

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2016 ANALYSIS AND RECOMMENDATIONS NEW JERSEY

### 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.*

N.J. Stat. Ann. § 2C:13-8(a)(3) (Human trafficking) makes it a crime to sex traffic a minor without requiring proof that force, threat of force, or coercion was used to cause the minor to engage in sexual activity.<sup>2</sup> N.J. Stat. Ann. § 2C:13-8(a)(3) states,

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

<sup>2</sup> N.J. Stat. Ann. § 2C:13-8(a)(1), (a)(2) (Human trafficking) reach the actions of traffickers and buyers who use some means of force, threat of force, or coercion and those who facilitate a violation of subsection (1). N.J. Stat. Ann. § 2C:13-8(a) states,

A person commits the crime of human trafficking if he:

a. A person commits the crime of human trafficking if he:

....

(3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1, whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

A conviction under N.J. Stat. Ann. § 2C:13-8 is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine up to \$200,000.<sup>3</sup> N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1), 2C:43-3(a)(1). If, however, an offender convicted under N.J. Stat. Ann. § 2C:13-8(a)(2) or (a)(3) faces imprisonment for 20 years to life, and is not eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d). Lastly, an additional fine of no less than \$25,000 is imposed on violators of N.J. Stat.

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(1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S. 2C:34-1 [Prostitution and related offenses] or to provide labor services:

(a) by causing or threatening to cause serious bodily harm or physical restraint against the person or any other person;

(b) by means of any scheme, plan or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint;

(c) by committing a violation of N.J.S.2C:13-5 [Criminal coercion] against the person;

(d) by destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document as defined in section 1 of P.L. 1997, c. 1 (C. 2C:21-31[Unauthorized practice of immigration law; penalties]), or other document issued by a governmental agency to any person which could be used as a means of verifying the person's identity or age or any other personal identifying information;

(e) by means of the abuse or threatened abuse of the law or legal process;

(f) by means of fraud, deceit, or misrepresentation against the person; or

(g) by facilitating access to a controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes; or

(2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection; or

....

<sup>3</sup> Under N.J. Stat. Ann. § 2C:43-3(e),

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

....

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term "gain" means the amount of money or the value of property derived by the offender and "loss" means the amount of value separated from the victim or the amount of any payment owed to the victim and avoided or evaded and includes any reasonable and necessary expense incurred by the owner in recovering or replacing lost, stolen or damaged property, or recovering any payment avoided or evaded, and, with respect to property of a research facility, includes the cost of repeating an interrupted or invalidated experiment or loss of profits. The term "victim" shall mean a person who suffers a personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the victim . . . .

Ann. § 2C:13-8(a) which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-8(d).

Additionally, N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) states that a person commits human trafficking in the second degree if he:

(1) provides services, resources, or assistance<sup>4</sup> with the knowledge that the services, resources, or assistance are intended to be used in furtherance of the commission of the crime of human trafficking in violation of section 1 of P.L.2005, c. 77 (C.2C:13-8) [Human trafficking].

....

(2) procures or attempts to procure a person to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses], or to provide labor or services, whether for himself or another person, knowing that the person provided or to be provided was a victim of human trafficking, or under circumstances in which a reasonable person would conclude that there was a substantial likelihood that the person was a victim of human trafficking.<sup>5</sup>

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<sup>4</sup> Under N.J. Stat. Ann. § 2C:13-9(a)(1),

(a) For purposes of this paragraph, “services, resources, or assistance” shall include financial support, business services, lodging, transportation, the provision of false documentation or identification, equipment, facilities, or any other service or property with a pecuniary value that exceeds \$200, whether or not a person is compensated for the services, resources, or assistance, but shall not include humanitarian or charitable aid or services provided directly to a victim of human trafficking.

(b) For purposes of this paragraph, the requisite knowledge that services, resources, or assistance are intended to be used in furtherance of the commission of the crime of human trafficking may be inferred if the defendant was aware that a person to whom the defendant was providing services, resources, or assistance:

(i) was subject to or subjected another to restrictions on the person's freedom of movement, so that the person could not leave without accompaniment of another person or was otherwise subjected to obvious restrictions on mobility; or

(ii) did not possess or have access to any means of communication, including but not limited to a cellular or other wireless telephone or other electronic communication device, and was not permitted or was otherwise unable to communicate with another person without supervision or permission.

<sup>5</sup> Under N.J. Stat. Ann. § 2C:13-9(2),

(a) For purposes of this paragraph, there shall be a rebuttable presumption that the defendant knew, and that a reasonable person would conclude there was a substantial likelihood, that a person was a victim of human trafficking if the person:

(i) could not leave the premises where the person provided labor or services without accompaniment of another person or was otherwise subjected to significant restrictions on the person's freedom of movement; or

(ii) did not possess or have access to any means of communication, including but not limited to a cellular or other wireless telephone or other electronic communication device, and was not permitted or was otherwise unable to communicate with another person without supervision or permission.

(b) For the purposes of this paragraph, there shall be a rebuttable presumption that:

(i) a person knew that a child under the age of 18 years of age procured to engage in sexual activity or for whom attempts were made to procure for that activity was a victim of human trafficking; and

(ii) a reasonable person would conclude that there was a substantial likelihood that a child under the age of 18 years of age procured to engage in sexual activity or for whom attempts were made to procure for that activity was a victim of human trafficking.

A conviction under N.J. Stat. Ann. § 2C:13-9 is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-9(c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2). An additional fine of no less than \$15,000 is imposed on violators of N.J. Stat. Ann. § 2C:13-9 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-9(c)(1).

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

The following laws criminalize CSEC in New Jersey:

1. N.J. Stat. Ann. § 2C:34-1(b)(3), (4) (Prostitution and related offenses) states,

A person commits an offense if:

....

(3) The actor knowingly promotes prostitution<sup>6</sup> of a child under 18 whether or not the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable;

(4) The actor knowingly promotes prostitution of the actor’s child, ward, or any other person for whose care the actor is responsible;

A conviction under either of these subsections is punishable as a first degree crime by imprisonment for 10–20 years, a possible fine up to \$200,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.”<sup>7</sup> N.J. Stat. Ann. §§ 2C:34-1(c), (f)(2), 2C:43-6(a)(1), 2C:43-3(a)(1).

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<sup>6</sup> Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(4), “promoting prostitution” is defined as,

- (a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;
- (b) Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;
- (c) Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;
- (d) Soliciting a person to patronize a prostitute;
- (e) Procuring a prostitute for a patron;
- (f) Transporting a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
- (g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

<sup>7</sup> Under N.J. Stat. Ann. § 2C:43-3(e),

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

....

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the term “gain” means the amount of money or the value of property derived by the offender and “loss” means the

2. Also, under N. J. Stat. Ann. § 2C:34-1(b) (Prostitution and related offenses),

A person commits an offense if:

....

(7) The actor knowingly engages in prostitution<sup>8</sup> with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual activity<sup>9</sup> with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity. It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.

A conviction under this section is punishable as a second degree crime by imprisonment for 5–10 years, a possible fine not to exceed \$150,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(c)(1), (f)(2), 2C:43-6(a)(2), 2C:43-3(a)(2).

3. N.J. Stat. Ann. § 2C:24-4(b)(3), (4) (Endangering welfare of children) states,

(3) A person commits a crime of the first degree if he causes or permits a child<sup>10</sup> to engage in a prohibited sexual act<sup>11</sup> or in the simulation of such an act if the person knows, has reason to know

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amount of value separated from the victim or the amount of any payment owed to the victim and avoided or evaded and includes any reasonable and necessary expense incurred by the owner in recovering or replacing lost, stolen or damaged property, or recovering any payment avoided or evaded, and, with respect to property of a research facility, includes the cost of repeating an interrupted or invalidated experiment or loss of profits. The term “victim” shall mean a person who suffers a personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the victim . . . .

<sup>8</sup> Under N.J. Stat. Ann. § 2C:34-1(a)(1), “prostitution” is defined as “sexual activity with another person in exchange for something of economic value, or the offer or acceptance of an offer to engage in sexual activity in exchange for something of economic value.”

<sup>9</sup> Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(2), “Sexual activity” includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.”

<sup>10</sup> For the purposes of N.J. Stat. Ann. § 2C:24-4, “child” is defined as “any person under 18 years of age.” N.J. Stat. Ann. § 2C:24-4(b)(1).

<sup>11</sup> Pursuant to N.J. Stat. Ann. § 2C:24-4(b)(1), “prohibited sexual act” is defined as

- (a) Sexual intercourse; or
- (b) Anal intercourse; or
- (c) Masturbation; or
- (d) Bestiality; or
- (e) Sadism; or
- (f) Masochism; or
- (g) Fellatio; or
- (h) Cunnilingus; or
- (i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or
- (j) Any act of sexual penetration or sexual contact as defined in N.J.S. 2C:14-1.

or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance.

(4) A person commits a crime of the second degree if he photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act.

Generally, a conviction under N.J. Stat. Ann. § 2C:24-4(b)(3), (4) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(a)(1), (2), (4), 2C:43-6(a)(2), 2C:43-3(a)(2). However, a conviction under N.J. Stat. Ann. §§ 2C:24-4(b)(3) is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:24-4(b)(3), 2C:43-6(a)(1), 2C:43-3(a)(1).

Sexual offense laws that may apply in cases of commercial sexual exploitation of a child include the following:

1. Pursuant to N.J. Stat. Ann. § 2C:14-2(a)(1) (Sexual assault),

An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration<sup>12</sup> with another person under any one of the following circumstances:

(1) The victim is less than 13 years old;

....

A conviction for aggravated sexual assault is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:14-2(a), 2C:43-6(a)(1), 2C:43-3(a)(1).

Additionally, pursuant to N.J. Stat. Ann. § 2C:14-2(b), (c),

b. An actor is guilty of sexual assault if he commits an act of sexual contact<sup>13</sup> with a victim who is less than 13 years old and the actor is at least four years older than the victim.

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

....

(4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

A conviction for sexual assault is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:14-2(b), (c), 2C:43-6(a)(2), 2C:43-3(a)(2).<sup>14</sup>

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<sup>12</sup> Pursuant to N.J. Stat. Ann. § 2C:14-1(c) (Definitions), “sexual penetration” is defined as “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor’s instruction. The depth of insertion shall not be relevant as to the question of commission of the crime.”

<sup>13</sup> Pursuant to N.J. Stat. Ann. § 2C:14-1(d), “sexual contact” is defined as

an intentional touching by the victim or actor, either directly or through clothing, of the victim’s or actor’s intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present.

2. Pursuant to N.J. Stat. Ann. § 2C:14-3(b) (Aggravated criminal sexual contact; criminal sexual contact), “An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c.(1) through (4).”

A conviction of criminal sexual conduct is punishable as a fourth degree crime by imprisonment not to exceed 18 months and a possible fine not to exceed \$10,000. N.J. Stat. Ann. §§ 2C:14-3(b), 2C:43-6(a)(4), 2C:43-3(b)(2).<sup>15</sup>

3. N.J. Stat. Ann. § 2C:24-4(a)(1) (Endangering welfare of children) states,

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree.

When the defendant has legal or assumed care over the child, a conviction is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(a)(1), (2), 2C:43-6(a)(2), 2C:43-3(a)(2). A conviction for any other person is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:24-4(a), 2C:43-6(a)(3), 2C: 43-3(b)(1).

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

N.J. Stat. Ann. § 2C:34-1(e) (Prostitution and related offenses) refers to New Jersey’s human trafficking law by creating an affirmative defense to prosecutions under the section for human trafficking victims. N.J. Stat. Ann. § 2C:34-1(e) states,

It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) [Human trafficking] or compelled by another to engage in sexual activity, regardless of the defendant’s age.

However, N.J. Stat. Ann. § 2C:34-1 does not specify that a child under 18 involved in prostitution is a victim of human trafficking. Although N.J. Stat. Ann. § 2C:13-8(a)(3) (Human Trafficking) does not

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<sup>14</sup> Pursuant to N.J. Stat. Ann. § 2C:14-6 (Sentencing),

If a person is convicted of a second or subsequent offense under sections 2C:14-2 [Sexual assault] or 2C:14-3 a. [Aggravated criminal sexual contact; criminal sexual contact], the sentence imposed under those sections for the second or subsequent offense shall, unless the person is sentenced pursuant to the provisions of 2C:43-7 [Sentence of imprisonment for crime; extended terms], include a fixed minimum sentence of not less than 5 years during which the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purpose of this section an offense is considered a second or subsequent offense, if the actor has at any time been convicted under sections 2C:14-2 or 2C:14-3 a. or under any similar statute of the United States, this state, or any other state for an offense that is substantially equivalent to sections 2C:14-2 or 2C:14-3a.

<sup>15</sup> See *supra* note 14 for enhanced sentencing provisions for convictions under N.J. Stat. Ann. § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact).

require force, fraud, or coercion for children to be considered human trafficking victims, New Jersey's other CSEC offenses do not refer to the human trafficking law to identify victims of those offenses as victims of trafficking.

*1.4 The state racketeering or gang crimes statute includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute trafficking crimes.*

Under N.J. Stat. Ann. § 2C:41-2 (Prohibited Activities),

- a. It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which he has participated as a principal within the meaning of N.J.S. 2C:2-6 to use or invest, directly or indirectly, any part of the income, or the proceeds of the income, in acquisition of any interest in, or the establishment or operation of any enterprise which is engaged in or the activities of which affect trade or commerce . . . .
- b. It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in or activities of which affect trade or commerce.
- c. It shall be unlawful for any person employed by or associated with any enterprise engaged in or activities of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
- d. It shall be unlawful for any person to conspire as defined by N.J.S. 2C:5-2, to violate any of the provisions of this section.

Pursuant to N.J. Stat. Ann. § 2C:41-1(a) (Definitions), "racketeering activity" includes promoting prostitution, obscenity, endangering welfare of children under § 2C:24-4(b)(3), (4) and human trafficking under § 2C:13-8 N.J. Stat. Ann. § 2C:41-1(d), (e), (z). Under N.J. Stat. Ann. § 2C:41-1(d),

"Pattern of racketeering activity" requires:

- (1) Engaging in at least two incidents of racketeering conduct one of which shall have occurred after the effective date of this act and the last of which shall have occurred within 10 years (excluding any period of imprisonment) after a prior incident of racketeering activity; and
- (2) A showing that the incidents of racketeering activity embrace criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

Pursuant to N.J. Stat. Ann. § 2C:41-3(a), "Any person who violates any provision of N.J.S.2C:41-2 in connection with a pattern of racketeering activity which involves a crime of violence, a crime of the first degree [which includes human trafficking,] or the use of firearms shall be guilty of a crime of the first degree. All other violations of N.J.S.2C:41-2 shall be crimes of the second degree."

A first degree crime is punishable by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:43-6(a)(1), 2C:43-3(a)(1). A second degree crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2). The defendant may also be required to pay restitution to the victim. N.J. Stat. Ann. § 2C:43-3.



Additionally, a shall forfeit “[a]ny interest including money or anything of value he has acquired or maintained” through racketeering activity and may face civil penalties including restitution and civil monetary penalties. N.J. Stat. Ann. §§ 2C:41-3(b), 2C:41-4.

Where the alleged enterprise is a criminal gang, a defendant may also be charged with crime gang activity for committing, attempting to commit, or conspiring to commit certain crimes including N.J. Stat. Ann. § 2C:13-8 (Human trafficking) or § 2C:34-1 (Prostitution and related offenses) as part of a criminal street gang, defined as “three or more persons associated in fact.”<sup>16</sup> N.J. Stat. Ann. § 2C:33-29(a). Pursuant to N.J. Stat. Ann. 2C:33-29(b) (Crime of gang criminality; “criminal street gang” defined; grading of offense),

Grading. Gang criminality is a crime of one degree higher than the most serious underlying crime referred to in subsection a. of this section, except that where the underlying crime is a crime of the first degree, gang criminality is a first degree crime and the defendant, upon conviction, and notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, shall be sentenced to an ordinary term of imprisonment between 15 and 30 years. A sentence imposed upon conviction of the crime of gang criminality shall be ordered to be served consecutively to the sentence imposed upon conviction of any underlying offense referred to in subsection a. of this section.

This means that a defendant who violates N.J. Stat. Ann. § 2C:13-8 (Human trafficking), a first degree crime, as part of a criminal street gang may be punished by “an ordinary term of imprisonment between 15 and 30 years.” N.J. Stat. Ann. § 2C:33-29(b). If a defendant knowingly promotes child prostitution in violation of N.J. Stat. Ann. § 2C:34-1(b)(3), (4), a first degree crime, a violation is punishable by imprisonment for 10–20 years, a possible fine not to exceed \$200,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:33-29(b), 2C:34-1(b)(3), (4), (f)(2), 2C:43-6(a)(1), 2C:43-3(a)(1).

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<sup>16</sup> Pursuant to N.J. Stat. Ann. § 2C:33-29(a),

Individuals are associated in fact if: (1) two of the following seven criteria that indicate criminal street gang membership apply: (a) self-proclamation; (b) witness testimony or official statement; (c) written or electronic correspondence; (d) paraphernalia or photographs; (e) tattoos; (f) clothing or colors; (g) any other indicia of street gang activity; and (2) individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed or conspired or attempted to commit, within the preceding five years from the date of the present offense, excluding any period of imprisonment, one or more offenses on separate occasions of robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, tampering with witnesses and informants or a violation of chapter 11, section 3, 4, 5, 6, or 7 of chapter 35 or chapter 39 of Title 2C of the New Jersey Statutes.

**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.*

**Legal Analysis:**

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

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) applies to buyers of sex with minors following federal precedent.<sup>17</sup> N.J. Stat. Ann. § 2C:13-8(a)(3) provides, a person commits human trafficking if he or she “knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity<sup>18</sup> as defined in paragraph (2) of subsection a. of N.J.S.2C:34–1 [Prostitution and related activities] . . . .”

<sup>17</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>18</sup> See *supra* note 9 for the definition of “sexual activity.”

Additionally, a buyer may be prosecuted under N.J. Stat. Ann. § 2C:13-9(a) (Human trafficking in the second degree), which states,

a. A person commits a crime of the second degree if he:

....

(2) procures or attempts to procure a person to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 [Prostitution and related offenses] . . . whether for himself or another person, knowing that the person provided or to be provided was a victim of human trafficking, or under circumstances in which a reasonable person would conclude that there was a substantial likelihood that the person was a victim of human trafficking.<sup>19</sup>

....

(b) For the purposes of this paragraph, there shall be a rebuttable presumption that: (i) a person knew that a child under the age of 18 years of age procured to engage in sexual activity or for whom attempts were made to procure for that activity was a victim of human trafficking; and (ii) a reasonable person would conclude that there was a substantial likelihood that a child under the age of 18 years of age procured to engage in sexual activity or for whom attempts were made to procure for that activity was a victim of human trafficking.

....

c. (1) Notwithstanding any provision of law to the contrary, a person convicted for a violation of this section shall be sentenced to a term of imprisonment, which shall include a period of parole ineligibility of one-third to one-half of the term of imprisonment imposed or three years, whichever is greater. Notwithstanding the provisions of N.J.S.2C:43-3, the sentence for a conviction under this section shall include a fine in an amount of not less than \$15,000, which shall be collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4) and forwarded to the Department of the Treasury to be deposited in the “Human Trafficking Survivor’s Assistance Fund” established by section 2 of P.L.2013, c.51 (C.52:17B-238).

(2) Additionally, upon a finding of guilt or entry of a guilty plea for a crime described under this section, the court shall direct any issuing State, county, or municipal governmental agency to revoke any license, permit, certificate, approval, registration, charter, or similar form of business or professional authorization required by law concerning the operation of that person’s business or profession, if that business or profession was used in the course of the crime.

2.1.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-8 (Human trafficking) to clarify that buyer conduct is included as a violation of N.J. Stat. Ann. § 2C:13-8 (Human trafficking).

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

N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) specifically makes it a crime to buy sex with a child. Pursuant to N.J. Stat. Ann. § 2C:34-1(b)(7),

A person commits an offense if:

....

(7) The actor knowingly engages in prostitution with a person under the age of 18, or if the actor enters into or remains in a house of prostitution for the purpose of engaging in sexual

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<sup>19</sup> See *supra* note 5 for a full discussion of the *mens rea* required for a violation of N.J. Stat. Ann. § 2C:13-9.

activity with a child under the age of 18, or if the actor solicits or requests a child under the age of 18 to engage in sexual activity . . . .

A conviction under this section is punishable as a second degree crime by imprisonment for 5–10 years, a possible fine not to exceed \$150,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.”<sup>20</sup> N.J. Stat. Ann. §§ 2C:34-1(c)(1), (f)(2), 2C:43-6(a)(2), 2C:43-3(a)(2).

Several sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a child.<sup>21</sup> These statutes, however, do not specifically criminalize the commercial sexual exploitation of a child and do not refer to N.J. Stat. Ann. § 2C:13-8 (Human trafficking).

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

New Jersey’s solicitation laws differentiate between buying sex with adults and children. Under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), a first conviction for engaging in prostitution as a patron, pursuant to subsection (b)(1) is punishable as a disorderly persons offense by imprisonment up to 6 months, a temporary loss of driver’s license and a possible fine not to exceed \$1,000, with heightened penalties for second and subsequent convictions. N.J. Stat. Ann. §§ 2C:34-1(c)(5), 2C:43-8, 2C:43-3(c). In contrast, under N.J. Stat. Ann. § 2C:34-1(b)(7), a conviction for buying sex with an individual under 18 or soliciting an individual under 18 is punishable as a second degree crime by imprisonment for 5–10 years, a possible fine not to exceed \$150,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(c)(1), (f)(2), 2C:43-6(a)(2), 2C:43-3(a)(2).

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

If N.J. Stat. Ann. § 2C:13-8(a) (Human trafficking) applies to buyers, a conviction under N.J. Stat. Ann. § 2C:13-8 is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine up to \$200,000.<sup>22</sup> N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1), 2C:43-3(a)(1). If, however, the buyer is convicted under N.J. Stat. Ann. § 2C:13-8(a)(2) or (a)(3), the buyer shall be sentenced to imprisonment for 20 years to life, and shall not be eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d). A buyer convicted under N.J. Stat. Ann. § 2C:13-8 is subject to a possible fine up to \$200,000 and a mandatory fine of not less than \$25,000 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.”<sup>23</sup> N.J. Stat. Ann. §§ 2C:13-8(b), (d).

If N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) applies to buyers, a conviction under N.J. Stat. Ann. § 2C:13-9(a)(2) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-9(c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2). An additional fine of no less than \$15,000 is imposed on violators of N.J. Stat. Ann. § 2C:13-9 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-9(c)(1).

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<sup>20</sup> Under N.J. Stat. Ann. § 2C:43-3, “A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both . . . .”

<sup>21</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

<sup>22</sup> See *supra* note 3.

<sup>23</sup> See *supra* Component 1.1 for a full description of fines and penalties applicable to convictions under N.J. Stat. Ann. § 2C:13-8(a) (Human trafficking).

A conviction for buying sex with a child under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) is punishable as a second degree crime by imprisonment for 5–10 years, a possible fine not to exceed \$150,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(c)(1), (f)(2), 2C:43-6(a)(2), 2C:43-3(a)(2).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a child but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of N.J. Stat. Ann. § 2C:13-8(a)(3) (Human trafficking).<sup>24</sup>

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>25</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>26</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>27</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>28</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.*

Pursuant to N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions),

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<sup>24</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

<sup>25</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>26</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>27</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>28</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).

A person commits a crime of the second degree if he attempts, via electronic<sup>29</sup> or any other means, to lure or entice a child<sup>30</sup> or one who he reasonably believes to be a child into a motor vehicle, structure<sup>31</sup> or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

A conviction under N.J. Stat. Ann. § 2C:13-6(a) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-6(a), 2C:43-6(a)(2), 2C:43-3(a)(2).<sup>32</sup> Additionally, under N.J. Stat. Ann. § 2C:13-6(f), “The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.”

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

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) prohibits a buyer from asserting a mistake of age defense for “engag[ing] in sexual activity” with a minor. N.J. Stat. Ann. § 2C:13-8(a)(3) specifies that a person commits the crime of human trafficking when that person “knowingly . . . obtains, by any means, a child under 18 years of age, to engage in sexual activity<sup>33</sup> . . . , whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

However, N.J. Stat. Ann. § 2C:13-9(a)(2)(b) (Human trafficking in the second degree) establishes a rebuttable presumption that:

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<sup>29</sup> N.J. Stat. Ann. § 2C: 13-6(b) states, “‘Electronic means’ includes, but is not limited to, the Internet.”

<sup>30</sup> Pursuant to N.J. Stat. Ann. § 2C:13-6(b), a “child” is “a person less than 18 years old.”

<sup>31</sup> Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

<sup>32</sup> Additional penalties may be imposed for second or subsequent convictions. Under N.J. Stat. Ann. § 2C:13-6,

. . . .  
d. A person convicted of a second or subsequent offense under this section shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6 [Sentence of imprisonment for crime; ordinary terms; mandatory terms], the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7 [Sentence of imprisonment for crime; extended terms], a mandatory minimum term of one-third to one-half of the sentence imposed, or three years, whichever is greater, during which time the defendant shall not be eligible for parole. If the person is sentenced pursuant to N.J.S.2C:43-7, the court shall impose a minimum term of one-third to one-half of the sentence imposed, or five years, whichever is greater. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section.

. . . .  
e. A person convicted of an offense under this section who has previously been convicted of a violation of N.J.S.2C:14-2 [Sexual assault], subsection a. of N.J.S.2C:14-3 [Aggravated criminal sexual contact; criminal sexual contact] or N.J.S.2C:24-4 [Endangering welfare of children] shall be sentenced to a term of imprisonment. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-6, the term of imprisonment shall include, unless the person is sentenced pursuant to the provisions of N.J.S.2C:43-7, a mandatory minimum term of five years, during which time the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.

. . . .

<sup>33</sup> See *supra* note 9 for the definition of “sexual activity”.

- (i) a person knew that a child under the age of 18 years of age procured to engage in sexual activity or for whom attempts were made to procure for that activity was a victim of human trafficking; and
- (ii) a reasonable person would conclude that there was a substantial likelihood that a child under the age of 18 years of age procured to engage in sexual activity or for whom attempts were made to procure for that activity was a victim of human trafficking.<sup>34</sup>

New Jersey does not allow a buyer of commercial sex to assert a mistake of age defense for the crime of prostitution. N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) states, in part, “It shall be no defense to a prosecution under this paragraph that the actor mistakenly believed that the child was 18 years of age or older, even if such mistaken belief was reasonable.”

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

The penalty for buying sex with a child does not change based on the age of the victim. A conviction for buying sex with a child under 18 years of age under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) is punishable as a second degree crime by imprisonment for 5–10 years, a possible fine not to exceed \$150,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(c)(1), (f)(2), 2C:43-6(a)(2), 2C:43-3(a)(2).

*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 of commercial sex with children are subject to fines, restitution, and asset forfeiture. A buyer convicted under N.J. Stat. Ann. § 2C:13-8 (Human trafficking) is subject to a possible fine up to \$200,000 and a mandatory fine of not less than \$25,000 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.”<sup>35</sup> N.J. Stat. Ann. §§ 2C:13-8(b), (d), 2C:43-3(a)(2).

Additionally, the buyer shall be ordered to make restitution to any victim. Pursuant to N.J. Stat. Ann. § 2C:13-8(e), the court shall award the greater of

- (1) the gross income or value to the defendant of the victim's labor or services; or
- (2) the value of the victim's labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L.1963, c. 150 (C.34:11–56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L.1966, c. 113 (C.34:11–56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c. 71 (C.34:9A–1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. s.201 et seq., or any other applicable federal law.

A conviction under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) is punishable as a second degree crime by a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-9(c)(1), 2C:43-3(a)(2). An additional fine of no less than \$15,000 is imposed on violators of N.J. Stat. Ann. § 2C:13-9 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-9(c)(1).

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<sup>34</sup> See *supra* note 5 for a full discussion of the *mens rea* required for a conviction under N.J. Stat. Ann. § 2C:13-9(a)(2).

<sup>35</sup> See *supra* Component 1.1 for a full description of fines and penalties applicable to convictions under N.J. Stat. Ann. § 2C:13-8(a) (Human trafficking).

Under N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses), a second degree crime, a buyer may face a fine up to \$150,000, a possible fine of \$150,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(c)(2), (f)(2), 2C:43-3(a)(2). For a violation of N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions) a buyer may face a fine up to \$150,000 and a sentence to pay restitution to the victim, or both. N.J. Stat. Ann. §§ 2C:13-6(a), 2C:43-3(a)(2).

Additionally, buyers face mandatory asset forfeiture pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture), including

....

- (2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purposes of committing offenses against the State.
- (3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.
- (4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of *prima facie* contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

Property subject to forfeiture “may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when (1) The article is *prima facie* contraband; or, (2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.” N.J. Stat. Ann. §2C:64-1(b). With the exception of *prima facie* contraband, forfeiture proceedings are civil in nature. N. J. Stat. An. §2C: 64-3. Disposal of forfeited property is governed by N.J. Stat. Ann. §2C: 64-6, which states, in part,

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforcement agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

A buyer may also have to pay a \$500 fee for a court ordered “Prostitution Offender Program.”<sup>36</sup> Pursuant to N.J. Stat. Ann. § 2C:13-9(b),

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<sup>36</sup> Pursuant to N.J. Stat. Ann. § 2C:13-9(d)(2), the program shall include information intended to increase the person’s awareness of:

- (a) the causes of prostitution and its relationship to human trafficking;
- (b) the health risks connected with prostitution, including the risk of transmittable diseases;



In addition to any fine, fee, assessment, or penalty authorized under the provisions of Title 2C of the New Jersey Statutes, a person convicted of an offense of engaging in prostitution as a patron pursuant to paragraph (1) of subsection b. of N.J.S.2C:34-1 [Prostitution and related offenses] shall be assessed, if ordered to participate in the “Prostitution Offender Program,” a fee of \$500.

Lastly, a buyer is subject to forfeiture of business or professional licenses used in the commission of the crime if convicted under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree). N.J. Stat. Ann. § 2C:13-9(c)(2) provides,

the court shall direct any issuing State, county, or municipal governmental agency to revoke any license, permit, certificate, approval, registration, charter, or similar form of business or professional authorization required by law concerning the operation of that person's business or profession, if that business or profession was used in the course of the crime.

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

Possessing pornography of a child under 18 is a crime, pursuant to N.J. Stat. Ann. § 2C:24-4(b)(5) (Endangering welfare of children), which states,

- (a) A person commits a crime of the second degree if, by any means, including but not limited to the Internet, he:
- (i) knowingly distributes an item depicting the sexual exploitation or abuse of a child;
  - (ii) knowingly possesses an item depicting the sexual exploitation or abuse of a child with the intent to distribute that item; or
  - (iii) knowingly stores or maintains an item depicting the sexual exploitation or abuse of a child using a file-sharing program which is designated as available for searching by or copying to one or more other computers.
- ....
- (b) A person commits a crime of the third degree if he knowingly possesses, knowingly views, or knowingly has under his control, through any means, including the Internet, an item depicting the sexual exploitation of a child.<sup>37</sup>

Distributing, possessing with intent to distribute, or storing child pornography is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. § 2C:24-4(b)(5)(a), 2C:43-6(a)(2), 2C:43-3(a)(2). Possessing child pornography is punishable as a third degree crime by imprisonment for 3–5 years and a possible fine not to exceed \$15,000. N.J. Stat. Ann. §§ 2C:24-4(b)(5)(b), 2C:43-6(a)(3), 2C: 43-3(b)(1).

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- (c) the consequences of convictions for prostitution or human trafficking, including penalties for subsequent convictions; and
  - (d) the pervasiveness of human trafficking and the effects of human trafficking on its victims.

<sup>37</sup> Pursuant to N.J. Stat. Ann. § 2C:24-4(b)(1), “item depicting the sexual exploitation of a child” means

a photograph, film, video, an electronic, electromagnetic or digital recording, an image stored or maintained in a computer program or file or in a portion of a file, or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act.

In comparison, a federal conviction for possession of child pornography<sup>38</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>39</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>40</sup>

- 2.9.1 Recommendation: Raise the penalties for violating N.J. Stat. Ann. § 2C:24-4(b)(5)(b) 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.*

Those convicted of buying sex with a child under N.J. Stat. Ann. § 2C:34-1(a)(7) (Prostitution and related offenses) are not required to register as convicted sex offenders under the sex offender registration laws. N.J. Stat. Ann. § 2C:7-2. However, other crimes applicable to buyers require registration. Pursuant to N.J. Stat. Ann. § 2C:7-2(a), (b) (Registration of sex offenders; definition; requirements; penalties),

- a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

. . . .

- b. For the purposes of this act a sex offense shall include the following:
- (1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact . . . or an attempt to commit any of these crimes if the court found that the offender’s conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;
- (2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; . . . ; endangering the welfare of a child pursuant to paragraph (3) or (4) or subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3 b. if the victim is a minor; . . . or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date [Oct. 31, 1994] of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the

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<sup>38</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>39</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>40</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).

offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date [Oct. 31, 1994] of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

- 2.10.1 Recommendation: Amend N.J. Stat. Ann. § 2C:7-2(b) (Registration of sex offenders; definition; requirements; penalties) to include N.J. Stat. Ann. § 2C:34-1(b)(7) (Prostitution and related offenses) and § 2C:13-8 (Human trafficking) as sex offenses for which a person convicted or pleading guilty to the crime would be required to register if the victim is a child.

***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.*

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) is punishable as a first degree crime by imprisonment for 10–20 years and a possible fine not to exceed \$200,000.<sup>41</sup> N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1), 2C:43-3(a)(1). If, however, the trafficker is convicted under N.J. Stat. Ann. § 2C:13-8(a)(2) or (a)(3), the trafficker shall be sentenced to imprisonment for 20 years to life, and shall not be eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d). An additional fine of no less than \$25,000 is imposed on violators of N.J. Stat. Ann. § 2C:13-8 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-8(d).

N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-9(c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2). An additional fine of no less than \$15,000 is imposed on violators of N.J. Stat. Ann. § 2C:13-9 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-9(c)(1).

Under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), promoting the prostitution of a child under 18 is punishable as a first degree crime by imprisonment for 10–20 years, a possible fine not to exceed \$200,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(b)(3)–(4), (c)(1), (f)(2), 2C:43-6(a)(1), 2C:43-3(a)(1).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>42</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>43</sup> against a minor. 18 U.S.C. § 3559(e)(1).

<sup>41</sup> See *supra* Component 1.1 about the additional fines applicable to human traffickers under N.J. Stat. Ann. § 2C:13-8(d).

<sup>42</sup> See *supra* note 25.

<sup>43</sup> See *supra* note 26 for the definition of “federal sex offense.”

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

N.J. Stat. Ann. § 2C:24-4(3), (4) (Endangering welfare of children) states, in part,

(3) A person commits a crime of the first degree if he causes or permits a child<sup>44</sup> to engage in a prohibited sexual act<sup>45</sup> or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance.

(4) A person commits a crime of the second degree if he photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act.

A first degree crime is punishable by imprisonment for 10–20 years and a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:43-6(a)(1), 2C:43-3(a)(1). A second degree crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2).

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>46</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of child pornography<sup>47</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>48</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>49</sup>

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

Pursuant to N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense; mandatory imprisonment; definitions),

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<sup>44</sup> See *supra* note 10.

<sup>45</sup> See *supra* note 11.

<sup>46</sup> See *supra* note 26 for the definition of “federal sex offense.”

<sup>47</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

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

A person commits a crime of the second degree if he attempts, via electronic<sup>50</sup> or any other means, to lure or entice a child<sup>51</sup> or one who he reasonably believes to be a child into a motor vehicle, structure<sup>52</sup> or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

A conviction under N.J. Stat. Ann. § 2C:13-6(a) is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:43-6(a)(2), 2C:43-3(a)(2).<sup>53</sup> Additionally, under N.J. Stat. Ann. § 2C:13-6(f), “[t]he court may not suspend or make any other non-custodial disposition of any person sentenced pursuant to this section.”

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

Traffickers are subject to various fines, restitution, and asset forfeiture. Traffickers convicted of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), a first degree crime, may receive a possible fine not to exceed \$200,000 and shall be subject to mandatory restitution orders. N.J. Stat. Ann. §§ 2C:13-8(b), (e), 2C:43-3(a)(1). A trafficker convicted under N.J. Stat. Ann. § 2C:13-8(a)(2) or (a)(3) is assessed an additional fine of no less than \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:13-8(b), (d), 2C:43-3(a)(2).

Traffickers convicted under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) are subject to a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-9(c)(1), 2C:43-3(a)(2). An additional fine of no less than \$15,000 is imposed on violators of N.J. Stat. Ann. § 2C:13-9 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-9(c)(1).

Pursuant to N.J. Stat. Ann. § 2C:13-8(e),

In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be ordered to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim’s labor or services; or
- (2) the value of the victim's labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L. 1963, c. 150 (C. 34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L. 1966, c. 113 (C. 34:11-56a et seq.), the Seasonal Farm Labor Act, P.L. 1945, c. 71 (C. 34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. § 201 et seq. ,or any other applicable federal law.

Traffickers convicted of promoting prostitution of a child under 18 under N.J. Stat. Ann. § 2C:34-1 (Prostitution and related offenses), a first degree crime by imprisonment for 10–20 years, a possible fine up to \$200,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(c)(1), (f)(2), 2C:43-6(a)(1), 2C:43-3(a)(1).

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<sup>50</sup> See *supra* note 29.

<sup>51</sup> Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “child” is “a person less than 18 years old.”

<sup>52</sup> Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

<sup>53</sup> See *supra* note 32 for additional penalties that may be imposed for second or subsequent convictions pursuant to N.J. Stat. Ann. § 2C:13-6.

Traffickers are also subject to mandatory asset forfeiture. Pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture),

Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

....

- (2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.
- (3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.
- (4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of *prima facie* contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

Property subject to forfeiture “may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when (1) The article is *prima facie* contraband; or, (2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.” N.J. Stat. Ann. §2C:64-1(b). Forfeiture proceedings are civil in nature (with the exception of *prima facie* contraband). Disposal of forfeited property is governed by N.J. Stat. Ann. §2C: 64-6, which states, in part,

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforcement agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

Lastly, a trafficker is subject to forfeiture of business or professional licenses used in the commission of the crime if convicted under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree). N.J. Stat. Ann. § 2C:13-9(c)(2) provides,

the court shall direct any issuing State, county, or municipal governmental agency to revoke any license, permit, certificate, approval, registration, charter, or similar form of business or professional authorization required by law concerning the operation of that person's business or profession, if that business or profession was used in the course of the crime.

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

Pursuant to N.J. Stat. Ann. § 2C:7-2(a), (b) (Registration of sex offenders; definition; requirements; penalties),

- a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

....

- b. For the purposes of this act a sex offense shall include the following:

....

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for . . . endangering the welfare of a child pursuant to paragraph (3) or (4) or subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3 b. if the victim is a minor; knowingly promoting prostitution of a child pursuant to paragraph (3) or paragraph (4) of subsection b. of N.J.S.2C:34-1, or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date [Oct. 31, 1994] of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date [Oct. 31, 1994] of this act; (3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

3.5.1 Recommendation: Amend N.J. Stat. Ann. § 2C:7-2(b) (Registration of sex offenders; definition; requirements; penalties) to include N.J. Stat. Ann. § 2C:13-8 (Human trafficking) as a sex offense for which a person convicted or pleading guilty to the crime would be required to register if the victim is a child.

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.*

Parental rights may be terminated under New Jersey’s laws for acts of sexual abuse, inclusive of CSEC offenses, pursuant to N.J. Stat. Ann. § 30:4C-15(a). However, the grounds for termination of parental rights do not include convictions of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1(b) (Prostitution and related offenses) (when a child is prostituted), or § 2C:24-4 (Endangering welfare of children). N.J. Stat. Ann. § 30:4C-15(f).

N.J. Stat. Ann. § 30:4C-15(f) (Petition to terminate parental rights, conditions) allows for termination when the parent is criminally convicted of

murder, aggravated manslaughter or manslaughter of another child of the parent; to have aided or abetted, attempted, conspired, or solicited to commit such murder, aggravated manslaughter or manslaughter of the child or another child of the parent; or to have committed, or attempted to commit, an assault that resulted, or could have resulted, in the significant bodily injury to the child or another child of the parent; or the parent has committed a similarly serious act which resulted, or could have resulted, in the death or significant bodily injury to the child or another child of the parent.

However, parental rights may be terminated wherever, pursuant to N.J. Stat. Ann. § 30:4C-15(a), “it appears that a court wherein a complaint has been proffered as provided in chapter 6 of Title 9 of the Revised Statutes, has entered a conviction against the parent or parents, guardian, or person having custody and control of any child because of abuse, abandonment, neglect of or cruelty to such child.” Pursuant to N.J. Stat. Ann. § 9:6-8.9(c) (“Abused child” defined), an “abused child” is “a child under the age of 18 years whose parent, guardian, or other person having his custody and control . . . [c]ommits or allows to be committed an act of sexual abuse against the child.” Under N.J. Stat. Ann. § 9:6-8.84(2) (Definitions relative to child abuse, neglect),

“Sexual abuse” means contacts or actions between a child and a parent or caretaker for the purpose of sexual stimulation of either that person or another person. Sexual abuse includes:

a. the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct;



- b. sexual conduct including molestation, prostitution, other forms of sexual exploitation of children, or incest; or
- c. sexual penetration<sup>54</sup> and sexual contact<sup>55</sup> as defined in N.J.S.2C:14-1 [Definitions] and a prohibited sexual act<sup>56</sup> as defined in N.J.S.2C:24-4 [Endangering welfare of children].

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<sup>54</sup> *See supra* note 12.

<sup>55</sup> *See supra* note 13.

<sup>56</sup> *See supra* note 11.

***Legal Components:***

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

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***Legal Analysis:***

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

A facilitator could be in violation of N.J. Stat. Ann. § 2C:13-9(a)(1) (Human trafficking in the second degree) if he

provides services, resources, or assistance<sup>57</sup> with the knowledge that the services, resources, or assistance are intended to be used in furtherance of the commission of the crime of human trafficking in violation of section 1 of P.L.2005, c. 77 (C.2C:13-8).

A conviction under N.J. Stat. Ann. § 2C:13-9 is punishable as a second degree crime by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:13-9(c)(1), 2C:43-6(a)(2), 2C:43-3(a)(2). An additional fine of no less than \$15,000 is imposed on violators of N.J. Stat. Ann. § 2C:13-9 which is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-9(c)(1).

N.J. Stat. Ann. § 2C:13-8(a)(2) (Human trafficking) reaches a smaller subset of facilitators by including a facilitator who “receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection.” A conviction under N.J. Stat. Ann. § 2C:13-8 is punishable as a first degree crime by imprisonment for 10–20 years. N.J. Stat. Ann. §§ 2C:13-8(b), 2C:43-6(a)(1). If, however, the facilitator is convicted under N.J. Stat. Ann. § 2C:13-8(a)(2) or (a)(3), the facilitator shall be sentenced to imprisonment for 20 years to life, and shall not be eligible for parole until 20 years have been served. N.J. Stat. Ann. § 2C:13-8(d).

As a first degree crime, a conviction is also punishable by a possible fine not to exceed \$200,000. N.J. Stat. Ann. § 2C:43-3(a)(1). Further, a facilitator convicted under N.J. Stat. Ann. § 2C:13-8(a)(2) or (3) shall pay “a fine in an amount of not less than \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-8(d).

Additionally, a facilitator could be in violation of N.J. Stat. Ann. § 2C:34-1(b)(3) (Prostitution and related offenses) for promoting prostitution of a child. Pursuant to N.J. Stat. Ann. § 2C:34-1(a)(4), “promoting prostitution” is defined as,

(a) Owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business;

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<sup>57</sup> See *supra* note 4 for the definition of “services, resources, or assistance.”

....

(f) Transporting a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or

(g) Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

A conviction under N.J. Stat. Ann. § 2C:34-1(b)(3) is punishable as a first degree crime by imprisonment for 10–20 years, a possible fine up to \$200,000, and a mandatory fine of at least \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(b)(3), (c)(1), (f)(2), 2C:43-6(a)(1), 2C:43-3(a)(1).

Facilitators who knowingly advertise the sale of minors for commercial sex acts are subject to criminal liability. Pursuant to N.J. Stat. Ann. § 2C:13-10(b) (Advertising commercial sexual abuse of a minor as a crime), a person commits the offense of advertising commercial sexual abuse of a minor if

(1) the person knowingly published, disseminates, or displays, or causes directly or indirectly to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place in this State and which includes the depiction of a minor; or

(2) the person knowingly purchases advertising in this State for a commercial sex act which includes the depiction of a minor.

A conviction under N.J. Stat. Ann. § 2C:13-10 is punishable as a first degree crime by imprisonment for 10–20 years, a possible fine up to \$200,000, and a mandatory fine of \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:13-10(c), 2C:43-6(a)(1), 2C:43-3(a)(1).

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

Facilitators are subject to fines, asset forfeiture, and restitution. As a first degree crime, a conviction under N.J. Stat. Ann. § 2C:13-8(a)(2) or (a)(3) (Human trafficking) carries a possible fine not to exceed \$200,000. N.J. Stat. Ann. §§ 2C:13-8(a)(2), (a)(3), 2C:43-3(a)(1). Additionally, for a conviction of promoting prostitution of a child under N.J. Stat. Ann. § 2C:34-1(b)(3) (Prostitution and related offenses), a facilitator could receive a possible fine not to exceed \$200,000 and a possible sentence to pay restitution, and a mandatory fine of \$25,000 to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. §§ 2C:34-1(b)(3), (c)(1), (f)(2), 2C:43-3(a)(1).

Additionally, a fine of not less than \$25,000 shall be imposed on violators of N.J. Stat. Ann. § 2C:13-8(a) and the fine is to be deposited in the “Human Trafficking Survivor’s Assistance Fund.” N.J. Stat. Ann. § 2C:13-8(d).

Persons convicted of trafficking shall also pay restitution pursuant to N.J. Stat. Ann. § 2C:13-8(e), which states,

In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be ordered to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

(1) the gross income or value to the defendant of the victim’s labor or services; or

(2) the value of the victim’s labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L. 1963, c. 150 (C. 34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L. 1966, c. 113 (C. 34:11-56a et seq.), the Seasonal Farm Labor Act, P.L. 1945, c. 71 (C. 34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised

Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. § 201 et seq., or any other applicable federal law.

Facilitators may be subject to asset forfeiture. Pursuant to N.J. Stat. Ann. § 2C:64-1(a) (Property subject to forfeiture),

Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

....

- (2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.
- (3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.
- (4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

Property subject to forfeiture “may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when (1) The article is prima facie contraband; or, (2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.” N.J. Stat. Ann. §2C:64-1(b). Disposal of forfeited property is governed by N.J. Stat. Ann. §2C: 64-6, which states, in part,

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforcement agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

Lastly, a facilitator is subject to forfeiture of business or professional licenses used in the commission of the crime if convicted under N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree). N.J. Stat. Ann. § 2C:13-9(c)(2) provides,

the court shall direct any issuing State, county, or municipal governmental agency to revoke any license, permit, certificate, approval, registration, charter, or similar form of business or professional authorization required by law concerning the operation of that person's business or profession, if that business or profession was used in the course of the crime.

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

There is no specific provision in the New Jersey code prohibiting child sex tourism.

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

4.4 *Promoting and selling child pornography is illegal.*

N.J. Stat. Ann. § 2C:24-4(b)(5)(a) (Endangering welfare of children) includes the crime of selling pornography involving children. N.J. Stat. Ann. § 2C:24-4(b)(5)(a) specifically states,

A person commits a crime of the second degree if, by any means, including but not limited to the Internet, he:

- (i) knowingly distributes an item depicting the sexual exploitation or abuse of a child;
- (ii) knowingly possesses an item depicting the sexual exploitation or abuse of a child with the intent to distribute that item; or
- (iii) knowingly stores or maintains an item depicting the sexual exploitation or abuse of a child using a file-sharing program which is designated as available for searching by or copying to one or more other computers.

The crime is punishable by imprisonment for 5–10 years and a possible fine not to exceed \$150,000. N.J. Stat. Ann. §§ 2C:24-4(b)(5)(a), 2C:43-6(a)(2), 2C:43-3(a)(2).

**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 under 18 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 sex trafficking offense include all commercially sexually exploited children.*<sup>58</sup>

N.J. Stat. Ann. § 2C:13-8 (Human trafficking) includes all commercial sexual exploitation of minors. Under N.J. Stat. Ann. § 2C:13-8(a)(3), when the victim is a minor, means of force, fraud, or coercion are not required.<sup>59</sup> In addition, the human trafficking law applies to buyers.<sup>60</sup> While the buyer applicable provision under N.J. Stat. Ann. § 2C:13-9(a) (Human trafficking in the second degree) requires that a buyer knew the person solicited or purchased was a victim of trafficking, creating a third party control requirement, the core sex trafficking offense under N.J. Stat. Ann. § 2C:13-8 applies to buyers through the term “obtains,” regardless of third party control. Thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking. Consequently, under N.J. Stat. Ann. § 2C:13-8, any child who is bought for sex, regardless of whether force, fraud or coercion is used, and regardless of whether the victim identifies a trafficker falls within the definition of a child sex trafficking victim entitled to the services, benefits and protections associated with that victim status. N.J. Stat. Ann. § 2C:13-8(a)(3).

<sup>58</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>59</sup> See *supra* discussion in Component 1.1.

<sup>60</sup> See *supra* discussion of buyer applicability in Component 2.1.

5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor under 18 to engage in the commercial sex act.*

Neither N.J. Stat. Ann. § 2C:13-8 (Human trafficking), nor N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) prohibit a defense based upon the willingness of a minor to engage in the commercial sex act. However, N.J. Stat. Ann. § 2C:2-10 (Consent) states,

a. In general. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

....

c. Ineffective consent. Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if:

(1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(2) It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or

(3) It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

5.2.1 Recommendation: Amend N.J. Stat. Ann. § 2C:13-8 (Human trafficking) and N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree) to expressly prohibit a defense based upon the willingness of the minor to engage in the commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>61</sup>

Neither N.J. Stat. Ann. § 2C:34-1(b)(1), (8) (Prostitution and related offenses) nor § 2C:34-1.1 (Loitering for the purpose of engaging in prostitution) prevents the prosecution of children for prostitution-related offenses. However, N.J. Stat. Ann. § 2C:34-1(e) provides an affirmative defense to prostitution charges for human trafficking victims and minors under 18, stating,

It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to [N.J. Stat. Ann. § 2C:13-8] or compelled by another to engage in sexual activity, regardless of the defendant's age.

5.3.1 Recommendation: Amend N.J. Stat. Ann. § 2C:34-1(b)(1) (Prostitution and related offenses) and § 2C:34-1.1 (Loitering for the purpose of engaging in prostitution) to ensure that all minors are protected from criminalization for prostitution offenses.

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

**Child Identified as Abused/Neglected**

Pursuant to N.J. Stat. Ann. § 9:6-1 (Abuse, abandonment, cruelty and neglect of child; what constitutes),

Abuse of a child shall consist in any of the following acts: . . . (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or

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<sup>61</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property . . . .

. . . .

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21[Definitions]), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

Additionally, pursuant to N.J. Stat. Ann. § 9:6-8.9(c) ("Abused child" defined), an "abused child" is "a child under the age of 18 years whose parent, guardian, or other person having his custody and control . . . [c]ommits or allows to be committed an act of sexual abuse against the child."<sup>62</sup>

Under N.J. Stat. Ann. § 9:6-8.84(2) (Definitions relative to child abuse, neglect),

"Sexual abuse" means contacts or actions between a child and a parent or caretaker for the purpose of sexual stimulation of either that person or another person. Sexual abuse includes:

- a. the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct;
- b. sexual conduct including molestation, prostitution, other forms of sexual exploitation of children, or incest; or
- c. sexual penetration<sup>63</sup> and sexual contact<sup>64</sup> as defined in N.J.S.2C:14-1 [Definitions] and a prohibited sexual act<sup>65</sup> as defined in N.J.S.2C:24-4 [Endangering welfare of children].

## *I. Initial custody*

### *a. Authority for initial custody*

Pursuant to N.J. Stat. Ann. § 9:6-8.27 (Temporary removal with consent),

A police officer or an agency or institution or individual may temporarily remove a child from the place where he is residing with the consent of his parent or other person legally responsible for his care, if, there is reasonable cause to suspect that the child's life or health is in imminent

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<sup>62</sup> Pursuant to N.J. Stat. Ann. § 9:6-1, a sexually exploited child is likely to be identified as abused or neglected. If a child is identified as abused or neglected under N.J. Stat. Ann. § 9:6-1, the definition of "caregiver" under N.J. Stat. Ann. § 9:6-2 is sufficiently broad to involve Child Protective Services in investigations where the child is in the custody or control of a non-family trafficker.

<sup>63</sup> See *supra* note 12.

<sup>64</sup> See *supra* note 13.

<sup>65</sup> See *supra* note 11.



danger. If the child is not returned within 3 working days from the date of removal, the procedure required pursuant to this act shall be applied immediately.

Additionally, pursuant to N.J. Stat. Ann. § 9:6-8.29 (Removal of child without court order), a law enforcement officer or a designated person may remove a child from their home without a court order and without consent of the child's parent or guardian, "if the child is in such condition that the child's continuance in the place or residence or in the care and custody of the parent or guardian presents an imminent danger to the child's life, safety, or health, and there is insufficient time to apply for a court order . . . ." This is further codified in N.J. Stat. Ann. 9:6-8.33(c) (Originating proceeding to determine abuse or neglect), which states that "[i]n cases of emergency, in addition to the removal of one child, any other child residing in the home may also be removed if his immediate removal is necessary to avoid imminent danger to his life or health."

Lastly, under N.J. Stat. Ann. 9:6-8.28 (Preliminary order of court before preliminary hearing held), a court may order a child be temporarily removed from their home before a hearing,

[I]f (1) the parent or other person legally responsible for the child's care was informed of an intent to apply for any order under this section; and (2) the child appears so to suffer from the abuse or neglect of his parent or guardian that his immediate removal is necessary to avoid imminent danger to the child's life, safety or health; and (3) there is not enough time to hold a preliminary hearing.

#### b. Placement

There is no statute that dictates the locations where a child may be placed immediately upon detention. However, N.J. Stat. Ann. § 9:6-8.30(a) (Action by the division upon emergency removal) states that

The division when informed that there has been an emergency removal of a child from his home without court order shall make every reasonable effort to communicate immediately with the child's parent or guardian that such emergency removal has been made and the location of the facility . . . . For the purposes of this section, "facility" means a hospital, shelter or child care institution in which a child may be placed for temporary care, but does not include a resource family home.

## II. *Process following initial custody*

Pursuant to N.J. Stat. Ann. § 9:6-8.31(a) (Preliminary orders after filing of complaint), a hearing must be held on the next court day when a child has been taken into custody without a warrant, "whereby the safety of the child shall be of paramount concern, to determine whether the child's interests require protection pending a final order of disposition." Additionally, "any person who may originate a proceeding may apply for, or the court, on its own motion, may order a hearing at any time after the complaint is filed to determine, with the safety of the child of paramount concern, whether the child's interests require protection pending a final order of disposition." N.J. Stat. Ann. § 9:6-8.31(a).

Further, under N.J. Stat. Ann. § 9:6-8.32 (Hearing to determine if child to be returned), a hearing may be held to determine whether a child should be returned to their home, upon application of the parent or guardian in the following circumstances:

- a. if there has not been a hearing on the removal of the child at which the parent or guardian was present or had an adequate opportunity to be present; or

b. upon good cause shown.

Except for good cause shown, such hearing shall be held within three court days of the application. Upon such hearing, the court shall grant the application, unless it finds that such return presents an imminent risk to the child's life, safety or health.

At this stage, a complaint may be filed to originate proceedings, pursuant to N.J. Stat. Ann. § 9:6-8.33(a) (Originating proceeding to determine abuse or neglect). Under N.J. Stat. Ann. § 9:6-8.34 (Persons who may originate proceedings), the proceedings may begin on the complaint of any of the following people:

- a. A parent or other person interested in the child.
- b. A duly authorized agency, association, society, institution or the division.
- c. A police officer.
- d. Any person having knowledge or information of a nature which convinces him that a child is abused or neglected.
- e. A person on the court's direction.
- f. The county prosecutor.

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

There is no New Jersey statute that specifically designates where a child may be placed pending adjudication of the complaint, but N.J. Stat. Ann. § 9:6-8.31 (Preliminary orders after filing of complaint) does allow for two possible placement outcomes to a preliminary hearing. These outcomes include

....

b. Upon such hearing, if the court finds that continued removal is necessary to avoid an ongoing risk to the child's life, safety, or health, it shall affirm the removal of the child to an appropriate place or place him in the custody of a suitable person.

....

d. Upon such hearing, the court may, for good cause shown, release the child to the custody of his parent or guardian from whose custody or care the child was removed, pending a final order of disposition, in accord with section 33 of P.L.1974, c.119 (C.9:6-8.53).

....

### *IV. Adjudication or referral to alternate process*

Pursuant to N.J. Stat. Ann. § 9:6-8.50 (Sustaining or dismissing complaint), there are several possible outcomes to an adjudication hearing. The facts of the case may be sustained, under subsection (a), if the court finds the child is abused or neglected. If the facts are not sustained, the complaint is dismissed. N.J. Stat. Ann. § 9:6-8.50(c). The court may also amend the allegations to conform them to the proof provided at the hearing. N.J. Stat. Ann. § 9:6-8.50(b).

Prior to disposition, the court, upon a finding of abuse or neglect, must decide, "whether a preliminary order pursuant to section 11 hereof is required to protect the child's interests pending a final order of disposition." N.J. Stat. Ann. § 9:6-8.50(d). Additionally, if necessary, the court may also have the child, "removed and remanded to a place designated by the court or . . . placed in the custody of a suitable person, pending a final order of disposition." N.J. Stat. Ann. § 9:6-8.50(d).

### *V. Outcomes*

Pursuant to N.J. Stat. Ann. § 9:6-8.51(a) (Disposition of adjudication), the following dispositions are possible after a child is found to be abused or neglected:

- (1) [S]uspending judgment in accord with section 32 hereof;
- (2) releasing the child to the custody of his parents or guardian in accord with section 33 hereof;
- (3) placing the child in accord with section 34 hereof;
- (4) making an order of protection in accord with section 35 hereof;
- (5) placing the respondent on probation in accord with section 36 hereof;
- (6) requiring that an individual found to have abused or neglected a child accept therapeutic services, and this order may be carried out in conjunction with any other order of disposition.

### **Child Identified as in a Juvenile-Family Crisis**

A child engaging in “an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking,” constitutes a juvenile-family crisis<sup>66</sup> under N.J. Stat. Ann. § 2A:4A-22(g), potentially allowing the child to be referred to a juvenile family crisis intervention unit.

#### *I. Initial custody*

##### *a. Authority for initial custody*

Pursuant to N.J. Stat. Ann. § 2A:4A-80 (Law enforcement referral),

A law enforcement officer taking a juvenile into short-term custody pursuant to section 12 of P.L. 1982, c. 77 [C. 2A:4A-31] shall immediately notify the juvenile-family crisis intervention unit and shall promptly bring the juvenile to the unit or place designated by the unit when:

- a. The officer has reason to believe that it is not in the best interests of the juvenile or the family for the officer to return the juvenile to his home;
- ....
- d. The juvenile has run away from a placement and the juvenile refuses to return home or the juvenile, through his past behavior, has demonstrated an inability to remain at home;
- e. The law enforcement officer is unable, by all reasonable efforts to identify or locate a parent, relative or other such appropriate person;
- f. The juvenile requires immediate emergency services, such as medical or psychiatric care; or
- g. No identification can be obtained from the juvenile.

In addition to law enforcement referrals, a juvenile may be referred to the juvenile-family crisis unit under N.J. Stat. Ann. § 2A:4A-81(a) (Other referrals), which states,

The juvenile-family crisis intervention unit shall also receive referrals on a continuous basis in situations where a juvenile-family crisis exists and there has been either:

- (1) A request by a parent or juvenile for intervention; or
- (2) A referral by a public or private agency, educational institution, or any other organization serving children, which has contact with the juvenile or family, and has reasonable cause to believe that a family crisis exists.

Also, a minor sex trafficking victim may also be temporarily removed from their place of residence under N.J. Stat. Ann. § 9:6-8.27(a) (Temporary removal with consent), which states, in part,

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<sup>66</sup> N.J. Stat. Ann. § 2A:4A-22(g)(5) defines “[j]uvenile family crisis” to include “behavior, conduct or a condition of a juvenile, parent or guardian or other family member which presents or results in . . . an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.”

A police officer or an agency or institution or individual may temporarily remove a child from the place where he is residing with the consent of his parent or other person legally responsible for his care,<sup>67</sup> if, there is reasonable cause to suspect that the child's life or health is in imminent danger . . . .

Alternatively, a court may hold a hearing to determine whether to remove the child for reasons of abuse or neglect.<sup>68</sup> N.J. Stat. Ann. § 9:6-8.28(a). The court may also place an abused or neglected child “in the custody of a relative or other suitable person or the division for the placement of a child after a finding that the division has made reasonable efforts to prevent placement” or that such reasonable efforts were not required. N.J. Stat. Ann. § 9:6-8.54(a).<sup>69</sup>

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<sup>67</sup> Pursuant to N.J. Stat. Ann. § 2A:4A-82 (Juvenile-family crisis stabilized), “When the juvenile-family crisis has been stabilized and the juvenile is residing in the home, the crisis intervention unit shall arrange a second interview session with the family as soon as practicable and preferably the day following the initial intervention, for the purpose of monitoring the family situation. The crisis intervention unit may, in appropriate cases, continue to work with the family on a short-term basis in order to stabilize the family situation.”

<sup>67</sup> See *infra* Component 5.6.

<sup>68</sup> See *infra* Component 5.5.

<sup>69</sup> While access to specialized services for juvenile sex trafficking victims is not statutorily mandated, N.J. Stat. Ann. § 52:4B-44.1 (Establishment of standard protocols for provision of information and services to victims of human trafficking, minors charged with prostitution) states,

The Attorney General shall, in consultation with the Commissioner of the Department of Health and Senior Services, the Commissioner of Children and Families, the Superintendent of State Police and representatives of providers of services to victims of human trafficking and sexually exploited minors, coordinate the establishment of standard protocols for the provision of information and services to victims of human trafficking and to minors under the age of 18 who are charged with prostitution, including coordination of efforts with the appropriate federal authorities pursuant to the "Trafficking Victims Protection Reauthorization Act of 2003," 22 U.S.C. § 7101 et seq. and shall make such protocols available upon request.

Additionally, although not codified, the New Jersey Office of the Attorney General issued Law Enforcement Directive No. 2012-2 (Investigation of Human Trafficking). Pursuant to the General Policy of the Directive, “[a]ll law enforcement agencies and officers shall be required: . . . to protect the immediate safety and security of human trafficking victims; and to respect and safeguard the rights of these victims.” The Directive outlines special responsibilities of law enforcement agencies in both investigating prostitution offenses and when interacting with possible victims of human trafficking. The Directive subsection IV(C) (Special responsibilities: when interacting with possible victims) states, in relevant part:

1. All law enforcement officers shall take appropriate actions as are necessary to protect the immediate safety and security of persons who may be the victims of human trafficking.
2. If a person reports to a law enforcement officer that he or she is a victim of human trafficking, or relates to a law enforcement officer facts that, if true, would make the person a victim of human trafficking, the law enforcement officer . . . shall treat the person making the report . . . as a human trafficking victim . . . notwithstanding that the person may have committed an offense (*e.g.* prostitution) . . .
3. . . . [A] law enforcement officer . . . shall notify the County Prosecutor’s Human Trafficking Liaison as soon as practicable after receiving the report or information from the possible human trafficking victim so that the County Prosecutor’s Office can arrange for any appropriate referrals for victim services.
4. . . . [T]he Division of Criminal Justice, working in conjunction with the County Prosecutors, and in consultation with the Commissioner of the Department of Health and Senior Services, the Commissioner of the Department of Children and Families, the Superintendent of State Police, and representatives of providers of services to victims of human trafficking and sexually exploited minors, shall develop standards and protocols for providing information and services to these persons. Such standards and protocols shall include coordination of efforts with appropriate federal authorities pursuant to the “Trafficking Victims Protection reauthorization Act of 2003,” 22 U.S.C. Sec. 7101 *et seq.*

b. Placement

After taking the child into short-term custody, the child may not be detained in a juvenile facility or jail. N.J. Stat. Ann. § 2A:4A-32(a). Pursuant to N.J. Stat. Ann. § 2A:4A-32(b), (c) (Short-term custody),

b. An officer taking a juvenile into short-term custody shall inform the juvenile of the reason for custody and shall where possible transport, or arrange to have the juvenile transported to his home. The officer releasing a juvenile from such custody shall inform the juvenile's parents or guardian and the juvenile-family crisis intervention unit<sup>70</sup> of the reason for taking the juvenile into custody and may, if he believes further services are needed, inform the juvenile and his parents of the nature and location of appropriate services.

c. A law enforcement officer taking a juvenile into short-term custody may transport the juvenile to the home of a relative of the juvenile or to the home of another responsible adult or make arrangement for such transportation where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in custody of the adult until such time as the juvenile-family crisis intervention unit can bring about the child's return home or an alternative living arrangement or out of home placement. A law enforcement officer placing a juvenile with a relative or responsible adult shall immediately notify the juvenile-family crisis intervention unit of this fact and the reason for taking the juvenile into custody.

*II. Process following initial custody*

Pursuant to N.J. Stat. Ann. § 2A:4A-78 (Intervention unit response), "A crisis intervention response shall consist of immediate interviews with the parents and juvenile involved by one or more crisis intervention workers. Where the juvenile is not in the home, or in the custody of the police, the intervention workers shall attempt to interview the juvenile wherever the juvenile may be found. The juvenile and family shall be advised of the purpose of the unit and of the emphasis upon the voluntary exhaustion of community services prior to court involvement. The unit shall make all reasonable efforts to keep the family intact consistent with the physical safety and mental well-being of the juvenile by obtaining, where possible, written agreement of the family to accept recommendations which may include, but are not limited to, referral to appropriate services and agencies." "When, in the judgment of the crisis intervention unit, a juvenile-family crisis continues to exist despite the provision of crisis intervention services and the exhaustion of appropriate community services, court intake services shall, by filing a petition, refer the case to the court." N.J. Stat. § 2A:4A-83 (Juvenile-family crisis referral to the court; continuing crisis). The court will hold a hearing on the juvenile-family crisis if the crisis is not stabilized.<sup>71</sup> N.J. Stat. Ann. § 2A:4A-86.

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See <http://www.nj.gov/oag/newsreleases12/AG-Human-Trafficking-Directive.pdf>.

<sup>70</sup> Pursuant to N.J. Stat. Ann. § 2A:4A-76 (Juvenile-family crisis intervention units established),

There shall be established in each county one or more juvenile-family crisis intervention units. Each unit shall operate either as a part of the court intake service, or where provided for by the county, through any other appropriate office or private service pursuant to an agreement with the Administrative Office of the Courts, provided that all such units shall be subject to the Rules of Court. In any county where a crisis intervention service system, designed to attend and stabilize juvenile and family problems on a county-wide basis, is in operation as of the effective date of this act, such service shall satisfy all the provisions of this act, and may continue in its present form and under its present procedures, provided that it is operating in substantial compliance with the specific requirements and goals set forth in this act.

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

N.J. Stat. Ann. § 2A:4A-88 (Temporary placement) states that a child may be temporarily placed pending adjudication, “in a host shelter, resource family or group home, a county shelter care facility as defined by law, or other suitable family setting.” Further, the statute specifically prohibits, “placement be arranged in a secure detention or other facility or in a secure correctional institution for the detention or treatment of juveniles accused of crimes or adjudged delinquent.”

Additionally, under N.J. Stat. Ann. § 2A:4A-87 (Juvenile-family crisis referral to courts; out of home placement),

When, despite provision of crisis intervention services and the exhaustion of all alternative services, there is a refusal on the part of the juvenile to stay in or return to the home or a refusal on the part of the parents to allow the juvenile to stay in or return home, or the physical safety of the juvenile is threatened, or the juvenile is in need of immediate care such that it is necessary to make an out of home placement of the juvenile, court intake services shall:

- a. Arrange, when agreed to by the parent or guardian and juvenile, alternate living arrangement for the juvenile with a relative, neighbor, or other suitable family setting. It shall not be necessary for a court hearing to approve the living arrangement and the arrangement may continue as long as there is agreement; or
- b. Arrange, when no alternate living arrangement can be agreed to and when all possible resources for alternate living arrangements as set forth in subsection a. of this section have been exhausted, temporary out of home placement prior to the placement hearing. Court intake services shall immediately file a petition for out of home placement which shall include documentation of the attempts made to provide alternate living arrangements including, but not limited to, the names of persons contacted, their responses and the lack of agreement by the juvenile or the juvenile’s parents if the persons contacted are willing to take the juvenile with the court. The crisis intervention unit shall inform the juvenile and parent or guardian that an out of home placement determination may be made by the court where an alternate living arrangement cannot be agreed to.

And, under N.J. Stat. Ann. § 2A:4A-46(b) (Disposition of juvenile-family crisis),

No juvenile involved in a juvenile-family crisis shall be committed to or placed in any institution or facility established for the care of delinquent children or in any facility, other than an institution for persons with intellectual disabilities, a mental hospital or facility for the care of persons addicted to controlled dangerous substances, which physically restricts such juvenile committed to or placed in it.

### *IV. Adjudication*

Pursuant to N.J. Stat. Ann. § 2A:4A-86 (Juvenile-family crisis hearing; disposition)

Whenever the court receives a petition from court intake services stating that a juvenile-family crisis may exist the court shall hold a hearing and consider the facts and recommendations submitted by intake services in order to determine the appropriate disposition to be made. The court shall notify the juvenile, his parent or guardian or other family member alleged in the petition as contributing to the family crisis that a juvenile-family crisis may exist. The juvenile, parent, guardian, or other family member may present witnesses and evidence to rebut the determination. If the court finds that there is not enough information to make a disposition it may continue the matter and hold one or more additional hearings . . . .

## V. *Outcomes*

A number of outcomes are possible as a result of a juvenile-family crisis hearing. Pursuant to N.J. Stat. Ann. § 2A:4A-46 (Disposition of juvenile-family crisis), “[t]he court may order any disposition in a juvenile-family crisis provided for in paragraphs (2), (4), (5), (6), (7) and (13) of subsection b. of section 24 of P.L.1982, c.77 (C.2A:4A-43) or other disposition specifically provided for in P.L.1982, c.80 (C.2A:4A-76 et seq.)”

The pertinent sections of N.J. Stat. Ann. § 2A:4A-43 (Disposition of delinquency cases) allow for the following dispositions:

....

(2) Release the juvenile to the supervision of the juvenile's parent or guardian;

....

(4) Transfer custody of the juvenile to any relative or other person determined by the court to be qualified to care for the juvenile;

(5) Place the juvenile under the care and responsibility of the Department of Children and Families so that the commissioner may designate a division or organizational unit in the department pursuant to P.L.1951, c.138 (C.30:4C-1 et seq.) for the purpose of providing services in or out of the home. Within 14 days, unless for good cause shown, but not later than 30 days, the Department of Children and Families shall submit to the court a service plan, which shall be presumed valid, detailing the specifics of any disposition order. The plan shall be developed within the limits of fiscal and other resources available to the department. If the court determines that the service plan is inappropriate, given existing resources, the department may request a hearing on that determination;

(6) Place the juvenile under the care and custody of the Commissioner of Children and Families for the purpose of receiving the services of the Division of Children's System of Care of that department, provided that the juvenile has been determined to be eligible for those services under P.L.1965, c.59, s.16 (C.30:4-25.4);

(7) Commit the juvenile, pursuant to applicable laws and the Rules of Court governing civil commitment, to the Department of Children and Families under the responsibility of the Division of Children's System of Care for the purpose of placement in a suitable public or private hospital or other residential facility for the treatment of persons who are mentally ill, on the ground that the juvenile is in need of involuntary commitment;

....

(13) Order that the juvenile participate in a program of academic or vocational education or counseling, such as a youth service bureau, requiring attendance at sessions designed to afford access to opportunities for normal growth and development. This may require attendance after school, evenings, and weekends;

....

The child may also be placed out of the home, pursuant to N.J. Stat. Ann. § 2A:4A-87 (Juvenile-family crisis referral to courts; out of home placement). Pursuant to subsection (a), the placement may include an, “alternate living arrangement for the juvenile with a relative, neighbor, or other suitable family setting.”

### **Child Identified as Delinquent**

Pursuant to N.J. Stat. Ann. § 2A:4A-23 (Definition of delinquency), delinquency is defined as

[T]he commission of an act by a juvenile which if committed by an adult would constitute:

- a. A crime;
- b. A disorderly persons offense or petty disorderly persons offense; or
- c. A violation of any other penal statute, ordinance or regulation.

Therefore, a victim of domestic minor sex trafficking could be alleged to be delinquent if the child was found to violate N.J. Stat. Ann. § N.J.S.2C:34-1.

*I. Initial custody*

- a. Authority for initial custody

Under N.J. Stat. Ann. § 2A:4A-31 (Taking into custody),

- a. A juvenile may be taken into custody:
  - (1) Pursuant to an order or warrant of any court having jurisdiction; or
  - (2) For delinquency, when there has been no process issued by a court, by a law enforcement officer, pursuant to the laws of arrest and the Rules of Court.

...

- c. The taking of a juvenile into custody shall not be construed as an arrest, but shall be deemed a measure to protect the health, morals and well being of the juvenile.

- b. Placement

After taking the child into short-term custody, the child may not be detained in a juvenile facility or jail. N.J. Stat. Ann. § 2A:4A-32(a). Pursuant to N.J. Stat. Ann. § 2A:4A-32(b), (c) (Short-term custody),

- b. An officer taking a juvenile into short-term custody shall inform the juvenile of the reason for custody and shall where possible transport, or arrange to have the juvenile transported to his home. The officer releasing a juvenile from such custody shall inform the juvenile's parents or guardian and the juvenile-family crisis intervention unit<sup>72</sup> of the reason for taking the juvenile into custody and may, if he believes further services are needed, inform the juvenile and his parents of the nature and location of appropriate services.
- c. A law enforcement officer taking a juvenile into short-term custody may transport the juvenile to the home of a relative of the juvenile or to the home of another responsible adult or make arrangement for such transportation where the officer reasonably believes that the child will be provided with adequate care and supervision and that the child will remain in custody of the adult until such time as the juvenile-family crisis intervention unit can bring about the child's return home or an alternative living arrangement or out of home placement. A law enforcement officer placing a juvenile with a relative or responsible

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<sup>72</sup> Pursuant to N.J. Stat. Ann. § 2A:4A-76 (Juvenile-family crisis intervention units established),

There shall be established in each county one or more juvenile-family crisis intervention units. Each unit shall operate either as a part of the court intake service, or where provided for by the county, through any other appropriate office or private service pursuant to an agreement with the Administrative Office of the Courts, provided that all such units shall be subject to the Rules of Court. In any county where a crisis intervention service system, designed to attend and stabilize juvenile and family problems on a county-wide basis, is in operation as of the effective date of this act, such service shall satisfy all the provisions of this act, and may continue in its present form and under its present procedures, provided that it is operating in substantial compliance with the specific requirements and goals set forth in this act.



adult shall immediately notify the juvenile-family crisis intervention unit of this fact and the reason for taking the juvenile into custody.

## *II. Process following initial custody*

A juvenile cannot be “placed in detention without the permission of a judge or the court intake service.” N.J. Stat. Ann. § 2A:4A-34(b). The court will hold a hearing to determine if detention is necessary. N.J. Stat. Ann. § 2A:4A-38(a). Pursuant to N.J. Stat. Ann. § 2A:4A-34(c), a juvenile may be detained prior to disposition, except as otherwise provided, only if:

(1) Detention is necessary to secure the presence of the juvenile at the next hearing as evidenced by a demonstrable record of recent willful failure to appear at juvenile court proceedings or to remain where placed by the court or the court intake service or the juvenile is subject to a current warrant for failure to appear at court proceedings which is active at the time of arrest; or

....

(3) With respect to a juvenile charged with an offense which, if committed by an adult, would constitute a crime of the fourth degree other than those enumerated in paragraph (2) of this subsection, or a disorderly persons or petty disorderly persons offense, and with respect to a juvenile charged with an offense enumerated in subsection c. when the criteria for detention are not met, the juvenile may be temporarily placed in a shelter or other non-secure placement if a parent or guardian cannot be located or will not accept custody of the juvenile. Police and court intake personnel shall make all reasonable efforts to locate a parent or guardian to accept custody of the juvenile prior to requesting or approving the juvenile’s placement in a shelter or other non-secure placement. If, after the initial detention hearing, continued placement is necessary, the juvenile shall be returned to a shelter or other non-secure placement.

Specifically, however, a juvenile 11 years old or younger may not be placed in detention “unless he is charged with an offense which, if committed by an adult, would be a crime of the first or second degree or arson.” N.J. Stat. Ann. § 2A:4A-34(f).

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

If arrested for a delinquent act, a juvenile charged with delinquency shall be released to any person or agency enumerated in the section, such as the juvenile’s parent or guardian, provided there is assurance that the person or agency accepts responsibility to ensure the juvenile is brought before the court and there is not a need for detention.<sup>73</sup> N.J. Stat. Ann. § 2A:4A-34(a), (d).

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<sup>73</sup> N.J. Stat. Ann. § 2A:4A-34(d) states that the judge or intake officer must consider the following placement alternatives before deciding whether detention is necessary:

- (1) Release to parents;
- (2) Release on juvenile’s promise to appear at next hearing;
- (3) Release to parents, guardian or custodian upon written assurance to secure the juvenile's presence at the next hearing;
- (4) Release into care of a custodian or public or private agency reasonably capable of assisting the juvenile to appear at the next hearing;
- (5) Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile at the next hearing;
- (6) Release with required participation in a home detention program;
- (7) Placement in a shelter care facility; or
- (8) Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.

In addition, the court has the following options of placement pending adjudication, pursuant to N.J. Stat. Ann. 2A:4A-34(d),

....

- (4) Release into care of a custodian or public or private agency reasonably capable of assisting the juvenile to appear at the next hearing;
- (5) Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile at the next hearing;
- (6) Release with required participation in a home detention program;
- (7) Placement in a shelter care facility; or
- (8) Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.

#### *IV. Adjudication or referral to alternate Process*

If a child is detained pending adjudication, the adjudication must be heard within 30 days of the detention hearing. N.J. Stat. Ann. § 2A:4A-38(k) (Adjudication hearing). There is no required timeframe for children that are not detained pending the adjudication hearing.

Additionally, A minor victim of sex trafficking may have an informal adjustment of a delinquency petition. Specifically, when a complaint is filed against a juvenile N.J. Stat. Ann. § 2A:4A-71(2)(b) requires that the complaint be reviewed by court intake services to determine whether it “should be dismissed, diverted, or referred for court action.” It also states that

Court intake services shall consider the following factors in determining whether to recommend diversion:

....

- (11) Any information relevant to the offense in any case where the juvenile is charged with an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking.<sup>74</sup>

#### *V. Outcomes*

If a child is alleged to be delinquent, a dispositional hearing must occur under N.J. Stat. Ann. § 2A:4A-41 (Dispositional hearing). Prior to this hearing a predispositional evaluation may be conducted under N.J. Stat. Ann. § 2A:4A-42 (Predispositional evaluation). “In any case where the juvenile is charged with an act which if committed by an adult would constitute prostitution in violation of N.J.S.2C:34-1 or any offense which the juvenile alleges is related to the juvenile being a victim of human trafficking, the predisposition report may include any information relevant to the commission of the act.” N.J. Stat. Ann. § 2A:4A-42(2)(h). Pursuant to N.J. Stat. Ann. § 2A:4A-43(b) (Disposition of delinquency cases), if a juvenile is adjudicated delinquent he may be incarcerated or sentenced to one of many dispositions, including release to the supervision of a parent or guardian or relative, placement with a state agency, placement on probation, or placement with a nonresidential work program.

Additionally, a child may be able to utilize defenses for the crime of prostitution that may lead to the child being found “not delinquent” by the court. Pursuant to N.J. Stat. Ann. § 2C:34-1(e) (Prostitution and

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<sup>74</sup> See also N.J. Stat. Ann. 2A:4A-74, listing prostitution and trafficking as relevant factors to be considered when the juvenile is diverted to a court intake services conference.

related offenses), “It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking . . . .”

If a minor sex trafficking victim is found delinquent, the child may have the opportunity to have that delinquency finding vacated. Specifically, N.J. Stat. Ann. § 2C:44-1.1(a) dictates that,

(1) A person convicted of N.J.S.2C:34–1, prostitution and related offenses, or section 3 of P.L.1997, c. 93 (C.2C:34–1.1), loitering for the purpose of engaging in prostitution, or a similar local ordinance, may file an application with the Superior Court in accordance with the Rules of Court to have the conviction vacated at any time following entry of a judgment of conviction, when the person's participation in the offense was a result of having been a victim of human trafficking pursuant to section 1 of P.L.2005, c. 77 (C.2C:13–8) or as defined in paragraph (14) of 22 U.S.C. s.7102 [Definitions].

. . . .  
(2) . . . .

. . . .  
(d) If the court finds, pursuant to subsection c. of this section,<sup>75</sup> that the person was a victim of human trafficking, it shall enter an order vacating the conviction and directing that all court records be revised accordingly. When the person's application also seeks an order for expungement, the court order shall require that any court, law enforcement and correctional agencies, and other noticed parties pursuant to subsection b. of this section expunge all references to the person's arrest, conviction, and related proceedings for the violation of N.J.S.2C:34–1, prostitution and related offenses, or section 3 of P.L.1997, c. 93 (C.2C:34–1.1), loitering for the purpose of engaging in prostitution, or a similar local ordinance from all records in their custody that relate to the vacated conviction.

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

### 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>76</sup>

New Jersey does not expressly identify human trafficking as a form of abuse but does include commercial sexual exploitation as a type of abuse or neglect. Pursuant to N.J. Stat. Ann. § 9:6-8.9(c) (“Abused child” defined), an “abused child” is “a child under the age of 18 years whose parent, guardian, or other person having his custody and control . . . [c]ommits or allows to be committed an act of sexual abuse against the child.”

Under N.J. Stat. Ann. § 9:6-8.84(2) (Definitions relative to child abuse, neglect),

“Sexual abuse” means contacts or actions between a child and a parent or caretaker for the purpose of sexual stimulation of either that person or another person. Sexual abuse includes:

- a. the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct;

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<sup>75</sup> Under N.J. Stat. Ann. § 2C:44-1.1(c)(1),

The court may vacate a conviction pursuant to this section if it finds by a preponderance of the evidence that the person was a victim of human trafficking pursuant to section 1 of P.L.2005, c. 77 (C.2C:13–8) [Human trafficking] or as defined in paragraph (14) of 22 U.S.C. s.7102 [Definitions] at the time of the offense, and that the violation was a result of the person having been a victim of human trafficking.

<sup>76</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

- b. sexual conduct including molestation, prostitution, other forms of sexual exploitation of children, or incest; or
- c. sexual penetration<sup>77</sup> and sexual contact<sup>78</sup> as defined in N.J.S.2C:14-1 [Definitions] and a prohibited sexual act<sup>79</sup> as defined in N.J.S.2C:24-4 [Endangering welfare of children].

5.5.1 Recommendation: Expand the definitions of abuse to expressly include when a child is victimized through N.J. Stat. Ann. § 2C:13-8 (Human trafficking).

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.*

For the purpose of protective child welfare laws, N.J. Stat. Ann. § 9:6-2 (“Parent” and “custodian” defined) defines “the person having care, custody and control of any child” as including,

any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed, and shall include . . . a person who legally or voluntarily assumes the care, custody, maintenance or support of the child.

While this definition may potentially be broad enough to allow child welfare intervention in non-familial trafficking cases, the definition of “sexual abuse,” which specifically applies to commercially sexually exploited children, requires “contacts or actions between a child and a parent or caretaker . . .” N.J. Stat. Ann. § 9:6-8.84(2). However, “caretaker” is not defined, suggesting that this definition is likely too narrow to allow for child welfare intervention on behalf of child sex trafficking victims in non-familial trafficking cases.

5.6.1 Recommendation: Amend N.J. Stat. Ann. § 9:6-8.84(2) (Definitions relative to child abuse, neglect) to allow child sex trafficking victims to access child protective services regardless of the perpetrator of abuse.

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

Crime victims’ compensation is only allowed for certain crimes, but most crimes related to domestic minor sex trafficking are included. Under the Criminal Injuries Compensation Act of 1971, the Victims of Crime Compensation Agency may order payment for victims<sup>80</sup> who suffer personal injury or death resulting from the commission or attempt to commit specified offenses, including violations of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:14-2 (Sexual assault), § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact), or any other lewd, indecent, or obscene acts with children. N.J. Stat. Ann. § 52:4B-11. The Agency may make an order for compensation even if the buyer has not been prosecuted or convicted. N.J. Stat. Ann. § 52:4B-10. Applications shall be made within two years of the date of injury or death (unless good cause is found for delay) and reported to authorities “within three months after its occurrence or reasonable discovery.” N.J. Stat. Ann. § 52:4B-18. Furthermore, pursuant to N.J. Stat. Ann. § 52:4B-18,

No compensation shall be awarded if:

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<sup>77</sup> See *supra* note 12.

<sup>78</sup> See *supra* note 13.

<sup>79</sup> See *supra* note 11.

<sup>80</sup> Pursuant to N.J. Stat. Ann. § 52:4B-2 (Definitions), a “victim” is defined as “a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in [N.J. Stat. Ann. § 52:4B-11].”

a. . . . the victim did not cooperate with the reasonable requests of law enforcement authorities unless the victim demonstrates a compelling health or safety reason for not cooperating; or

. . . .

c. The victim was guilty of a violation of . . . subtitle 2 of Title 2C [Specific Offenses] of the New Jersey Statutes, which caused or contributed to his injuries; or

. . . .

f. The victim has been convicted of a crime and is still incarcerated; or

. . . .

. . . .

Additionally, New Jersey has a “Sex Crime Victim Treatment Fund,” which is only applicable to crimes that fall within the sexual assault chapter, such as sexual assault and lewdness, but not human trafficking. N.J. Stat. Ann. § 52:4B-43.2.

5.7.1 Recommendation: Provide exceptions to the listed ineligibility criteria for child sex trafficking victims to ensure that domestic minor sex trafficking victims may receive compensation.

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

Pursuant to N.J. Stat. Ann. § 2C:14-7 (Victim’s previous sexual conduct; manner of dress),

a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, human trafficking involving sexual activity, endangering the welfare of a child in violation of N.J.S. 2C:24-4 or the fourth degree crime of lewdness in violation of subsection b. of N.J.S. 2C:14-4, evidence of the victim’s previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section . . . .

b. In the absence of clear and convincing proof to the contrary, evidence of the victim’s sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.

d. Evidence of the victim’s previous sexual conduct with the defendant shall be considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.

e. Evidence of the manner in which the victim was dressed at the time an offense was committed shall not be admitted unless such evidence is determined by the court to be relevant and admissible in the interest of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury or at such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination. A statement by the court of its findings shall also be included in the record.

f. For the purposes of this section, “sexual conduct” shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and life style.

N.J. Stat. Ann. § 2A:82-46(a) prevents the disclosure of the identity of child victims of certain sexual offense crimes including N.J. Stat. Ann. § 2C:24-4 (Endangering welfare of children) does not protect the child victims of N.J. Stat. Ann. § 2C:13-8 (Human trafficking) or § 2C:34-1 (Prostitution and related offenses).

New Jersey’s law allowing a minor to testify via closed circuit television includes cases of human trafficking but does not include CSEC offenses as qualifying offenses. N.J. Stat. Ann. § 2A:84A-32.4(a). Only prosecutions for

“aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, human trafficking involving sexual activity, child abuse, or any action alleging abused or neglected children” can occur via closed circuit television under this statute. N.J. Stat. Ann. § 2A:84A-32.4(a). An order for such testimony of a witness 16 years of age or younger may be made when “there is a substantial likelihood that the witness would suffer severe emotional or mental distress if required to testify in open court.” N.J. Stat. Ann. § 2A:84A-32.4(b).

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.*

Juvenile records may be sealed under N.J. Stat. Ann. § 2A:4A-62 (Sealing of records), which states in part,

a. On motion of a person who has been the subject of a complaint filed under this act or on its own motion, the court may vacate its order and findings and order the nondisclosure of social, medical, psychological, legal and other records of the court and probation services, and records of law enforcement agencies if it finds:

(1) Two years have elapsed since the final discharge of the person from legal custody or supervision, or two years have elapsed after the entry of any other court order not involving custody or supervision; and

(2) He has not been convicted of a crime, or a disorderly persons offense or adjudged delinquent, during the two years prior to the filing of the motion, and no proceeding or complaint is pending seeking such conviction or adjudication.

....

e. Any adjudication of delinquency or conviction of a crime subsequent to sealing shall have the effect of nullifying the sealing order.

f. Expungement of juvenile records shall be governed by the applicable provisions of chapter 52 of Title 2C of the New Jersey Statutes [Expungement].

A juvenile charged with prostitution or loitering for the purpose of prostitution can have their records vacated under N.J. Stat. Ann. § 2C:44-1.1 (Vacated sentence permitted for certain prostitution and related offenses). Pursuant to N.J. Stat. Ann. § 2C:44-1.1(a),

(1) A person convicted of N.J.S.2C:34–1, prostitution and related offenses, or section 3 of P.L.1997, c. 93 (C.2C:34–1.1), loitering for the purpose of engaging in prostitution, or a similar local ordinance, may file an application with the Superior Court in accordance with the Rules of Court to have the conviction vacated at any time following entry of a judgment of conviction, when the person's participation in the offense was a result of having been a victim of human trafficking pursuant to section 1 of P.L.2005, c. 77 (C.2C:13–8) or as defined in paragraph (14) of 22 U.S.C. s.7102 [Definitions].

....

(2) ....

....

(d) If the court finds, pursuant to subsection c. of this section<sup>81</sup>, that the person was a victim of human trafficking, it shall enter an order vacating the conviction and directing that all

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<sup>81</sup> Under N.J. Stat. Ann. § 2C:44-1.1(c)(1),

The court may vacate a conviction pursuant to this section if it finds by a preponderance of the evidence that the person was a victim of human trafficking pursuant to section 1 of P.L.2005, c. 77 (C.2C:13–8) [Human trafficking] or as defined in paragraph (14) of 22 U.S.C. s.7102 [Definitions] at the time of the offense, and that the violation was a result of the person having been a victim of human trafficking.

court records be revised accordingly. When the person's application also seeks an order for expungement, the court order shall require that any court, law enforcement and correctional agencies, and other noticed parties pursuant to subsection b. of this section expunge all references to the person's arrest, conviction, and related proceedings for the violation of N.J.S.2C:34-1, prostitution and related offenses, or section 3 of P.L.1997, c. 93 (C.2C:34-1.1), loitering for the purpose of engaging in prostitution, or a similar local ordinance from all records in their custody that relate to the vacated conviction.

These requirements mandate 7 years without conviction of a subsequent crime before the juvenile is eligible for expungement. N.J. Stat. Ann. § 2C:52-2(a)<sup>82</sup> (Indictable Offenses).

5.9.1 Recommendation: Amend N.J. Stat. Ann. § 2A:4A-62 (Sealing of records) to allow a juvenile sex trafficking victim to expunge juvenile records related to their trafficking victimization.

*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.*

Offenders convicted under N.J. Stat. Ann. § 2C:13-8 (Human trafficking) must pay restitution to the victim. Specifically, under N.J. Stat. Ann. § 2C:13-8(e),

The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim's labor or services; or
- (2) the value of the victim's labor or services as determined by the "New Jersey Prevailing Wage Act," the "New Jersey State Wage and Hour Law," "the Seasonal Farm Labor Act," the laws concerning the regulation of child labor...or any other applicable State law, and the "Fair Labor Standards Act of 1938" 29 U.S.C. s.201 et seq., or any other applicable federal law.

Similarly, other offenders may be ordered to pay restitution because the court is allowed to order the perpetrator to pay the victim restitution for any degree of crime. N.J. Stat. Ann. § 2C:43-3. However, except in state tax cases, "[t]he restitution ordered paid to the victim shall not exceed the victim's loss." N.J. Stat. Ann. § 2C:43-3.

Specific civil remedies are available to victims of human trafficking and they may seek a judgment against both the trafficker and persons acting in concert with the trafficker. Pursuant to N.J. Stat. Ann. § 2C:13-8.1,

Any person injured, including injury due to the loss of moneys or property, real or personal, by an actor and all those acting in concert with that actor who committed a human trafficking offense in violation of section 1 of P.L.2005,c. 77 (C.2C:13-8) [Human trafficking] or section 5 of P.L.2013, c. 51 (C.2C:13-9) [Human trafficking as a crime of the second degree] may bring a civil action in any court of competent jurisdiction against the actor and all those acting in concern [sic] with that actor.<sup>83</sup>

Under N.J. Stat. Ann. § 2C:13-8.1(c)(1), (2), (d), a prevailing victim in a civil action may recover attorney's fees and costs, and the court may "in addition to any other appropriate legal or equitable relief, including damages for pain and suffering, recovery of reasonable costs for necessary medical, dental, and psychological services and punitive damages, award damages in an amount that is the greater of:

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<sup>82</sup> The text of N.J. Stat. Ann. § 2C:52-2 cited here and elsewhere in this report includes amendments made by the enactment of Assembly Bill 206 during the 216th Legislature of New Jersey (effective April 18, 2016).

<sup>83</sup> "A civil action brought under this section shall not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law." N.J. Stat. Ann. § 2C:13-8.1(4).

- (1) the gross income or value to the defendant of the injured party's labor or services; or
- (2) the value of the injured party's labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L.1963, c. 150 (C.34:11–56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L.1966, c. 113 (C.34:11–56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c. 71 (C.34:9A–1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. s.201 et seq., or any other applicable federal law.

Also, child sex trafficking and CSEC victim could bring a civil case under an action for sexual abuse. N.J. Stat. Ann. § 2A:61B-1. For purposes of this action, “sexual abuse” is defined in N.J. Stat. Ann. § 2A:61B-1(a)(1) as

an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis within the household who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

*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.*

Most prosecutions in New Jersey are subject to a 5-year statute of limitations pursuant to N.J. Stat. Ann. § 2C:1-6(b)(1) (Time limitations). Prosecutions for sexual assault and aggravated sexual assault under N.J. Stat. Ann. § 2C:14-2 (Sexual assault) have no limitation and may be brought at any time. N.J. Stat. Ann. § 2C:1-6(a)(1). An extension is also available to victims of N.J. Stat. Ann. § 2C:14-3 (Aggravated criminal sexual contact; criminal sexual contact) and § 2C:24-4 (Endangering welfare of children) pursuant to N.J. Stat. Ann. § 2C:1-6(b)(4), which states,

A prosecution for an offense set forth in N.J.S.2C:14-3 or N.J.S.2C:24-4, when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim’s attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later.

A civil action brought under N.J. Stat. Ann. § 2A:61B-1 (Definitions; accrual of actions; proceedings) for sexual abuse must “be brought within two years after reasonable discovery.” N.J. Stat. Ann. § 2A:61B-1(b).

- 5.11.1 Recommendation: Amend N.J. Stat. Ann. § 2C:1-6(a)(1) (Time limitations) to include § 2C:13-8 (Human trafficking) and § 2C:34-1 (Prostitution and related offenses) when a child is involved, in order to allow prosecutions for these offenses to be brought at any time.



**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.*

New Jersey law mandates development of training on human trafficking. N.J. Stat. Ann. § 2C:13-12(19)(a) provides that

The Police Training Commission, in consultation with the Attorney General and the Director of the Division of Criminal Justice in the Department of Law and Public Safety, shall develop and approve, as part of the police training courses required pursuant to P.L.1961, c. 56 (C.52:17B-66 et seq.), courses of study on the handling, response procedures, investigation, and prosecution of human trafficking cases. These courses shall be reviewed at least every two years and modified from time to time as need may require.

Pursuant to N.J. Stat. Ann. § 52:4B-47 (Training courses for law enforcement personnel), the curriculum for police training shall include “specific training on responding to the needs of victims of human trafficking as defined in section 1 of P.L.2005, c. 77 (C.2C:13-8), and on services available to provide assistance, including information on federal, State, and local hotlines available to receive reports of and provide assistance to victims of human trafficking. N.J. Stat. Ann. § 52:4B-47(9)(a).

Additionally, New Jersey does require training on “substances which could be used to facilitate sexual assault,” training on tracing missing persons, and training on technology used in the commission of sex offenses, all of which could include topics related to domestic minor sex trafficking. N.J. Stat. Ann. §§52:17B-4.5(a), 52:17B-9.8, 52:17B-77.11.

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

New Jersey allows for single party consent to audiotaping. The following actions are lawful pursuant to N.J. Stat. Ann. § 2A:156A-4(b)-(d),

- b. Any investigative or law enforcement officer to intercept a wire, electronic or oral communication, where such officer is a party to the communication or where another officer who is a party to the communication requests or requires him to make such interception;
- c. Any person acting at the direction of an investigative or law enforcement officer to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception; provided,

however, that no such interception shall be made without the prior approval of the Attorney General or his designee or a county prosecutor or his designee;

d. A person not acting under color of law to intercept a wire, electronic or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception unless such communication is intercepted or used for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act . . . .

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

New Jersey law allows wiretapping for investigations of N.J. Stat. Ann. § 2C:13-8 (Human trafficking), § 2C:34-1 (Prostitution and related offenses), § 2C:24-4 (Endangering welfare of children), or racketeering offenses under N.J. Stat. Ann. § 2C:41-2 (Prohibited activities). N.J. Stat. Ann. § 2A:156A-8.

Pursuant to N.J. Stat. Ann. § 2A:156A-8 (Authorization for application for order to intercept communications),

The Attorney General, county prosecutor or a person designated to act for such an official and to perform his duties in and during his actual absence or disability, may authorize, in writing, an ex parte application to a judge designated to receive the same for an order authorizing the interception of a wire, or electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation when such interception may provide evidence of the commission of the offense of . . . section 1 of P.L. 2005, c. 77 (C.2C:13-8) [Human trafficking], a violation of N.J.S.C. 2C:34-1 [Prostitution and related offenses] punishable by imprisonment for more than one year, . . . endangering the welfare of a child pursuant to N.J.S. 2C:24-4, . . . racketeering or a violation of subsection g. of N.J.S. 2C:5-2, . . . or any conspiracy to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the foregoing offenses.

### 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.*

No trafficking or CSEC law prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor. However, the non-CSEC offense under N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions) appears to permit the use of a decoy, by making it a crime to attempt to lure a person the offender “reasonably believes to be a child.” N.J. Stat. Ann. § 2C:13-6(a) states,

A person commits a crime of the second degree if he attempts, via electronic or any other means, to lure or entice a child<sup>84</sup> or one who he reasonably believes to be a child into a motor vehicle, structure<sup>85</sup> or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

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

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<sup>84</sup> Pursuant to N.J. Stat. Ann. § 2C:13-6(b), a “child” is “a person less than 18 years old.”

<sup>85</sup> Pursuant to N.J. Stat. Ann. § 2C:13-6(b), “structure” is defined as “any building, room, ship, vessel or airplane and also any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.”

likely situations in which a defendant would try to use such a defense. N.J. Stat. Ann. § 2C:13-8 (Human trafficking), N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree), N.J. Stat. Ann. § 2C:34-1(b) (Prostitution and related offenses), and N.J. Stat. Ann. § 2C:24-4(b) (Endangering welfare of children) are buyer applicable CSEC and sex trafficking offenses which do not prohibit this defense, meaning that buyers charged for attempting to solicit or purchase sex with a minor under these statutes would not be prohibited from raising a defense based on the fact that an actual minor was not involved.

6.4.1. Recommendation: Expand the ability of law enforcement to investigate commercial sexual exploitation crimes against children by amending N.J. Stat. Ann. § 2C:13-8 (Human trafficking), N.J. Stat. Ann. § 2C:13-9 (Human trafficking in the second degree), N.J. Stat. Ann. § 2C:34-1(b) (Prostitution and related offenses), and N.J. Stat. Ann. § 2C:24-4(b) (Endangering welfare of children) to prohibit the defense that the “victim” was actually a law enforcement agent or officer.

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

While trafficking and CSEC laws do not expressly allow for investigation using the Internet or electronic communications, law enforcement can use electronic means for investigation under N.J. Stat. Ann. § 2C:13-6(a) (Luring, enticing child by various means, attempts; crime of second degree; subsequent offense, mandatory imprisonment; definitions).

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

Law enforcement must report missing and recovered minors in New Jersey. Under N.J. Stat. Ann. § 52:17B-9.8 (Powers, duties of unit), the Department of Law and Public Safety shall,

a. Coordinate, file and investigate all missing persons cases in this State, and cooperate with local law enforcement officials and federal law enforcement officials in the creation of a centralized office on missing persons in this State;

....

c. Collect and maintain data on missing persons and unidentified bodies in this State and throughout the United States;

d. Coordinate efforts with other states and with the federal government in the investigation of cases involving missing persons or unidentified bodies;

....

Additionally, pursuant to N.J. Stat. Ann. § 52:17B-217 (Actions relative to high risk missing person or child), if the missing person is a child,

....

b. The lead law enforcement agency shall promptly notify all law enforcement agencies within the State and, if deemed appropriate, law enforcement agencies in adjacent states or jurisdictions of the information that may aid in the prompt location and safe return of the high risk missing person.

c. Local law enforcement agencies that receive notification from the lead law enforcement agency pursuant to subsection b. of this section shall forward that information immediately to their officers and members.

d. The lead law enforcement agency shall, as expeditiously as possible, prepare and disseminate a photographic information bulletin utilizing the Missing Child Alert System, or any successor law enforcement notification system the State may employ.

e. The lead law enforcement agency shall, as appropriate, enter all collected information relating to the missing person case to applicable federal databases. The information shall be provided in accordance with applicable guidelines relating to the databases, as follows:

(1) a missing person report, and relevant information, in a high risk missing person case shall be entered in the National Crime Information Center database immediately, but in no case no more than two hours after the determination that the missing person is a high risk missing person;

(2) a missing person report, and relevant information, in a case not involving a high risk missing person shall be entered within 24 hours of the initial filing of the missing person report;

....

(6) the State Police shall, when deemed appropriate and likely to facilitate a resolution to a particular missing person report, activate the Amber Alert program for the State.

f. If, after the dissemination of a photographic information bulletin utilizing the Missing Child Alert System information, the missing person is found, the lead law enforcement agency shall promptly disseminate an additional bulletin on the Missing Child Alert System indicating that the person was found.

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