsection (1) of this section, shall release the child to a shelter facility that has agreed to provide care and services to children who have run away from home and that has been designated by the juvenile court to provide such care and services if it reasonably appears that the child would not willingly remain at home if released to the child's parent or guardian.

## II. *Process Following Initial Custody*

Pursuant to Or. Rev. Stat. § 419B.168 (Procedure when child is not released),

- (1) If a child taken into protective custody is not released as provided in ORS 419B.165 and the juvenile court for the county has not established the alternative procedure authorized in subsection (4) of this section, the person taking the child into custody shall, without unnecessary delay, do one of the following:
  - (a) Take the child before the court or a person appointed by the court to effect disposition under ORS 419B.165.
  - (b) Take the child to a place of detention or shelter care or a public or private agency designated by the court and as soon as possible thereafter notify the court that the child has been taken into custody.
- (2) Where a child residing in some other county is taken into protective custody the child may be:
  - (a) Released to the child's parent or other responsible person in this state as provided in ORS 419B.165.
  - (b) Delivered to a peace officer or juvenile counselor in the county in which the child resides, if such delivery can be made without unnecessary delay. In such event, the person to whom the child is delivered shall assume protective custody of the child and shall proceed as provided in this chapter.
- (3) Where a child is released or delivered as provided in subsection (2) of this section, the jurisdiction of the juvenile court of the county in which the child resides shall attach from the time the child is taken into custody.
- (4) The juvenile court may establish, as an alternative to the provisions of subsection (1) of this section, that if a child taken into protective custody is not released as provided in ORS 419B.165, procedures shall be followed that comply with the following:
  - (a) The person taking the child into custody may communicate, by telecommunications or otherwise, with the person appointed by the court to effect disposition under ORS 419B.175.
  - (b) After interviewing the person taking the child into custody and obtaining such other information as is considered necessary, the person appointed by the court under ORS 419B.175 to effect disposition may exercise the authority granted under that section and shall, in such case, direct that the person taking the child into custody release the child or deliver the child in accordance with such direction.
  - (c) The person taking the child into custody shall comply with the direction of the person appointed by the court to effect disposition.

Additionally, under ORS § 419B.845(1)(a) (Restraining order when child abuse alleged), “[w]hen a petition has been filed alleging that the child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from having contact with the child or attempting to contact the child and requiring the alleged perpetrator to move from the household in which the child resides.” Restraining orders may be issued only if the court finds:

- (A) There is probable cause to believe the abuse occurred and that the person to be restrained committed the abuse; and
- (B) The order is in the best interest of the child.

Or. Admin. R. 413-015-0210(2) (Determining Department’s Response and Required Time Lines for CPS Information) lays out the requirements for CPS involvement as follows:

- (2) CPS assessment required. A CPS assessment is required if:
  - (a) The screener determines that information received constitutes a report of child abuse or neglect, as defined in ORS 419B.005 [Definitions], and the information indicates:
    - (A) The alleged perpetrator is a legal parent of the alleged child victim;
    - (B) The alleged perpetrator resides in the alleged child victim’s home;
    - (C) The alleged perpetrator may have access to the alleged child victim, and the parent or caregiver may not be able or willing to protect the child; or
    - (D) The alleged child abuse occurred in a day care facility, the home of a Department certified foster parent or relative caregiver, or a private child caring agency that is not a Children’s Care Provider (CCP).

....

Jurisdiction attaches at the time the child is taken into custody. Or. Rev. Stat. § 419B.157 (Jurisdiction attaches at time of custody).

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

A detention hearing must be held within 24 hours of a child being taken into custody. Or. Rev. Stat. § 419B.183 (Speedy hearing required).

If a child is taken into protective custody, Or. Rev. Stat. § 419B.175(1) (Initial disposition of child taken into custody) states,

- [A] person designated by a court to effect disposition of a child taken into protective custody or brought before the court . . . shall . . .
- (a) Release the child to the custody of a parent, guardian or other responsible person;
  - (b) Release the child on the child’s own recognizance when appropriate;
  - (c) Subject to ORS 419B.121 or 419B.180, place the child in shelter care or detention. The child shall be placed in shelter care rather than detention, unless the person has probable cause to believe that the court will be able to detain the child under ORS 419B.121; or
  - (d) Pursuant to order of the court made after the filing of a petition, hold, retain or place the child in shelter care subject to further order.

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

A hearing must be conducted no later than 60 days following a petition alleging that a child is a runaway, abandoned, dependent, or neglected and the court must enter an order for disposition of the child at the termination of the hearing. Or. Rev. Stat. §§ 419B.305, 419B.100, 419B.325.

## V. *Outcomes*

Following a hearing, “the court may place the ward in the legal custody of the Department of Human Services for care, placement, and supervision.” Or. Rev. Stat. § 419B.337<sup>99</sup> (Commitment to custody of Department of Human Services). The Department of Human services shall then give preference to “relatives and persons who have a caregiver relationship with the child . . . [and] make diligent efforts to place the child or ward with such persons.” Or. Rev. Stat. §§ 419B.192(1) (Placement of child or ward; preference given to relatives and caregivers; written findings of court required). Alternatively, “[t]he department may place the ward in a child care center authorized to accept the ward.” Or. Rev. Stat. § 419B.337(2). Finally, “if the ward has been placed in the custody of the Department of Human Services, the court shall make no commitment directly to any residential facility . . . and a ward so committed may not be placed in a Department of Corrections Institution.” Or. Rev. Stat. § 419B.337(5). A child in need of protective supervision may be placed with a relative under supervision, “some person maintaining a foster home approved by the court, or in a child care center or a youth care center authorized to accept the ward” or alternatively may be placed in the custody of the Department of Human Services. Or. Rev. Stat. §§ 419B.331, 419B.337.

### **Child Identified as Delinquent**

Delinquency is not defined in the Oregon code. However, the jurisdiction of the juvenile court extends to “any case involving a person who is under 18 years of age and who has committed an act that is a violation, or that if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.” Or. Rev. Stat. § 419C.005(1) (Jurisdiction).

#### *I. Initial Custody*

##### a. Authority for initial custody

A domestic minor sex trafficking victim may be treated as a delinquent. Pursuant to Or. Rev. Stat. § 419C.080 (Custody; when authorized),

(1) A peace officer, or any other person authorized by the juvenile court of the county in which the youth is found, may take a youth into custody in the following circumstances:

- (a) When, if the youth were an adult, the youth could be arrested without a warrant; or
- (b) When the juvenile court, by order indorsed on the summons as provided in ORS 419C.306 or otherwise, has ordered that the youth be taken into custody.

(2) In any order issued under subsection (1)(b) of this section that may result in a substitute care placement or detention, the court shall include a written finding describing why it is in the best interests of the youth to be taken into custody.

Instead of taking the youth into custody, the peace officer may opt to issue a citation for the offense. Or. Rev. Stat. § 419C.085.

##### b. Placement

Generally, after taking the youth into custody, the youth should be released to the parent, guardian or other person responsible for care of the child. Or. Rev. Stat. § 419C.100 (Release of youth taken into custody; exceptions). However, pursuant to Or. Rev. Stat. § 419C.100, the youth shall not be released in the following circumstances:

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<sup>99</sup> The text of Or. Rev. Stat. § 419B.337 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2908 during the 2015 Regular session of the 78th Oregon legislature. (OR 2015) (effective October 1, 2015).

- (1) When the court has issued a warrant of arrest against the youth.
- (2) When the person taking the youth into custody has probable cause to believe that release of the youth may endanger the welfare of the youth, the victim or others.
- ....

Pursuant to Or. Rev. Stat. 419C.130(1)(a) (Youth or youth offender may not be detained where adults are detained; exceptions), a child may only be initially detained in a “police station, jail, prison or other place where adults are detained . . . for up to five hours when necessary to obtain the youth or youth offender’s name, age, residence and other identifying information.”

*II. Process Following Initial Custody*

If the youth is not released, then the youth must be taken to court for disposition or taken to detention, shelter care, or a public or private agency and notify the court. Or. Rev. Stat. § 419C.103(1) (Procedure when youth is not released; release decision when youth taken into custody resides in other county).

Pursuant to Or. Rev. Stat. § 419C.103(5) (Procedure when youth is not released; release decision when youth taken into custody resides in other county),

(5) The juvenile court may establish, as an alternative to the provisions of subsection (1) of this section, that if a youth taken into custody is not released as provided in ORS 419C.100, procedures shall be followed that comply with the following:

- (a) The person taking the youth into custody may communicate, by telecommunications or otherwise, with the person appointed by the court to effect disposition under ORS 419C.109.
- (b) After interviewing the person taking the youth into custody and obtaining such other information as is considered necessary, the person appointed by the court under ORS 419C.109 to effect disposition may exercise the authority granted under that section and shall, in such case, direct that the person taking the youth into custody release the youth or deliver the youth in accordance with such direction.
- (c) The person taking the youth into custody shall comply with the direction of the person appointed by the court to effect disposition.

A child may be detained pending adjudication only in the following circumstances, pursuant to Or. Rev. Stat. § 419C.145 (Preadjudication detention; grounds),

- (a) The youth is a fugitive from another jurisdiction;
- ...
- (c) The youth has willfully failed to appear at one or more juvenile court proceedings by having disobeyed a proper summons, citation or subpoena;
- (d) The youth is currently on probation imposed as a consequence of the youth previously having been found to be within the jurisdiction of the court under ORS 419C.005, and there is probable cause to believe the youth has violated one or more of the conditions of that probation;
- (e) The youth is subject to conditions of release pending or following adjudication of a petition alleging that the youth is within the jurisdiction of the court pursuant to ORS 419C.005 and there is probable cause to believe the youth has violated a condition of release;
- ....

Pursuant to Or. Rev. Stat. § 419C.094 (Jurisdiction attaches at time youth taken into custody), the court’s jurisdiction attaches when a child is taken into custody.

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

Pursuant to Or. Rev. Stat. § 419C.109 (Initial disposition of youth taken into custody), when a child is taken into custody and certain requirements are met, the child may be released to “a parent, guardian or other responsible person,” released on the child’s own recognizance, conditionally released, or placed in shelter care or detention, with a preference for shelter care over detention.

Additionally, pursuant to Or. Rev. Stat. § 419C.103(3),

- (3) Where a youth residing in some other county is taken into custody the youth may be:
  - (a) Released to the youth’s parent, guardian or other responsible person in this state as provided in ORS 419C.100.
  - (b) Delivered to a peace officer or juvenile counselor in the county in which the youth resides, if such delivery can be made without unnecessary delay. In such event, the person to whom the youth is delivered shall assume custody of the youth and shall proceed as provided in this chapter.

A child may be detained in a jail pursuant to Or. Rev. Stat. § 419C.125(1) (Detention in place where adults are detained of certain persons alleged to be within court’s jurisdiction), only if the child is 18 years of age or older, continues to be within the jurisdiction of the juvenile court and “only in those circumstances in which the juvenile court could detain a youth before adjudication on the merits in a detention facility.” Additionally, pursuant to subsection (2), the child may only be detained in a jail if the court determines that it, “meets the specific needs of the person alleged to be within the jurisdiction of the court.”

Pursuant to Or. Rev. Stat. § 419C.150 (Time limitations on detention) a child may be held in detention, “for a maximum of 28 days;” however, “[i]f good cause for continued detention is shown, the period of detention may be extended for no more than an additional 28 days unless the adjudication is continued with the express consent of the youth.”

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

Under Or. Rev. Stat. § 419C.400(1) (Conduct of hearings), at the adjudication hearing the facts alleged against the child, “must be established beyond a reasonable doubt,” unless admitted. Subsection (5) dictates that, “[a]n adjudication by a juvenile court that a youth is within its jurisdiction is not a conviction of a crime or offense.”

### *V. Outcomes*

There are several dispositions for cases in which a child has been adjudicated delinquent. The options include probation and continued detention. Pursuant to Or. Rev. Stat. § 419C.446 (Probation; requirements),

- (1) When a court determines it would be in the best interest and welfare of a youth offender, the court may place the youth offender on probation. The court may direct that the youth offender remain in the legal custody of the youth offender’s parents or other person with whom the youth offender is living, or the court may direct that the youth offender be placed in the legal custody of some relative or some person maintaining a foster home approved by the court, or in a child care center or a youth care center authorized to accept the youth offender.
- (2) The court may specify particular requirements to be observed during the probation consistent with recognized juvenile court practice, including but not limited to restrictions on visitation by the youth offender’s parents, restrictions on the youth offender’s associates, occupation and activities, restrictions on and requirements to be observed by the person having the youth offender’s legal custody, requirements for visitation by and consultation with a juvenile counselor or other suitable counselor, requirements to make restitution under ORS 419C.450, requirements of a period of detention under ORS 419C.453, requirements

to pay a fine under ORS 419C.459, requirements to pay a supervision fee under ORS 419C.449, requirements to perform community service under ORS 419C.462, or service for the victim under ORS 419C.465, or requirements to submit to blood or buccal testing under ORS 419C.473.

....

Additionally, the court may order the child to be detained pursuant to the conditions laid out in Or. Rev. Stat. § 419C.453 (Detention; when authorized), which states that

(1) Pursuant to a hearing, the juvenile court may order a youth offender placed in a detention facility for a specific period of time not to exceed eight days, in addition to time already spent in the facility, unless a program plan that is in conformance with standards established by the State Commission on Children and Families has been filed with and approved by the commission, in which case the youth offender may be held in detention for a maximum of 30 days in addition to time already spent in the facility, when:

(a) The youth offender has been found to be within the jurisdiction of the juvenile court by reason of having committed an act which would be a crime if committed by an adult; or

(b) The youth offender has been placed on formal probation for an act which would be a crime if committed by an adult, and has been found to have violated a condition of that probation.

(2) Pursuant to a hearing, the juvenile court may order a youth offender who is at least 18 years of age placed in a jail or other place where adults are detained. The placement must be for a specific period of time and may not exceed eight days in addition to time already spent in a juvenile detention facility or jail. The court may order placement under this subsection when:

(a) The youth offender has been found to be within the jurisdiction of the juvenile court by reason of having committed an act which would be a crime if committed by an adult; or

(b) The youth offender has been placed on formal probation for an act which would be a crime if committed by an adult, and has been found to have violated a condition of that probation.

5.4.1 Recommendation: Enact a mandatory protective response for juvenile sex trafficking victims that provides an avenue to specialized services outside detention.

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

Or. Admin. R. 413-015-0115(3) (Definitions) defines “child abuse or neglect” to mean “any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.” Or. Rev. Stat. § 419B.005<sup>100</sup> (Definitions) is one of several statutes listed as statutory authority for Or. Admin. R. 413-015-0115.

Or. Rev. Stat. § 419B.005 defines “abuse” in part as,

(1)(a) “Abuse” means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child’s mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

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<sup>100</sup> See *supra* note 97.

- (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and
- (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in Section 4 of this 2013 Act [Or. Rev. Stat. § 163.413] or to engage in commercial sexual solicitation as described in ORS 167.008. . . .

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.*

Or. Admin. R. 413-015-0115(1) (Definitions) defines “caregiver” as “a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.” More importantly, pursuant to Or. Admin. R. 413-015-0115(45) the rules define “third-party abuse” as “abuse by a person who is not the child’s parent, not the child’s caregiver or other member of the child’s household, and not a person responsible for the child’s care, custody, and control.” The rules state that “[e]xamples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.”

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.*

Oregon’s “Compensation of Crime Victims” statutes, codified at Or. Rev. Stat. § 147.005 et. seq., was enacted to provide compensation for victims of specified crimes. Or. Rev. Stat. § 147.015 (Eligibility for compensation; generally) states,

- (1) A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:
  - (a) The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable crime that has resulted in or may result in a compensable loss;
  - (b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim within 72 hours after its perpetration, unless the Department of Justice finds good cause exists for the failure of notification;
  - (c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the department has found that the applicant’s failure to cooperate was for good cause;
  - (d) The application for compensation is not the result of collusion between the applicant and the assailant of the victim;
  - (e) The death or injury to the victim was not substantially attributable to the wrongful act of the victim or substantial provocation of the assailant of the victim; and
  - (f) The application for an award of compensation under ORS 147.005 to 147.367 is filed with the department:
    - (A) Within one year of the date of the injury to the victim; or
    - (B) Within such further extension of time as the department for good cause shown, allows.
- (2) The fact that a victim was subjected to sexual exploitation as defined in ORS 419B.005 is prima facie evidence of good cause for the victim’s failure to notify law enforcement in a timely manner under subsection (1)(b) of this section, or for failure to cooperate with law enforcement under subsection (1)(c) of this section.



If a claim is accepted, then, under the rules set out in Or. Rev. Stat. § 147.035(1)–(4) (Compensable losses; rules) compensable losses include the following:

- (1) (a) Except as otherwise provided in ORS 147.025 and 147.390, compensation may be awarded under ORS 147.005 to 147.367 only for losses described in this section.
  - (b) The maximum amount of compensation that may be awarded, in aggregate, to the victim and the survivors and dependents of a deceased victim is \$ 47,000.
  - (c) When a compensable crime results in:
    - (A) Injury to a victim, the losses described in subsections (2), (4), (7) and (8) of this section are compensable.
    - ....
- (2) When a claim for compensation is filed in a case of injury, compensation may be awarded for:
  - (a) The victim’s reasonable medical and hospital expenses, including counseling expenses, up to a maximum amount of \$ 20,000;
  - (b) Loss of the victim’s earnings, at a maximum rate of \$ 400 per week, up to a maximum amount of \$ 20,000;
  - (c) The victim’s rehabilitation expenses, up to a maximum amount of \$ 4,000; and
  - (d) Expenses related to transportation for the victim’s medical care or counseling, at a rate determined by the Department of Justice, up to a maximum amount of \$ 3,000, when:
    - (A) The medical care or counseling is compensable under this section;
    - (B) The medical care or counseling is provided more than 30 miles away from the victim’s residence; and
    - (C) Adequate medical care or counseling is not available in closer proximity to the victim’s residence.
    - ....
- (4) When a claim for compensation is filed in a case of:
  - (a) Rape of a child, child sexual abuse or sexual exploitation, as those terms are described in ORS 419B.005 (1)(a)(C), (D) and (E), counseling expenses of the victim’s family are compensable up to a maximum amount of \$ 20,000, less any amounts awarded for the victim’s medical or hospital expenses under subsection (2)(a) of this section.
  - ....

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

Several victim-friendly criminal justice procedures and protections are statutorily provided for minor victim-witnesses, although none specifically apply in cases of trafficking or compelled prostitution of a minor. Pursuant to Or. Rev. Stat. § 419B.112 (Court appointed special advocate) , a “court appointed special advocate,”<sup>101</sup> shall be appointed by the court “[i]n every case under ORS chapter 419B [Juvenile Code: Dependency].”<sup>102</sup> Or. Rev. Stat. § 45.400(1) permits telephone testimony, “[u]pon motion of any party and for good cause shown . . . in any civil proceeding or any proceeding under ORS chapter 419B [Juvenile Code: Dependency].” Or. Rev. Stat. § 44.547 supplies additional protections for child witnesses under 12 years of age, or developmentally disabled persons of any age. These protections may include the following: “[b]reak periods” during the trial proceedings; providing a “waiting area appropriate to the special needs of the witness”;

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<sup>101</sup> Pursuant to Or. Rev. Stat. § § 419A.004 (9), a “[c]ourt appointed special advocate” means a person in a CASA Volunteer Program who is appointed by the court to act as a court appointed special advocate pursuant to ORS 419B.112.”

The text of Or. Rev. Stat. § 419A.004 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2908 during the 2015 Regular session of the 78th Oregon legislature. (Or. 2015) (effective October 1, 2016).

<sup>102</sup> Enacted House Bill 2205 established the Fund to End Commercial Sexual Exploitation of Children to, among other things, finance the “[a]dvocacy for children who have been victims of commercial sexual exploitation”. H.B. 2205, 78th Leg. Assem., Reg. Sess. (Or. 2015).

“[r]elaxing the formalities of the proceedings”; “[c]onducting proceedings in clothing other than judicial robes”; “[a]djusting the layout of the courtroom for the comfort of the witness”; and “[c]onducting proceedings outside of the normal courtroom.” Or. Rev. Stat. § 44.547. Or. Rev. Stat. § 40.460(18a), (24), Rule 803, which sets out exceptions to Oregon’s hearsay rule, codified at Or. Rev. Stat. § 40.455 Rule 802, permits closed circuit television testimony in certain criminal or juvenile proceedings involving a child witness under 12 years old as follows:

(18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050,<sup>103</sup> or a complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, made by the witness after the commission of the alleged misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.

....

(24) Notwithstanding the limits contained in subsection (18a)<sup>104</sup> of this section, in any proceeding in which a child under 12 years of age at the time of trial, or a person with a developmental disability as described in subsection (18a)(d) of this section, may be called as a witness to testify concerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the child or person with a developmental disability by another, the testimony of the child or person with a developmental disability taken by contemporaneous examination and cross-examination in another place under the supervision of the trial judge and communicated to the courtroom by closed-circuit television or other audiovisual means. Testimony will be allowed as provided in this subsection only if the court finds that there is a substantial likelihood, established by expert testimony, that the child or person with a developmental disability will suffer severe emotional or psychological harm if required to testify in open court. If the court makes such a finding, the court, on motion of a party, the child, the person with a developmental disability or the court in a civil proceeding, or on motion of the district attorney, the child or the person with a developmental disability in a criminal or juvenile proceeding, may order that the testimony of the child or the person with a developmental disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the parties, individuals necessary to operate the equipment and any individual the court finds would contribute to the welfare and well-being of the child or person with a developmental disability may be present during the testimony of the child or person with a developmental disability.

Or. Rev. Stat. § 40.210 Rule 412 (Sex offense cases; relevance of victim's past behavior or manner of dress), protects testifying victims of certain crimes “(1). . . in a prosecution for a crime described in ORS 163.266 (1)(b) or (c) [Trafficking in persons], 163.355 to 163.427 [Sex offense chapter], 163.670 [Using child in display of sexually explicit conduct] or 167.017 [Compelling prostitution], or in a prosecution for an attempt to commit one of [these] those crimes” from the admission of “[r]eputation or opinion evidence of the past sexual behavior<sup>105</sup> of an alleged victim of the crime or a corroborating witness” or “[r]eputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim of the crime incited the crime or indicated consent to the sexual acts alleged in the charge.” The statute provides in part,

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<sup>103</sup> Pursuant to Or. Rev. Stat. § 124.050(2), “Elderly person” is defined as “any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.”

<sup>104</sup> Or. Rev. Stat. § 40.460 [Rule 803. Hearsay exceptions; availability of declarant immaterial] states in part, “The following are not excluded by ORS 40.455, even though the declarant is available as a witness: . . . (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or 419B.005 . . . made by the witness after the commission of the alleged misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.”

<sup>105</sup> Or. Rev. Stat. § 40.210(5)(c) Rule 412 defines “past sexual behavior” as “sexual behavior other than:

(A) The sexual behavior with respect to which the crime or attempt to commit the crime listed in subsection (1) of this section is alleged; or

(B) In a proceeding conducted under ORS 163.760 [Definitions for ORS 163.760 to 163.777] to 163.777 [Fees or undertaking may not be required], the alleged sexual abuse.”

(2) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime in subsection (1) of this section, evidence of a victim’s past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

- (a) Is admitted in accordance with subsection (4) of this section; and
- (b) Is evidence that:
  - (A) Relates to the motive or bias of the alleged victim;
  - (B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or
  - (C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section [ORS 163.266 (1)(b) or (c) [Trafficking in persons], 163.355 to 163.427 [Sex offense chapter], 163.670 [Using child in display of sexually explicit conduct] or 167.017 [Compelling prostitution]], evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime, is also not admissible, unless the evidence is:

- (a) Admitted in accordance with subsection (4) of this section; and
- (b) Is evidence that:
  - (A) Relates to the motive or bias of the alleged victim;
  - (B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;
  - (C) Is necessary to establish the identity of the victim; or
  - (D) Is otherwise constitutionally required to be admitted.

....

Under Or. Rev. Stat. § 192.822,<sup>106</sup> Oregon has also established the “Address Confidentiality Program,” in order to:

- (a) protect the confidentiality of the actual address<sup>107</sup> of a victim of domestic violence,<sup>108</sup> a sexual offense,<sup>109</sup> stalking or human trafficking;<sup>110</sup> and
- (b) prevent assailants or potential assailants of the victim from finding the victim through public records.

As enumerated within Or. Rev. Stat. § 192.822, under the “Address Confidentiality Program,”<sup>111</sup>

....

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<sup>106</sup> Lexis notes the following: “Or. Rev. Stat. §§ 192.820—192.868 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.”

<sup>107</sup> Or. Rev. Stat. § 192.820(1) defines “actual address” as: (a) A residential, work or school street address of an individual specified on the application of the individual to be a program participant; or (b) The name of the county in which the program participant is registered to vote.”

<sup>108</sup> Or. Rev. Stat. § 192.820(9) defines a “victim of domestic violence” as “(a) An individual against whom domestic violence has been committed, as define in ORS 135.230, 181.610 or 411.117; (b) An individual who has been a victim of abuse, as defined in ORS 107.705; or (c) Any other individual designated a victim of domestic violence by the Attorney General by rule.”

<sup>109</sup> Or. Rev. Stat. § 192.820(8) defines a “victim of a sexual offense as “(a) An individual against whom a sexual offense has been committed, as described in ORS 163.305 to 163.467, 163.427, 163.466 or 163.525; or (b) Any other individual designated by the Attorney General by rule.”

<sup>110</sup> Or. Rev. Stat. § 192.820 defines a “victim of human trafficking” as “(a) an individual against whom as offense described in ORS 163.263, 163.264 or 163.266 has been committed; or (b) Any other individual designated by the Attorney General by rule. In adopting rules under this subsection, the Attorney General shall consider individuals against whom an act recognized as a severe form of trafficking in persons under 22 U.S.C. 7102 has been committed.”

<sup>111</sup> Or. Rev. Stat. § 192.822.

(2) The Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of all legal process this state and receiving and forwarding first-class, certified or registered mail.

(3) The Attorney General is not required to forward any packages or mail other than first-class, certified or registered mail to the program participant.

(4) The Attorney General is not required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered.

Furthermore, Or. Rev. Stat. § 192.854(1)<sup>112</sup> states that “[t]he Attorney General may designate employees of or volunteers serving public or private entities that provide counseling and shelter services to victims of domestic violence, a sexual offense, stalking or human trafficking as application assistants to assist individuals applying to participate in the Address Confidentiality Program.”<sup>113</sup>

5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*

Under Or. Rev. Stat. § 419A.262(2) (Expunction proceedings; notice to victim; effect of expunction; confidentiality; penalties),

Upon application of either a person who is the subject of a record or a juvenile department, or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter is contested, it finds that:

- (a) At least five years have elapsed since the date of the person’s most recent termination;
- (b) Since the date of the most recent termination, the person has not been convicted of a felony or a Class A misdemeanor;
- (c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are pending against the person;
- (d) The person is not within the jurisdiction of any juvenile court on the basis of a petition alleging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005; and
- (e) The juvenile department is not aware of any pending investigation of the conduct of the person by any law enforcement agency.

Under Or. Rev. Stat. § 419A.262(3) (Expunction proceedings; notice to victim; effect of expunction; confidentiality; penalties),

(a) Notwithstanding subsection (2) of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after hearing when the matter is contested under subsection (13) of this section, shall order expunction if it finds that:

- (A) The application requests expunction of only that part of a person’s record that involves a charge, allegation or adjudication based on conduct that if done by an adult would constitute the crime of prostitution under ORS 167.007; and
- (B) The person was under 18 years of age at the time of the conduct.

(b) Except provided in subsections (13) and (14) of this section, there is no waiting period required before the juvenile court orders expunction under this subsection.

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<sup>112</sup> See *supra* note 106.

<sup>113</sup> “Any assistance rendered to applicants for participation in the Address Confidentiality Program by the Attorney General or an application assistant is not considered legal advice.” Or. Rev. Stat. § 192.854.

Under Or. Rev. Stat. § 419A.262(5) (Expunction proceedings; notice to victim; effect of expunction; confidentiality; penalties),

When a person who is the subject of a record kept by a juvenile court or juvenile department reaches 18 years of age, the juvenile court, after a hearing when the matter is contested, shall order expunction if:

- (a) The person never has been found to be within the jurisdiction of the court; or
- (b) The conditions of subsection (2) or (3) of this section have been met.

Or. Rev. Stat. § 419A.262(8) (Expunction proceedings; notice to victim; effect of expunction; confidentiality; penalties) goes on to state,

Notwithstanding subsections (2), (3) and (5) to (7) of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter is contested, may order expunction of all or any part of the person's record if it finds that to do so would be in the best interests of the person and the public. In the case of an application by the juvenile department or of the court acting upon its own motion, expunction shall not be ordered if actual notice of expunction has not been given to the person in accordance with subsection (12) of this section unless the person has reached 21 years of age.

Or. Rev. Stat. § 419A.262(9) (Expunction proceedings; notice to victim; effect of expunction; confidentiality; penalties) further goes on to state,

Notwithstanding ORS 419A.260 (1)(d)(J)(x), (xiii) or (xviii), a person who has been found to be within the jurisdiction of the juvenile court based on an act that if committed by an adult would constitute:

....

(b) A sex crime that is a Class C felony may apply for an order of expunction under this section. The court shall order expunction of the records in the case if, after a hearing when the matter is contested, the court finds that:

- (A) The person meets the requirements of subsection (2) of this section;
- (B) The person was under 16 years of age at the time of the offense;
- (C) The person is less than three years older than the victim;
- (D) The victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age;
- (E) The victim was at least 12 years of age at the time of the offense;
- (F) Each finding described in this paragraph involved the same victim; and
- (G) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime listed in ORS 419A.260 (1)(d)(J) or an offense the court is prohibited from setting aside under ORS 137.225, other than the adjudication that is the subject of the motion.

Additionally, Or. Rev. Stat. § 419A.262(14)(c) (Expunction proceedings; notice to victim; effect of expunction; confidentiality; penalties) states,

The court shall proceed without a hearing if:

- (A) No objection is filed under subsection (13) of this section;
- (B) The application requests expunction of only that part of the person's record that involves a charge, allegation or adjudication based on conduct that if done by an adult would constitute the crime of prostitution under ORS 167.007; and
- (C) The person was under 18 years of age at the time of the conduct.

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.*

Or. Rev. Stat. § 137.106 (Restitution to victims) requires the district attorney to investigate and present to the court evidence of economic damages suffered as a result of the crime. The court is authorized to order restitution as part of a criminal case when the crime “has resulted in economic damages.”<sup>114</sup> Or. Rev. Stat. § 137.106(1). Restitution is defined in Or. Rev. Stat. § 137.103(3) (Definitions for ORS 137.101 to 137.109) as “full, partial or nominal payment of economic damages to a victim. Restitution is independent of and may be awarded in addition to a compensatory fine awarded under ORS § 137.101.”

Or. Rev. Stat. § 30.867 (Action for violation of criminal laws relating to involuntary servitude or trafficking in persons) specifically provides the right to bring a civil action for damages suffered by a victim of human trafficking and involuntary servitude irrespective of the initiation or outcome of any criminal action. Victims of these crimes who prevail may recover “(a) Both special and general damages, including damages for emotional distress; and (b) Punitive damages,” as well as reasonable attorney fees. Or. Rev. Stat. § 30.867(2), (3). The statute gives victims six years from the date of the conduct to file a civil claim for damages. Or. Rev. Stat. § 30.867(4).

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.*

Or. Rev. Stat. § 131.125<sup>115</sup> (Time limitations) outlines the statute of limitations on bringing criminal actions for felonies. Or. Rev. Stat. § 131.125(2) provides a longer statute of limitations for certain sex crimes; it states,

A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

- (a) Rape in the first degree under ORS 163.375.
- (b) Sodomy in the first degree under ORS 163.405.
- (c) Unlawful sexual penetration in the first degree under ORS 163.411.
- (d) Sexual abuse in the first degree under ORS 163.427.

Regarding other felonies, Or. Rev. Stat. § 131.125(3) states,

A prosecution for any of the following felonies may be commenced within six years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, any time before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- ....
- (i) Using a child in a display of sexual conduct under ORS 163.670.
- (j) Encouraging child sexual abuse in the second degree under ORS 163.684.
- ....
- (L) Promoting prostitution under ORS 167.012.
- (m) Compelling prostitution under ORS 167.017.
- (n) Luring a minor under ORS 167.057.

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<sup>114</sup> See *supra* note 40.

<sup>115</sup> The text of Or. Rev. Stat. § 131.125 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2317 during the 2015 Regular session of the 78th Oregon legislature. (OR 2015) (effective January 1, 2016).

Or. Rev. Stat. § 131.125(4) states,

A prosecution for any of the following misdemeanors may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, any time before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human services, whichever occurs first:

- (b) Sexual abuse in the third degree under ORS 163.415.
- (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- (d) Displaying obscene materials to minors under ORS 167.080.

Or. Rev. Stat. § 30.867 (Action for violation of criminal laws relating to involuntary servitude or trafficking in persons) specifically provides the right to bring a civil action for damages suffered by a victim of human trafficking and involuntary servitude irrespective of the initiation or outcome of any criminal action. Victims of these crimes who prevail may recover “(a) Both special and general damages, including damages for emotional distress; and (b) Punitive damages,” as well as reasonable attorney fees. Or. Rev. Stat. § 30.867(2), (3). The statute gives victims six years from the date of the conduct to file a civil claim for damages. Or. Rev. Stat. § 30.867(4).

Or. Rev. Stat. § 12.117(1)<sup>116</sup> (Actions based on child abuse), which covers civil proceedings, states,

(1) Notwithstanding ORS 12.110 [Actions for certain injuries to person not arising on contract], 12.115 [Action for negligent injury to person or property] or 12.160<sup>117</sup> [Suspension for minors and persons who are have a disabling mental condition], an action based on conduct that constitutes child abuse<sup>118</sup> or conduct knowingly allowing, permitting or encouraging child abuse that occurs while the person is under 18 years of age must be commenced before the person attains 40 years of age, or if the person has not discovered the causal connection between the injury and the child abuse, nor in the exercise of reasonable care should have discovered the causal connection between the injury and the child abuse, not more than five years from the date the person discovers or in the exercise of reasonable care should have discovered the causal connection between the child abuse and the injury, whichever period is longer.

5.11.1 Recommendation: Amend Or. Rev. Stat. § 131.125(2) to include sex trafficking and CSEC offenses including Or. Rev. Stat. § 163.266 (Trafficking in persons), Or. Rev. Stat. § 163.263 (Subjecting another person to involuntary servitude in the second degree), Or. Rev. Stat. § 163.264 (Subjecting another person to involuntary servitude in the first degree), Or. Rev. Stat. § 167.017(1) (Compelling

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<sup>116</sup> The text of Or. Rev. Stat. § 12.117 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2206 during the 2015 Regular session of the 78th Oregon legislature (Or. 2015) (effective January 1, 2016).

<sup>117</sup> The text of Or. Rev. Stat. § 12.160 17 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2333 during the 2015 Regular session of the 78th Oregon legislature (Or. 2015) (effective June 22, 2015).

<sup>118</sup> Or. Rev. Stat. § 12.117(2) (Actions based on child abuse) defines “child abuse” to include the following:

- (c) Sexual abuse, as defined in ORS Chapter 163, when the victim is a child; or
- (d) Sexual exploitation of a child, including but not limited to:
  - (A) Conduct constituting a violations of ORS 163.435 and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact; and
  - (B) Allowing, permitting, encouraging or hiring a child to engage in prostitution or to engage in commercial sexual solicitation, as defined in ORS chapter 167.”

*See supra* note 116.

prostitution),and Or. Rev. Stat. § 163.670(1) (Using child in display of sexually explicit conduct), Or. Rev. Stat. § 163.413<sup>119</sup> (Purchasing sex with a minor).

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<sup>119</sup> The text of Or. Rev. Stat. § 163.413 included here and elsewhere in this report includes amendments made by the enactment of House Bill 2206 and House Bill 2385 during the 2015 Regular session of the 78th Oregon legislature. (Or. 2015) (effective January 1, 2016).



**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.*

**Legal Analysis:**

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

Pursuant to Or. Rev. Stat. § 181.649 (Training in human trafficking), “[t]he Board on Public Safety Standards and Training may require that all police officers and certified reserve officers are trained to recognize, investigate and report cases involving labor trafficking and sex trafficking of children and adults at any advanced training program operated or authorized by the Department of Public Safety Standards and Training.”

Additionally, Or. Rev. Stat. § 181.643 (Training in missing persons cases) does state that “[s]ubject to the availability of funds, the Board on Public Safety Standards and Training shall ensure that all police officers and certified reserve officers are trained to investigate and report cases of missing children and adults.

Enacted House Bill 2205<sup>120</sup> established the Fund to End Commercial Sexual Exploitation of Children, which among other things to finance the “[t]raining of investigators, service providers and others regarding the identification and treatment of children who have experienced commercial sexual exploitation.”

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

Or. Rev. Stat. § 165.543(1) (Interception of communications) states in part,

Except as provided in ORS 133.724 [Order for interception of communications; application; grounds for issuance; contents of order; progress reports] or as provided in ORS 165.540(2)(a), any person who willfully intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept any wire or oral communication where such person is not a party to the communication and where none of the parties to the communication has given prior consent to the interception, is guilty of a Class A misdemeanor.

Or. Rev. Stat. § 133.726(1) (Interception of oral communication without order; order for interception of oral communication; application; grounds for issuance; contents of order; penalties) states, “[A] law enforcement officer<sup>121</sup> is authorized to intercept an oral communication to which the officer or person under direct

<sup>120</sup> H.B. 2205, 78th Leg. Assem., Reg. Sess. (Or. 2015).

<sup>121</sup> Under Or. Rev. Stat. § 133.726(1), “law enforcement officer” is

(a) [a]n officer employed to enforce criminal laws by:

supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724” in certain situations. “[A] person is a party to an oral communication if the oral communication is made in the person’s immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.” Or. Rev. Stat. § 133.726(2).

Or. Rev. Stat. § 133.726(7)–(10) (Interception of oral communication without order; order for interception of oral communication; application; grounds for issuance; contents of order; penalties) also states,

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.752 (Prohibited acts generally), 475.806 (Unlawful manufacture of hydrocodone) to 475.894 (Unlawful possession of methamphetamine) or 475.906 (Penalties for unlawful delivery to minors) or as a misdemeanor under ORS 167.007 (Prostitution) or 167.008 (Patronizing a prostitute); or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 (Order for interception of communications) or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer’s direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer’s employment and as a part of assigned duties.

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

Or. Rev. Stat. § 133.724 outlines criteria for applying to intercept wire communications, stating that, among other things, the “application shall include . . .

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(A) The United States, this state or a municipal government within this state;

(B) A political subdivision, agency, department or bureau of the governments described in subparagraph (A) of this paragraph;

(C) A police department established by a university under ORS 352.383 [Public universities; establishment of police departments; police officers] or 353.125 [Creation of police department and commission of police officers; rules]; or

(b) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011; or

(c) A liquor enforcement inspector as defined in ORS 471.001 [Definitions for ORS chapters 471 and 473].

The text of Or. Rev. Stat. Or. Rev. Stat. § 133.726 included here and elsewhere in this report includes amendments made by the enactment of Senate Bill 343 during the 2015 Regular session of the 78th Oregon legislature. (Or. 2015) (effective May 26, 2015).

(c) A statement demonstrating that there is probable cause to believe that an individual is committing, has committed or is about to commit: (A) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony; (B) A crime punishable as a felony under ORS 163.266 (1)(b) or (c) [Trafficking in persons], 166.720 [Racketeering activity], 167.012 [Promoting prostitution], 167.017 [Compelling prostitution], . . . or section 4 of this 2013 Act [Purchasing sex with a minor under Or. Rev. Stat. § 163.413] or as a misdemeanor under ORS 167.007 [Prostitution] or 167.008 [Commercial sexual solicitation]; or (C) Any conspiracy to commit any of the foregoing crimes; . . .

Or. Rev. Stat. § 133.726(3)–(6) also outlines criteria for ex parte orders for intercepting oral communications, including situations where the application states, among other things, that “[t]here is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007 [Prostitution] or section 3 of this 2011 Act [patronizing prostitution], and that intercepting the oral communication will yield evidence thereof.”

Or. Rev. Stat. § 133.733 does not permit “[t]he contents of any wire, electronic or oral communication intercepted under ORS 133.724, or evidence derived therefrom” from being “received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved.” This period may be judicially waived.

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.*

Pursuant to Or. Rev. Stat. § 167.057<sup>122</sup> (Luring a minor), this offense includes conduct with “a police officer posing as a minor or an agent of a police officer posing as a minor” Or. Rev. Stat. § 167.057.

Similarly, an offense pursuant to Or. Rev. Stat. § 163.413<sup>123</sup> (Purchasing sex with a Minor) includes “if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with . . . a police officer posing as a minor or an agent of a police officer posing as a minor.”

However, no such prohibition applies in prosecutions under Or. Rev. Stat. § 167.017 (Compelling prostitution) and § 167.007 (Prostitution).

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

Or. Rev. Stat. § 163.434(2) (Provisions applicable to online sexual corruption of a child) states that “[i]t is not a defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was in fact communicating with a law enforcement officer . . . or a person working under the direction of a law enforcement officer, who is 16 years of age or older.”

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<sup>122</sup>See *supra* note 10.

<sup>123</sup>See *supra* note 10.

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

Or. Rev. Stat § 146.181(1) (Missing persons; police report; supplementary report) states,

When a person is reported as missing to any city, county or state police agency, the agency, within 12 hours thereafter, shall enter into state and federal records maintained for that purpose, a report of the missing person in a format and according to procedures established by the authorities responsible respectively for the state and federal records.

Or. Rev. Stat. § 181.505(1) (Establishment and maintenance of missing persons clearinghouse) directs the Oregon State Police to “establish and maintain a missing children and adults clearinghouse that receives from and distributes to local law enforcement agencies, school districts, state and federal agencies and the general public information regarding missing children and adults.” Under Or. Rev. Stat § 181.506(1), (4) (Duties of administrator of clearinghouse), the administrator of the clearinghouse is directed to, among other things, “[p]rovide information and training to local law enforcement agencies and child welfare agencies and to other state agencies having child welfare duties” and “[m]aintain a 24-hour hotline to receive and provide information on missing children and adults.”

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