

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2016 ANALYSIS AND RECOMMENDATIONS FLORIDA

### 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 acknowledge the intersection of prostitution with trafficking victimization.*
- 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.*

Florida law prohibits sex trafficking of minors, without proof of force, fraud or coercion in its human trafficking statute and defines a minor as under the age of 18. Fla. Stat. Ann. § 787.06(3)<sup>2</sup> (Human trafficking) states:

Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially or by receiving anything of value from participation in a venture<sup>3</sup> that has subjected a person to human trafficking<sup>4</sup>:

<sup>1</sup> This report includes legislation enacted as of August 1, 2016.

<sup>2</sup> The text of Fla. Stat. Ann. § 787.06 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1294 and House Bill 545 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016 and October 1, 2016, respectively).

....  
(f) 1. For commercial sexual activity who does so by the transfer or transport of any child under the age of 18 from outside this state to within the state commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, [Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison], s. 775.083 [Fines], or s. 775.084 [Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms].

....  
(g) For commercial sexual activity in which any child under the age of 18 . . . is involved commits a life felony, punishable as provided in s. 775.082(3)(a)6. [Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison], s. 775.083 [Fines], or s. 775.084 [Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms].

....  
Fla. Stat. Ann. § 787.06(2)(b) defines “[c]ommercial sexual activity” as “any violation of chapter 796 [Prostitution]<sup>5</sup> or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.”

Pursuant to § 775.082(3)(a)(6), a violation of Fla. Stat. Ann. § 787.06(3)(g) is punishable by life imprisonment<sup>6</sup> and a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 787.06(3)(g), 775.082(3)(a)(6), 775.083(1)(a).<sup>7</sup> A

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<sup>3</sup> Fla. Stat. Ann. § 787.06(2)(k) defines “[v]enture” as “any group of two or more individuals associated in fact, whether or not a legal entity.”

<sup>4</sup> Fla. Stat. Ann. § 787.06(2)(d) defines “[h]uman trafficking” as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

<sup>5</sup> The following offenses are contained in Chapter 796: Fla. Stat. Ann. §§ 796.04 (Forcing, compelling or coercing another to become a prostitute), 796.05 (Deriving support from the proceeds of prostitution), 796.06 (Renting space to be used for lewdness, assignation, or prostitution), 796.07 (Prohibiting prostitution and related acts), 796.08 (Screening for HIV and sexually transmissible diseases; providing penalties).

<sup>6</sup> Pursuant to Fla. Stat. Ann. § 775.082(3)(a) (Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison), depending on the date the life felony was committed, a person “may be punished as follows:

1. For a life felony committed before October 1, 1983, by a term of imprisonment for life or for a term at least 30 years.
2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.
3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.
- ....
5. For a life felony committed on or after October 1, 2014, which is a violation of s. 787.06(3)(g) [Human trafficking], by a term of imprisonment for life.

<sup>7</sup> Pursuant to Fla. Stat. Ann. § 775.084 (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms), an offender may be subject to enhanced penalties if the offender is classified as a “habitual felony offender,” “habitual violent felony offender,” three-time violent felony offender,” or a “violent career

conviction under Fla. Stat. Ann. § 787.06(3)(f) is punishable as a first degree felony by up to life imprisonment<sup>8</sup> and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 787.06(3)(f), 775.082(3)(b)(1), 775.083(1)(b). Fla. Stat. Ann. § 787.06(3) states, “For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.” Pursuant to Fla. Stat. Ann. § 787.06(8),

The degree of an offense shall be reclassified as follows if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of an offense under this section:

- (a) A felony of the second degree shall be reclassified as a felony of the first degree.
- (b) A felony of the first degree shall be reclassified as a life felony.

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criminal.” Offenders may also be subject to enhanced penalties provided under Fla. Stat. Ann. § 775.082(9)(a)(3), which states,

If the state attorney determines that a defendant is a prison releasee reoffender . . . the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant . . . must be sentenced as follows:

- a. For a felony punishable by life, by a term of imprisonment for life;
- b. For a felony of the first degree, by a term of imprisonment of 30 years;
- c. For a felony of the second degree, by a term of imprisonment of 15 years; and
- d. For a felony of the third degree, by a term of imprisonment of 5 years.

Pursuant to Fla. Stat. Ann. § 775.082(9)(a)(1),

“Prison releasee reoffender” means any defendant who commits, or attempts to commit:

- . . . .
- d. Sexual battery;
- . . . .
- i. Kidnapping;
- . . . .
- o. Any felony that involves the use or threat of physical force or violence against an individual; . . . ; [or]
- r. Any felony violation of s. 790.07 [Persons engaged in criminal offense, having weapons], s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], s. 827.03 [Abuse, aggravated abuse, and neglect of a child; penalties], s. 827.071 [Sexual performance by a child; penalties], or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties]; within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.

Prison release reoffenders “shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release” and “must serve 100 percent of the court-imposed sentence.” Fla. Stat. Ann. § 775.082(9)(b).

<sup>8</sup> Pursuant to Fla. Stat. Ann. § 775.082(3)(b)(1) (Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison), “A person who has been convicted of any other designated felony may be punished as follows . . . . For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.”

Fla. Stat. Ann. § 787.06(4)(a) prohibits any “parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking.” A conviction under Fla. Stat. Ann. § 787.06(4)(a) is punishable as a life felony by a term of imprisonment up to life<sup>9</sup> and a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 787.06(4)(a), 775.082(3)(b)(1), 775.083(1)(a). Pursuant to Fla. Stat. Ann. § 787.06(4)(b),

Any person who, for the purpose of committing or facilitating an offense under this section, permanently brands, or directs to be branded, a victim of an offense under this section commits a second degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, the term “permanently branded” means a mark on the individual’s body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure.

Pursuant to Fla. Stat. Ann. § 787.06(7), “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.<sup>10</sup>

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

Florida has several statutes that specifically criminalize CSEC, including the following:

1. Fla. Stat. Ann. § 800.04(4)(a)(2) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) provides that:

(a) A person commits lewd or lascivious battery by:

....

- (2) Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

A conviction under Fla. Stat. Ann. § 800.04(4) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 800.04(4)(b),<sup>11</sup> 775.082(3)(d), 775.083(1)(b).

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<sup>9</sup> See *infra* Section 6 for punishments of life felonies prior to October 1, 2014.

<sup>10</sup> See *infra* Components 2.8, 3.4 and 4.2 for discussion of the Florida Contraband Forfeiture Act.

<sup>11</sup> Pursuant to Fla. Stat. Ann. § 800.04 (4)(c),

A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if the person is an offender 18 years of age or older who commits lewd or lascivious battery and was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or s. 847.0135(5);
2. Section 787.01(3)(a)2. or 3.;
3. Section 787.02(3)(a)2. or 3.;
4. Chapter 794, excluding s. 794.011(10);
5. Section 825.1025;
6. Section 847.0135(5); or

2. Fla. Stat. Ann. § 787.01(3)(a) (Kidnapping; kidnapping of child under age 13, aggravating circumstances) states,

A person who commits the offense of kidnapping<sup>12</sup> upon a child under the age of 13 and who, in the course of committing the offense, commits one or more of the following:

1. Aggravated child abuse, as defined in s. 827.03;
  2. Sexual battery, as defined in chapter 794, against the child;
  3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties];
  4. A violation of former s. 796.03 [Procuring person under age of 18 for prostitution] or s. 796.04 [Forcing, compelling, or coercing another to become a prostitute], relating to prostitution, upon the child; or
  5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151 [Hiring and employing; infliction of pain or suffering; penalty],
  6. A violation of s. 787.06(3)(g), relating to human trafficking,
- commits a life felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 787.01(3)(a) is punishable as a life felony by imprisonment up to life and a possible fine not to exceed \$15,000.<sup>13</sup> Fla. Stat. Ann. §§ 787.01(3)(a), 775.082(3)(a)(3), 775.083(1)(a).

3. Fla. Stat. Ann. § 787.02(3)(a) (False imprisonment; false imprisonment<sup>14</sup> of child under age 13, aggravating circumstances) states,

A person who commits the offense of false imprisonment upon a child under the age of 13 and who, in the course of committing the offense, commits any offense enumerated in subparagraphs 1–5, commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

1. Aggravated child abuse, as defined in s. 827.03;
2. Sexual battery, as defined in chapter 794, against the child;

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7. This section.

<sup>12</sup> Pursuant to Fla. Stat. Ann. § 787.01(1)(a),

The term “kidnapping” means forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to:

1. Hold for ransom or reward or as a shield or hostage.
2. Commit or facilitate commission of any felony.
3. Inflict bodily harm upon or to terrorize the victim or another person.
4. Interfere with the performance of any governmental or political function.

<sup>13</sup> For punishments of life felonies prior to July 1, 1995 see Fla. Stat. Ann. § 775.082(3)(a)(1)–(3).

<sup>14</sup> Fla. Stat. Ann. § 787.02(1) (False imprisonment; false imprisonment of child under age 13, aggravating circumstances) states,

- (a) The term “false imprisonment” means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.
- (b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

3. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, in violation of s. 800.04 or s. 847.0135(5);
4. A violation of s. former 796.03 or s. 796.04, relating to prostitution, upon the child;
5. Exploitation of the child or allowing the child to be exploited, in violation of s. 450.151 [Hiring and employing; infliction of pain or suffering; penalty]; or
6. A violation of s. 787.06(3)(g) relating to human trafficking.

A conviction under Fla. Stat. Ann. § 787.02(3)(a) is punishable as a first degree felony by imprisonment up to 30 years, or when the statute permits “a term of years not exceeding life imprisonment” and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(b)(1), 775.083(1)(b).

4. Fla. Stat. Ann. § 827.071(2), (3) (Sexual performance by a child; penalties) states,

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance<sup>15</sup> or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes<sup>16</sup> any performance which includes sexual conduct<sup>17</sup> by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 827.071(2), (3) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(b).

5. Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) makes it a crime if a person

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
- (d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct

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<sup>15</sup> Fla. Stat. Ann. § 827.071(1)(i) states, “‘Sexual performance’ means any performance or part of thereof which includes sexual conduct by a child of less than 18 years of age.” Fla. Stat. Ann. § 827.071(1)(c) defines “performance” as “any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.”

<sup>16</sup> Fla. Stat. Ann. § 827.071(1)(d) states, “‘Promote’ means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or to agree to do the same.”

<sup>17</sup> Fla. Stat. Ann. § 827.071(1)(h) states,

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed . . . .

of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

6. Fla. Stat. Ann. § 847.0145(1) (Selling or buying of minors; penalties) makes it a crime if

[a]ny parent, legal guardian, or other person having custody or control of a minor<sup>18</sup> who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, either:

(a) With knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;<sup>19</sup>

or

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

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Fla. Stat. Ann. § 847.0145(2) also makes it a crime if a person

purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor, either:

(a) With knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct;

(b) With intent to promote either:

1. The engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

2. The rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

....

A conviction under this statute is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 847.0145, 775.082(3)(b)(1), 775.083(1)(b).

Sexual offense laws that are not expressly commercial but that may apply in cases of CSEC include:

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<sup>18</sup> Pursuant to Fla. Stat. Ann. § 847.001(8) (Definitions), “Minor” means any person under the age of 18 years.”

<sup>19</sup> Pursuant to Fla. Stat. Ann. § 847.001(16) (Definitions),

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

1. Fla. Stat. Ann. § 787.025(2) (Luring or enticing a child) states,

(a) A person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person 18 years of age or older who, having been previously convicted of a violation of paragraph (a), intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, s. 800.04, or s. 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 787.025(2)(a) is punishable as a first degree misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$1,000. Fla. Stat. Ann. §§ 775.082(4)(a), 775.083(1)(d). A conviction under Fla. Stat. Ann. § 787.025(b), (c) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

2. Fla. Stat. Ann. § 847.0135(3)–(4) (Computer pornography; traveling to meet minor; penalties) makes it unlawful to use a computer or other similar device to solicit a minor for illegal sexual acts and states in part,

(3) Certain uses of computer services or devices prohibited. — Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800 [Lewdness; Indecent exposure], or chapter 827 [Abuse of children], or to otherwise engage in any unlawful sexual conduct<sup>20</sup> with a child or with another person believed by the person to be a child; or

(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

(4) Traveling to meet a minor.—Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another

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<sup>20</sup> Fla. Stat. Ann. § 847.001(16) (Definitions) provides the same definition of sexual conduct as the definition that appears in Fla. Stat. Ann. § 827.071(h). See *supra* note 17, for the definition of sexual conduct.



person believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- (a) Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child; or
- (b) Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0135(3), (4) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(b). In some circumstances, a conviction under Fla. Stat. Ann. § 847.0135(3) may be punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

3. Fla. Stat. Ann. § 847.012(4) (Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty) states, “A person may not knowingly use a minor in the production of any material described in subsection (3),<sup>21</sup> regardless of whether the material is intended for distribution to minors or is actually distributed to minors.” Further, Fla. Stat. Ann. § 847.012(5) states: “An adult may not knowingly distribute to a minor on school property,<sup>22</sup> or post on school property, any material<sup>23</sup> described in subsection (3).” Under Fla. Stat. Ann. § 847.012(6), a conviction of any provision of section 847.012 is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000.<sup>24</sup>
4. Fla. Stat. Ann. § 794.05(1) (Unlawful sexual activity with certain minors) states in part, “A person 24 years of age or older who engages in sexual activity<sup>25</sup> with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla.

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<sup>21</sup> Fla. Stat. Ann. § 847.012(3) states,

A person may not knowingly sell, rent, or loan for monetary consideration to a minor:

- (a) Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- (b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in s. 847.001 [Definitions], explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and that is harmful to minors.

<sup>22</sup> “[S]chool property’ means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.” Fla. Stat. Ann. § 847.012(5)

<sup>23</sup> Pursuant to Fla. Stat. Ann. § 847.012(5) materials do “not apply to the distribution or posting of school-approved instructional materials that by design serve as a major tool for assisting in the instruction of a subject or course by school officers, instructional personnel, administrative personnel, school volunteers, educational support employees, or managers . . . .”

<sup>24</sup> See Fla. Stat. Ann. §§ 775.082, 775.083, and 775.084 for the available punishment provisions.

<sup>25</sup> “As used in this section, ‘sexual activity’ means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.” Fla. Stat. Ann. § 794.05(1).

Stat. Ann. § 794.05(1) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(c), 775.083(1)(b).

5. Fla. Stat. Ann. § 800.04(4)(a)(4), (5), (6) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) states,

(4) Lewd or lascivious battery.

(a) A person commits lewd or lascivious battery

1. Engaging in sexual activity<sup>26</sup> with a person 12 years of age or older but less than 16 years of age; or
2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in . . . prostitution, or any other act involving sexual activity.

....

(5) Lewd or lascivious molestation.

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in s. 775.082(3)(a)4.

(c)

....

2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

....

(6) Lewd or lascivious conduct.

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.

(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

....

An offender's first conviction under Fla. Stat. Ann. § 800.04(5)(b) is punishable as a life felony by "(I) A term of imprisonment for life; or (II) A split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life . . ." <sup>27</sup> Fla. Stat. Ann. § 775.082(3)(a)(4.a). A subsequent conviction under Fla. Stat. Ann. § 800.04(5)(b) is punishable as a life felony by life imprisonment. <sup>28</sup> Fla. Stat. Ann. § 775.082(3)(a)(4.b). A conviction under Fla. Stat. Ann. § 800.04(6)(b) is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(b).

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<sup>26</sup> Pursuant to Fla. Stat. Ann. § 800.04(1)(a), "'Sexual activity' means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose."

<sup>27</sup> For punishments of life felonies prior to September 1, 2005 see Fla. Stat. Ann. § 775.082(3).

<sup>28</sup> For punishments of life felonies prior to July 1, 2008 see Fla. Stat. Ann. § 775.082(3).

1.3 *Prostitution statutes refer to the sex trafficking statute to acknowledge the intersection of prostitution with trafficking victimization.*

Fla. Stat. Ann. § 796.01 (Offenses by adults involving minors; intent) refers to the human trafficking law to clarify that commercially sexually exploited minors are victims of sex trafficking. It states,

It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter be prosecuted under other laws of this state, such as, but not limited to, s. 787.06 [Human trafficking], chapter 794 [Sexual battery], chapter 800 [Lewdness; Indecent Exposure], s. 810.145 [Video voyeurism], chapter 827 [Abuse of children], and chapter 847 [Obscenity]. The Legislature finds that prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.

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.*

Florida's Racketeering Influenced and Corrupt Organization (RICO) statute is codified at Fla. Stat. Ann. § 895.03 (Prohibited activities and defense) which states,

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

Both human trafficking and CSEC offenses constitute predicate racketeering acts. Fla. Stat. Ann. § 895.02(8)<sup>29</sup> (Definitions), defines "racketeering activity" in part as the following:

to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

- (a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

....

26. Chapter 787, relating to kidnapping or human trafficking.

....

29. Former section 796.03 [Procuring person under age of 18 for prostitution], former s. 796.035 [Selling or buying of minors into prostitution; penalties], s. 796.04 [Forcing, compelling, or coercing another to become a prostitute], s. 796.05 [Deriving support from the

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<sup>29</sup> The text of Fla. Stat. Ann. § 895.02 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 549 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

proceeds of prostitution], or s. 796.07 [Prohibiting prostitution and related acts], relating to prostitution.

....

36. Section 827.071 [Relating to commercial sexual exploitation of children].

....

43. Section 847.011 [Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty], s. 847.012 [Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty], s. 847.013 [Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations], s. 847.06 [Obscene matter; transportation into state prohibited; penalty], or s. 847.07 [Wholesale promotion of obscene materials; penalties], relating to obscene literature and profanity.

“Pattern of racketeering activity” is defined in Fla. Stat. Ann. § 895.02(7) as,

[E]ngaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after Oct. 1, 1977, and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

Defendants convicted under the racketeering statute also face stiff penalties. Pursuant to Fla. Stat. Ann. § 895.04(1) (Criminal penalties and alternative fine), “[a]ny person convicted of engaging in activity in violation of the provisions of s. 895.03 is guilty of a felony of the first degree and shall be punished as provided in s. 775.082, s. 775.083, or s. 775.084.” Fla. Stat. Ann. § 895.04(2) (Criminal penalties and alternative fine) states in part,

In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of s. 895.03 [Prohibited activities and defenses], through which the person derived pecuniary value,<sup>30</sup> or by which he or she caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

Fla. Stat. Ann. § 895.05(2)(a) (Civil remedies), which provides for civil asset forfeiture, states, “All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of ss. 895.01–895.05 is subject to civil forfeiture to the state.” In distributing property forfeited under Fla. Sta. Ann. § 895.05, Fla. Stat. Ann. § 895.09<sup>31</sup> (Disposition of funds obtained through forfeiture proceedings), prioritizes payment of victim restitution after satisfying existing claims on the property and court fees. It states,

(1) A court entering a judgment of forfeiture in a proceeding brought pursuant to s. 895.05 shall retain jurisdiction to direct the distribution of any cash or of any cash proceeds realized from the forfeiture and

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<sup>30</sup> Pecuniary value is defined in Fla. Stat. Ann. § 895.04(4) for the purposes of subsection (2) as “(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or (b) Any other property or service that has a value in excess of \$ 100.”

<sup>31</sup> The text of Fla. Stat. Ann. § 895.09 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 549 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

disposition of the property. The court shall direct the distribution of the funds in the following order of priority:

- (a) Any statutory fees to which the clerk of the court may be entitled.
- (b) Any claims against the property by persons who have previously been judicially determined to be innocent persons, pursuant to s. 895.05(2)(e), and whose interests are preserved from forfeiture by the court and not otherwise satisfied. Such claims may include any claim by a person appointed by the court as receiver pending litigation.
- (c) Any claim by the Board of Trustees of the Internal Improvement Trust Fund on behalf of the Internal Improvement Trust Fund or the trust fund used pursuant to s. 253.03(12), not including administrative costs of the Department of Environmental Protection previously paid directly from the Internal Improvement Trust Fund in accordance with legislative appropriation.
- (d) Any claims for restitution by victims of the racketeering activity . . . .

**Legal Components:**

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

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

Fla. Stat. Ann. § 787.06(3) (Human trafficking) can apply to buyers of commercial sex with minors following federal precedent through the term “obtain.”<sup>32</sup> Pursuant to Fla. Stat. Ann. § 787.06(3), a human trafficking offense is committed by “[a]ny person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking . . . .” Fla. Stat. Ann. § 787.06(2)(d) defines “[h]uman trafficking” as “transporting, soliciting, recruiting, harboring, enticing, maintaining, or obtaining<sup>33</sup> another

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<sup>32</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

<sup>33</sup> While Fla. Stat. Ann. § 787.06(2)(g) (Human trafficking) provides that “[o]btain” means, in relation to labor or services, to secure performance thereof,” the term “obtain” is not defined in relation to “commercial sexual activity.”

person for the purpose of exploitation,” and Fla. Stat. Ann. § 787.06(3)(g) makes it a crime to engage in human trafficking “[f]or commercial sexual activity<sup>34</sup> in which any child under the age of 18 . . . is involved . . . .”

2.1.1 Recommendation: Amend Fla. Stat. Ann. § 787.06 (Human trafficking) to clarify that buyer conduct is included as a violation of Fla. Stat. Ann. § 787.06.

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

Fla. Stat. Ann. § 800.04(4)(b)(2) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), in part, may reach some buyers, providing that a person commits the offense of a lewd or lascivious battery by:

Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

A buyer who purchases information about a minor for the purpose of engaging in sexual conduct with the minor may be prosecuted under Fla. Stat. Ann. § 847.0135(2)(d) (Computer pornography; traveling to meet minor; penalties) which makes it a crime if a person “[b]uys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.” A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

Several other sexual offense statutes could be used to prosecute certain buyers of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of the child and do not refer to the human trafficking statute.<sup>35</sup>

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

Fla. Stat. Ann. § 796.07(2)(f) and (i) (Prohibiting prostitution and related acts) do not distinguish between the offense of soliciting a minor and the offense of soliciting an adult for commercial sex acts. Fla. Stat. Ann. § 796.07(2)(f) states, “It is unlawful . . . (f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation,” and Fla. Stat. Ann. § 796.07(2)(i) makes it a crime to “[t]o purchase the services of any person engaged in prostitution.” However, Fla. Stat. Ann. § 796.001 (Offenses by adults involving minors; intent) states,

It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter be prosecuted under other laws of this state, such as, but not limited to, s. 787.06 [Human trafficking], chapter 794 [Sexual battery], chapter 800 [Lewdness; Indecent Exposure], s. 810.145 [Video voyeurism], chapter 827 [Abuse of children], and chapter 847 [Obscenity]. The Legislature finds that prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.

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<sup>34</sup> Fla. Stat. Ann. § 787.06(2)(b) defines “commercial sexual activity” as “any violation of chapter 796 or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.”

<sup>35</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

Fla. Stat. Ann. § 800.04(4)(b)(2) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), may reach solicitation of minors under 16 by buyers by providing that a person commits the offense of a lewd or lascivious battery by “encouraging, forcing, or enticing any person less than 16 years of age to engage in . . . prostitution . . . .”

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

A human trafficking conviction under Fla. Stat. Ann. § 787.06(3)(g) is punishable as a life felony by a term of imprisonment for life and a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 787.06(3)(g), 775.082(3)(a)(6),<sup>36</sup> 775.083(1)(a). A human trafficking conviction under Fla. Stat. Ann. § 787.06(3)(f) is punishable as a first degree felony punishable by up to life imprisonment and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 787.06(3)(f), 775.082(3)(b)(1), 775.083(1)(b).

If applicable to buyers, Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) is a second degree felony punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(b). Additionally, a conviction under Fla. Stat. Ann. § 847.0135(2) or (3) (Computer pornography; traveling to meet minor; penalties)<sup>37</sup> is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c). A conviction under subsection (4) of the previous statute, which addresses traveling to meet a minor, is punishable as a second degree by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(b).

Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) may be used to prosecute buyers who buy “any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of . . . soliciting sexual conduct of or with any minor, or the visual depiction of such conduct.” A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

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

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<sup>36</sup> See *infra* Section 6 for punishments of life felonies prior to Oct. 1, 2014.

<sup>37</sup> See *supra* Component 1.2 for discussion of relevant provisions.

<sup>38</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>39</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>40</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.*

Fla. Stat. Ann. § 847.0135(2)(d) (Computer pornography; traveling to meet minor; penalties), applies to buyers who buy “any notice, statement, or advertisement of any minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor . . .” Fla. Stat. Ann. § 847.0135(2)(d) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000, and is subject to enhanced penalties for repeat offenders pursuant to Fla. Stat. Ann. § 775.084 (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms). Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

Although not expressly commercial, Fla. Stat. Ann. § 847.0135(3) (Computer pornography; traveling to meet minor; penalties) reaches the conduct of buyers who use the Internet to solicit or purchase sex with minors.<sup>41</sup> Fla. Stat. Ann. § 847.0135(3)(a) states, “Any person who knowingly uses a computer online service [or] Internet service . . . [to] [s]educate, solicit, lure, or entice” or attempt to do the foregoing to secure a child “to commit any illegal act described in chapter 794 [Sexual battery], chapter 800 [Lewdness; Indecent exposure], or chapter 827 [Abuse of children], or to otherwise engage in any unlawful sexual conduct . . .” A conviction under Fla. Stat. Ann. § 847.0135(3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c). However, pursuant to Fla. Stat. Ann. § 847.0135(3), “[a]ny person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree,” punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(b).

Pursuant to Fla. Stat. Ann. § 847.0135(4)(a),<sup>42</sup> it is a second degree felony for a person to travel in or to Florida to engage in certain illegal acts after initially attempting to solicit the child via the Internet or through other specified electronic methods.

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

Fla. Stat. Ann. § 787.06(9)<sup>43</sup> (Human trafficking) prohibits a mistake of age defense, providing that, “ignorance of the victim’s age, the victim’s misrepresentation of his or her age, or the defendant’s bona fide belief of the victim’s age cannot be raised as a defense.”

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<sup>39</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>40</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(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); *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>41</sup> *See supra* Component 1.2 for discussion of relevant provisions.

<sup>42</sup> *See supra* Component 1.2 for discussion of relevant provisions.

<sup>43</sup> *See supra* note 2.

However, Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) does not expressly prohibit a defense based on mistake of age.

2.6.1 Recommendation: Amend Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) to expressly prohibit a defendant charged with this crime from raising mistake of age as a defense.

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

Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) only applies to CSEC crimes against children under 16. Therefore, buyers whose victims are 16 and 17 face a substantially lower penalty under Fla. Stat. Ann. § 796.07(2)(f) or (i) (Prohibiting prostitution and related acts), which do not distinguish between the offense of soliciting a minor and the offense of soliciting an adult for commercial sex acts.<sup>44</sup> First offenses under Fla. Stat. Ann. § 796.07(2)(f) are punishable as first degree misdemeanors and first offenses under Fla. Stat. Ann. § 796.07(2)(i) are punishable as second degree misdemeanors while violations of Fla. Stat. Ann. § 800.04(4)(b) are second degree felonies. Fla. Stat. Ann. § 796.07(4)(a)(1), Fla. Stat. Ann. § 800.04(4)(b).

2.7.1 Recommendation: Amend Fla. Stat. Ann. § 800.04(4)(b) (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age) to make the offense applicable to all offenses involving a minor victim under the age of 18 or enact a law that provides sufficiently high base penalty for buying sex with any minor under the age of 18.

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

Buyers are subject to fines, restitution, and asset forfeiture for many of the offenses for which they can be prosecuted. If convicted under Fla. Stat. Ann. § 800.04(4)(b) (Lewd and lascivious offenses committed upon or in the presence of persons less than 16 years of age), the offender faces a possible fine not to exceed \$15,000. Fla. Stat. Ann. §§ 775.083(1)(b), 800.04(4)(b). A violation of Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minors; penalties) is subject to a fine not to exceed \$5,000. Fla. Stat. Ann. § 775.083(1)(b).

Buyers convicted of sexual offenses that are not expressly commercial also may be required to pay fines.<sup>45</sup>

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<sup>44</sup> However, age-neutral prostitution laws should not be used to prosecute offenses involving a minor victim pursuant to Fla. Stat. Ann. § 796.001 (Offenses by adults involving minors; intent) which states,

It is the intent of the Legislature that adults who involve minors in any behavior prohibited under this chapter be prosecuted under other laws of this state, such as, but not limited to, s. 787.06 [Human trafficking], chapter 794 [Sexual battery], chapter 800 [Lewdness; Indecent Exposure], s. 810.145 [Video voyeurism], chapter 827 [Abuse of children], and chapter 847 [Obscenity]. The Legislature finds that prosecution of such adults under this chapter is inappropriate since a minor is unable to consent to such behavior.

<sup>45</sup> See *supra* Component 1.2 for discussion of relevant provisions.

If convicted under Fla. Stat. Ann. § 787.06(3)(f) or (g) (Human trafficking), a buyer faces a fine of up to \$10,000 or \$15,000. Fla. Stat. Ann. § 775.083(1)(a). Also, Fla. Stat. Ann. § 787.06(7) states, “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. However, even if Fla. Stat. Ann. § 787.06(3) is not applicable, Fla. Stat. Ann. §§ 932.701–932.7062 (Florida Contraband Forfeiture Act) can also be used to impose significant penalties on the buyer of commercial sex acts with minors if the buyer is charged with any felony. Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions) defines “contraband” in part to mean the following:

....

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

....

Pursuant to Fla. Stat. Ann. § 932.704(8)<sup>46</sup> (Forfeiture proceedings), “Upon proof beyond a reasonable doubt that the contraband article was being used in violation of the Florida Contraband Forfeiture Act, the court shall order the seized property forfeited to the seizing law enforcement agency . . . .” Seizure of the forfeitable property is governed by Fla. Stat. Ann § 932.703.<sup>47</sup>

Pursuant to Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property),

It is unlawful:

- (1) To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.
- (2) To conceal or possess any contraband article.
- (3) To use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.
- (4) To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.
- (5) To acquire real or personal property by the use of proceeds obtained in violation of the Florida Contraband Forfeiture Act.

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<sup>46</sup> The text of Fla. Stat. Ann. § 932.704 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1044 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

<sup>47</sup> The text of Fla. Stat. Ann. § 932.703 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1044 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

Subject to the provisions in Fla. Stat. Ann. § 932.703 (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

A contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the Florida Contraband Forfeiture Act. A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701 . . . .<sup>48</sup>

Pursuant to Fla. Stat. Ann. § 794.09 (Forfeiture of retirement benefits),

The retirement benefits of a person convicted of a felony committed on or after October 1, 2008, under this chapter [sexual battery] are subject to forfeiture in accordance with s. 112.3173 or s. 121.091 if the person is a public officer or employee when the offense occurs; the person commits the offense through the use or attempted use of power, rights, privileges, duties, or position of the person's public office or employment position; and the victim is younger than 18 years of age when the offense occurs.

Fla. Stat. Ann. § 775.089(1)(a) (Restitution) states in part,

In addition to any punishment, the court shall order the defendant to make restitution to the victim<sup>49</sup> for:

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<sup>48</sup> Pursuant to Fla. Stat. Ann. § 932.703(1)(a) (Forfeiture of contraband article; exceptions), seizure is also permissible when one or more of the following circumstances apply:

1. The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure;
2. The owner of the property is a fugitive from justice or is deceased;
3. An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701 and the owner of the property had actual knowledge of the criminal activity. Evidence that an owner received written notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Florida Contraband Forfeiture Act on a prior occasion by the arrested person, may be used to establish actual knowledge;
4. The owner of the property agrees to be a confidential informant as defined in s. 914.28. The seizing agency may not use the threat of property seizure or forfeiture to coerce the owner of the property to enter into a confidential informant agreement. The seizing agency shall return the property to the owner if criminal charges are not filed against the owner and the active criminal investigation ends or if the owner ceases being a confidential informant, unless the agency includes the final forfeiture of the property as a component of the confidential informant agreement; or
5. The property is a monetary instrument. For purposes of this subparagraph, the term "monetary instrument" means coin or currency of the United States or any other country; a traveler's check; a personal check; a bank check; a cashier's check; a money order; a bank draft of any country; an investment security or negotiable instrument in bearer form or in other form such that title passes upon delivery; a prepaid or stored value card or other device that is the equivalent of money and can be used to obtain cash, property, or services; or gold, silver, or platinum bullion or coins.

<sup>49</sup> Fla. Stat. Ann. § 775.089(1)(c) defines "victim" for this section and "any provision of law relating to restitution" as "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, the victim's next of kin if the victim is deceased as a result of the offense, and the victim's trade association if the offense is a violation of s. 540.11(3)(a)3, involving the sale, or possession for purposes of sale, of

1. Damage or loss caused directly or indirectly by the defendant's offense; and
  2. Damage or loss related to the defendant's criminal episode,
- unless it finds clear and compelling reasons not to order such restitution. Restitution may be monetary or nonmonetary restitution. The court shall make the payment of restitution a condition of probation in accordance with s. 948.03 . . . .

Pursuant to subsection (2),

- (a) When an offense has resulted in bodily injury to a victim, a restitution order entered under subsection (1) shall require that the defendant:
1. Pay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing.
  2. Pay the cost of necessary physical and occupational therapy and rehabilitation.
  3. Reimburse the victim for income lost by the victim as a result of the offense.
  4. In the case of an offense which resulted in bodily injury that also resulted in the death of a victim, pay an amount equal to the cost of necessary funeral and related services.
- (b) When an offense has not resulted in bodily injury to a victim, a restitution order entered under subsection (1) may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.

Pursuant to Fla. Stat. Ann. § 775.089 (Restitution), restitution is mandatory and may be made directly to the victim. Fla. Stat. Ann. § 775.089(1)(a)(2) states,

An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund . . . .

This language suggests that a restitution order may be made either to the Trust Fund or to the victim. Additionally, pursuant to Fla. Stat. Ann. § 775.089(5), "An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action." Thus, a victim may seek to receive restitution directly.

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

Fla. Stat. Ann. § 827.071(5) (Sexual performance by a child; penalties) states in part,

It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense.

A violation of this statute is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

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physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf."

In addition, Fla. Stat. Ann. § 847.0137(2), (3) (Transmission of pornography by electronic device or equipment prohibited; penalties) states,

(2) Notwithstanding ss. 847.012 [Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty ] and 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty], any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001,<sup>50</sup> to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0137(2) or (3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847(2) (Possession or promotion of certain images of child pornography; reclassification), reclassifies violations of Fla. Stat. Ann. § 827.071 (Sexual performance by a child; penalties), § 847.0135 (Computer pornography; traveling to meet minor; penalties), § 847.0137, or § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) to the next highest felony degree if,

....

(a) The offender possesses 10 or more images of any form of child pornography regardless of content; and

(b) The content of at least one image contains one or more of the following:

1. A child who is younger than the age of 5.
2. Sadoomasochistic abuse involving a child.
3. Sexual battery involving a child.
4. Sexual bestiality involving a child.
5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

In comparison, a federal conviction for possession of child pornography<sup>51</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>52</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>53</sup>

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<sup>50</sup> Fla. Stat. Ann. § 847.001(3) defines “child pornography” as “any image depicting a minor engaged in sexual conduct.”

<sup>51</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>52</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).

- 2.9.1 Recommendation: Amend Fla. Stat. Ann. § 827.071(5) (Sexual performance by a child; penalties) and Fla. Stat. Ann. § 847.0137(2), (3) (Transmission of pornography by electronic device or equipment prohibited; penalties) to increase penalties to reflect the seriousness of the offenses.

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

A buyer convicted under Fla. Stat. Ann. § 787.06(f) or (g) (Human trafficking), or under certain CSEC, child pornography and sex offense provisions, will be required to register as a sexual predator under Fla. Stat. Ann. § 775.21 (The Florida Sexual Predators Act). Pursuant to Fla. Stat. Ann. § 775.21(4)(a),<sup>54</sup>

For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:
  - a. A capital, life, or first-degree felony violation, or any attempt thereof, of . . . s. 794.011 [Sexual battery], s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age], or a violation of a similar law of another jurisdiction; or
  - b. Any felony violation, or any attempt thereof, of . . . s. 787.025(2)(c) [Luring or enticing a child], where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g) [Human trafficking]; former s. 787.06(3)(h) [Human Trafficking]; s. 794.011, excluding s. 794.011(10); s. 794.05 [Unlawful sexual activity with certain minors]; . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age]; . . . or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of . . . ; s. 787.025(2)(c) , where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g) [Human trafficking]; former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; . . . s. 800.04 ; . . . s. 847.0135(6) [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6); s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; . . . or a violation of a similar law of another jurisdiction;
2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and
3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

A buyer convicted under Fla. Stat. Ann. § 787.06(f) or (g) (Human trafficking), or certain CSEC, pornography and sex offense provisions, will also be required to register as a sex offender under Fla. Stat. Ann.

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<sup>53</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>54</sup> The text of Fla. Stat. Ann. § 775.21 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 545 and 1333 during the 118th Regular Session of the Florida Legislature (effective October 1, 2016).

§ 943.0435(2)(a) (Sexual offenders required to register with the department; penalty). Pursuant to Fla. Stat. Ann. § 943.0435(1)(h)1.,<sup>55</sup> a “sexual offender” subject to the registration requirement in subsection (2)(a) is defined as a person who:

- a. (I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction . . . 787.025(2)(c) [Luring or enticing a child], where the victim is a minor; s. 787.06(3)(b), (d), (f) or (g) [Human trafficking]; former s. 787.06(3)(h); s. 794.011 [Sexual battery], excluding s. 794.011(10); s. 794.05 [Unlawful sexual activity with certain minors] . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age] . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6) . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-paragraph . . . .  
 . . . .
- b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;
- c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction . . . s. 787.025(2)(c) [Computer pornography; traveling to meet minor; penalties], where the victim is a minor; s. 787.06(3)(b), (d), (f) or (g) [Human trafficking]; former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05 [Unlawful sexual activity with certain minors] . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age] . . . 847.0135, excluding s. 847.0135(6) [Computer pornography; traveling to meet minor; penalties] . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph . . . .  
 . . . .

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<sup>55</sup> The text of Fla. Stat. Ann. § 943.0435 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 545 and 1333 during the 118th Regular Session of the Florida Legislature (effective October 1, 2016).



**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.

**Legal Analysis:**

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

There are many crimes within the Florida statutes that may be applicable to traffickers. For ease of reading, these criminal provisions and corresponding penalties have been organized into a chart. Many of the crimes are subject to enhanced penalties.<sup>56</sup>

| Offense <sup>57</sup>   | Crime classification                                | Penalty (under Fla. Stat. Ann. § 775.082 <sup>58</sup> )   |
|---|---|--|
| Fla. Stat. Ann. § 787.01(3)(a)<br>(Kidnapping; kidnapping of child under age 13, aggravating circumstances)                               | Life felony   | “a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment”   |
| Fla. Stat. Ann. § 787.02(3)(a) <sup>59</sup><br>(False imprisonment; false imprisonment of child under age 13, aggravating circumstances) | First Degree Felony punishable by life imprisonment | Imprisonment up to 30 years “or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment”                         |
| Fla. Stat. Ann. § 787.06(3)(g)<br>(Human trafficking)   | Life felony   | “a term of imprisonment for life”  |
| Fla. Stat. Ann. § 787.06(3)(f)<br>(Human trafficking)   | First degree felony                                 | “Imprisonment up to 30 years “or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment” if victim is under 18” |
| Fla. Stat. Ann. § 787.06(4)<br>(Human trafficking; sale of minor by parent, legal guardian, person with custody)                          | Life felony   | “a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment”   |

<sup>56</sup> See *supra* note 7.

<sup>57</sup> See *supra* Components 1.1 and 1.2 for discussion of relevant provisions.

<sup>58</sup> See *infra* Section 6 for punishments of life felonies prior to Oct. 1, 2014.

<sup>59</sup> See *supra* note 14.

|  |   |   |
|--|---|---|
| Fla. Stat. Ann. § 800.04(4)<br>(Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)        | Second Degree Felony                              | Imprisonment up to 15 years                                     |
| Fla. Stat. Ann. § 827.071(2)–(4)<br>(Sexual performance by a child; penalties)   | Second Degree Felony                              | Imprisonment up to 15 years                                     |
| Fla. Stat. Ann. § 847.012(4), (6)<br>(Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty) | Third Degree Felony                               | Imprisonment up to 5 years                                      |
| Fla. Stat. Ann. § 847.0135(2)–(4)<br>(Computer pornography; traveling to meet minor; penalties)  | 1) Second Degree Felony<br>2) Third Degree Felony | 1) Imprisonment up to 15 years<br>2) Imprisonment up to 5 years |

Traffickers may face additional penalties pursuant to Fla. Stat. Ann. § 896.101(3) (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity) if they engage in money laundering by doing the following:

- (3) It is unlawful for a person:
  - (a) Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity,<sup>60</sup> to conduct or attempt to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity<sup>61</sup>:
    - 1. With the intent to promote the carrying on of specified unlawful activity; or
    - 2. Knowing<sup>62</sup> that the transaction is designed in whole or in part:
      - a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
      - b. To avoid a transaction reporting requirement or money transmitters’ registration requirement under state law.
  - (b) To transport or attempt to transport a monetary instrument or funds:
    - 1. With the intent to promote the carrying on of specified unlawful activity; or

<sup>60</sup> Fla. Stat. Ann. § 896.101(2)(a) provides,

“Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (g).

<sup>61</sup> Pursuant to Fla. Stat. Ann. § 896.101(2)(g), “specified unlawful activity” means “any ‘racketeering activity’ as defined in s. 895.02.”

<sup>62</sup> Pursuant to Fla. Stat. Ann. § 896.101(2)(h), “knowing” means,

[T]hat a person knew; or, with respect to any transaction or transportation involving more than \$10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

2. Knowing that the monetary instrument<sup>63</sup> or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part:

- a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
- b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law.

(c) To conduct or attempt to conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer, or someone acting under such officer's direction, represents as being derived from, or as being used to conduct or facilitate, specified unlawful activity, when the person's conduct or attempted conduct is undertaken with the intent:

1. To promote the carrying on of specified unlawful activity; or
2. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds or property believed to be the proceeds of specified unlawful activity; or
3. To avoid a transaction reporting requirement under state law.

....

Pursuant to Fla. Stat. Ann. § 896.101(5), a conviction of laundering between \$300–\$19,999.99 in the course of a year is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 896.101(5)(a), 775.082(3)(e), 775.083(1)(c). A conviction of laundering between \$20,000–\$99,999.99 in the course of a year is punishable as a second degree felony by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 896.101(5)(b), 775.082(3)(d), 775.083(1)(b). A conviction of laundering \$100,000 or more in the course of a year is punishable as a first degree felony by imprisonment up to 30 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 896.101(5)(c), 775.082(3)(b), 775.083(1)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA) for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>64</sup> against a minor. 18 U.S.C. § 3559(e)(1).

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

Creating or distributing child pornography is illegal in Florida under several statutes. Fla. Stat. Ann. § 827.071(2), (Sexual performance by a child; penalties) makes it illegal for a trafficker, “knowing the character and content thereof,” to employ, authorize, or induce a child in “to engage in a sexual performance,”<sup>65</sup> or, if the offender is the child's parent, to consent “to the participation by such child in a sexual performance.” Fla. Stat. Ann. § 827.071(3) additionally criminalizes when a trafficker “produces, directs, or promotes<sup>66</sup> any

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<sup>63</sup> Pursuant to Fla. Stat. Ann. § 896.101(2)(e), “monetary instruments” means “coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.”

<sup>64</sup> See *supra* note 38 for the definition of “federal sex offense.”

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

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

performance which includes sexual conduct<sup>67</sup> by a child less than 18 years of age,” while Fla. Stat. Ann. § 827.071(4) makes it illegal for a person to possess 3 or more copies of child pornography “with the intent to promote the child pornography.”<sup>68</sup> A conviction under Fla. Stat. Ann. § 827.071(2)–(4) is punishable as a second degree felony by imprisonment up to 15 years and a possible not to exceed \$10,000. Fla. Stat. Ann. §§ 827.071(2)–(4), 775.082(3)(d), 775.083(1)(b).

Fla. Stat. Ann. § 847.011(1) (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states in part,

(1) (a) Except as provided in paragraph (c), any person . . . who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character [for obscene use, or purporting to be for obscene use or purpose]; . . . or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, commits a misdemeanor of the first degree . . . .

. . . .

(c) A person who commits a violation of paragraph (a) or subsection (2)<sup>69</sup> which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors<sup>70</sup> commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .

Fla. Stat. Ann. § 847.012(4) (Harmful materials; sale or distribution to minors or using minors in production prohibited) provides, “A person may not knowingly use a minor in the production of any material described in

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<sup>67</sup> See *supra* note 17.

<sup>68</sup> See *supra* Component 1.2 for discussion of relevant provisions.

<sup>69</sup> Fla. Stat. Ann. § 847.011(2) states,

Except as provided in paragraph (1)(c) , a person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, . . . photograph, motion picture film, film, . . . containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

<sup>70</sup> Fla. Stat. Ann. § 847.001(6) (Definitions) states,

“Harmful to minors” means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (a) Predominantly appeals to a prurient, shameful, or morbid interest;
- (b) Is patently offensive to the prevailing standards in the adult community as a whole or with respect to what is suitable material or conduct for minors; and
- (c) Taken as a whole, is without serious literary, artistic, political or scientific value for minors.

subsection (3),<sup>71</sup> regardless of whether the material is intended for distribution to minors or is actually distributed to minors.” A conviction under this section is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 847.012(6), 775.082(3)(e), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847 (Possession or promotion of certain images of child pornography; reclassification) states,

- (2) A violation of s. 827.071, s. 847.0135, s. 847.0137 . . . shall be reclassified to the next higher degree . . . if:
- (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and
  - (b) The content of at least one image contains one or more of the following:
    1. A child who is younger than the age of 5.
    2. Sadomasochistic abuse involving a child.
    3. Sexual battery involving a child.
    4. Sexual bestiality involving a child.
    5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>72</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of child pornography<sup>73</sup> is generally punishable by imprisonment for 5–20 years and a fine not to

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<sup>71</sup> Fla. Stat. Ann. § 847.012(3) states,

- A person may not knowingly sell, rent or loan for monetary consideration to a minor:
- (a) Any picture, photography, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, bestiality, or sadomachistic abuse and which is harmful to minors; or
  - (b) Any book pamphlet, magazine, printed matter however reproduced, or sound recording that contains any matter defined in 847.001, explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct that is harmful to minors.

<sup>72</sup> See *supra* note 38 for the definition of “federal sex offense.”

<sup>73</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).

exceed \$250,000.<sup>74</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>75</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.*

Under Fla. Ann. Stat. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties) it is a crime if

[a] person who:

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
- (d) Buys, sells, receives, exchanges, or disseminates,

any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082 [Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison], s. 775.083 [Fines], or s. 775.084 [Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms] . . . .

A conviction under Fla. Stat. Ann. § 847.0135(2) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

Fla. Stat. Ann. § 847.0135(3)(a), prohibits any person from, among other things, knowingly using a computer or any type of Internet service to do the following:

Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.

A violation of this statute is punishable as a third degree felony. Any person who misrepresents his or her age in the course of violating this subsection may be convicted of a second degree felony punishable by imprisonment up to 15 years and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 775.082(3)(d), 775.083(1)(b).

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<sup>74</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>75</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).

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

The trafficking, CSEC and sex offense statutes under which traffickers may be prosecuted carry possible fines ranging from \$5,000 to \$15,000.<sup>76</sup>

In addition to the fines set out in Fla. Stat. Ann. § 775.083 (Fines), if the trafficker is convicted of laundering money in violation of Fla. Stat. Ann. § 896.101 (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity), he may be fined up to “\$ 250,000 or twice the value of the financial transactions, whichever is greater” for a first time violation and “up to \$ 500,000 or quintuple the value of the financial transactions, whichever is greater” for any subsequent violation. Fla. Stat. Ann. § 896.101(6). Also, the trafficker who violates the money laundering statute may be “liable for a civil penalty of not more than the value of the financial transactions involved or \$ 25,000, whichever is greater.” Fla. Stat. Ann. § 896.101(7).

Traffickers also face asset forfeiture pursuant to the trafficking law. Fla. Stat. Ann. § 787.06(7) (Human trafficking) states, “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. Additionally, Fla. Stat. Ann. §§ 932.701–932.7062 (Florida Contraband Forfeiture Act) can be used to impose significant penalties including forfeiture of contraband<sup>77</sup> on traffickers charged with other felonies.<sup>78</sup> Subject to certain provisions in Fla. Stat. Ann. § 932.703<sup>79</sup> (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

A contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act,<sup>80</sup> or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701 . . . .<sup>81</sup>

Pursuant to Fla. Stat. Ann. § 932.704(8)<sup>82</sup> (Forfeiture proceedings), “Upon proof beyond a reasonable doubt that the contraband article was being used in violation of the Florida Contraband Forfeiture Act, the court shall order the seized property forfeited to the seizing law enforcement agency . . . .” Seizure of the forfeitable property is governed by Fla. Stat. Ann § 932.703.

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<sup>76</sup> See *supra* penalties chart in Component 3.1.

<sup>77</sup> See *supra* Component 2.8 for the definition of “contraband” pursuant to Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions).

<sup>78</sup> Among the statutes for which a trafficker could be charged with a felony are the following: Fla. Stat. Ann. § 787.06 (Human trafficking); § 827.071 (Sexual performance by a child; penalties); § 787.01 (Kidnapping; kidnapping of child under age 13, aggravating circumstances); § 787.02 (False imprisonment; false imprisonment of child under age 13, aggravating circumstances); § 787.025 (Luring or enticing a child); § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); § 827.04 (Contributing to the delinquency or dependency of a child; penalty); § 827.071 (Sexual performance by a child; penalties); § 847.0145 (Selling or buying of minors; penalties).

<sup>79</sup> See *supra* note 47.

<sup>80</sup> See *supra* Component 2.8 for the text of Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property), which describes ways that an offender may violate the Florida Contraband Forfeiture Act.

<sup>81</sup> See *supra* note 48.

<sup>82</sup> See *supra* note 46.

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)<sup>83</sup> provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim for . . .” loss or damage caused or related to the trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Pursuant to Fla. Stat. Ann. § 775.089, restitution is mandatory and may be made directly to the victim. Fla. Stat. Ann. § 775.089(1)(a)(2) states,

An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund . . . .

This language suggests that a restitution order may be made either to the Trust Fund or to the victim. Additionally, pursuant to Fla. Stat. Ann. § 775.089(5), “An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.” Thus, a victim may seek to receive restitution directly.

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

Perpetrators of domestic minor sex trafficking are required to register under Fla. Stat. Ann. § 775.21 (The Florida Sexual Predators Act). Pursuant to Fla. Stat. Ann. § 775.21(4)(a),<sup>84</sup>

For a current offense committed on or after October 1, 1993, upon conviction, an offender shall be designated as a “sexual predator” under subsection (5), and subject to registration under subsection (6) and community and public notification under subsection (7) if:

1. The felony is:
  - a. A capital, life, or first-degree felony violation, or any attempt thereof, of s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances] or s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances], where the victim is a minor, or . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age], or s. 847.0145 [Selling or buying of minors; penalties], or a violation of a similar law of another jurisdiction; or
  - b. Any felony violation, or any attempt thereof, of . . . s. 787.025(2)(c) [Luring or enticing a child], where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g) [Human trafficking]; former s. 787.06(3)(h) [Human Trafficking]; s. 794.011, excluding s. 794.011(10); s. 794.05 [Unlawful sexual activity with certain minors]; . . . s. 800.04; . . . or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of . . . s. 393.135(2) [Sexual misconduct with developmentally disabled; reporting required; penalties]; s. 394.4593(2) [Sexual misconduct prohibited; reporting required; penalties];s. 787.025(2)(c) ,

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<sup>83</sup> See *supra* Component 2.8 for discussion of relevant provisions.

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



where the victim is a minor ; s. 787.06(3)(b), (d), (f), or (g) [Human trafficking]; former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; . . . s. 800.04 ; . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6); s. 895.03 [Prohibited activities and defense] if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; . . . or a violation of a similar law of another jurisdiction;

2. The offender has not received a pardon for any felony or similar law of another jurisdiction that is necessary for the operation of this paragraph; and
3. A conviction of a felony or similar law of another jurisdiction necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Traffickers convicted under Fla. Stat. Ann. § 787.06(g) and (h) or certain CSEC, pornography and sex offense provisions, will also be required to register as a sex offender under Fla. Stat. Ann. § 943.0435(2)(a) (Sexual offenders required to register with the department; penalty). Pursuant to Fla. Stat. Ann. § 943.0435(1)(h)1.,<sup>85</sup> a “sexual offender” subject to the registration requirement in subsection (2) is defined as a person who:

- a. (I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: . . . s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances], s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances] . . . s. 787.06(3)(b), (d), (f) or (g) [Human trafficking]; former s. 787.06(3)(h) ; . . . former s. 796.03 [Procuring person under age of 18 for prostitution]; former s. 796.035 [Selling or buying of minors into prostitution; penalties]; s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age] . . . s. 827.071 [Sexual performance by a child; penalties] . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6) . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph . . . .  
. . . .
- b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;
- c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 787.01 [Kidnapping; kidnapping of child under age 13, aggravating circumstances], s. 787.02 [False imprisonment; false imprisonment of child under age 13, aggravating circumstances] . . . s. 787.06(3)(b), (d), (f) or (g) [Human trafficking]; former s. 787.06(3)(h) . . . former s. 796.03 [Procuring person under age of 18 for prostitution]; former s. 796.035 [Selling or buying of minors into prostitution; penalties]; s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years’ of age] . . . s. 827.071 [Sexual performance by a child; penalties] . . . s. 847.0135 [Computer pornography; traveling to meet minor; penalties], excluding s. 847.0135(6) . . . or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph . . . .

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<sup>85</sup> See *supra* note 55.

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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.*

Fla. Stat. Ann. § 39.806(1)<sup>86</sup> (Grounds for termination of parental rights) states in part,

Grounds for the termination of parental rights may be established under any of the following circumstances:

....

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a significant portion of the child's minority. When determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;
2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084,<sup>87</sup> a habitual violent felony offender as defined in s. 775.084,<sup>88</sup> or a sexual

<sup>86</sup> The text of Fla. Stat. Ann. § 39.806 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 545 during the 118th Regular Session of the Florida Legislature (effective October 1, 2016).

<sup>87</sup> Pursuant to Fla. Stat. Ann. § 775.084(d), the defendant is a violent career criminal when,

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:

....

c. Aggravated child abuse, as described in s. 827.03(2)(a);

....

e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04 or s. 847.0135(5) [Computer pornography; traveling to meet minors; penalties];

....

2. The defendant has been incarcerated in a state prison or a federal prison.
3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:
  - a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
  - b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.
5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

predator as defined in s. 775.21;<sup>89</sup> has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011;<sup>90</sup> or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child. When determining harm, the court shall consider the following factors:

- a. The age of the child.
  - b. The relationship between the child and the parent.
  - c. The nature of the parent's current and past provision for the child's developmental, cognitive, psychological, and physical needs.
  - d. The parent's history of criminal behavior, which may include the frequency of incarceration and the unavailability of the parent to the child due to incarceration.
  - e. Any other factor the court deems relevant.
- (e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:
1. The child continues to be abused, neglected, or abandoned by the parent or parents . . . .
  2. The parent or parents have materially breached the case plan . . . .
  3. The child has been in care for any 12 of the last 22 months and the parents have not substantially complied with the case plan so as to permit reunification . . . .
- (f) The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or

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<sup>88</sup> Pursuant to Fla. Stat. Ann. § 775.084(b), the defendant is a habitual violent felony offender when,

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
  - . . . .
  - b. Sexual battery;
  - . . . .
  - d. Kidnapping;
  - e. Aggravated child abuse;
  - . . . .
2. The felony for which the defendant is to be sentenced was committed:
  - a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
  - b. Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.
4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

<sup>89</sup> See *supra* Component 3.5 for the criteria that define a sexual predator.

<sup>90</sup> See *supra* Component 1.2 for details on the sexual batteries that result in capital, life, or first degree felonies.

physical, mental, or emotional health of the child or the child’s sibling. Proof of a nexus between egregious conduct to a child and the potential harm to the child’s sibling is not required.

....

2. As used in this subsection, the term “egregious conduct” means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(g) The parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse<sup>91</sup> as defined in s. 39.01, or chronic abuse.

....

(m) The court determines by clear and convincing evidence that the child was conceived as a result of an act of sexual battery<sup>92</sup> made unlawful pursuant to s. 794.011, or pursuant to a similar law of another state, territory, possession, or Native American tribe where the offense occurred. It is presumed that termination of parental rights is in the best interest of the child if the child was conceived as a result of the unlawful sexual battery. A petition for termination of parental rights under this paragraph may be filed at any time. The court must accept a guilty plea or conviction of unlawful sexual battery pursuant to s. 794.011 as conclusive proof that the child was conceived by a violation of criminal law as set forth in this subsection.

....

In addition, Fla. Stat. Ann. § 63.089<sup>93</sup> (Proceeding to terminate parental rights pending adoption; hearing; grounds; dismissal of petition; judgment) provides grounds for terminating parental rights based on abandonment, which is defined to include incarceration for an offense for which the parent may be deemed a violent career criminal under Fla. Stat. Ann. § 775.084<sup>94</sup> (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms). It states in part,

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<sup>91</sup> Fla. Stat. Ann. § 39.01(70)(g) (Definitions) defines “[s]exual abuse of a child for purposes of finding a child to be dependent” to include,

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827; or
3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).

The text of Fla. Stat. Ann. § 39.01 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 545 during the 118th Regular Session of the Florida Legislature (effective October 1, 2016).

<sup>92</sup> Under Fla. Stat. Ann. § 794.011(1)(h) (Sexual battery) “‘Sexual battery’ means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.”

<sup>93</sup> The text of Fla. Stat. Ann. § 63.089 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 545 during the 118th Regular Session of the Florida Legislature (effective October 1, 2016).

<sup>94</sup> Pursuant to Fla. Stat. Ann. § 775.084(d)(1)(e) (Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms), “the defendant is a violent career criminal when . . . [t]he defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is . . . Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04 or s. 847.0135(5) [Computer pornography; traveling to meet minors; penalties] . . .”

(4) FINDING OF ABANDONMENT. A finding of abandonment resulting in a termination of parental rights must be based upon clear and convincing evidence that a parent or person having legal custody has abandoned the child in accordance with the definition contained in s. 63.032. A finding of abandonment may also be based upon emotional abuse or a refusal to provide reasonable financial support, when able, to a birth mother during her pregnancy or on whether the person alleged to have abandoned the child, while being able, failed to establish contact with the child or accept responsibility for the child's welfare.

....

(b) The child has been abandoned when the parent of a child is incarcerated on or after October 1, 2001, in a federal, state, or county correctional institution and:

1. The period of time for which the parent has been or is expected to be incarcerated will constitute a significant portion of the child's minority. In determining whether the period of time is significant, the court shall consider the child's age and the child's need for a permanent and stable home. The period of time begins on the date that the parent enters into incarceration;
2. The incarcerated parent has been determined by a court of competent jurisdiction to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, convicted of child abuse as defined in s. 827.03, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of a substantially similar offense in another jurisdiction. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or
3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, termination of the parental rights of the incarcerated parent is in the best interests of the child.

**Legal Components:**

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

**Legal Analysis:**

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

The act of assisting or facilitating the crime of sex trafficking is criminalized by the state human trafficking law. Fla. Stat. Ann. § 787.06(3) (Human trafficking) states, “Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially or by receiving anything of value from participation in a venture<sup>95</sup> that has subjected a person to human trafficking: . . .” A human trafficking offense in violation of § 787.06(3)(g) is punishable as a life felony by up to life imprisonment and a possible fine not to exceed \$15,000, and a human trafficking offense in violation of § 787.06(3)(f) is punishable as a first degree felony by up to life imprisonment and a possible fine not to exceed \$10,000. Fla. Stat. Ann. §§ 787.06(3)(f), (g), 775.082(3)(a)(6), (3)(b)(1.), 775.083(1)(a), (b).

A facilitator may also be guilty of money laundering in violation of Fla. Stat. Ann. § 896.101(3) (Florida money laundering act; definitions; penalties; injunctions; seizure warrants; immunity). Depending on the amount of money the facilitator helped to conceal, the facilitator may be convicted of a first, second, or third degree felony. Fla. Stat. Ann. § 896.101(5). Additional and more substantial fines may be demanded of the facilitator convicted of money laundering. Fla. Stat. Ann. § 896.101(6), (7).<sup>96</sup>

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

Facilitators may be subject to fines for convictions related to their activities. A first degree felony conviction under Fla. Stat. Ann. § 787.06(3)(f) (Human trafficking) is punishable by a possible fine of up to \$10,000 and a life felony conviction under Fla. Stat. Ann. § 787.06(3)(g) is punishable by a possible fine up to \$15,000. Fla. Stat. Ann. § 775.083(1)(a), (b).

Facilitators also face asset forfeiture under the human trafficking law. Fla. Stat. Ann. § 787.06(7) (Human trafficking) states, “[a]ny real property or personal property that was used, attempted to be used, or intended to be used in violation of any provision of this section may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. Additionally, Fla. Stat. Ann. §§ 932.701–932.7062 (Florida Contraband Forfeiture Act) can be used to impose significant penalties including forfeiture of

<sup>95</sup> See *supra* note 3 for definition of “venture”.

<sup>96</sup> See *supra* Component 3.4 for a detailed explanation of the fines specifically applicable to money laundering.

contraband<sup>97</sup> on facilitators charged with felonies. Subject to certain provisions in Fla. Stat. Ann. § 932.703<sup>98</sup> (Forfeiture of contraband article; exceptions), subsection (1)(a) states,

A contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act,<sup>99</sup> or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act. A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701 . . . .<sup>100</sup>

Pursuant to Fla. Stat. Ann. § 932.704(8)<sup>101</sup> (Forfeiture proceedings), “Upon proof beyond a reasonable doubt that the contraband article was being used in violation of the Florida Contraband Forfeiture Act, the court shall order the seized property forfeited to the seizing law enforcement agency . . . .” Seizure of the forfeitable property is governed by Fla. Stat. Ann § 932.703.

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)<sup>102</sup> provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim<sup>103</sup> for . . .” loss or damage caused or related to the trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution . . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Pursuant to Fla. Stat. Ann. § 775.089, restitution is mandatory and may be made directly to the victim. Fla. Stat. Ann. § 775.089(1)(a)(2) states,

An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to chapter 960. Payment of an award by the Crimes Compensation Trust Fund shall create an order of restitution to the Crimes Compensation Trust Fund . . . .

This language suggests that a restitution order may be made either to the Trust Fund or to the victim. Additionally, pursuant to Fla. Stat. Ann. § 775.089(5), “An order of restitution may be enforced by the state, or by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.” Thus, a victim may seek to receive restitution directly.

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<sup>97</sup> See *supra* Component 2.8 for the definition of “contraband” pursuant to Fla. Stat. Ann. § 932.701(2)(a) (Short title; definitions).

<sup>98</sup> See *supra* note 47.

<sup>99</sup> See *supra* Component 2.8 for the text of Fla. Stat. Ann. § 932.702 (Unlawful to transport, conceal, or possess contraband articles or to acquire real or personal property with contraband proceeds; use of vessel, motor vehicle, aircraft, other personal property, or real property), which describes ways that an offender may violate the Florida Contraband Forfeiture Act.

<sup>100</sup> See *supra* note 48.

<sup>101</sup> See *supra* note 46.

<sup>102</sup> See *supra* Component 2.8 for discussion of relevant provisions.

<sup>103</sup> See *supra* note 49.

Facilitators who allow their premises to be used for sex trafficking face loss of their property if it is declared a nuisance under Fla. Stat. Ann. § 823.05 (Places and groups engaged in criminal gang-related activity declared a nuisance; massage establishments engaged in prohibited activity; may be abated and enjoined), which states,

(1) Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, or any house or place of prostitution, assignation, lewdness or place . . . or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a nuisance. All such places or persons shall be abated or enjoined as provided in ss. 60.05<sup>104</sup> and 60.06.<sup>105</sup>

. . . .

(3) A massage establishment as defined in s. 480.033(7)<sup>106</sup> that operates in violation of s. 480.0475<sup>107</sup> or s. 480.0535(2)<sup>108</sup> is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06.

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

There is no specific provision in the Florida statutes that prohibits child sex tourism. Fla. Stat. Ann. § 847.0135(4) (Computer pornography; traveling to meet minor) may apply where a person travels to or within

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<sup>104</sup> Fla. Stat. Ann. § 60.05(4) (Abatement of nuisances) states,

On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are a lien on all personal property found in the place of the nuisance and on the failure of the property to bring enough to pay the costs, then on the real estate occupied by the nuisance. No lien shall attach to the real estate of any other than said persons unless 5 days' written notice has been given to the owner or his or her agent who fails to begin to abate the nuisance within said 5 days. In a proceeding abating a nuisance pursuant to s. 823.10 or s. 823.05, if a tenant has been convicted of an offense under chapter 893 or s. 796.07, the court may order the tenant to vacate the property within 72 hours if the tenant and owner of the premises are parties to the nuisance abatement action and the order will lead to the abatement of the nuisance.

<sup>105</sup> Fla. Stat. Ann. § 60.06 (Abatement of nuisances; enforcement) states, "The court shall make such orders on proper proof as will abate all nuisances mentioned in s. 823.05, and has authority to enforce injunctions by contempt but the jurisdiction hereby granted does not repeal or alter s. 823.01."

<sup>106</sup> Under Fla. Stat. Ann. § 480.033, "'Establishment'" means a site or premises, or portion thereof, wherein a massage therapist practices massage."

<sup>107</sup> Fla. Stat. Ann. § 480.0475 (Massage establishments; prohibited practices) states in part,

(1) A person may not operate a massage establishment between the hours of midnight and 5 a.m. . . .

(2) A person operating a massage establishment may not use or permit the establishment to be used as a principal domicile unless the establishment is zoned for residential use under a local ordinance.

. . . .

<sup>108</sup> Fla. Stat. Ann. § 480.0535(1) (Documents required while working in a massage establishment) states,

In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, a person employed by a massage establishment and any person performing massage therein must immediately present, upon the request of an investigator of the department or a law enforcement officer, valid government identification while in the establishment . . . .



Florida for the purpose of engaging in certain illegal sex acts with children, but does not specifically address sex tourism.

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

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

Promoting or selling child pornography is illegal in Florida under several statutes. Fla. Stat. Ann. § 847.011 (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty) states in part,

- (1) (a) Except as provided in paragraph (c), any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, . . . picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; . . . commits a misdemeanor of the first degree . . . .

. . . .

- (c) A person who commits a violation of paragraph (a) or subsection (2) which is based on materials that depict a minor engaged in any act or conduct that is harmful to minors<sup>109</sup> commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

. . . .

- (4) Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree . . . . Any person who, after having been convicted of violating this subsection, thereafter violates any of its provisions and is convicted thereof is guilty of a felony of the third degree . . . .

A conviction under Fla. Stat. Ann. § 847.011(1)(a), (4) is punishable as a first degree misdemeanor by imprisonment up to 1 year and a possible fine not to exceed \$1,000. Fla. Stat. Ann. §§ 775.082(4)(a), 775.083(1)(d). A conviction under Fla. Stat. Ann. § 847.011(1)(c), (4) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

Facilitators could also be convicted of violating Fla. Stat. Ann. § 847.0135(2)<sup>110</sup> (Computer pornography; traveling to meet minor; penalties), which is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

Fla. Stat. Ann. § 847.0137 (Transmission of pornography by electronic device or equipment prohibited; penalties), states,

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<sup>109</sup> See *supra* note 70.

<sup>110</sup> See *supra* Component 1.2 for discussion of relevant provisions.

(2) Notwithstanding ss. 847.012 [Harmful materials; sale or distribution to minors or using minors in production prohibited; penalty] and 847.0133 [Protection of minors; prohibition of certain acts in connection with obscenity; penalty], any person in this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001,<sup>111</sup> to another person in this state or in another jurisdiction commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Notwithstanding ss. 847.012 and 847.0133, any person in any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography, as defined in s. 847.001, to any person in this state commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A conviction under Fla. Stat. Ann. § 847.0137(2), (3) is punishable as a third degree felony by imprisonment up to 5 years and a possible fine not to exceed \$5,000. Fla. Stat. Ann. §§ 775.082(3)(e), 775.083(1)(c).

Fla. Stat. Ann. § 775.0847(2) (Possession or promotion of certain images of child pornography; reclassification), reclassifies violations of Fla. Stat. Ann. § 827.071 (Sexual performance by a child; penalties), § 847.0135 (Computer pornography; traveling to meet minor; penalties), § 847.0137, and § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) to the next highest felony degree if,

- (2) (a) The offender possesses 10 or more images of any form of child pornography regardless of content; and
- (b) The content of at least one image contains one or more of the following:
  - 1. A child who is younger than the age of 5.
  - 2. Sadomasochistic abuse involving a child.
  - 3. Sexual battery involving a child.
  - 4. Sexual bestiality involving a child.
  - 5. Any movie involving a child, regardless of length and regardless of whether the movie contains sound.

4.4.1 Recommendation: Amend Fla. Stat. Ann. § 847.011 (Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty), Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), and Fla. Stat. Ann. § 847.0137 (Transmission of pornography by electronic device or equipment prohibited; penalties) to enhance the penalties for each offense and reflect the seriousness of the crimes.

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<sup>111</sup> See *supra* note 50.

**Legal Components:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*
- 5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor to engage in the commercial sex act.*
- 5.3 *State law prohibits the 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 *Child sex trafficking 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).*
- 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 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*<sup>112</sup>

All commercially sexually exploited children are identified as victims of child sex trafficking under Florida’s core child sex trafficking offense, Fla. Stat. Ann. § 787.06(3)(g) (Human trafficking). Pursuant to Fla. Stat. Ann. § 787.06(3)(g), force, fraud or coercion is not required when the victim is a minor,<sup>113</sup> and because Fla. Stat. Ann. § 787.06(3) provides criminal liability for buyers of sex with minors, a commercially sexually exploited child need not be under the control of a third party trafficker in order to be identified as a child sex trafficking victim.<sup>114</sup>

- 5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor to engage in the commercial sex act.*

Pursuant to Fla. Stat. Ann. § 787.06(11)<sup>115</sup> (Human trafficking), “A victim’s lack of chastity or the willingness or consent of a victim is not a defense to prosecution under this section if the victim was under 18 years of age at the time of the offense.”<sup>116</sup>

<sup>112</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 all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>113</sup> See *supra* Component 1.1.

<sup>114</sup> See *supra* Component 2.1.

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

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>117</sup>

Fla. Stat. Ann. § 796.07<sup>118</sup> (Prohibiting prostitution and related acts) specifically excludes minors from prosecution for prostitution offenses. Pursuant to Fla. Stat. Ann. § 796.07(2)(e), “It is unlawful . . . [f]or a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution,<sup>119</sup> lewdness, or assignation.”

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

**Child Initially Identified as Dependent-Neglected**

A domestic minor sex trafficking victim is likely to be identified as dependent-neglected and receive specialized services through the Department of Children and Families.<sup>120</sup> Fla. Stat. Ann. § 39.01(2), (10), (15)(g), (70)(g)<sup>121</sup> (Definitions), § 39.001(5) (Purposes and intent; personnel standards and screening).<sup>122</sup>

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<sup>116</sup> While Fla. Stat. Ann. § 794.022(4) (Rules of evidence) provides that “[w]hen consent of the victim is a defense to prosecution under s. 787.06, s. 794.011, or s. 800.04, evidence of the victim’s mental incapacity or defect is admissible to prove that the consent was not intelligent, knowing, or voluntary . . .” this provision would not apply to minor victims in light of the prohibition on a consent defense under Fla. Stat. Ann. § 787.06(11) (Human trafficking). The text of Fla. Stat. Ann. § 794.022 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1294 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

<sup>117</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>118</sup> The text of Fla. Stat. Ann. § 796.07 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 545 during the 118th Regular Session of the Florida Legislature (effective October 1, 2016).

<sup>119</sup> Pursuant to Fla. Stat. Ann. § 796.07(1) (Prohibiting prostitution and related acts),

- (a) “Prostitution” means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.
- (b) “Lewdness” means any indecent or obscene act.
- (c) “Assignation” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.
- (d) “Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

<sup>120</sup> Pursuant to Fla. Stat. Ann. § 409.986(1)(a) (Legislative findings and intent; child protection and child welfare outcomes; definitions), “It is the intent of the Legislature that the Department of Children and Families provide child protection and child welfare services to children through contracting with community-based care lead agencies. The community-based lead agencies shall give priority to the use of services that are evidence-based and trauma-informed.”

<sup>121</sup> See *supra* note 91.

<sup>122</sup> See *infra* Component 5.5 for a full analysis of the definition of “abuse” as it relates to identification of sexually exploited children and Component 5.6 for a full analysis of the definition of “caregiver” and the Department of Children and Families’ jurisdiction to serve domestic minor sex trafficking victims.

I. *Initial custody*

a. Authority for initial custody

Pursuant to Fla. Stat. Ann. § 39.401(1)(b) (Taking a child alleged to be a dependent into custody; law enforcement officers and authorized agents of the department) and Fla. Stat. Ann. § 39.395 (Detaining a child; medical or hospital personnel),<sup>123</sup> a child may be taken into custody by law enforcement, an agent of the department, or medical personnel. Fla. Stat. Ann. § 39.401(1)(b)(1) (Taking a child alleged to be a dependent into custody; law enforcement officers and authorized agents of the department) states,

A child may only be taken into custody:

. . . .

(b) By a law enforcement officer, or an authorized agent of the department, if the officer or authorized agent has probable cause to support a finding:

1. That the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment.

Pursuant to Fla. Stat. Ann. § 39.395(Detaining a child; medical or hospital personnel),

Any person in charge of a hospital or similar institution, or any physician or licensed health care professional treating a child may detain that child without the consent of the parents, caregiver, or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such that returning the child to the care or custody of the parents, caregiver, or legal custodian presents an imminent danger to the child's life or physical or mental health. Any such person detaining a child shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of this chapter and shall make every reasonable effort to immediately notify the parents or legal custodian that such child has been detained . . . .

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<sup>123</sup> A child may also come to the attention of law enforcement through the filing of a mandatory report of abuse pursuant to Fla. Stat. Ann. § 39.201(1) (Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline) which provides,

- (a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).
- (b) Any person who knows, or who has reasonable cause to suspect, that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).
- (c) Any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender,<sup>123</sup> as defined in this chapter, shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

Pursuant to Fla. Stat. Ann. § 394.495(3), (4) (Child and adolescent mental health system of care; programs and services),<sup>124</sup>

- (3) Assessments must be performed by:
  - (a) A professional as defined in s. 394.455(5), (7), (32), (35), or (36);
  - (b) A professional licensed under chapter 491; or
  - (c) A person who is under the direct supervision of a qualified professional as defined in s. 394.455(5), (7), (32), (35), or (36);
- (4) The array of services may include, but is not limited to:
  - ....
  - (p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(70)(g).

b. Placement

If a law enforcement officer takes a domestic minor sex trafficking victim into custody as an alleged dependent,<sup>125</sup> and has “probable cause to believe he or she has been sexually exploited,” Fla. Stat. Ann. § 39.401(2) requires that the minor be delivered to the department. Fla. Stat. Ann. § 39.401(2) states,

If the law enforcement officer takes the child into custody, that officer shall:

- (a) Release the child to:
  - 1. The parent or legal custodian of the child;
  - 2. A responsible adult approved by the court when limited to temporary emergency situations;
  - 3. A responsible adult relative or the adoptive parent of the child’s sibling who shall be given priority consideration over a nonrelative placement when this is in the best interests of the child; or

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<sup>124</sup> The text of Fla. Stat. Ann. § 394.495 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 12 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

<sup>125</sup> A domestic minor sex trafficking victim identified by law enforcement as having offered to engage in or engaged in prostitution should be treated as an alleged dependent pursuant to the definition of a “child who is found to be dependent” under Fla. Stat. Ann. § 39.01(15)(g) and the definition of “sexual abuse of a child” for purposes of finding a child to be dependent” under § 39.01(70)(g). Fla. Stat. Ann. § 39.01 (Proceedings related to children) provides,

(15) “Child who is found to be dependent” means a child who, pursuant to this chapter, is found by the court:

- ....
- (g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.
- ....

....

(70) “Sexual abuse of a child” for purposes of finding a child to be dependent means one or more of the following acts:

- ....
- (g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution or the act of allowing, encouraging, or forcing a child to:
  - 1. Solicit for or engage in prostitution;
  - 2. Engage in a sexual performance, as defined by chapter 827; or
  - 3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).

*See supra* note 91.

4. A responsible adult approved by the department; or
- (b) Deliver the child to an authorized agent of the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is abandoned, abused, or neglected, or otherwise dependent.<sup>126</sup> For such a child for whom there is also probable cause to believe he or she has been sexually exploited, the law enforcement officer shall deliver the child to the department.

....

## II. Process following initial custody of abused/neglected child

### a. Where is the child referred after initial custody?

Victims of domestic minor sex trafficking who have been identified as sexually exploited must be assessed for placement in a safe house or safe foster home pursuant to Fla. Stat. Ann. § 39.524(1)<sup>127</sup> (Safe harbor placement) which states,

Except as provided in s. 39.407 [Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody] or s. 985.801 [Interstate Compact on Juveniles; implementing legislation; legislative findings and policy], a dependent<sup>128</sup> child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01(70)(g)<sup>129</sup> must be assessed for placement in a safe house or safe foster home as provided in s. 409.1678<sup>130</sup> using the initial screening and assessment instruments provided in s. 409.1754(1) [Sexually exploited children; screening and assessment; training; case management; task forces]. If such placement is determined to be appropriate for the child as a result of this assessment, the child may be placed in a safe house or safe foster home, if one is available. However, the child may be placed in another setting, if the other setting is more appropriate to the child's needs or if the safe house or safe foster home is unavailable, as long as the child's behaviors are managed so as not to endanger other children served in that setting.

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<sup>126</sup> See *supra* note 91.

<sup>127</sup> The text of Fla. Stat. Ann. § 39.524 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 12 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

<sup>128</sup> See *supra* note 91.

<sup>129</sup> Pursuant to Fla. Stat. Ann. § 39.01(70)(g),

[S]exual exploitation of a child . . . includes the act of a child offering to engage in or engaging in prostitution or the act of allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827; or
3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).

See *supra* note 91.

<sup>130</sup> Fla. Stat. Ann. § 409.1678(1)(a) (Specialized residential options for children who are victims of sexual exploitation) defines "safe foster home" as "a foster home certified by the department under this section to care for sexually exploited children." Fla. Stat. Ann. § 409.1678(1)(b) defines "safe house" as "a group residential placement certified by the department under this section to care for sexually exploited children." Fla. Stat. Ann. § 409.1678(1)(c) defines "sexually exploited child" as "a child who has suffered sexual exploitation as defined in s. 39.01(70)(g) [Definitions] and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq." The text of Fla. Stat. Ann. § 409.1678 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 12 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

Fla. Stat. Ann. § 409.1754 (Sexually exploited children; screening and assessment; training; case management; task forces) states,

(1) SCREENING AND ASSESSMENT—

(a) The department shall develop or adopt one or more initial screening and assessment instruments to identify, determine the needs of, plan services for, and determine the appropriate placement for sexually exploited children. The department shall consult state and local agencies, organizations, and individuals involved in the identification and care of sexually exploited children when developing or adopting initial screening and assessment instruments. Initial screening and assessment instruments shall assess the appropriate placement of a sexually exploited child, including whether placement in a safe house or safe foster home is appropriate, and shall consider, at a minimum, the following factors:

1. Risk of the child running away.
2. Risk of the child recruiting other children into the commercial sex trade.
3. Level of the child's attachment to his or her exploiter.
4. Level and type of trauma that the child has endured.
5. Nature of the child's interactions with law enforcement.
6. Length of time that the child was sexually exploited.
7. Extent of any substance abuse by the child.

(b) The initial screening and assessment instruments shall be validated, if possible, and must be used by the department, juvenile assessment centers as provided in s. 985.135, and community-based care lead agencies.

(c) The department shall adopt rules that specify the initial screening and assessment instruments to be used and provide requirements for their use and for the reporting of data collected through their use.

(d) The department, the Department of Juvenile Justice, and community-based care lead agencies may use additional assessment instruments in the course of serving sexually exploited children.

(2) TRAINING; CASE MANAGEMENT; TASK FORCES—

(a) 1. The department and community-based care lead agencies shall ensure that cases in which a child is alleged, suspected, or known to have been sexually exploited are assigned to child protective investigators and case managers who have specialized intensive training in handling cases involving a sexually exploited child. The department and lead agencies shall ensure that child protective investigators and case managers receive this training before accepting a case involving a sexually exploited child.

....

....

Pursuant to Fla. Stat. Ann. § 409.1678(2) (Specialized residential options for children who are victims of sexual exploitation),

(a) A safe house and a safe foster home shall provide a safe, separate, and therapeutic environment tailored to the needs of sexually exploited children who have endured significant trauma. Safe houses and safe foster homes shall use a model of treatment that includes strength-based and trauma-informed approaches.

(b) A safe house or a safe foster home must be certified by the department . . . .

(c) To be certified, a safe house must hold a license as a residential child-caring agency, as defined in s. 409.175, and a safe foster home must hold a license as a family foster home, as defined in s. 409.175. A safe house or safe foster home must also:

1. Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.



2. Serve exclusively one sex.
  3. Group sexually exploited children by age or maturity level.
  4. Care for sexually exploited children in a manner that separates those children from children with other needs. Safe houses and safe foster homes may care for other populations if the children who have not experienced sexual exploitation do not interact with children who have experienced sexual exploitation.
  5. Have awake staff members on duty 24 hours a day, if a safe house.
  6. Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas.
  7. Meet other criteria established by department rule, which may include, but are not limited to, personnel qualifications, staffing ratios, and types of services offered.
- (d) Safe houses and safe foster homes shall provide services tailored to the needs of sexually exploited children and shall conduct a comprehensive assessment of the service needs of each resident. In addition to the services required to be provided by residential child caring agencies and family foster homes, safe houses and safe foster homes must provide, arrange for, or coordinate, at a minimum, the following services:
1. Victim-witness counseling.
  2. Family counseling.
  3. Behavioral health care.
  4. Treatment and intervention for sexual assault.
  5. Education tailored to the child's individual needs, including remedial education if necessary.
  6. Life skills training.
  7. Mentoring by a survivor of sexual exploitation, if available and appropriate for the child.
  8. Substance abuse screening and, when necessary, access to treatment.
  9. Planning services for the successful transition of each child back to the community.
  10. Activities structured in a manner that provides sexually exploited children with a full schedule.
- (e) The community-based care lead agencies shall ensure that foster parents of safe foster homes and staff of safe houses complete intensive training regarding, at a minimum, the needs of sexually exploited children, the effects of trauma and sexual exploitation, and how to address those needs using strength-based and trauma-informed approaches. The department shall specify the contents of this training by rule and may develop or contract for a standard curriculum. The department may establish by rule additional criteria for the certification of safe houses and safe foster homes that shall address the security, therapeutic, social, health, and educational needs of sexually exploited children.
- (f) The department shall inspect safe houses and safe foster homes before certification and annually thereafter to ensure compliance with the requirements of this section. The department may place a moratorium on referrals and may revoke the certification of a safe house or safe foster home that fails at any time to meet the requirements of, or rules adopted under, this section.
- (g) The certification period for safe houses and safe foster homes shall run concurrently with the terms of their licenses.

b. When and how does the court assume jurisdiction?

Pursuant to Fla. Stat. Ann. §39.501 (Petition for dependency),

- (1) All proceedings seeking an adjudication that a child is dependent shall be initiated by the filing of a petition by an attorney for the department, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.
- (2) The purpose of a petition seeking the adjudication of a child as a dependent child is the protection of the child and not the punishment of the person creating the condition of dependency.

....

(4) When a child has been placed in shelter status by order of the court, a petition alleging dependency must be filed within 21 days after the shelter hearing, or within 7 days after any party files a demand for the early filing of a dependency petition, whichever comes first. In all other cases, the petition must be filed within a reasonable time after the date the child was referred to protective investigation. The child's parent or legal custodian must be served with a copy of the petition at least 72 hours before the arraignment hearing.

### III. *Placement process pending adjudication/ investigation*

#### a. When must placement hearing be held after initial custody?

Pursuant to Fla. Stat. Ann. § 39.402(8)(a), “[i]n the interval until the shelter hearing is held, the decision to place the child in a shelter or release the child from a shelter lies with the protective investigator.”<sup>131</sup> Once a child is sheltered, the child may only be held for 24 hours pending a placement hearing. Fla. Stat. Ann. § 39.402(8)(a).

#### b. What are the placement options?

Pursuant to Fla. Stat. Ann § 39.402 (Placement in a shelter), a child may be placed or continued in shelter care only if,

[T]here is probable cause to believe that:

- (a) The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment;
- (b) The parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
- (c) The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

Further, a shelter is an option only if, at the shelter hearing the court makes, “a specific finding of fact regarding the necessity for removal of the child from the home and has made a determination that the provision of appropriate and available services will not eliminate the need for placement.” Fla. Stat. Ann § 39.402(2).

Florida defines the location where a child may be placed pending the shelter care hearing. Specifically, Fla. Stat. Ann. § 39.401(3)(b) states in part,

While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care or may release the child to a parent or legal custodian or responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a licensed placement, or a responsible adult approved by the department if this is in the best interests of the child . . . .

While Florida legislation does not specify the types of services a child should receive during shelter care pending adjudication as a dependent child, a sexually exploited child placed in a safe house or safe foster home will receive “services tailored to the needs of sexually exploited children and “a comprehensive assessment of the service needs of each resident” must be conducted pursuant to Fla. Stat. Ann. § 409.1678(2)(d).

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<sup>131</sup> Protective investigator is defined as “. . . an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function.” Fla. Stat. Ann. § 39.01(63) (Definitions).

IV. *Adjudication*

a. Adjudication of dependency-neglect

Pursuant to Fla. Stat. Ann § 39.507 (Adjudicatory hearings; orders of adjudication),

- (1) (a) The adjudicatory hearing shall be held as soon as practicable after the petition for dependency is filed and in accordance with the Florida Rules of Juvenile Procedure, but no later than 30 days after the arraignment.
- (b) Adjudicatory hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases and adjourning the hearings from time to time as necessary. In a hearing on a petition in which it is alleged that the child is dependent, a preponderance of evidence will be required to establish the state of dependency . . . .

. . . .

(4) If the court finds at the adjudicatory hearing that the child named in a petition is not dependent, it shall enter an order so finding and dismissing the case.

(5) If the court finds that the child named in the petition is dependent, but finds that no action other than supervision in the child's home is required, it may enter an order briefly stating the facts upon which its finding is based, but withholding an order of adjudication and placing the child's home under the supervision of the department. If the court later finds that the parents of the child have not complied with the conditions of supervision imposed, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of dependency, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated. If the child is to remain in an out-of-home placement by order of the court, the court must adjudicate the child dependent.

(6) If the court finds that the child named in a petition is dependent, but chooses not to withhold adjudication or is prohibited from withholding adjudication, it shall incorporate that finding in an order of adjudication entered in the case, briefly stating the facts upon which the finding is made, and the court shall thereafter have full authority under this chapter to provide for the child as adjudicated.

. . . .

(8) At the conclusion of the adjudicatory hearing, if the child named in the petition is found dependent, the court shall schedule the disposition hearing within 30 days after the last day of the adjudicatory hearing. All parties shall be notified in writing at the conclusion of the adjudicatory hearing by the clerk of the court of the date, time, and location of the disposition hearing.

(9) An order of adjudication by a court that a child is dependent shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment.

b. Alternative process for non-dependent sexually exploited minors

Pursuant to Fla. Stat. Ann. § 409.1678(4)(b), "The lead agency shall ensure that all sexually exploited children residing in safe houses or safe foster homes or served in residential treatment centers or hospitals pursuant to

subsection (3)<sup>132</sup> have a case manager and a case plan, whether or not the child is a dependent child.” Additionally, Fla. Stat. Ann. § 409.1678(5) states,

**SCOPE OF AVAILABILITY OF SERVICES.** — To the extent possible provided by law and with authorized funding, the services specified in this section may be available to all sexually exploited children whether such services are accessed voluntarily, as a condition of probation, through a diversion program, through a proceeding under chapter 39, or through a referral from a local community-based care or social service agency.

#### V. *Outcome*

For children who are deemed dependent, various options are available to the court during a disposition hearing. Pursuant to Fla. Stat. Ann. § 39.521(1)(b)<sup>133</sup> (Disposition hearings; power of disposition), the court may

1. Require the parent and, when appropriate, the legal custodian and the child to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a mental health or substance abuse disorder assessment or evaluation . . . .
2. Require, if the court deems necessary, the parties to participate in dependency mediation.
3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first.

#### **Child Initially Identified as a Child In Need Of Services**

A victim of domestic minor sex trafficking might also be brought into custody and placed through the “[c]hild in need of services” procedures. Fla. Stat. Ann. § 984.03(9) (Definitions) defines a “child in need of services” as one who is found by the court to have persistently run away from home, habitually absent from school, or consistently disobedient to the reasonable demands of the parent or guardian. A “child in need of services” may not be the subject of an investigation regarding “abuse, neglect, or abandonment,” may not have a pending referral that the child is delinquent, and cannot be under supervision “for an adjudication of dependency or delinquency.” Fla. Stat. Ann. § 984.03(9).

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<sup>132</sup> Fla. Stat. Ann. § 409.1678(3) states,

**SERVICES WITHIN A RESIDENTIAL TREATMENT CENTER OR HOSPITAL.**— No later than July 1, 2015, residential treatment centers licensed under s. 394.875, and hospitals licensed under chapter 395 that provide residential mental health treatment, shall provide specialized treatment for sexually exploited children in the custody of the department who are placed in these facilities pursuant to s. 39.407(6), s. 394.4625, or s. 394.467. The specialized treatment must meet the requirements of subparagraphs (2)(c)1. and 3.-7., paragraph (2)(d), and the department’s treatment standards adopted pursuant to this section. The facilities shall ensure that children are served in single-sex groups and that staff working with such children are adequately trained in the effects of trauma and sexual exploitation, the needs of sexually exploited children, and how to address those needs using strength-based and trauma-informed approaches.

<sup>133</sup> The text of Fla. Stat. Ann. § 39.521 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 12 and House Bill 439 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

I. *Initial custody*

a. Authority for initial custody

Pursuant to Fla. Stat. Ann. § 984.13(1) (Taking into custody a child alleged to be from a family in need of services or to be a child in need of services),

A child may be taken into custody:

- (a) By a law enforcement officer when the officer has reasonable grounds to believe that the child has run away from his or her parents, guardian, or other legal custodian.
- (b) By a law enforcement officer when the officer has reasonable grounds to believe that the child is absent from school without authorization or is suspended or expelled and is not in the presence of his or her parent or legal guardian, for the purpose of delivering the child without unreasonable delay to the appropriate school system site . . . .<sup>134</sup>
- (c) Pursuant to an order of the circuit court based upon sworn testimony before or after a petition is filed under s. 984.15.
- (d) By a law enforcement officer when the child voluntarily agrees to or requests services pursuant to this chapter or placement in a shelter.

b. Placement

Under subsection (2),

The person taking the child into custody shall:

- (a) Release the child to a parent, guardian, legal custodian, or responsible adult relative or to a department-approved family-in-need-of-services and child-in-need-of-services provider if the person taking the child into custody has reasonable grounds to believe the child has run away from a parent, guardian, or legal custodian; is truant; or is beyond the control of the parent, guardian, or legal custodian; . . . or
- (b) Deliver the child to the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is from a family in need of services.

II. *Process following initial custody of a child in need of services*

a. Where is the child referred after initial custody?

Fla. Stat. Ann. § 984.03(28) (Definitions—Child in need of services) states,

“Intake” means the initial acceptance and screening by the Department of Juvenile Justice of a complaint or a law enforcement report or probable cause affidavit of delinquency, family in need of services, or child in need of services to determine the recommendation to be taken in the best interests

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<sup>134</sup> Fla. Stat. Ann. § 984.13(1)(b) states further, “For the purpose of this paragraph, ‘school system site’ includes, but is not limited to, a center approved by the superintendent of schools for the purpose of counseling students and referring them back to the school system or an approved alternative to a suspension or expulsion program. If a student is suspended or expelled from school without assignment to an alternative school placement, the law enforcement officer shall deliver the child to the parent or legal guardian, to a location determined by the parent or guardian, or to a designated truancy interdiction site until the parent or guardian can be located.”

of the child, the family, and the community. The emphasis of intake is on diversion and the least restrictive available services. Consequently, intake includes such alternatives as:

- (a) The disposition of the complaint, report, or probable cause affidavit without court or public agency action or judicial handling when appropriate.
- (b) The referral of the child to another public or private agency when appropriate.
- (c) The recommendation by the juvenile probation officer of judicial handling when appropriate and warranted.

Pursuant to Fla. Stat. Ann. § 984.13(3),

If the child is taken into custody by, or is delivered to, the department, the appropriate representative of the department shall review the facts and make such further inquiry as necessary to determine whether the child shall remain in custody or be released. Unless shelter is required as provided in s. 984.14(1), the department shall:

- (a) Release the child to his or her parent, guardian, or legal custodian . . . or to a department-approved family-in-need-of-services and child-in-need-of-services provider; or
- (b) Authorize temporary services and treatment that would allow the child alleged to be from a family in need of services to remain at home.

b. When and how does the court assume jurisdiction?

Pursuant to § 984.15 (Petition for a child in need of services), “[a]ll proceedings seeking an adjudication that a child is a child in need of services shall be initiated by the filing of a petition,” which can be filed by a representative of the department or the child’s parent, legal custodian, or guardian as set out in the statute.

*III. Placement process pending adjudication/ investigation*

a. When must the placement hearing be held after initial custody?

If the shelter placement is involuntary, a shelter hearing must be held within 24 hours. Fla. Stat. Ann. § 984.14(3). Additionally, a child may only be placed in a shelter pending adjudication for 35 days. Fla. Stat. Ann. § 984.14(5).

b. What are the placement options?

Pursuant to Fla. Stat. Ann. § 984.14(1), children are not ordinarily placed in shelters prior to a hearing. However, placement in a shelter without a hearing is appropriate when it is determined that placement in a shelter is necessary because the “parent, custodian, or guardian is unavailable” or to give time to the child and family to agree to “conditions for the child’s return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement . . . .” Fla. Stat. Ann. § 984.14(1)(a). The child will be placed in a shelter “specifically for runaways and troubled youth . . . .” Fla. Stat. Ann. § 984.14(2).

A child who has been involuntarily placed in a shelter must be given a hearing within 24 hours after being taken into custody, Fla. Stat. Ann. § 984.14(3), and must be released after 24 hours “unless an order so directing is made by the court after a shelter hearing finding that placement in a shelter is necessary based on the criteria in subsection (1) and that the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home.” Fla. Stat. Ann. § 984.14(4). The child may not stay in the shelter longer than 35

days, unless permitted by Fla. Stat. Ann. § 984.225 (Powers of disposition; placement in a staff-secure shelter).<sup>135</sup> Fla. Stat. Ann. § 984.14(5).

Pursuant to Fla. Stat. Ann. § 984.14(1) (Shelter placement; hearing), a child may be sheltered prior to a hearing either by court order or voluntary placement. However, Fla. Stat. Ann. § 984.14(1) also states that

A child taken into custody shall not be placed in a shelter prior to a court hearing unless a determination has been made that the provision of appropriate and available services will not eliminate the need for placement and that such placement is required:

- (a) To provide an opportunity for the child and family to agree upon conditions for the child's return home, when immediate placement in the home would result in a substantial likelihood that the child and family would not reach an agreement; or
- (b) Because a parent, custodian, or guardian is unavailable to take immediate custody of the child.

Florida has not codified what, if any, services are provided during shelter placement. However, there are statutes that dictate where a child in need of services may be placed. Specifically, pursuant to Fla. Stat. Ann. § 984.14(7),

A child who is adjudicated a child in need of services or alleged to be from a family in need of services or a child in need of services may not be placed in a secure detention facility or jail or any other commitment program for delinquent children under any circumstances.

#### *IV. Adjudication of child in need of services*

Pursuant to Fla. Stat. Ann. § 984.21 (Orders of Adjudication),

- (1) If the court finds that the child named in a petition is not a child in need of services, it shall enter an order so finding and dismissing the case.
- (2) If the court finds that the child named in the petition is a child in need of services, but finds that no action other than supervision in the home is required, it may enter an order briefly stating the facts upon which its finding is based, but withholding an order of adjudication and placing the child and family under the supervision of the department. If the court later finds that the parent, guardian, or custodian of the child have not complied with the conditions of supervision imposed, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of the child in need of services, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated.

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<sup>135</sup> Fla. Stat. Ann. § 984.225 states,

- (1) Subject to specific legislative appropriation, the court may order that a child adjudicated as a child in need of services be placed for up to 90 days in a staff-secure shelter if:
  - (a) The child's parent, guardian, or legal custodian refuses to provide food, clothing, shelter, and necessary parental support for the child and the refusal is a direct result of an established pattern of significant disruptive behavior of the child in the home of the parent, guardian, or legal custodian;
  - (b) The child refuses to remain under the reasonable care and custody of his or her parent, guardian, or legal custodian, as evidenced by repeatedly running away and failing to comply with a court order; or
  - (c) The child has failed to successfully complete an alternative treatment program or to comply with a court-ordered sanction and the child has been placed in a residential program on at least one prior occasion pursuant to a court order under this chapter.
- (2) This section applies after other alternative, less-restrictive remedies have been exhausted . . . .

. . . .

(3) If the court finds that the child named in a petition is a child in need of services, but elects not to proceed under subsection (2), it shall incorporate that finding in an order of adjudication entered in the case, briefly stating the facts upon which the finding is made, and the court shall thereafter have full authority under this chapter to provide for the child as adjudicated.

(4) An order of adjudication by a court that a child is a child in need of services shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment.

## V. *Outcomes*

When the court adjudicates a child to be in need of services, the court may place the child under the supervision of the department and its program providers, “in the temporary legal custody of an adult willing to care for the child,” or with a licensed childcare agency. Fla. Stat. Ann. § 984.22. The court may even order community service. Fla. Stat. Ann. § 984.22(2)(d). When a child in need of services must be placed “with an adult willing to care for the child, a licensed child-caring agency, [or] the Department of Juvenile Justice, or the Department of Children and Families” pursuant to Fla. Stat. Ann. § 984.22(3) (Powers of disposition), “the court shall order the natural or adoptive parents of such child . . . to pay child support to the adult relative caring for the child, the licensed child-caring agency, the Department of Juvenile Justice, or the Department of Children and Families.”

Pursuant to Fla. Stat. Ann. § 984.225 (Powers of disposition; placement in a staff-secure shelter), a court may order that a child found to be in need of services be placed in a staff-secure shelter for up to 90 days if other less restrictive means have been exhausted and the parent or guardian will not provide for the needs of the child because of the child’s disruptive behavior, the child refuses to stay at home and repeatedly runs away, or the child “failed to successfully complete an alternative treatment program or comply with a court-ordered sanction . . . .”

The court may order an adjudicated child in need of services to be placed in a physically secure setting for up to 90 days when the child has failed to be present for placement in a shelter, failed to comply with a court order related to placement, been found in contempt of court, or has run away from a shelter. Fla. Stat. Ann. § 984.226(3).

### **Child Initially Identified as Delinquent**

Although Fla. Stat. Ann. § 796.07(2)(e)<sup>136</sup> (Prohibiting prostitution and related acts) specifically excludes minors from prosecution for prostitution offenses, a minor may be subject to prosecution for other delinquent acts arising from their trafficking victimization. A “child who has been found to have committed a delinquent act” means a child while who

is found by a court to have committed a violation of law or to be in direct or indirect contempt of court, except that this definition does not include an act constituting contempt of court arising out of a dependency proceeding or a proceeding concerning a child or family in need of services.

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<sup>136</sup> See *supra* note 118.



I. *Initial custody*

a. Authority for initial custody

Where a child is not identified as abused and neglected or as a child in need of services, and is instead taken into custody by law enforcement for a status offense or delinquency offense pursuant to Fla. Stat. Ann. § 985.101(1) (Taking a child into custody),

(1) A child may be taken into custody under the following circumstances:

(a) Pursuant to an order of the circuit court issued under this chapter, based upon sworn testimony, either before or after a petition is filed.

(b) For a delinquent act or violation of law, pursuant to Florida law pertaining to a lawful arrest . . .

.

. . . .

b. Placement

Pursuant to Fla. Stat. Ann. § 985.101(1)–(3) (Taking a child into custody),

(1) . . . Nothing in this subsection shall be construed to allow the detention of a child who does not meet the detention criteria in part V.

(2) Except in emergency situations, a child may not be placed into or transported in any police car or similar vehicle that at the same time contains an adult under arrest, unless the adult is alleged or believed to be involved in the same offense or transaction as the child.

(3) When a child is taken into custody as provided in this section, the person taking the child into custody shall attempt to notify the parent, guardian, or legal custodian of the child. The person taking the child into custody shall continue such attempt until the parent, guardian, or legal custodian of the child is notified or the child is delivered to a juvenile probation officer under ss. 985.14 and 985.145, whichever occurs first. If the child is delivered to a juvenile probation officer before the parent, guardian, or legal custodian is notified, the juvenile probation officer shall continue the attempt to notify until the parent, guardian, or legal custodian of the child is notified . . . .

Fla. Stat. Ann. § 985.101(4) states, “Taking a child into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence in conjunction therewith is lawful.” Pursuant to Fla. Stat. Ann. § 985.115(2)(b), “Unless otherwise ordered by the court under s. 985.255 [Detention criteria; detention hearing] or s. 985.26 [Length of detention], and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child . . . [c]ontingent upon specific appropriation, to a shelter approved by the department or to an authorized agent.”

II. *Process following initial custody of delinquent child*

a. Where is child referred after initial custody?

Initially, a child that is arrested is taken before a juvenile probation officer who, “review[s] the facts in the law enforcement report or probable cause affidavit and make[s] such further inquiry as may be necessary to determine whether detention care is required.” Fla. Stat. Ann. § 985.25(1) (Detention intake).

Fla. Stat. Ann. § 985.125 (Prearrest or postarrest diversion programs) provides an opportunity for a child arrested for a delinquent act to avoid a record of delinquency by participating in a “prearrest or postarrest diversion program,” that “may, upon agreement of the agencies that establish the program, provide for the

expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582 [Prearrest, postarrest, or teen court diversion program expunction].” Fla. Stat. Ann. § 985.125(3).

Pursuant to Fla. Stat. Ann. § 985.135(2) (Juvenile assessment centers),

The department shall work cooperatively with substance abuse programs, mental health providers, law enforcement agencies, schools, health service providers, state attorneys, public defenders, and other agencies serving youth to establish juvenile assessment centers. Each current and newly established center<sup>137</sup> shall be developed and modified through the local initiative of community agencies and local governments and shall provide a broad array of youth-related services appropriate to the needs of the community where the center is located.

Pursuant to Fla. Stat. Ann. § 985.318(1) all proceedings seeking a finding that a child has committed a delinquent act or violation of law shall be initiated by the state by the filing of a petition for delinquency by the state attorney and (4) When a petition has been filed and the child or his or her counsel has advised the state attorney that the truth of the allegations is admitted and that no contest is to be made of the allegations in the petition, the state attorney may request that the case be set for an adjudicatory hearing. If the child changes the plea at the adjudicatory hearing, the court shall continue the hearing to permit the state attorney to prepare and present the case for the state.

### *III. Placement process pending adjudication/ investigation*

Pursuant to Fla. Stat. Ann. § 985.25(1) (Detention intake), the juvenile probation officer also decides the type of placement that is appropriate pending a detention hearing. Pursuant to Fla. Stat. Ann. §§ 985.25 (1)(a) and (b), the officer may consider “secure detention care, nonsecure detention care, or home detention care,” based on the findings of “risk instrument assessment.”<sup>138</sup>

Pursuant to Fla. Stat. Ann. § 985.25(2), “[t]he arresting law enforcement agency shall complete and present its investigation of an offense to the appropriate state attorney’s office within 8 days after placement of the child in secure detention.” However, the child may not be detained for a period exceeding 24 hours without a court order. Fla. Stat. Ann. § 985.26. The court order is a result of hearing required by Fla. Stat. Ann. § 985.25(3)(a), which defines that, “[t]he purpose of the detention hearing is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention.” Pursuant to Fla. Stat. Ann. § 985.25(2), the considerations for whether a child needs continued detention include,

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<sup>137</sup> Pursuant to Fla. Stat. Ann. § 985.135(1), “‘center’ means a juvenile assessment center comprising community operated facilities and programs which provide collocated central intake and screening services for youth referred to the department.”

<sup>138</sup> Pursuant to Fla. Stat. Ann. § 985.245 (Risk assessment instrument), the risk assessment instrument must take into consideration, but is not limited to:

. . . [P]rior history of failure to appear, prior offenses, offenses committed pending adjudication, any unlawful possession of a firearm, theft of a motor vehicle or possession of a stolen motor vehicle, and probation status at the time the child is taken into custody. The risk assessment instrument shall also take into consideration appropriate aggravating and mitigating circumstances . . . The risk assessment instrument shall also include any information concerning the child’s history of abuse and neglect. The risk assessment shall indicate whether detention care is warranted, and, if detention care is warranted, whether the child should be placed into secure, nonsecure, or home detention care.

(a) The child is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program.

...

(c) The child is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety.

....

Additionally, pursuant to Fla. Stat. Ann § 985.24(1) (Use of detentions; prohibitions),

All determinations and court orders regarding the use of secure, nonsecure, or home detention shall be based primarily upon findings that the child:

- (a) Presents a substantial risk of not appearing at a subsequent hearing;
- (b) Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior;
- (c) Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- (d) Has committed contempt of court by:
  - 1. Intentionally disrupting the administration of the court;
  - 2. Intentionally disobeying a court order; or
  - 3. Engaging in a punishable act or speech in the court's presence which shows disrespect for the authority and dignity of the court; or
- (e) Requests protection from imminent bodily harm.<sup>139</sup>

Generally, the programs and services a child may receive during detention is not codified, but Fla. Stat. Ann. § 985.265(4) does state that

- (a) While a child who is currently enrolled in school is in nonsecure or home detention care, the child shall continue to attend school unless otherwise ordered by the court.
- (b) While a child is in secure detention care, the child shall receive education commensurate with his or her grade level and educational ability.

Although a commercially sexually exploited child may not be found dependent if a parent or caregiver is not at fault for abuse or neglect of the child,<sup>140</sup> the services available to an alleged dependent child may also be available to non-dependent juvenile sex trafficking victims. Pursuant to Fla. Stat. Ann. § 409.1678(5) (Specialized residential options for children who are victims of sexual exploitation), "To the extent possible provided by law and with authorized funding, the services specified in this section may be available to all sexually exploited children whether such services are accessed voluntarily, as a condition of probation, through a diversion program, through a proceeding under chapter 39, or through a referral from a local community-based care or social service agency."

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<sup>139</sup> Additionally, Fla. Stat. Ann § 985.24 imposes restrictions on considerations for placements. Specifically, a child may not be detained for an allegedly delinquent act for the following reasons:

- (a) To allow a parent to avoid his or her legal responsibility.
- (b) To permit more convenient administrative access to the child.
- (c) To facilitate further interrogation or investigation.
- (d) Due to a lack of more appropriate facilities.

<sup>140</sup> See *supra* Component 5.6 for analysis of parent/caregiver barrier to child welfare involvement in child sex trafficking cases.

IV. *Adjudication of delinquent child*

Pursuant to Fla. Stat. Ann. § 985.35 (Adjudicatory hearings; withheld adjudications; orders of adjudication),

- (1) The adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations in s. 985.26(2) and (3) apply.
- (2) Adjudicatory hearings shall be conducted without a jury by the court, applying in delinquency cases the rules of evidence in use in criminal cases; adjourning the hearings from time to time as necessary; and conducting a fundamentally fair hearing in language understandable, to the fullest extent practicable, to the child before the court.

Additionally, under subsection (4),

If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

- (a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind, community service, a curfew, urine monitoring, revocation or suspension of the driver's license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.
- (b) If the child is attending public school and the court finds that the victim or a sibling of the victim in the case was assigned to attend or is eligible to attend the same school as the child, the court order shall include a finding pursuant to the proceedings described in s. 985.455, regardless of whether adjudication is withheld.
- (c) If the court later finds that the child has not complied with the rules, restrictions, or conditions of the community-based program, the court may, after a hearing to establish the lack of compliance, but without further evidence of the state of delinquency, enter an adjudication of delinquency and shall thereafter have full authority under this chapter to deal with the child as adjudicated.

V. *Outcomes*

When a child is adjudicated delinquent pursuant to Fla. Stat. Ann § 985.35 (Adjudicatory hearings; withheld adjudications; orders of adjudication), several dispositional outcomes are possible, including physically secure custody in a juvenile correctional facility or juvenile prison pursuant to Fla. Stat. Ann. § 985.465 (Juvenile correctional facilities or juvenile prison). Fla. Stat. Ann. § 985.433 (Disposition hearings in delinquency cases) states,

When a child has been found to have committed a delinquent act, the following procedures shall be applicable to the disposition of the case:

- ....
- (7) If the court determines that the child should be adjudicated as having committed a delinquent act and should be committed to the department . . .

- (a) The juvenile probation officer shall recommend to the court the most appropriate placement and treatment plan, specifically identifying the restrictiveness level<sup>141</sup> most appropriate for the child . . . .
  - (b) The court shall commit the child to the department at the restrictiveness level identified or may order placement at a different restrictiveness level . . . .
  - (c) The court may also require that the child be placed in a probation program following the child’s discharge from commitment . . . .
- (8) If the court determines not to adjudicate and commit to the department, then the court shall determine what community-based sanctions it will impose in a probation program for the child. Community-based sanctions may include, but are not limited to, participation in substance abuse treatment, a day-treatment probation program, restitution in money or in kind, a curfew, revocation or suspension of the driver’s license of the child, community service, and appropriate educational programs as determined by the district school board.

. . . .

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>142</sup>

Human trafficking is identified as a form of sexual abuse within Florida’s child protection statutes. Fla. Stat. Ann. § 39.01(2) (Definitions) defines “abuse”<sup>143</sup> within the general provisions on judicial proceedings involving children, which includes provisions related to child protective investigations and abuse and neglect, as “any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired . . . .”

Fla. Stat. Ann. § 39.01(70)(g)<sup>144</sup> defines “‘sexual abuse of a child’ for purposes of finding a child to be dependent” to include

The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children]; or
3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g) [Human trafficking].

In addition, Fla. Stat. Ann. § 39.01(15)(g) defines “child who is found to be dependent” to include a child who “is found by the court . . . to have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.”

Fla. Stat. Ann. § 984.03(2) (Definitions) similarly defines “abuse” for the purposes of the chapter on families and children in need of services in part as “any willful act that results in any physical, mental, or sexual injury that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.”

Pursuant to Fla. Stat. Ann. § 39.01(30), “harm” is defined in part as the following:

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<sup>141</sup> Under Fla. Stat. Ann. § 985.03(45) restrictiveness levels vary and could be minimum-risk nonresidential, low-risk residential, moderate-risk residential, high-risk residential, and maximum-risk residential. All of these programs vary in the level of access to the outside community that the juvenile receives and style of program.

<sup>142</sup> For more information regarding recent federal legislation impacting this component see:

<http://go.sharedhope.org/stateimpactmemo>.

<sup>143</sup> See *supra* note 122.

<sup>144</sup> See *supra* note 91.

“Harm” to a child’s health or welfare can occur when any person:

....

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794 [Sexual battery], or lewd or lascivious acts, as defined in chapter 800 [Lewdness; indecent exposure], against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children].

....

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

....

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.*

Since Fla. Stat. Ann. § 39.01(15)(g) (Definitions) defines “child who is found to be dependent” to include a child who “is found by the court . . . to have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care,” this establishes a requirement of parent or caregiver fault that may limit a child sex trafficking victim’s access to services through child welfare as a dependent child.

Nor is the definition of caregiver broad enough to include any person who sexually exploits a child. Fla. Stat. Ann. § 39.01(10) defines “caregiver” as a “parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child’s welfare as defined in subsection (47).” Pursuant to Fla. Stat. Ann. § 39.01(47), “Other person responsible for a child’s welfare” includes the child’s legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child’s welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child’s care . . . .”

Although this definition of caregiver limits juvenile sex trafficking victims’ access to services through the dependency process, Chapter 39 provides other avenues for the Department of Child Welfare to serve domestic minor sex trafficking victims.<sup>145</sup> Pursuant to Fla. Stat. Ann. § 39.001(5) (Purposes and intent; personnel standards and screening),

(5) SEXUAL EXPLOITATION SERVICES.

(a) The Legislature recognizes that child sexual exploitation is a serious problem nationwide and in this state. The children at greatest risk of being sexually exploited are runaways and throwaways. Many of these children have a history of abuse and neglect. The vulnerability of these children starts with isolation from family and friends. Traffickers maintain control of child victims through

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<sup>145</sup> The Department of Children and Families has an operating procedure allowing child abuse investigations and specialized assessments for minor victims of human trafficking when the alleged perpetrator is not a caregiver. *See Intakes and Investigative Response to Human Trafficking of Children*, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES (May 1, 2009), [http://www.dcf.state.fl.us/admin/publications/cfops/175%20Family%20Safety%20\(CFOP%20175-XX\)/CFOP%20175-14.%20Intakes%20and%20Investigative%20Response%20to%20the%20Human%20Trafficking%20of%20Children.pdf](http://www.dcf.state.fl.us/admin/publications/cfops/175%20Family%20Safety%20(CFOP%20175-XX)/CFOP%20175-14.%20Intakes%20and%20Investigative%20Response%20to%20the%20Human%20Trafficking%20of%20Children.pdf) (stating CF Operating Procedure No. 175-14).

psychological manipulation, force, drug addiction, or the exploitation of economic, physical, or emotional vulnerability. Children exploited through the sex trade often find it difficult to trust adults because of their abusive experiences. These children make up a population that is difficult to serve and even more difficult to rehabilitate.

(b) The Legislature establishes the following goals for the state related to the status and treatment of sexually exploited children in the dependency process:

1. To ensure the safety of children.
2. To provide for the treatment of such children as dependent children rather than as delinquents.
3. To sever the bond between exploited children and traffickers and to reunite these children with their families or provide them with appropriate guardians.
4. To enable such children to be willing and reliable witnesses in the prosecution of traffickers.

(c) The Legislature finds that sexually exploited children need special care and services in the dependency process, including counseling, health care, substance abuse treatment, educational opportunities, and a safe environment secure from traffickers.

(d) The Legislature further finds that sexually exploited children need the special care and services described in paragraph (c) independent of their citizenship, residency, alien, or immigrant status. It is the intent of the Legislature that this state provide such care and services to all sexually exploited children in this state who are not otherwise receiving comparable services, such as those under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

5.7 *Crime victims' compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC).*

The Florida Crimes Compensation Act in Fla. Stat. Ann. §§ 960.01–960.28 authorizes the payment of compensation to victims of crime. Under Fla. Stat. Ann. § 960.03(3) (Definitions), “crime” is defined in part as the following:

(a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death, or a felony or misdemeanor offense of child abuse<sup>146</sup> committed by an adult or a juvenile which results in a mental injury, as defined in s. 827.03 [Abuse, aggravated abuse, and neglect of a child; penalties], to a person younger than 18 years of age who was not physically injured by the criminal act. The mental injury to the minor must be verified by a psychologist licensed under chapter 490, by a physician licensed in this state under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175. The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

....

(d) A violation of s. 827.071 [Sexual performance by a child; penalties], s. 847.0135 [Computer pornography; traveling to meet minor; penalties], s. 847.0137 [Transmission of pornography by electronic device or equipment prohibited; penalties] or s. 847.0138 [Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties], related to online sexual

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<sup>146</sup> Pursuant to Fla. Stat. Ann. § 827.03(1)(b) (Abuse, aggravated abuse, and neglect of a child; penalties),

“Child abuse” means:

1. Intentional infliction of physical or mental injury upon a child;
  2. An intentional act that could reasonably be expected to result in physical or mental injury to a child;
- or
3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

exploitation and child pornography.

....

For the purposes of the Florida Crimes Compensation Act, a “victim” is defined in §960.03(14) as

- (a) A person who suffers personal physical injury or death as a direct result of a crime;
- (b) A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured;
- (c) A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury as defined by s. 827.03 but who was not physically injured; or
- (d) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.

Pursuant to Fla. Stat. Ann. § 960.065(2) (Eligibility for awards), a person is ineligible for an award if he or she:

- (a) Committed or aided in the commission of the crime upon which the claim for compensation was based;
- (b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based; unless the victim was engaged in prostitution as a result of being a victim of human trafficking as described in s. 787.06(3)(b), (d), (f), or (g) [Human trafficking].
- (c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;

....

Further, pursuant to Fla. Stat. Ann. § 960.065(5),<sup>147</sup> “A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation as defined in s. 39.01(70)(g).” Fla. Stat. Ann. § 39.01(70)(g)<sup>148</sup> defines sexual exploitation of child to include:

the act of a child offering to engage or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827 [Abuse of children]; or
3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g) [Human trafficking].

Fla. Stat. Ann. § 960.13(1)(a)(2)–(3) (Awards) require that before compensation may be awarded, that the “crime directly resulted in personal injury to, psychiatric or psychological injury to, or death of, the victim or intervenor,” and the “crime was promptly reported to the proper authorities.” Fla. Stat. Ann. § 960.13(1)(b) provides,

In no case may an award be made when the record shows that such report was made more than 72 hours after the occurrence of such crime unless the department, for good cause shown, finds the delay to have

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<sup>147</sup> The text of Fla. Stat. Ann. § 960.065 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 12 and House Bill 545 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016 and October 1, 2016, respectively).

<sup>148</sup> See *supra* note 91.



been justified. The department, upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the department, may deny, reduce, or withdraw any award, as the case may be.

However, victims of child pornography receive special protection under Fla. Stat. Ann. § 960.03(10) and Fla. Stat. Ann. § 960.197 (Assistance to victims of online sexual exploitation and child pornography), which ensures that they receive compensation as victims of crime. Fla. Stat. Ann. § 960.03(10) defines “identified victim of child pornography” as “any person who, while under the age of 18, is depicted in any image or movie of child pornography and who is identified through a report generated by a law enforcement agency and provided to the National Center for Missing and Exploited Children’s Child Victim Identification Program.” Pursuant to Fla. Stat. Ann. § 960.197,

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award compensation for counseling and other mental health services to treat psychological injury or trauma to:

(a) A child younger than 18 years of age who suffers psychiatric or psychological injury as a direct result of online sexual exploitation under any provision of s. 827.071, s. 847.0135, s. 847.0137, or s. 847.0138, and who does not otherwise sustain a personal injury or death; or

(b) Any person who, while younger than age 18, was depicted in any image or movie, regardless of length, of child pornography as defined in s. 847.001 [Definitions],<sup>149</sup> who has been identified by a law enforcement agency or the National Center for Missing and Exploited Children as an identified victim of child pornography, who suffers psychiatric or psychological injury as a direct result of the crime, and who does not otherwise sustain a personal injury or death.

(2) Compensation under this section is not contingent upon pursuit of a criminal investigation or prosecution.

Also, Fla. Stat. Ann. § 960.07(2) (Filing of claims for compensation) states in part that claims “must be filed not later than 1 year after: (a) The occurrence of the crime upon which the claim is based . . . [or] (b) The death of the victim or intervenor,” but that “for good cause the department may extend the time for filing for a period not exceeding 2 years after such occurrence.” This limit, however, can be extended under subsection (3)(b), which states,

Notwithstanding the provisions of subsection (2) and regardless of when the crime occurred, if the victim or intervenor was under the age of 18 at the time the crime upon which the claim is based occurred, a claim may be filed in accordance with this subsection.

....  
(b) When a victim or intervenor who was under the age of 18 at the time the crime occurred reaches the age of 18, the victim or intervenor has 1 year within which to file a claim.

....

Additionally, “[f]or good cause, the department may extend [the time period allowed for filing a claim under paragraph (b) for an additional period not to exceed 1 year.” Fla. Stat. Ann. § 960.07(3).

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

Child victim witnesses are provided with certain protections throughout the judicial process. Pursuant to Fla. Stat. Ann. § 39.822 (Appointment of guardian ad litem for abused, abandoned, or neglected child), a guardian

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<sup>149</sup> See *supra* note 50.

ad litem shall be appointed “by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.”

Additionally, Fla. Stat. Ann. § 39.01305 (Appointment of an attorney for a dependent child with certain special needs) requires the appointment of an attorney for a child who is a victim of human trafficking as defined in Fla. Stat. Ann. s. 787.06(2)(d)<sup>150</sup> (Human trafficking). Fla. Stat. Ann. s. 39.01305(1)(a)(2) provides that “[a] dependent child<sup>151</sup> who has certain special needs has a particular need for an attorney to represent the dependent child . . . so that the attorney may address the child’s medical and related needs and the services and supports necessary for the child to live successfully in the community.”

As an additional protection, pursuant to Fla. Stat. Ann. §§ 92.55(2)<sup>152</sup> (Judicial or other proceedings involving victim or witness under the age of 18 . . . or a sexual offense victim or witness; special protections; . . . ), the court may “enter any order necessary to protect the victim or witness in any judicial proceeding or other official proceeding from severe emotional or mental harm due to the presence of the defendant if the victim or witness is required to testify in open court.”<sup>153</sup> Therefore, the court may order that the testimony of a sexual offense<sup>154</sup> victim or witness<sup>155</sup> under the age of 18 be videotaped and shown in open court or taken outside of the courtroom and shown over the television, instead of live testimony, if the court finds that there is a “substantial likelihood” that testifying in open court, in the presence of the defendant, would cause the minor “at least moderate emotional or mental harm.” Fla. Stat. Ann. §§ 92.53(1),<sup>156</sup> 92.54(1).<sup>157</sup> In determining whether to

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<sup>150</sup> Fla. Stat. Ann. § 787.06(2)(d) defines “human trafficking” as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.”

<sup>151</sup> Fla. Stat. Ann. § 39.01305(2) defines “dependent child” as “a child who is subject to any proceeding under this chapter. The term does not require that a child be adjudicated dependent for purposes of this section.”

<sup>152</sup> The text of Fla. Stat. Ann. § 92.55 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1294, House Bill 545, and House Bill 1333 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016, October 1, 2016, and October 1, 2016, respectively).

<sup>153</sup> Fla. Stat. Ann. § 92.55(2) (Judicial or other proceedings involving victim or witness under the age of 18, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of registered service or therapy animals) also provides,

Such orders must relate to the taking of testimony and include, but are not limited to:

- (a) Interviewing or the taking of depositions as part of a civil or criminal proceeding.
- (b) Examination and cross-examination for the purpose of qualifying as a witness or testifying in any proceeding.
- (c) The use of testimony taken outside of the courtroom, including proceedings under ss. 92.53 and 92.54.

Pursuant to Fla. Stat. Ann. § 92.55(4), “the court may enter orders limiting the number of times that a child, a person who has an intellectual disability, or a sexual offense victim or witness may be interviewed, prohibiting depositions of the victim or witness, requiring the submission of questions before the examination of the victim or witness, setting the place and conditions for interviewing the victim or witness or for conducting any other proceeding, or permitting or prohibiting the attendance of any person at any proceeding . . . .” See *supra* note 152.

<sup>154</sup> Fla. Stat. Ann. § 92.55(1)(b) defines “sexual offense” as “any offense specified in s. 775.21(4)(a)1 [The Florida Sexual Predators Act] or s. 943.0435(1)(h)(1.a.)I [Sexual offenders required to register with the department; penalty], which include human trafficking and CSEC offenses. See *infra* Components 2.10 and 3.5 for a list of sex trafficking-related offenses. See *supra* note 55.

<sup>155</sup> Fla. Stat. Ann. § 92.55(1)(a) defines “sexual offense victim or witness” as “a person who was under the age of 16 when he or she was the victim of or a witness to a sexual offense.”

<sup>156</sup> The text of Fla. Stat. Ann. § 92.53 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1294 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

<sup>157</sup> The text of Fla. Stat. Ann. § 92.54 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1294 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

permit the victim or witness to testify outside of the courtroom by video feed or prerecorded video, the court considers, “[t]he age of the child, the nature of the offense or act, the relationship of the child to the parties in the case or to the defendant in a criminal action, the degree of emotional trauma that will result to the child as a consequence of the defendant’s presence, and any other fact that the court deems relevant . . . .” Fla. Stat. Ann. § 92.55(3)(a).

Additionally, Fla. Stat. Ann. § 92.56(5) (Judicial proceedings court records involving sexual offenses and human trafficking) requires that any publication or broadcast not include any identifying characteristics of the victim including “an identifying photograph, an identifiable voice, or the name or address of the victim . . . .” unless the victim has consented in writing. Fla. Stat. Ann. § 943.0583(11)(a)(1) (Human trafficking victim expunction) exempts victims of human trafficking from having their identity, or criminal history after the record has been expunged, revealed in public record. Fla. Stat. Ann. § 409.1678(6)(a) requires that the location of a “safe house, safe foster home, or other residential facility serving victims of sexual exploitation” be kept confidential.

The court may also limit the number of interviews, prohibit depositions, require advance submission of questions, set conditions for the interview location, and determine who will attend the proceeding. Fla. Stat. Ann. § 92.55(4).

Under Fla. Stat. Ann. § 92.56(3) (Judicial proceedings and court records involving sexual offenses and human trafficking), the state may use a pseudonym to protect the victim’s identity in court proceeding involving a “victim of a crime described in 787.06(3)(a) (Human Trafficking), (c)1., or (e)1., in 787.06(3)(b), (d), (f), 73 or (g), or in chapter 794 [Sexual battery] or chapter 800 [Lewdness; indecent exposure], or of child abuse, aggravated child abuse, or sexual performance by a child under chapter 827 [Abuse of children], or any crime involving the production, possession, or promotion of child pornography as described in chapter 847 [Obscenity] . . . .”

In the context of seeking expungement of criminal records, Fla. Stat. Ann. § 943.0583(7)(c) (Human trafficking victim expunction) provides,

The court shall allow an advocate from a state attorney's office, law enforcement agency, safe house or safe foster home as defined in s. 409.1678(1),<sup>158</sup> or a residential facility offering services to adult victims of human trafficking to be present with the petitioner during any court proceedings or hearings under this section, if the petitioner has made such a request and the advocate is able to be present.

Fla. Stat. Ann. § 943.0583(11)(a) further provides,<sup>159</sup>

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<sup>158</sup> See *supra* note 130.

<sup>159</sup> Enacted House Bill 467 § 3 states,

Section 3. The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain criminal intelligence information or criminal investigative information that reveals the identity of a victim of the crime of human trafficking of a minor for labor or any victim of human trafficking for commercial sexual activity. The Legislature finds that it is important to strengthen the protections afforded victims of human trafficking for labor who are minors and victims of human trafficking for commercial sexual activity, regardless of age, in order to ensure their privacy and to prevent their revictimization by making such information confidential and exempt. The identity of these victims is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims protects them from further

The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

....

Additionally, Fla. Stat. Ann. § 119.071(2)(h)(1) (General exemptions from inspection or copying of public records) states,

The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).
- b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.
- c. A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

However, if the buyer or trafficker is prosecuted under Fla. Stat. Ann. §§ 787.06 (Human trafficking), 794.011 (Sexual battery) or 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), “[n]otwithstanding any other provision of law, reputation evidence relating to a victim’s prior sexual conduct or evidence presented for the purpose of showing that manner of dress of the victim at the time of the offense incited the sexual battery may not be admitted into evidence in a prosecution under s. 787.06, s. 794.011, or s. 800.04.” Fla. Stat. Ann. § 794.022(3).<sup>160</sup> Victims of these offenses are also protected under Fla. Stat. Ann. § 794.022(1), which provides that “the testimony of the victim need not be corroborated.” Fla. Stat. Ann. § 794.022(2) provides further protections for victims of these offenses. It states,

Specific instances of prior consensual sexual activity between the victim and any person other than the offender may not be admitted into evidence in a prosecution under s. 787.06, s. 794.011, or s. 800.04. However, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence may prove that the defendant was not the source of the semen, pregnancy, injury, or disease; or, when consent by the victim is at issue, such evidence may be admitted if it is first established to the court in a proceeding in camera that such evidence tends to establish a pattern of

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embarrassment, harassment, or injury . . . . Persons who are victims of human trafficking and who have been charged with crimes allegedly committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal charges remain on record and accessible to potential employers and others. Therefore, it is necessary that these records be made confidential and exempt in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

2015 Fla. Laws ch. 146.

<sup>160</sup> The text of Fla. Stat. Ann. § 794.022 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1294 during the 118th Regular Session of the Florida Legislature (effective July 1, 2016).

conduct or behavior on the part of the victim which is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.

Florida provides relocation assistance to domestic minor sex trafficking victims who assist in a prosecution. In order to receive assistance, the state attorney or statewide prosecutor must attest that the victim is cooperating with law enforcement officials. Under Fla. Stat. Ann. § 960.199(1) (Relocation assistance for victims of sexual battery or human trafficking) victims of human trafficking may receive up to \$1,500 on any one claim and \$3,000 over a lifetime in relocation cost assistance. Fla. Stat. Ann. § 960.199(2) states that, in order for an award to be granted to a victim for relocation assistance:

- (a) There must be proof that a . . . human trafficking offense as described in s. 787.06(3)(b), (d), (f), or (g), [Human trafficking] was committed.
- (b) The . . . human trafficking offense, as defined in s. 787.06(3)(b), (d), (f), or (g), must be reported to the proper authorities.
- (c) The victim's need for assistance must be certified by a certified rape crisis center in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking's need for assistance may also be certified by a certified domestic violence center in this state.
- (d) The certified rape crisis center's or certified domestic violence center's certification must include, if applicable, approval by the state attorney or statewide prosecutor attesting that the victim is cooperating with law enforcement officials.
- (e) The act of . . . human trafficking, as described in s. 787.06(3)(b), (d), (f), or (g) must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

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.*

Florida law allows expungement specifically for victims of human trafficking. Under Fla. Stat. Ann. § 943.0583(3) (Human trafficking victim expunction),

A person who is a victim of human trafficking<sup>161</sup> may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chapters 796 [Prostitution] and 847 [Obscenity], without regard to the disposition of the arrest or of any charges. However, this section does not apply to any offense listed in s. 775.084(1)(b)1 [Violent career criminals]<sup>162</sup>. . . .

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<sup>161</sup> Pursuant to Fla. Stat. Ann. § 943.0583(1)(c), “‘Victim of human trafficking’ means a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.”

<sup>162</sup> Fla. Stat. Ann. § 775.084(1)(b)1. states:

The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

- a. Arson;
- b. Sexual battery;
- c. Robbery;

Furthermore, “Official documentation of the victim's status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is not required for granting a petition under this section . . . .” Fla. Stat. Ann. § 943.0583(5).

In addition, Florida law provides other methods to expunge or seal criminal records and allows petitions to be filed either concurrently or subsequently. Fla. Stat. Ann. §§ 943.0582, 943.0585 and 943.059. Pursuant to Fla. Stat. Ann. § 943.0582(1) (Prearrest, postarrest, or teen court diversion program expunction), “the department [Department of Law Enforcement] may provide . . . for the expunction of any non-judicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors as authorized by Fla. Stat. Ann. § 985.125 [Prearrest or postarrest diversion programs].”

Expunctions are available for adults and minors who comply with the requirements set forth in Fla. Stat. Ann. § 943.0585 (Court-ordered expunction of criminal history records). An important prerequisite for expunction is obtaining a certificate of eligibility. Fla. Stat. Ann. § 943.0585(2)(a) provides that the department must issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

. . . .

(3) That the criminal history record does not relate to a violation of . . . s. 787.025 [Luring or enticing a child], chapter 794 [Sexual battery], former s. 796.03 [Procuring person under age of 18 for prostitution], s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], . . . [or] s. 847.0145[Selling or buying of minors; penalties] . . . .

Adults and minors that comply with the requirements of Fla. Stat. Ann. § 943.059 (Court-ordered sealing of criminal history records) become eligible to have their criminal record sealed. Similar to the process of expunction, an important prerequisite for sealing the criminal record is obtaining a certificate of eligibility. Fla. Stat. Ann. § 943.059(2) reads,

The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

. . . .

(d) Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains.

. . . .

- 
- d. Kidnapping;
  - e. Aggravated child abuse;
  - f. Aggravated abuse of an elderly person or disabled adult;
  - g. Aggravated assault with a deadly weapon;
  - h. Murder;
  - i. Manslaughter;
  - j. Aggravated manslaughter of an elderly person or disabled adult;
  - k. Aggravated manslaughter of a child;
  - l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - m. Armed burglary;
  - n. Aggravated battery; or
  - o. Aggravated stalking.

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.*

Fla. Stat. Ann. § 772.102(1)(a)(15) (Definitions) defines “criminal activity” to include the offense of human trafficking for the purpose of allowing victims of trafficking to obtain civil remedies for criminal offenses under Fla. Stat. Ann. § 772.104 (Civil cause of action).

Fla. Stat. Ann. § 772.104(2) provides,

[A]ny person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 [Prohibited activities]<sup>163</sup> due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of \$ 200 and reasonable attorney’s fees and court costs in the trial and appellate courts.

However, Fla. Stat. Ann. § 772.104(3) prohibits an award of punitive damages.

Another remedy is provided in Fla. Stat. Ann. § 796.09(1) (Coercion; civil cause of action; evidence; defenses; attorney’s fees), which states,

- (1) A person has a cause of action for compensatory and punitive damages against:
  - (a) A person who coerced that person into prostitution;
  - (b) A person who coerces that person to remain in prostitution; or
  - (c) A person who uses coercion to collect or receive any part of that person’s earnings derived from prostitution.<sup>164</sup>

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<sup>163</sup> Fla. Stat. Ann. § 772.103 (Prohibited activities) provides,

It is unlawful for any person:

- (1) Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- (2) Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- (4) To conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

<sup>164</sup> According to Fla. Stat. Ann. § 796.09(2), “prostitution” has the same meaning as in Fla. Stat. Ann. § 796.07(1)(a) (Prohibiting prostitution and related acts), which states, “‘Prostitution’ means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.” Pursuant to Fla. Stat. Ann. § 796.09(3), “[c]oercion” is defined as

[A]ny practice of domination, restraint, or inducement for the purpose of or with the reasonably foreseeable effect of causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution, and includes, but is not limited to:

- .....
- (o) Exploitation of human needs for food, shelter, safety, or affection.

In any civil action for damages, Fla. Stat. Ann. § 796.09(5) prohibits defenses asserting that the plaintiff was paid for the prostitution, that the plaintiff committed prostitution before knowing the defendant, or that the plaintiff did not attempt to leave or stop associating with the defendant.

Furthermore, “[e]vidence of convictions for prostitution or prostitution-related offenses are inadmissible in a proceeding brought under this section for purposes of attacking the plaintiff’s credibility.” Fla. Stat. Ann. § 796.09(6).

Under Fla. Stat. Ann. § 796.09(4), victims and witnesses are protected from self-incrimination for the evidence or testimony they produce in the course of litigation. The victims and witnesses will face criminal prosecution only in the event that they perjure themselves during the proceeding.

A specific remedy is provided in Fla. Stat. Ann. § 847.01357(1) (Exploited children’s civil remedy) for certain victims of exploitation through child pornography. This provision states,

Any person who, while under the age of 18, was a victim of a sexual abuse crime listed in chapter 794 [Sexual Battery], chapter 800 [Lewdness; indecent exposure], chapter 827 [Abuse of children], or chapter 847 [Obscenity], where any portion of such abuse was used in the production of child pornography, and who suffers personal or psychological injury as a result of the production, promotion, or possession of such images or movies, may bring an action in an appropriate state court against the producer, promoter, or possessor of such images or movies, regardless of whether the victim is now an adult. In any action brought under this section, a prevailing plaintiff shall recover the actual damages such person sustained and the cost of the suit, including reasonable attorney’s fees. Any victim who is awarded damages under this section shall be deemed to have sustained damages of at least \$ 150,000.<sup>165</sup>

Pursuant to Fla. Stat. Ann. § 847.01357(5) (Exploited children’s civil remedy), the Attorney General’s office may pursue the lawsuit on behalf of the victim at the victim’s request and all damages awarded will go to the victim. An action under Fla. Stat. Ann. § 847.01357, must be filed within 3 years “of: (a) The conclusion of a related criminal case; (b) The notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of pornographic images; or (c) In the case of a victim younger than 18, within 3 years after the person reaches the age of 18.” Fla. Stat. Ann. § 847.01357(2).

Fla. Stat. Ann. § 775.089(1)(a) (Restitution)<sup>166</sup> provides that “the court shall order the defendant to make [monetary or nonmonetary] restitution to the victim<sup>167</sup> for . . .” loss or damage caused or related to the trafficker’s criminal episode, “unless it finds clear and compelling reasons not to order such restitution . . .” If the offense “resulted in bodily injury to a victim,” the restitution shall include “the cost of necessary medical and related professional services” including services for therapy and rehabilitation, the victim’s income lost as a result of the crime, and if the crime resulted in the victim’s death, “the cost of necessary funeral and related services.” Fla. Stat. Ann. § 775.089(2)(a). If the victim was not physically injured by the offense, the restitution “may require that the defendant reimburse the victim for income lost by the victim as a result of the offense.” Fla. Stat. Ann. § 775.089(2)(b).

Additionally, where a human trafficking victim is also a victim of a racketeering crime, the victim may seek injunctive relief. Fla. Stat. Ann. § 895.05(6) (Civil remedies) vests any aggrieved person with standing to seek

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<sup>165</sup> Fla. Stat. Ann. § 847.01357(4) states, “It is not a defense to a civil cause of action under this section that the respondent did not know the victim or commit the abuse depicted in any image of child pornography.”

<sup>166</sup> See *supra* Component 2.8 for discussion of relevant provisions.

<sup>167</sup> See *supra* note 49.



“injunctive relief from threatened loss or damage in other civil cases,” under subsection (1) and grants the circuit court authority to enjoin a defendant’s racketeering violations without a “showing of special or irreparable damage.”

*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.*

Pursuant to Fla. Stat. Ann. § 775.15(18) (Time limitations; general time limitations; exceptions), prosecutions under Fla. Stat. Ann. § 787.06 (Human trafficking) and, with some limited exceptions, Fla. Stat. Ann. § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), may be commenced at any time. Fla. Stat. Ann. § 775.15 (Time limitations; general time limitations; exceptions) allows for a criminal prosecution to be commenced as follows:

(1) A prosecution for a capital felony, a life felony, or a felony that resulted in a death may be commenced at any time. If the death penalty is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, all crimes designated as capital felonies shall be considered life felonies for the purposes of this section, and prosecution for such crimes may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony of the first degree must be commenced within 4 years after it is committed.

(b) A prosecution for any other felony must be commenced within 3 years after it is committed.

(c) A prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed.

(d) A prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

....

(13)(a) If the victim of a violation of s. 794.011 [Sexual battery], . . . s. 800.04 [Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age], . . . or s. 847.0135(5) [Computer pornography; traveling to meet minor; penalties] is under the age of 18, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement agency or other governmental agency, whichever occurs earlier . . . .

(b) If the offense is a first degree felony violation of s. 794.011 [Sexual battery] and the victim was under 18 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before October 1, 2003.

(c) If the offense is a violation of s. 794.011 [Sexual battery] and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time. This paragraph applies to any such offense except an offense the prosecution of which would have been barred by subsection (2) on or before July 1, 2010.

....

(16)(a) In addition to the time periods prescribed in this section, a prosecution for any of the following offenses may be commenced at any time after the date on which the identity of the accused is established, or should have been established by the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence . . . .

....

....

(18) If the offense is a violation of s. 800.04(4) or (5) and the victim was under 16 years of age at the time the offense was committed, a prosecution of the offense may be commenced at any time, unless, at the time of the offense, the offender is less than 18 years of age and is no more than 4 years older than the victim. This subsection applies to an offense that is not otherwise barred from prosecution on or before October 1, 2014.

(19) A prosecution for a violation of s. 787.06 [Human trafficking] may be commenced at any time. This subsection applies to any such offense except an offense<sup>168</sup> the prosecution of which would have been barred by subsection (2) on or before October 1, 2014.

For civil remedies pursued under Fla. Stat. Ann. § 847.01357 (Exploited children’s civil remedy), Fla. Stat. Ann. § 847.01357(2) provides,

Notwithstanding any other provisions of law, any action commenced under this section must be filed within 3 years after the later of:

- (a) The conclusion of a related criminal case;
- (b) The notification to the victim by a member of a law enforcement agency of the creation, possession, or promotion of pornographic images; or
- (c) In the case of a victim younger than 18, within 3 years after the person reaches the age of 18.

Fla. Stat. Ann. § 95.11(3)(o) (Limitations other than for the recovery of real property), states that there is a four year limitation on asserting “[a]n action for assault, battery, . . . false imprisonment, or any other intentional tort, except as provided in subsections (4), (5), and (7)” or “[a]ny action not specifically provided for in these statutes.” Specifically, subsection 7 establishes the tolling procedure for abuse based intentional torts, stating, “An action founded on alleged abuse, as defined in s. 39.01 [Definitions], . . . or s. 984.03 [Definitions],<sup>169</sup> . . . may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.” Fla. Stat. Ann. § 95.11(7). However, for victims of Fla. Stat. Ann. § 794.011 (Sexual battery), Fla. Stat. Ann. § 95.11(9) states, “An action related to an act constituting a violation of s. 794.011 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.”

Fla. Stat. Ann. § 95.051 (When limitations tolled) provides circumstances when the statute of limitations may be tolled. For example, when the person entitled to sue is a minor or incapacitated and lacks the aid of the parent or guardian to sue, the statute is tolled for a maximum of seven years from the occurrence giving rise to the suit. Fla. Stat. Ann. § 95.051(i).

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<sup>168</sup> The text of Fla. Stat. Ann. § 775.15 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 545 during the 118th Regular Session of the Florida Legislature (October 1, 2016).

<sup>169</sup> See *supra* Component 5.5 for the definition of “abuse.”

***Legal Components:***

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

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

Pursuant to Fla. Stat. Ann. § 787.06(5) (Human Trafficking), “[t]he Criminal Justice Standards and Training Commission shall establish standards for basic and advanced training programs for law enforcement officers in the subjects of investigating and preventing human trafficking crimes.” Also, “[a]fter January 1, 2007, every basic skills course required for law enforcement officers to obtain initial certification must include training on human trafficking crime prevention and investigation.” Fla. Stat. Ann. § 787.06(5). In addition, pursuant to Fla. Stat. Ann. § 943.041 (Crimes against children criminal profiling program) the legislature created a program within the law enforcement department to “perform investigative, intelligence, research, and training activities related to crimes against children.”

Additionally, Fla. Stat. Ann. § 409.1754(3)(a) (Sexually exploited children; screening and assessment; training; case management; task forces) provides,

To the extent that funds are available, the local regional director may provide training to local law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties. Training shall address . . . how to identify and obtain appropriate services for sexually exploited children. The local circuit administrator may contract with a not-for-profit agency with experience working with sexually exploited children to provide the training. Circuits may work cooperatively to provide training, which may be provided on a regional basis. The department shall assist circuits to obtain available funds for the purpose of conducting law enforcement training from the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice.

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

Under Fla. Stat. Ann. § 934.03(1)(a) (Interception and disclosure of wire, oral, or electronic communications prohibited) it is a crime to “[i]ntentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication,” unless the chapter provides an exception.

However, Fla. Stat. Ann. § 934.03(2)(c) states,

It is lawful under ss. 934.03–934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.<sup>170</sup>

Under (2)(d), “It is lawful under ss. 934.03–934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.”

Additionally, a specific exception is provided for investigations of offenses committed against a child where the child is a party to the communication. Fla. Stat. Ann. § 934.03(2)(k) provides,

It is lawful under ss. 934.03-934.09 for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

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

Fla. Stat. Ann. § 934.03(1) (Interception and disclosure of wire, oral or, electronic communications prohibited) prohibits wiretaps performed by private parties acting outside of a police investigation unless, pursuant to subsection (2)(d), both parties consent.

Exceptions are located in Fla. Stat. Ann. § 934.07(1) (Authorization for interception of wire, oral, or electronic communications).<sup>171</sup> Pursuant to Fla. Stat. Ann. § 934.07(1)(a), certain specified persons “may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with ss. 934.03–934.09 an order authorizing or approving the interception of, wire, oral, or electronic communications” by law enforcement for the purpose of investigating the commission of certain crimes, including “any violation of s. 787.06 [Human trafficking] . . . any violation of chapter 895 [Offenses concerning racketeering and illegal debts]; any violation of chapter 896 [Offenses related to financial transactions]; any violation of chapter 815 [Computer-related crimes]; any violation of chapter 847 [Obscenity]; any violation of s. 827.071 [Sexual performance by a child; penalties]; . . . or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes specifically enumerated in this paragraph.”

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

Under Fla. Stat. Ann. § 796.07(2)(b), (f) and (i) (Prohibiting prostitution and related acts), it is unlawful to “offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act,” “[t]o solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation,” or “[t]o purchase the services of any person engaged in prostitution.” Fla. Stat. Ann. § 796.07(3)(b) states, “Notwithstanding any other provision of law, a police officer may testify as an offended party in an action regarding charges filed pursuant to this section.” Additionally, Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), states, “The fact that an undercover operative or law

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<sup>170</sup> The Florida Supreme Court has held, however, that “insofar as [Fla. Stat. Ann. § 934.03] authorizes the warrantless interception of a private conversation *conducted in the home*, it is unconstitutional and unenforceable.” State v. Sarmiento, 397 So. 2d 643, 645 (Fla. 1981).

<sup>171</sup> *Id.*

enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.” To the extent decoys use the Internet to investigate suspected offenders, use of a decoy is permissible in investigating many potential offenses under subsection (3), which criminalizes use of the following:

[A] computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to . . . [s]educe, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827.

Fla. Stat. Ann. § 847.0135(3)(a). Additionally, subsection (4) (Travelling to meet a minor) uses the phrase “another person believed by the person to be a child,” indicating that decoys can be used. Similarly, under Fla. Stat. Ann. § 847.0138 (Transmission of material harmful to minors to a minor by electronic device or equipment prohibited; penalties) the offender need only transmit material to a person “known by the defendant to be a minor” meaning that “the defendant had actual knowledge or believed that the recipient of the communication was a minor.” Fla. Stat. Ann. § 847.0138(1)(a). A decoy may also be used to obtain a conviction under Fla. Stat. Ann. § 800.04 (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age).<sup>172</sup> Fla. Stat. Ann. § 847.0135.

However, a defendant may still be able to assert a defense based on a law enforcement decoy posing as a minor to investigate other buyer-applicable offenses through reverse sting operations, which are the most likely situations in which a defendant would try to use such a defense. Fla. Stat. Ann. § 787.06 (Human trafficking) is a buyer-applicable sex trafficking offense<sup>173</sup> that does not prohibit this defense, meaning that buyers charged for attempting to solicit or purchase sex with a minor under Fla. Stat. Ann. § 787.06 would not be prohibited from raising a defense based on the fact that an actual minor was not involved.

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

Fla. Stat. Ann. § 847.0135(2) (Computer pornography; traveling to meet minor; penalties), criminalizes buying, selling, receiving, exchanging or disseminating a “minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purposes of facilitating . . . or soliciting sexual conduct of or with any minor . . . .” The statute specifies that an undercover law enforcement officer involved in the detection and investigation of an offense of this statute is not a defense to a charge under this law. Additionally, subsections (3) and (4) use the phrase “another person believed by the person to be a child,” indicating that decoys can be used.

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

Law enforcement agencies are mandated to promptly report both missing and recovered children. Under Fla. Stat. Ann. § 39.0141 (Missing children; report required),

Whenever the whereabouts of a child involved with the department become unknown, the department, the community-based care provider, or the sheriff’s office providing investigative services for the department shall make reasonable efforts, as defined by rule, to locate the child. If, pursuant to criteria

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<sup>172</sup> See *Hudson v. Florida*, 745 So. 2d 997 (Fla. Dist. Ct. App. 1999) (denying motion to dismiss charge of attempting to commit a lewd and lascivious act even though the victim was actually an adult police officer posing as a 14 year old boy).

<sup>173</sup> See Component 2.1 for more information about Fla. Stat. Ann. § 787.06.

established by rule, the child is determined to be missing, the department, the community-based care provider, or the sheriff's office shall file a report that the child is missing in accordance with s. 937.021 [Missing child and missing adult reports].

Fla. Stat. Ann. § 937.025(5) (Missing children; student records; reporting requirements; penalties) requires any “employee of the state or a local governmental agency, a person who is employed under a contract with the state or a local governmental agency, or an employee of a public or private school within the state” to “promptly report to the local law enforcement agency and the Department of Law Enforcement any information received or possessed that could assist in . . .” finding the missing child, determining the identity of the person who has the missing child, or ascertaining “whether a missing child is in danger of physical injury or death.” Fla. Stat. Ann. § 937.025(5).

Under Fla. Stat. Ann. § 937.021(1) (Missing child and missing adult reports) law enforcement agencies are directed to adopt policies and procedures to be used to promptly investigate missing children reports. Specifically, Fla. Stat. Ann. § 937.021(1) states,

Law enforcement agencies in this state shall adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults. The policies must ensure that cases involving missing children and adults are investigated promptly using appropriate resources. The policies must include:

- (a) Requirements for accepting missing child and missing adult reports;
- (b) Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and
- (c) Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the Florida Crime Information Center and the National Crime Information Center. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

Pursuant to Fla. Stat. Ann. § 937.021(4)(a)–(b), once a missing child report has been filed, within two hours all on-duty police officers will be notified and the report will be transmitted to “the Florida Crime Information Center and the National Crime Information Center databases.”

Fla. Stat. Ann. § 937.022 (Missing Endangered Persons Information Clearinghouse) creates a central repository for information regarding missing endangered persons.

Under Fla. Stat. Ann. § 937.023(1) (Department of education to compile list of missing Florida school children; forms; notification) the Department of Education must identify and locate missing Florida children who are enrolled in the public school districts.<sup>174</sup> “Missing Florida school child” is defined as “a child 18 years of age or younger whose whereabouts are unknown.” Fla. Stat. Ann. § 937.023(1).

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<sup>174</sup> Pursuant to Fla. Stat. Ann. § 937.023(1), the school must do the following:

- (a) Collect each month a list of missing Florida school children as provided by the Florida Crime Information Center. The list shall be designed to include such information as the department deems necessary for the identification of the missing school child.
- (b) Compile from the information collected pursuant to paragraph (a) a list of missing Florida school children, which list shall be distributed monthly to all public school districts admitting children to kindergarten through grade 12. The list shall include the names of all such missing children, together with such other information as the department deems necessary. Each school district shall distribute this information to the public schools in the district by whatever manner it deems appropriate.

Florida also has several mechanisms in place to help find missing children. Pursuant to Fla. Stat. Ann. § 937.025(1),

[U]pon notification by the Department of Law Enforcement that a child is listed or reported as a missing child, the school in which the [missing] child is currently enrolled, or was previously enrolled, shall flag the student records in such a manner that whenever a copy of or information concerning the records of the missing child is requested, the person authorized to provide such copy or information is alerted to the fact that the child has been listed or reported as missing.

Furthermore, Fla. Stat. Ann. § 937.024<sup>175</sup> (Birth records of missing children; registrars' duties) directs the Office of Vital Statistics to collect a list of missing children from law enforcement each month, distill from that information a list of those children born in Florida, and flag the birth certificates of missing children. If a copy of a flagged birth certificate is requested, a supervisor shall be notified immediately and information regarding the person requesting the birth certificate shall be collected. Fla. Stat. Ann. § 937.024.

Under Fla. Stat. Ann. § 847.002 (Child pornography prosecutions), any law enforcement officer who “recovers images or movies of child pornography” must provide the images or movies to and request information from the law enforcement agency representative with the Child Victim Identification Program. Additionally, subsection (3) states, “In every filed case involving an identified victim of child pornography . . . the prosecuting agency shall enter [certain] information into the Victims in Child Pornography Tracking Repeat Exploitation database maintained by the Office of the Attorney General.”

With regard to recovered children, Fla. Stat. Ann. § 937.022(5) states, “[t]he law enforcement agency having jurisdiction over a case involving a missing endangered person shall, upon locating the child . . . , immediately purge information about the case from the Florida Crime Information Center or the National Crime Information Center databases and notify the clearinghouse.”

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(c) Notify the appropriate local, state, or federal law enforcement authority as soon as any additional information is obtained or contact is made with respect to a missing Florida school child.

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