

# PROTECTED INNOCENCE CHALLENGE

STATE ACTION. NATIONAL CHANGE.

## 2016 ANALYSIS AND RECOMMENDATIONS NEVADA

### 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.*

Nevada specifically criminalizes domestic minor sex trafficking<sup>2</sup> without requiring proof of force, fraud, or coercion, pursuant to Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception)<sup>3</sup> which states,

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

<sup>2</sup> Nevada's statutes entitled "Trafficking in Persons," Nev. Rev. Stat. Ann. § 200.467 (Trafficking in persons for financial gain; penalties) and Nev. Rev. Stat. Ann. § 200.468 (Trafficking in persons for illegal purposes; penalty) deal with human smuggling and the transportation of individuals into Nevada who "do not have the legal right to enter or remain in the United States." Additionally, Nevada has several involuntary servitude laws that are not specific to sex trafficking. Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude; penalties) penalizes "[a] person who knowingly subjects, or attempts to subject, another person to forced labor or services," but "labor and services" is not defined to clearly apply to sex trafficking of minors. Nev. Rev. Stat. Ann. § 200.4631 states,

A person:

(a) Is guilty of sex trafficking if the person:

- (1) Induces,<sup>4</sup> causes, recruits, harbors, transports,<sup>5</sup> provides, obtains or maintains a child to engage in prostitution,<sup>6</sup> or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct<sup>7</sup> or prostitution;
- (2) Induces, recruits, harbors, transports, provides, obtains or maintains a person by any means, knowing, or in reckless disregard of the fact, that threats, violence, force, intimidation, fraud, duress or coercion will be used to cause the person to engage in prostitution, or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution;
- (3) By threats, violence, force, intimidation, fraud, duress, coercion, by any device or scheme, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, induces, causes, compels or procures a person to engage in prostitution, or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution; or
- (4) Takes or detains a person with the intent to compel the person by force, violence, threats or duress to marry him or her or any other person.

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A person who has physical custody of a minor, allows a minor to reside in his or her residence, . . . or provides care for any length of time to a minor and who knowingly:

- (a) Obtains labor or services from the minor by . . . engaging in a pattern of conduct that results in . . . sexual abuse<sup>2</sup> of the minor or sexual assault of the minor pursuant to NRS 200.366 [Sexual assault: definition; penalties]; or
- (b) Benefits, financially or by receiving anything of value other than sexual gratification from the labor or services obtained by the conduct specified in paragraph (a), is guilty of holding a minor in involuntary servitude.

Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), penalizes a person who

1. Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that the person will be held in involuntary servitude; or
2. Benefits, financially or by receiving anything of value, from participating in a violation of NRS 200.463 [Involuntary servitude; penalties] or section 2 of this act . . . .

<sup>3</sup> Under Nev. Rev. Stat. Ann. § 201.350,

It shall not be a defense to a prosecution for any of the acts prohibited in NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] . . . that any part of such act or acts shall have been committed outside this state, and the offense shall in such case be deemed and alleged to have been committed, and the offender tried and punished, in any county in which the prostitution was consummated, or any overt act in furtherance of the offense shall have been committed.

<sup>4</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(3), “[i]nduce’ means to persuade, encourage, inveigle or entice.”

<sup>5</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(7), “‘Transports’ means to transport or cause to be transported, by any means of conveyance, into, through or across this State, or to aid or assist in obtaining such transportation.”

<sup>6</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(5), “‘Prostitution’ means engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value.”

<sup>7</sup> Pursuant to Nev. Rev. Stat. Ann. § 201.295(4), (6), “‘Sexual conduct’ means engaging “in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.”

A person who is found guilty of sex trafficking a child is subject to penalties pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) (Pandering and sex trafficking: definition; penalties; exception) which states,

- (I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.
- (II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.
- (III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

Additionally, Nev. Rev. Stat. Ann. § 201.300(2) states, “A court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking a child pursuant to subsection 2.”

Nevada law also creates separate penalties for conspiracy to commit certain crimes, including NRS 201.300 (Pandering and sex trafficking: definition; penalties; exception), offenses pursuant to Nev. Rev. Stat. Ann. § 199.480(1) (Penalties).<sup>8</sup>

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

The following laws criminalize CSEC in Nevada:

1. Pursuant to Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), it is a crime to “engage in prostitution or solicitation therefor, except in a licensed house of prostitution.”<sup>9</sup> Nev. Rev. Stat. Ann. § 201.354(1). If a child under 18 is solicited, a first violation is a category E felony punishable by imprisonment for 1–4 years and a fine up to \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(3)(a), 201.295(2), 193.130(2)(e). The court “shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate,” unless barred by Nev. Rev. Stat. Ann. § 176A.100(1)(b).<sup>10</sup> Nev. Rev. Stat. Ann. § 193.130(2)(e). A second violation of Nev.

<sup>8</sup> Pursuant to Nev. Rev. Stat. Ann. § 199.480(1) (Penalties), “whenever two or more persons conspire to commit . . . sex trafficking in violation of NRS 201.300 (Pandering and sex trafficking: definition; penalties; exception) . . . each person is guilty of a category B felony and shall be punished . . . by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years.”

<sup>9</sup> The state allows counties to control the licensing of houses of prostitution if the county population is less than 700,000. Pursuant to Nev. Rev. Stat. Ann. § 244.345(8) (Dancing halls, escort services, entertainment by referral services and gambling games or devices; limitation on licensing of houses of prostitution), “In a county whose population is 700,000 or more, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.”

<sup>10</sup> Pursuant to Nev. Rev. Stat. Ann. § 176A.100(1)(b) (Authority and discretion of court to suspend sentence and grant probation; persons eligible; factors considered; intensive supervision; submission of report of presentence investigation),

1. Except as otherwise provided in this section and NRS 176A.110 [Persons convicted of certain offenses required to be certified as not representing high risk to reoffend before court suspends sentence or grants probation; immunity]; and 176A.120, if a person is found guilty in a district court upon verdict or plea of:

Rev. Stat. Ann. § 201.354(3)(b) with a child is a category D felony and is punishable 1-4 years and a possible fine up to \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(3)(b), 193.130(2)(d). “[A] third or subsequent” violation of Nev. Rev. Stat. Ann. § 201.354(3) with a child is a category C felony, punishable by imprisonment for 1-5 years and a fine up to \$10,000, and “[t]he court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.” Nev. Rev. Stat. Ann. §§ 201.354(3)(c); 193.130(2)(c).

2. Pursuant to Nev. Rev. Stat. Ann. § 609.210 (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: criminal penalty), a person is guilty of a misdemeanor when the person

employs, or causes to be employed, exhibits or has in his or her custody for exhibition or employment, any minor, and every parent, relative, guardian, employer or other person having the care, custody or control of any minor, who in any way procures or consents to the employment of the minor:

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....  
(b) A category E felony, except as otherwise provided in this paragraph, the court shall suspend the execution of the sentence imposed and grant probation to the person. The court may, as it deems advisable, decide not to suspend the execution of the sentence imposed and grant probation to the person if, at the time of sentencing, it is established that the person:

- (1) Was serving a term of probation or was on parole at the time the crime was committed, whether in this State or elsewhere, for a felony conviction;
- (2) Had previously had the person’s probation or parole revoked, whether in this State or elsewhere, for a felony conviction;
- (3) Had previously been assigned to a program of treatment and rehabilitation pursuant to NRS 453.580 and failed to successfully complete that program; or
- (4) Had previously been two times convicted, whether in this State or elsewhere, of a crime that under the laws of the situs of the crime or of this State would amount to a felony.

If the person denies the existence of a previous conviction, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the person. At such a hearing, the person may not challenge the validity of a previous conviction. For the purposes of this paragraph, a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.

Pursuant to Nev. Rev. Stat. Ann. § 176A.110 (Persons convicted of certain offenses required to be certified as not representing high risk to reoffend before court suspends sentence or grants probation; immunity), unless a person has undergone a psychosexual evaluation and it has been certified that the person does not have a high risk to re-offend, a court cannot grant probation to or suspend the sentence of a person convicted under

- (a) Attempted sexual assault of a person who is 16 years of age or older pursuant to NRS 200.366.
- (b) Statutory sexual seduction pursuant to NRS 200.368.
- (c) Battery with intent to commit sexual assault pursuant to NRS 200.400.
- (d) Abuse or neglect of a child pursuant to NRS 200.508.
- (e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
- (f) Incest pursuant to NRS 201.180.
- (g) Open or gross lewdness pursuant to NRS 201.210.
- (h) Indecent or obscene exposure pursuant to NRS 201.220.
- (i) Sexual penetration of a dead human body pursuant to NRS 201.450.
- (j) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.
- (k) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.
- (l) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
- (m) A violation of NRS 207.180.
- (n) An attempt to commit an offense listed in paragraphs (a) to (k), inclusive.
- (o) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

....

2. In any indecent or immoral exhibition or practice;

....

A violation is punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. § 193.150(1). Alternatively, the court may sentence an offender to community service. Nev. Rev. Stat. Ann. § 193.150(2).

3. Under Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), it is a category A felony when a person “knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance . . . .” Additionally, Nev. Rev. Stat. Ann. § 200.710(2) states that it is a category A felony when a person “knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance . . . .” When the minor is 14 or older, a violation is punishable by a possible fine not to exceed \$100,000 and life imprisonment with possibility of parole beginning after the offender has served 5 five years. Nev. Rev. Stat. Ann. § 200.750(1). When the minor is under 14, violations are punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(2).

Although not specific to commercial sex offenses, the following offenses may also apply to commercial sexual exploitation of children cases:

1. Pursuant to Nev. Rev. Stat. Ann. § 200.368 (Statutory sexual seduction: penalties), “statutory sexual seduction” is a crime. Nev. Rev. Stat. Ann. § 200.364(6), defines “statutory sexual seduction” as

ordinary sexual intercourse, anal intercourse, or sexual penetration committed by a person 18 years of age or older with a person who is 14 or 15 years of age and is at least 4 years younger than the perpetrator.

If the offender is 21 or older, Nev. Rev. Stat. Ann. § 200.368 is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. §§ 200.368(1), 193.130(2)(c). If the offender is under 21, a violation is a gross misdemeanor punishable by up to 364 days of imprisonment in the county jail, a fine not to exceed \$2,000, or both. Nev. Rev. Stat. Ann. §§ 200.368(2), 193.140.

2. Pursuant to Nev. Rev. Stat. Ann. § 201.230(1) (Lewdness with child; penalties), a person is guilty of lewdness with a child if that person

(a) Is 18 years of age or older and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child; or

(b) Is under the age of 18 years and willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child.

A violation against a child under the age of 14 is a category A felony punishable by a possible fine not to exceed \$10,000 and life imprisonment with eligibility for parole beginning when the offender has served 10

years. Nev. Rev. Stat. Ann. § 201.230(2). A violation against a child who is 14 or 15 years old is a category B felony, punishable by imprisonment for 1-10 years and a fine up to \$10,000.

However, if the person has been previously convicted of “lewdness with a child pursuant to this section or any other sexual offense against a child” or a crime in another jurisdiction that could be classified as one of these crimes in Nevada, the crime is a category A felony punishable by life imprisonment without the possibility of parole. Nev. Rev. Stat. Ann. § 201.230(3).

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

Nevada’s prostitution statute, Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) does not refer to Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception) in order to identify commercially sexually exploited minors as victims of trafficking.

1.3.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty), when the person engaged in prostitution is a minor, to refer to Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception) to ensure that minor victims of prostitution are properly identified as human trafficking victims.

*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.*

Pursuant to Nev. Rev. Stat. Ann. § 207.400(1) (Unlawful acts; penalties), Nevada’s racketeering law,

It is unlawful for a person:

(a) Who has with criminal intent received any proceeds derived, directly or indirectly, from racketeering activity to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of:

(1) Any title to or any right, interest or equity in real property; or

(2) Any interest in or the establishment or operation of any enterprise.<sup>11</sup>

(b) Through racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.

(c) Who is employed by or associated with any enterprise to conduct or participate, directly or indirectly, in:

(1) The affairs of the enterprise through racketeering activity; or

(2) Racketeering activity through the affairs of the enterprise.

(d) Intentionally to organize, manage, direct, supervise or finance a criminal syndicate.

(e) Knowingly to incite or induce others to engage in violence or intimidation to promote or further the criminal objectives of the criminal syndicate.

(f) To furnish advice, assistance or direction in the conduct, financing or management of the affairs of the criminal syndicate with the intent to promote or further the criminal objectives of the syndicate.

(g) Intentionally to promote or further the criminal objectives of a criminal syndicate by inducing the commission of an act or the omission of an act by a public officer or employee which violates his or her official duty.

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<sup>11</sup> “Enterprise” is defined as “1. Any natural person, sole proprietorship, partnership, corporation, business trust or other legal entity; and 2. Any union, association or other group of persons associated in fact although not a legal entity. The term includes illicit as well as licit enterprises and governmental as well as other entities.” Nev. Rev. Stat. Ann. § 207.380.

(h) To transport property, to attempt to transport property or to provide property to another person knowing that the other person intends to use the property to further racketeering activity.

(i) Who knows that property represents proceeds of, or is directly or indirectly derived from, any unlawful activity<sup>12</sup> to conduct or attempt to conduct any transaction involving the property:

(1) With the intent to further racketeering activity; or

(2) With the knowledge that the transaction conceals the location, source, ownership or control of the property.

(j) To conspire to violate any of the provisions of this section.

Pursuant to Nev. Rev. Stat. Ann. § 207.390, “racketeering activity” is defined as

engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one of the incidents occurred after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.

Furthermore, under Nev. Rev. Stat. Ann. § 207.360,

"Crime related to racketeering" means the commission of, attempt to commit or conspiracy to commit any of the following crimes:

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5. Kidnapping;

6. Sexual assault;

....

11. Statutory sexual seduction;

....

29. Any violation of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception], 201.320 [Living from earnings of prostitute; penalty] or 201.360 [Placing person in house of prostitution; penalties];

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34. Involuntary servitude in violation of any provision of NRS 200.463 [Involuntary servitude; penalties] or 200.464 [Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty] or a violation of any provision of NRS 200.465 [Assuming rights of ownership over another person; purchase or sale of person; penalty]; or  
35. Trafficking in persons in violation of any provision of NRS 200.467 [Trafficking in persons for financial gain; penalties] or 200.468 [Trafficking in persons for illegal purposes; penalty].

Based on this definition of racketeering, acts of commercial sexual exploitation of children constitute predicate crimes under the racketeering law, making it available for combatting criminal enterprises that engage in domestic minor sex trafficking. A violation of Nev. Rev. Stat. Ann. § 207.400 is a category B felony punishable by imprisonment for 5–20 years and a possible fine not to exceed \$25,000. Nev. Rev. Stat. Ann. § 207.400(2). Under Nev. Rev. Stat. Ann. § 207.410 (Alternate fine for unlawful acts), a fine may be imposed not exceeding the greater of 3 times “1. Any gross pecuniary value the convicted person

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<sup>12</sup> “Unlawful activity” is defined in Nev. Rev. Stat. Ann. § 207.400(3) by referring to Nev. Stat. Ann. § 207.195, which defines the term in part as “any crime related to racketeering as defined in NRS 207.360 or any offense punishable as a felony pursuant to state or federal statute.” Nev. Rev. Stat. Ann. §§ 207.400(3), 207.195(5)(c).

gained; or 2. Any gross loss the convicted person caused, including property damage and personal injury, but excluding any pain and suffering.”

Additionally, for a conviction under Nev. Rev. Stat. Ann. § 207.400, the offender will face mandatory criminal forfeiture. Pursuant to Nev. Rev. Stat. Ann. § 207.420(1) (Criminal forfeiture: Property subject to forfeiture; substitution for unreachable property),

If the indictment or information filed regarding a violation of NRS 207.400 alleges that real or personal property was derived from, realized through, or used or intended for use in the course of the unlawful act and the extent of that property:

(a) The jury; or

(b) If the trial is without a jury, the court, shall upon a conviction, determine at a separate hearing the extent of the property to be forfeited. If the indictment or information does not include such an allegation, the property is not subject to criminal forfeiture.

Discretionary civil forfeiture is also available. Nev. Rev. Stat. Ann. § 207.400.

**Legal Components:**

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

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**Legal Analysis:**

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

Nevada's sex trafficking statute may apply to buyers of sex with minors through the term "causes" and, following federal precedent, through the term "obtains." Under Nev. Rev. Stat. Ann. § 201.300(2)(a)(1) (Pandering: definition; penalties; exception), "A person . . . [i]s guilty of sex trafficking if the person . . . [i]nduces,<sup>13</sup> causes, recruits, harbors, transports,<sup>14</sup> provides, obtains<sup>15</sup> or maintains a child to engage in

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<sup>13</sup> See *supra* note 4.

<sup>14</sup> See *supra* note 5.

<sup>15</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.

prostitution,<sup>16</sup> or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct<sup>17</sup> or prostitution.”

2.1.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.300 (Pandering: definition; penalties; exception) to clarify that buyer conduct is included as a violation of Nev. Rev. Stat. Ann. § 201.300 (Pandering: definition; penalties; exception).

2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*<sup>18</sup>

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) criminalizes buying sex with minors under 18. Nev. Rev. Stat. Ann. § 201.354(1) states, “It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.” When the person solicited is under 18, the crime is a category E felony for a first violation, punishable by imprisonment for 1–4 years and a fine up to \$5,000, but the court may suspend the sentence and sentence an offender to probation.<sup>19</sup> Nev. Rev. Stat. Ann. §§ 201.354(3)(a), 193.130(2)(e). A second violation of Nev. Rev. Stat. Ann. § 201.354(3)(b) with a child is a category D felony and is punishable 1–4 years and a possible fine up to \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(3)(b), 193.130(2)(d). “[A] third or subsequent” violation of Nev. Rev. Stat. Ann. § 201.354(3) with a child is a category C felony, punishable by imprisonment for 1–5 years and a fine up to \$10,000, and “[t]he court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.” Nev. Rev. Stat. Ann. §§ 201.354(3)(c); 193.130(2)(c).

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

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception) has different penalties for the solicitation of an adult and the solicitation of a minor. If the person solicited was 18 or older, the crime is a misdemeanor. Nev. Rev. Stat. Ann. § 201.354(2). If the person solicited was under 18, the crime is a category E felony for a first violation, a category D felony for a second violation and a category C felony for a third or subsequent violation, at which point suspension of a sentence or probation is not allowed. Nev. Rev. Stat. Ann. § 201.354(3)(a)–(c).

Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty), which states, “It is unlawful to: . . . (b) Offer or agree to engage in, engage in or aid and abet any act of prostitution,” does not differentiate penalties based on the age of the person solicited. Each violation is a misdemeanor with increased penalties based on the number of charges within the previous 3 years. Nev. Rev. Stat. Ann. § 207.030(2).

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

Under Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) (Pandering and sex trafficking: definition; penalties; exception),

A person . . . [w]ho is found guilty of sex trafficking . . . [a] child:

(I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.

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

<sup>17</sup> See *supra* note 7.

<sup>18</sup> In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to buyers of commercial sex with minors. Some counties also allow for the operation of licensed houses of prostitution. See *infra* Appendix A for a list of some county and city ordinances applicable to buyers.

<sup>19</sup> See *supra* note 10.

(II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.  
(III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

In addition, pursuant to Nev. Rev. Stat. Ann. § 201.352 (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of a violation of Nev. Rev. Stat. Ann. § 201.300 and “physical force or violence or the immediate threat of physical force or violence is used upon the child, the court may . . . impose a fine of not more than \$500,000.”

There are also heightened penalties for acts of conspiracy. If a person is convicted of sex trafficking or living from the proceeds of a prostitute, as well as conspiracy to commit those offenses, and the victim of the offense was a child at the time, the court may impose a fine of not more than \$500,000 in addition to other fines prescribed by statute. Nev. Rev. Stat. Ann. § 201.352(1)(a).

Furthermore, pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) (Pandering and sex trafficking: definition; penalties; exception), “[a] court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking a child pursuant to subsection 2.”

For a violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), when the person solicited was under 18, a first violation is a category E felony punishable by imprisonment for 1–4 years and a fine up to \$5,000, but the court may suspend the sentence and sentence an offender to probation.<sup>20</sup> Nev. Rev. Stat. Ann. §§ 201.354(3)(a), § 193.130(2)(e). A second violation of Nev. Rev. Stat. Ann. § 201.354(3)(b) with a child is a category D felony and is punishable 1–4 years and a possible fine up to \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(3)(b), 193.130(2)(d).<sup>21</sup> “[A] third or subsequent” violation of Nev. Rev. Stat. Ann. § 201.354(3) with a child is a category C felony, punishable by imprisonment for 1–5 years and a fine up to \$10,000, and “[t]he court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.” Nev. Rev. Stat. Ann. §§ 201.354(3)(c); 193.130(2)(c).

A violation of Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty) is a misdemeanor punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. §§ 207.030(2)(a), 193.150(1). Second violations occurring within 3 years of a first violation will result in imprisonment in the county jail between 30 days and 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b). A third or subsequent violation “occurring within 3 years after the first violation” are punishable by imprisonment in the county jail for 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(c).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>22</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>23</sup> against a minor. 18

<sup>20</sup> See *supra* note 10.

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

<sup>22</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>23</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>24</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>25</sup>

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

Although Nevada does not have a statute specifically criminalizing using the Internet or other electronic communication to purchase commercial sex acts, such action can fall under Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties). Pursuant to Nev. Rev. Stat. Ann. § 201.560,

1. Except as otherwise provided in subsection 3,<sup>26</sup> a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:

....

....

(b) Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.

....

4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:

(a) With the intent to engage in sexual conduct<sup>27</sup> with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental

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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>24</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>25</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>26</sup> Nev. Rev. Stat. Ann. § 201.560(3) states, “The provisions of this section do not apply if the contact or communication is made or attempted with the intent to prevent imminent bodily, emotional or psychological harm to the child, person believed to be a child or person with mental illness.”

<sup>27</sup> For the purpose of Nev. Rev. Stat. Ann. § 201.560, “sexual conduct” is defined by referring to Nev. Rev. Stat. § 201.520, which defines the term as “1. Ordinary sexual intercourse 2. Anal intercourse; 3. Fellatio, cunnilingus or other oral-genital contact; 4. Physical contact by a person with the unclothed genitals or pubic area of another person for the purpose of arousing or gratifying the sexual desire of either person; 5. Penetration, however slight, by a person of an object into the genital or anal opening of the body of another person for the purpose of arousing or gratifying the sexual desire of either person; 6. Masturbation or the lewd exhibition of unclothed genitals; 7. Sado-masochistic abuse; or 8. Any lewd or lascivious act upon or with the body, or any part or member thereof, of another person.” Nev. Rev. Stat. Ann. §§ 201.520, 201.560(6)(f).

illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

....

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

A buyer is prohibited from asserting a mistake of age defense to charges of sex trafficking a minor under Nev. Rev. Stat. Ann. § 201.300(5) (Pandering: definition; penalties; exception), which states,

In a prosecution for sex trafficking a child pursuant to subsection 2, it is not a defense that the defendant did not have knowledge of the victim's age, nor is reasonable mistake of age a valid defense to a prosecution conducted pursuant to subsection 2.

Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) is silent on the availability of a defense based on age mistake.

2.6.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) to prevent a buyer from exercising a mistake of age defense.

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

A buyer convicted under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) faces the possibility of life imprisonment for offenses involving all minors. The law also imposes heightened penalties for offenses involving younger minors. Specifically, Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) states,

A person . . . [w]ho is found guilty of sex trafficking . . . [a] child:

(I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.

(II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.

(III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

In addition, under Nev. Rev. Stat. Ann. § 201.35 (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of a violation of Nev. Rev. Stat. Ann. § 201.300 and “physical force or violence or the immediate threat of physical force or violence is used upon the child, the court may . . . impose a fine of not more than \$500,000” regardless of the minor’s age.

The penalty for buying sex with any minor does not vary based on the age of the victim under 18. For a first violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), when a child is solicited is a category E felony punishable by imprisonment for 1–4 years with a \$5,000 fine, but the court may suspend the sentence and sentence an offender to probation. Nev. Rev. Stat.

Ann. §§ 201.354(3)(a), 193.130(2)(e).<sup>28</sup> And a second violation of a Nev. Rev. Stat. Ann. § 201.354(3) is a category D felony, and a third or subsequent violation of Nev. Rev. Stat. Ann. § 201.354(3) is a category C felony. Nev. Rev. Stat. Ann. § 201.354(3)(b)–(c). Additionally, the penalty for a conviction under Nev. Rev. Stat. Ann. § 207.030(1) (Prohibited acts; penalty) does not vary based on the age of the person solicited. A violation is a misdemeanor punishable by imprisonment in the county jail not to exceed 6 months, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. §§ 207.030(2)(a), 193.150(1). A second conviction occurring within 3 years of a first conviction will result in imprisonment in the county jail between 30 days and 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b). Third and subsequent convictions “occurring within 3 years after the first violation” are punishable by imprisonment in the county jail for 6 months and a fine of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(c).

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

A buyer convicted of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) may be punished by a fine of not more than \$20,000 if the minor is under 14 years old at the time of the offense and a fine of not more than \$10,000 if the minor is at least 14 years old but less than 18 years old at the time of the offense. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2). In addition, under Nev. Rev. Stat. Ann. § 201.35 (Additional fine for pandering child and conspiring to pander child), the court may impose a fine of not more than \$500,000 for a violation of Nev. Rev. Stat. Ann. § 201.300 if the victim is a child at the time of the offense and “physical force or violence or the immediate threat of physical force or violence is used upon the child.”

Financial penalties are also available under Nevada’s solicitation law. When the person solicited was under 18, a first violation of Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception) is a category E felony punishable by a fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 201.354(3)(a), 193.130(2)(e). A second violation of Nev. Rev. Stat. Ann. § 201.354 when the person solicited was a child is a category D felony punishable by a possible fine up to \$5,000, and a third or subsequent violation of Nev. Rev. Stat. Ann. § 201.354 with a child is a category C felony punishable by a possible fine up to \$10,000. A violation of Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) is a misdemeanor punishable by a possible fine not to exceed \$1,000 for the first violation and a fine of \$250–\$1,000 for subsequent violations occurring within 3 years of the first violation. Nev. Rev. Stat. Ann. §§ 207.030(2), 193.150(1).

A buyer may also be ordered to pay restitution for violations of Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception), pursuant to Nev. Rev. Stat. Ann. § 201.325 (Power of court to order restitution), which states in part,<sup>29</sup>

[r]estitution ordered pursuant to this section may include, without limitation:

- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
- (b) The cost of transportation, temporary housing and child care;
- (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;

<sup>28</sup> See *supra* note 10.

<sup>29</sup> Pursuant to Nev. Rev. Stat. Ann. § 200.4631(4), “‘victim’ means any person: (a) Against whom a violation of any provision of [Nev. Rev. Stat. Ann. §§ 201.300 [Pandering and sex trafficking: definition; penalties; exception] or 201.320 [Living from earnings of prostitute; penalty] has been committed; or (b) Who is the surviving child of such a person.”

- (e) The cost of repatriation of the victim to his or her home country, if applicable; and
- (f) Any and all other losses suffered by the victim as a result of the violation of any provision of NRS 201.300 or 201.320 [Living from earnings of prostitute; penalty].

Generally, a court must award restitution where appropriate. Nev. Rev. Stat. Ann. § 176.033(1)(c). Specifically, pursuant to Nev. Rev. Stat. Ann. § 176.033(1)(c) (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence), “[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . .”

Buyers are subject to asset forfeiture for violations of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception). Pursuant to Nev. Rev. Stat. Ann. § 201.351 (Forfeiture of assets derived from or relating to pandering child; temporary restraining order to preserve property subject to forfeiture; use of proceeds derived from forfeiture), “All assets derived from or relating to any violation of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] [including 201.320 [Living from earnings of prostitute; penalty] to 201.340 [Pandering: Furnishing transportation; penalties], inclusive are subject to forfeiture pursuant to NRS 179.121 [Forfeiture of personal property and conveyances used in the commission of crime] and a proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.121, inclusive.”

Nev. Rev. Stat. Ann. § 179.121(a), (e) establishes forfeiture of “[a]ll personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes” which includes Nev. Rev. Stat. Ann. §§ 201.300 (Pandering and sex trafficking: Definitions; penalties; exception) and 201.320 (Living from the earnings of a prostitute). Nev. Rev. Stat. Ann. § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime) also provides, with certain limited exceptions, that “all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony . . . are subject to forfeiture.”

In addition, pursuant to Nev. Rev. Stat. Ann. § 200.760 (Forfeiture) and § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime), buyers face civil asset forfeiture for possession of child pornography or forfeiture of proceeds attributable to commission of a felony. Pursuant to Nev. Rev. Stat. Ann. § 200.760, “[a]ll assets derived from or relating to any violation of NRS . . . 200.710 to 200.730 [including 200.727(1) (Use of Internet to control visual representation depicting sexual conduct of person under 16 years of age; penalties) and 200.730 (Possession of visual representation depicting sexual conduct of person under 16 years of age unlawful; penalties)], inclusive . . . are subject to forfeiture. A proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.119, inclusive.”

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

Pursuant to Nev. Rev. Stat. Ann. § 200.730 (Possession of visual representation depicting sexual conduct of person under 16 years of age unlawful; penalties), a person is guilty of a felony “who knowingly and willfully has in his or her possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal<sup>30</sup> or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct.”<sup>31</sup> A first violation is a category B felony punishable by imprisonment

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<sup>30</sup> “Sexual portrayal” is defined as “the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.” Nev. Rev. Stat. Ann. § 200.700(4)

<sup>31</sup> “Sexual conduct” is defined as “sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person’s body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.” Nev. Rev. Stat. Ann. § 200.700(3).

for 1–6 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. § 200.730(1). Second and subsequent violations are category A felonies punishable by imprisonment for 1 year to life imprisonment, with the possibility of parole, and a possible fine of \$5,000. Nev. Rev. Stat. Ann. § 200.730(2).

Additionally, pursuant to Nev. Rev. Stat. Ann. § 200.727(1) (Use of Internet to control visual representation depicting sexual conduct of person under 16 years of age; penalties),

Any person who, knowingly, willfully and with the specific intent to view any film, photograph or other visual presentation depicting a person under the age of 16 years engaging in or simulating sexual conduct,<sup>32</sup> uses the Internet to control such a film, photograph or other visual presentation is guilty of:

- (a) For the first offense, a category C felony and shall be punished as provided in NRS 193.130 [Categories and punishment of felonies].
- (b) For any subsequent offense, a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

As a category C felony, the first violation is punishable by imprisonment for 1–5 years and a possible fine not to exceed \$10,000. Nev. Rev. Stat. Ann. § 193.130(2)(c).

Additionally, asset forfeiture exists for a violation of this provision. Nev. Rev. Stat. Ann. § 200.760. Pursuant to Nev. Rev. Stat. Ann. § 200.760 (Forfeiture), “All assets derived from or relating to any violation of . . . 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive . . . are subject to forfeiture.”

Domestic minor sex trafficking victims under 16 who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result,” also have a civil cause of action against buyers. Nev. Rev. Stat. Ann. § 41.1396(1). Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct<sup>33</sup> and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

- (a) Promoted the film, photograph or other visual presentation;
- (b) Possessed the film, photograph or other visual presentation; or
- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

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<sup>32</sup> Nev. Rev. Stat. Ann. § 700.727(2) states, “As used in this section, ‘sexual conduct’ means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.”

<sup>33</sup> Nev. Rev. Stat. Ann. § 41.1396(5)(b) states, “‘Sexual conduct’ means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.”

In comparison, a federal conviction for possession of child pornography<sup>34</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>35</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>36</sup>

2.9.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 200.730 (Possession of visual representation depicting sexual conduct of person under 16 years of age unlawful; penalties) to increase the penalty to reflect the seriousness of the offense.

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

Any person convicted of “a crime against a child” or deemed a “sex offender” must register as a sex offender. Nev. Rev. Stat. Ann. § 179D.441(1). Under Nev. Rev. Stat. Ann. § 179D.0357 (“Crime against a child” defined), a

“Crime against a child” means any of the following offenses if the victim of the offense was less than 18 years of age when the offense was committed:

....

3. Involuntary servitude of a child ... unless the offender is the parent or guardian of the victim.

4. An offense involving sex trafficking pursuant to subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] or prostitution pursuant to NRS 201.320 [Living from earnings of prostitute; penalty].

5. An attempt to commit an offense listed in this section.

....

A “sex offender” is defined to include “a person who, after July 1, 1956, is or has been: (a) Convicted of a sexual offense listed in NRS 179D.097 [“Sexual offense” defined] . . . .” Nev. Rev. Stat. Ann. § 179D.095. Pursuant to Nev. Rev. Stat. Ann. § 179D.097(1) a “sexual offense” is defined to include the following offenses:

....

(c) Statutory sexual seduction pursuant to NRS 200.368.

....

(g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

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<sup>34</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>35</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>36</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).

(h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance, Promotion of sexual performance of minor unlawful, Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty, Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age, Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties] , inclusive.

(i) Incest pursuant to NRS 201.180.

....

(l) Lewdness with a child pursuant to NRS 201.230.

....

(n) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540(p) Luring a child . . . if punished as a felony.

(q) Sex trafficking pursuant to NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception].

(r) Any other offense that has an element involving a sexual act or sexual conduct with another.

....

Therefore, a buyer could potentially be required to register as a sex offender either for a conviction of sex trafficking pursuant to Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) or for a conviction under Nev. Rev. Stat. Ann. § 201.354(3) (Engaging in prostitution or solicitation for prostitution: Penalty; exception) and Nev. Rev. Stat. Ann. § 207.030(b) (Prohibited acts; penalty) since both of these offenses that have “an element involving a sexual act or sexual conduct with another.” Nev. Rev. Stat. Ann. § 179D.097(1).

However, notably, under Nev. Rev. Stat. Ann. § 179D.097(2) (“Sexual offense” defined),

Except for the offenses described in paragraphs (n) and (o) of subsection 1, the term does not include an offense involving consensual sexual conduct if the victim was:

(a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or

(b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Therefore, since a court may view a domestic minor sex trafficking victim as consenting to the sexual conduct, some buyers who are not more than 4 years older than the victim may not be required to register as a “sex offender” under Nev. Rev. Stat. Ann. § 179D.097, but would be required to register for having committed a “crime against a child” under Nev. Rev. Stat. Ann. § 179D.0357.

Pursuant to Nev. Rev. Stat. Ann. § 179D.115,

"Tier II offender" means an offender convicted of a crime against a child or a sex offender, other than a Tier III offender, whose crime against a child is punishable by imprisonment for more than 1 year or whose sexual offense:

1. If committed against a child, constitutes:

(a) Luring a child pursuant to NRS 201.560 [Definitions; exception; penalties], if punishable as a felony;

(b) Abuse of a child pursuant to NRS 200.508 [Abuse, neglect or endangerment of child: penalties; definitions], if the abuse involved sexual abuse or sexual exploitation;

(c) An offense involving pandering sex trafficking pursuant to NRS 201.300 [Pandering and sex trafficking: Definition; penalties; exception] or prostitution pursuant to NRS 201.320 [Living from earnings of prostitute; penalty];

- (d) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730,<sup>37</sup> inclusive; or
  - (e) Any other offense that is comparable to or more severe than the offenses described in 42 U.S.C. Section 16911(3) [Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators];
2. Involves an attempt or conspiracy to commit any offense described in subsection 1;
  3. If committed in another jurisdiction, is an offense that, if committed in this State, would be an offense listed in this section. This subsection includes, without limitation, an offense prosecuted in:
    - (a) A tribal court; or
    - (b) A court of the United States or the Armed Forces of the United States; or
  4. Is committed after the person becomes a Tier I offender if any of the person's sexual offenses constitute an offense punishable by imprisonment for more than 1 year.

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<sup>37</sup> Nev. Rev. Stat. Ann. §§ 200.710 (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), 200.720 (Promotion of sexual performance of minor unlawful), 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), 200.727 (Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; penalties), and 200.730 (Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties).

**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.

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**Legal Analysis:**

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.<sup>38</sup>

A trafficker<sup>39</sup> who is found guilty of sex trafficking a child is subject to penalties pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b) (Pandering and sex trafficking: definition; penalties; exception) which states,

....

2. A child:

(I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.

(II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.

(III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

3. A court shall not grant probation to or suspend the sentence of a person convicted of sex trafficking a child pursuant to subsection 2.

In addition, a trafficker could be convicted of living from earnings of a prostitute under Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute; penalty), if the trafficker “knowingly accepts, receives, levies or appropriates any money or other valuable thing, without consideration, from the proceeds of any prostitute.” “Any such acceptance, receipt, levy or appropriation of money or valuable thing upon any proceedings or trial for violation of this section is presumptive evidence of lack of consideration.” Nev. Rev. Stat. Ann. § 201.320(2). A violation of Nev. Rev. Stat. Ann. § 201.320 is a Class D felony punishable by imprisonment for 1–4 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 201.320(1), 193.130(2)(d).

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<sup>38</sup> See *supra* Components 1.1 and 1.2 for full discussion of the substantive provisions of the Nevada statutes listed. In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to traffickers of commercial sex with minors. Some counties also allow for the operation of licensed houses of prostitution. See *infra* Appendix A for some county and city ordinances applicable to traffickers.

<sup>39</sup> See *supra* note 2 for Nevada’s involuntary servitude laws.

Furthermore, pursuant to Nev. Rev. Stat. Ann. § 201.352 (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of an offense and “physical force or violence or the immediate threat of physical force or violence is used upon the child,” a trafficker who is convicted of subsection 2 of Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) or Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute; penalty) may be fined \$500,000. There are also heightened penalties for acts of conspiracy. If a person is convicted of sex trafficking or living from the proceeds of a prostitute, as well as conspiracy to commit those offenses, and the victim of the offense was a child at the time, the court may impose a fine of not more than \$500,000 in addition to other fines prescribed by statute. Nev. Rev. Stat. Ann. § 201.352(2).

In addition, conspiracy to commit certain crimes, including “sex trafficking in violation of NRS 201.300” renders traffickers subject to penalties pursuant to Nev. Rev. Stat. Ann. § 199.480(1) (Penalties).<sup>40</sup>

When the minor victim is under 14 years of age, a violation of Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance) is a Category A felony punishable by imprisonment for life with possibility of parole after 10 years and a fine not to exceed \$100,000. Nev. Rev. Stat. Ann. §§ 200.710(1), 200.750(2). When the minor victim is 14 years of age or older, a violation of Nev. Rev. Stat. Ann. § 200.710(1) is a Category A felony punishable by imprisonment for life, with parole eligibility after serving 5 years and a fine not to exceed \$100,000. Nev. Rev. Stat. Ann. §§ 200.710(1), 200.750(2).

Similarly, Nev. Rev. Stat. Ann. § 609.210(2) (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty) is a misdemeanor punishable by up to 6 months in prison, a fine not to exceed \$1,000, or both. Nev. Rev. Stat. Ann. §§ 609.210, 193.150(1).

A trafficker could be found guilty of money laundering under Nev. Rev. Stat. Ann. § 207.195(1) (Use of monetary instrument proceeding or derived from unlawful activity), which states,

If a monetary instrument represents the proceeds of or is directly or indirectly derived from any unlawful activity, it is unlawful for a person, having knowledge of that fact:

- (a) To conduct or attempt to conduct a financial transaction involving the instrument:
  - (1) With the intent to further any unlawful activity;
  - (2) With the knowledge that the transaction conceals the location, source, ownership or control of the instrument; or
  - (3) With the knowledge that the transaction evades any provision of federal or state law that requires the reporting of a financial transaction.
- (b) To transport or attempt to transport the monetary instrument:
  - (1) With the intent to further any unlawful activity;

....

A violation of Nev. Rev. Stat. Ann. § 207.195 is a Class D felony punishable by imprisonment for 1–4 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 207.195(3), 193.130(2)(d).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>41</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.

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<sup>40</sup> See *supra* note 8.

<sup>41</sup> See *supra* note 22.

§§ 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>42</sup> against a minor. 18 U.S.C. § 3559(e)(1).

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

Pursuant to Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), it is a category B felony when a person “knowingly prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct<sup>43</sup>. . . .” The crime is punishable by imprisonment for 1–15 years, a fine not to exceed \$15,000, or both. Nev. Rev. Stat. Ann. § 200.725.

Under Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), it is a category A felony when a person “knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance.” Additionally, under Nev. Rev. Stat. Ann. § 200.710(2), it is a category A felony when a person “knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance.”

Violations of any of these statutes subjects “[a]ll assets derived from or relating to any violation . . . to forfeiture.” Nev. Rev. Stat. Ann. § 200.760.

Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct<sup>44</sup> and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

- (a) Promoted<sup>45</sup> the film, photograph or other visual presentation;
- (b) Possessed the film, photograph or other visual presentation; or
- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(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

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<sup>42</sup> See *supra* note 23.

<sup>43</sup> See *supra* note 31.

<sup>44</sup> See *supra* note 33.

<sup>45</sup> “Promote” means “to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.” Nev. Rev. Stat. Ann. §§ 41.1396(5)(a), 200.700(2).

<sup>46</sup> See *supra* note 23.

<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).

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.*

Although Nevada law does not specifically criminalize using the Internet or other electronic communication to sell commercial sex acts, the crime can fall within Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties). Pursuant to Nev. Rev. Stat. Ann. § 201.560,

1. Except as otherwise provided in subsection 3,<sup>50</sup> a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:
  - (a) A child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from the child's home or from any location known to the child's parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:
    - (1) Without the express consent of the parent or guardian or other person legally responsible for the child; and
    - (2) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child; or
  - (b) Another person whom he or she believes to be a child who is less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.

....
4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:
  - (a) With the intent to engage in sexual conduct<sup>51</sup> with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

....

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

Traffickers convicted of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) may be punished by a fine of not more than \$20,000 if the minor is under 14

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<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).

<sup>50</sup> *See supra* note 26.

<sup>51</sup> *See supra* note 31.

years old at the time of the offense and a fine of not more than \$10,000 if the minor is at least 14 years old but less than 18 years old at the time of the offense. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2).

A trafficker who is convicted under Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute) is subject to a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 201.320(1), 193.130(2)(d).

Pursuant to Nev. Rev. Stat. Ann. § 201.352 (Additional fine for pandering child and conspiring to pander child), if the victim is a child at the time of the offense and “physical force or violence or the immediate threat of physical force or violence is used upon the child,” a trafficker who is convicted of Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception) or Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute; penalty) may be fined \$500,000. An additional \$500,000 fine may be levied if a trafficker is convicted of conspiracy to commit sex trafficking or living from the earnings of a prostitute, if the victim is a child. Nev. Rev. Stat. Ann. § 201.352(3).

Convictions under Nev. Rev. Stat. Ann. § 207.030(b), (c) (Prohibited acts; penalty) or Nev. Rev. Stat. Ann. § 609.210 (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty) can result in fines not to exceed \$1,000. Nev. Rev. Stat. Ann. §§ 207.030, 609.210(2)(a), 193.150(1). Subsequent violations of Nev. Rev. Stat. Ann. § 207.030 that occur within 3 years of the first violation can result in fines of \$250–\$1,000. Nev. Rev. Stat. Ann. § 207.030(2)(b), (c).

Traffickers may be subject to civil, discretionary asset forfeiture pursuant to Nev. Rev. Stat. Ann. § 179.121 if they commit pandering/sex trafficking offenses in violation of Nev. Rev. Stat. Ann. §§ 201.300 or 201.320. Nev. Rev. Stat. Ann. § 179.121(e) provides for forfeiture of “[a]ll personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in” violations of Nev. Rev. Stat. Ann. §§ 201.300 or 201.320. Nev. Rev. Stat. Ann. § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime)<sup>52</sup> also provides, with certain limited exceptions, that “all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony . . . are subject to forfeiture.”

Additionally, pursuant to Nev. Rev. Stat. Ann. § 179.1164(1)(a) (Property subject to seizure and forfeiture; exceptions), “[a]ny proceeds attributable to the commission or attempted commission of any felony,” are subject to forfeiture. “Proceeds” is defined as “any property, or that part of an item of property, derived directly or indirectly from the commission or attempted commission of a crime.” Nev. Rev. Stat. Ann. § 179.1161. “Property” includes the following: “1. Real property or interest in real property. 2. Fixture or improvement to real property. 3. Personal property, whether tangible or

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<sup>52</sup> Pursuant to Nev. Rev. Stat. Ann. § 179.1164 (Property subject to seizure and forfeiture; exceptions),

1. Except as otherwise provided in subsection 2, the following property is subject to seizure and forfeiture in a proceeding for forfeiture:
  - (a) Any proceeds attributable to the commission or attempted commission of any felony.
  - (b) Any property or proceeds otherwise subject to forfeiture pursuant to NRS 179.121, 200.760, 202.257, 370.419, 453.301 or 501.3857.
2. Property may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or omission shown to have been committed or omitted without the knowledge, consent or willful blindness of the claimant.
3. Unless the owner of real property or a mobile home:
  - (a) Has given the tenant notice to surrender the premises pursuant to NRS 40.254 within 90 days after the owner receives notice of a conviction pursuant to subsection 2 of NRS 453.305; or
  - (b) Shows the court that the owner had good cause not to evict the tenant summarily pursuant to NRS 40.254,. . . .

intangible, or interest in personal property. 4. Conveyance, including any aircraft, vehicle or vessel. 5. Money, security or negotiable instrument. 6. Proceeds.” Nev. Rev. Stat. Ann. § 179.1162.

Seizure of forfeitable property is governed by Nev. Rev. Stat. Ann § 179.1165, which provides for seizure upon process issued by a magistrate or without process if

- (a) The seizure is incident to:
  - (1) An arrest;
  - (2) A search pursuant to a search warrant; or
  - (3) An inspection pursuant to a warrant for an administrative inspection;
- (b) The property is the subject of a final judgment in a proceeding for forfeiture;
- (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture.

Following an order of forfeiture, the seizing agency may retain the property for official use, “sell any of it which is neither required to be destroyed nor harmful to the public”, or “remove it for disposition in accordance with [other statutes].” Nev. Rev. Stat. Ann. § 179.1175.

In addition to any other penalty, pursuant to Nev. Rev. Stat. Ann. § 201.325 (Power of court to order restitution),, the court may order a trafficker convicted of a violation of or 201.300 (Pandering: definition; penalties; exception) or 201.320 (Living from earnings of prostitute; penalty) to pay restitution to the victim.<sup>53</sup> Nev. Rev. Stat. Ann. § 201.325 states,

- [r]estitution ordered pursuant to this section [may include, without limitation:
- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
  - (b) The cost of transportation, temporary housing and child care;
  - (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
  - (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;
  - (e) The cost of repatriation of the victim to his or her home country, if applicable; and
  - (f) Any and all other losses suffered by the victim as a result of the violation of any provision of 201.300 (Pandering and sex trafficking: definition; penalties; exception), or 201.320 (Living from earnings of prostitute; penalty).

Generally, traffickers are subject to a mandatory order of restitution where appropriate. Nev. Rev. Stat. Ann. § 176.033(1)(c). Pursuant to Nev. Rev. Stat. Ann. § 176.033(1)(c) (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence), “[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . . .”

Finally, a trafficker may face a possible fine up to \$5,000 for a violation of Nev. Rev. Stat. Ann. § 207.195 (Use of monetary instrument proceeding or derived from unlawful activity). Nev. Rev. Stat. Ann. §§ 207.195(3), 193.130(2)(d).

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<sup>53</sup> See *supra* note 29.

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

Traffickers convicted of a “crime against a child” and “sex offenders” must register as sex offenders. Nev. Rev. Stat. Ann. § 179D.441(1). Pursuant to Nev. Rev. Stat. Ann. § 179D.0357 (“Crime against a child” defined), a “crime against a child” includes

“Crime against a child” means any of the following offenses if the victim of the offense was less than 18 years of age when the offense was committed:

....

4. An offense involving sex trafficking pursuant to subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] or prostitution pursuant to NRS 201.320 [Living from earnings of prostitute; penalty].
5. An attempt to commit an offense listed in this section.

A “sex offender” is defined to include “a person who, after July 1, 1956, is or has been: (a) convicted of a sexual offense listed in NRS 179D.097 [“Sexual offense” defined] . . . .” Nev. Rev. Stat. Ann. § 179D.095(1)(a). Pursuant to Nev. Rev. Stat. Ann. § 179D.097(1), a “sexual offense” is defined to include the following offenses:

....

- (g) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.
- (h) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive.
- ....
- (n) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.
- ....
- (p) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
- (q) Sex trafficking pursuant to NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception].
- (r) Any other offense that has an element involving a sexual act or sexual conduct with another.

....

However, notably, under Nev. Rev. Stat. Ann. § 179D.097(2),

Except for the offenses described in paragraphs (n) and (o) of subsection 1, the term does not include an offense involving consensual sexual conduct if the victim was:

- (a) An adult, unless the adult was under the custodial authority of the offender at the time of the offense; or
- (b) At least 13 years of age and the offender was not more than 4 years older than the victim at the time of the commission of the offense.

Therefore, since a court may view a domestic minor sex trafficking victim as consenting to the sexual conduct, some traffickers who are 4 or fewer years older than the victim may not be required to register. However, traffickers who commit “[a]n offense involving pandering or prostitution pursuant to NRS 201.300 to 201.340” would still be required to register for committing a “crime against 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.*

Pursuant to Nev. Rev. Stat. Ann. § 128.105 (Grounds for terminating parental rights: considerations; required findings),

1. The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:

(a) The best interests of the child would be served by the termination of parental rights; and

(b) The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 [Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe return to home possible; determining whether reasonable efforts have been made] or demonstrated at least one of the following:

(1) Abandonment of the child;

(2) Neglect of the child;

(3) Unfitness of the parent;

(4) Failure of parental adjustment;

(5) Risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents;

(6) Only token efforts by the parent or parents:

(I) To support or communicate with the child;

(II) To prevent neglect of the child;

(III) To avoid being an unfit parent; or

(IV) To eliminate the risk of serious physical, mental or emotional injury to the child;

or

(7) With respect to termination of the parental rights of one parent, the abandonment by that parent.

2. Before making a finding pursuant to subparagraph (5) of paragraph (b) of subsection 1, if the child has been out of the care of his or her parent or guardian for at least 12 consecutive months, the court shall consider, without limitation:

(a) The placement options for the child;

(b) The age of the child; and

(c) The developmental, cognitive and psychological needs of the child.

Pursuant to Nev. Rev. Stat. Ann. § 128.106 (Specific considerations in determining neglect by or unfitness of parent),

In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

.....

2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.

3. Conduct that violates any provision of NRS 200.463 [Involuntary servitude; penalties], 200.4631 [Involuntary servitude of minors; penalties], 200.464 [Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty] or

200.465 [Assuming rights of ownership over another person; purchase or sale of person; penalty].<sup>54</sup>

....

6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.

....

Nev. Rev. Stat. Ann. § 432B.393(3) (Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe return to home possible; determining whether reasonable efforts have been made) provides that an agency is not required to make reasonable efforts to reunify a parent and child, if the court finds that

(a) A parent or other person responsible for the child's welfare has:

- (1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter;
- (2) Caused the abuse or neglect of the child, or of another child of the parent or other person responsible for the child's welfare, which resulted in substantial bodily harm to the abused or neglected child;
- (3) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to the home would result in an unacceptable risk to the health or welfare of the child; . . . .

....

(g) The child, a sibling of the child or another child in the household has been sexually abused or has been subjected to neglect by pervasive instances of failure to protect the child from sexual abuse; or

(h) A parent of the child is required to register as a sex offender pursuant to the provisions of chapter 179D of NRS or the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. Sections 16901 et seq.

3.6.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 128.106 (Specific considerations in determining neglect by or unfitness of parent) to include violations of Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception) and Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute; penalty).

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<sup>54</sup> See *supra* Component 1.1.

**Legal Components:**

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

**Legal Analysis:**

- 4.1 *The acts of assisting, enabling, or financially benefitting from child sex trafficking are included as criminal offenses in the state sex trafficking statute.<sup>55</sup>*

Nevada’s sex trafficking law applies to some facilitators. Under Nev. Rev. Stat. Ann. § 201.300(2)(a)(1) (Pandering and sex trafficking: definition; penalties; exception), “A person . . . [i]s guilty of sex trafficking if the person . . . [i]nduces, causes, recruits, harbors, transports, provides, obtains or maintains a child to engage in prostitution, or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution.” A person who is found guilty of sex trafficking a child is subject to penalties pursuant to Nev. Rev. Stat. Ann. § 201.300(2)(b)(2) which states that a person who commits sex trafficking,

- (I) If the child is less than 14 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served, and may be further punished by a fine of not more than \$ 20,000.
- (II) If the child is at least 14 years of age but less than 16 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$ 10,000.
- (III) If the child is at least 16 years of age but less than 18 years of age when the offense is committed, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than \$ 10,000.

....

A facilitator could be convicted of living from earnings of a prostitute under Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute; penalty) if the facilitator “knowingly accepts, receives, levies or appropriates any money or other valuable thing, without consideration, from the proceeds of any prostitute.” Further, “[a]ny such acceptance, receipt, levy or appropriation of money or valuable thing upon any proceedings or trial for violation of this section is presumptive evidence of lack of consideration.” Nev. Rev. Stat. Ann. §§ 201.320(2). A violation of Nev. Rev. Stat. Ann. § 201.320 is a

<sup>55</sup> In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to facilitators of domestic minor sex trafficking. Some counties also allow for the operation of licensed houses of prostitution. *See infra* Appendix A for a list of some county and city ordinances applicable to facilitators.

Class D felony punishable by imprisonment for 1–4 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 201.320(1), 193.130(2)(d).

While not specific to sex trafficking, Nevada’s involuntary servitude laws may also apply to facilitators involved in commercial sexual exploitation of minors; the laws include.<sup>56</sup>

Additionally, a facilitator could be found guilty of money laundering under Nev. Rev. Stat. Ann. § 207.195(1) (Use of monetary instrument proceeding or derived from unlawful activity), which states,

If a monetary instrument represents the proceeds of or is directly or indirectly derived from any unlawful activity, it is unlawful for a person, having knowledge of that fact:

(a) To conduct or attempt to conduct a financial transaction involving the instrument:

- (1) With the intent to further any unlawful activity;
- (2) With the knowledge that the transaction conceals the location, source, ownership or control of the instrument; or
- (3) With the knowledge that the transaction evades any provision of federal or state law that requires the reporting of a financial transaction.

(b) To transport or attempt to transport the monetary instrument:

- (1) With the intent to further any unlawful activity;

...

A violation of Nev. Rev. Stat. Ann. § 207.195 is a Class D felony punishable by imprisonment 1–4 years and a possible fine not to exceed \$5,000. Nev. Rev. Stat. Ann. §§ 207.195(3), 193.130(2)(d).

4.1.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) to expressly apply to all traffickers who financially benefit or receive something of value from the commission of an offense.

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

Facilitators convicted of minor sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) may be punished by a fine of not more than \$20,000 if the minor is under 14 years old at the time of the offense and a fine of not more than \$10,000 if the minor is at least 14 years old but less than 18 years old at the time of the offense. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2).

Persons convicted under Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) and § 201.430 (Unlawful advertising of prostitution; penalties) can receive a fine not to exceed \$1,000. Nev. Rev. Stat. Ann. §§ 207.030(2)(a), 201.430(4)(a). Subsequent violations of Nev. Rev. Stat. Ann. § 207.030 or § 201.430 that occur within 3 years of the first violation can result in fines between \$250–\$1,000. Nev. Rev. Stat. Ann. §§ 207.030(2)(b), (c), 201.430(4)(b), (c). Lastly, a violation of Nev. Rev. Stat. Ann. § 201.390(1) (Property or principal business streets not to be rented for purposes of prostitution) can result in a fine of not more than \$500. Nev. Rev. Stat. Ann. § 201.390(2).

Facilitators are subject to asset forfeiture for violations of sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception) and Nev. Rev. Stat. Ann. § 201.320 (Living from earnings of prostitute; penalty). Pursuant to Nev. Rev. Stat. Ann. § 201.351 (Forfeiture of assets derived from or relating to pandering child; temporary restraining order to preserve property subject to forfeiture; use of proceeds derived from forfeiture), “All assets derived from or relating to any violation of NRS 201.300 (Pandering and sex

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<sup>56</sup> See *supra* Component 1.1 for a discussion of potentially applicable involuntary servitude laws.

trafficking: definition; penalties; exception), or 201.320 (Living from earnings of prostitute; penalty) are subject to forfeiture pursuant to NRS 179.121 (Forfeiture of personal property and conveyances used in the commission of crime) and a proceeding for their forfeiture may be brought pursuant to NRS 179.1156 to 179.121, inclusive.”

Furthermore, Nev. Rev. Stat. Ann. § 179.121(e) establishes forfeiture of “[a]ll personal property, including, without limitation, any tool, substance, weapon, machine, computer, money or security, which is used as an instrumentality in any of the following crimes” which includes Nev. Rev. Stat. Ann. §§ 201.300 (Pandering: definition; penalties; exception) or 201.320 (Living from the earnings of a prostitute). Nev. Rev. Stat. Ann. § 179.121 (Forfeiture of personal property and conveyances used in the commission of crime)<sup>57</sup> also provides, with certain limited exceptions, that “all conveyances, including aircraft, vehicles or vessels, which are used or intended for use during the commission of a felony . . . are subject to forfeiture.”

Additionally, pursuant to Nev. Rev. Stat. Ann. § 179.1164(1)(a) (Property subject to seizure and forfeiture; exceptions), “[a]ny proceeds attributable to the commission or attempted commission of any felony,” are subject to forfeiture. “Proceeds” is defined as “any property, or that part of an item of property, derived directly or indirectly from the commission or attempted commission of a crime.” Nev. Rev. Stat. Ann. § 179.1161. “Property” includes the following: “1. Real property or interest in real property. 2. Fixture or improvement to real property. 3. Personal property, whether tangible or intangible, or interest in personal property. 4. Conveyance, including any aircraft, vehicle or vessel. 5. Money, security or negotiable instrument. 6. Proceeds.” Nev. Rev. Stat. Ann. § 179.1162.

Seizure of forfeitable property is governed by Nev. Rev. Stat. Ann. § 179.1165, which provides for seizure upon process issued by a magistrate or without process if

- (a) The seizure is incident to:
  - (1) An arrest;
  - (2) A search pursuant to a search warrant; or
  - (3) An inspection pursuant to a warrant for an administrative inspection;
- (b) The property is the subject of a final judgment in a proceeding for forfeiture;
- (c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (d) The law enforcement agency has probable cause to believe that the property is subject to forfeiture.

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<sup>57</sup> Pursuant to Nev. Rev. Stat. Ann. § 179.1164 (Property subject to seizure and forfeiture; exceptions),

- 1. Except as otherwise provided in subsection 2, the following property is subject to seizure and forfeiture in a proceeding for forfeiture:
  - (a) Any proceeds attributable to the commission or attempted commission of any felony.
  - (b) Any property or proceeds otherwise subject to forfeiture pursuant to NRS 179.121, 200.760, 202.257, 370.419, 453.301 or 501.3857.
- 2. Property may not, to the extent of the interest of any claimant, be declared forfeited by reason of an act or omission shown to have been committed or omitted without the knowledge, consent or willful blindness of the claimant.
- 3. Unless the owner of real property or a mobile home:
  - (a) Has given the tenant notice to surrender the premises pursuant to NRS 40.254 within 90 days after the owner receives notice of a conviction pursuant to subsection 2 of NRS 453.305; or
  - (b) Shows the court that the owner had good cause not to evict the tenant summarily pursuant to NRS 40.254,

. . . .

Following an order of forfeiture, the seizing agency may retain the property for official use, sell any of it which is neither required to be destroyed nor harmful to the public, or remove it for disposition in accordance with other statutes. Nev. Rev. Stat. Ann. § 179.1175.

Moreover, a facilitator is subject to a mandatory restitution order where appropriate. Nev. Rev. Stat. Ann. § 176.033(1)(c). Specifically, pursuant to Nev. Rev. Stat. Ann. § 176.033(1)(c) (Sentence of imprisonment required or permitted by statute: Definite period for misdemeanor or gross misdemeanor; minimum and maximum term for felony unless definite term required by statute; restitution; modification of sentence), “[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . . .”

In addition to any other penalty, pursuant to Nev. Rev. Stat. Ann. § 201.325 (Power of court to order restitution),, the court may order a facilitator convicted of a violation of Nev. Rev. Stat. Ann. §§ 201.300 (Pandering: definition; penalties; exception) or 201.320 (Living from earnings of prostitute; penalty) to pay restitution to the victim.<sup>58</sup> Nev. Rev. Stat. Ann. § 201.325 states,

[r]estitution ordered pursuant to this section may include, without limitation:

- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
- (b) The cost of transportation, temporary housing and child care;
- (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;
- (e) The cost of repatriation of the victim to his or her home country, if applicable; and
- (f) Any and all other losses suffered by the victim as a result of the violation of any provision of 201.300 [Pandering and sex trafficking: definition; penalties; exception], or 201.320 [Living from earnings of prostitute; penalty].

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

Nevada has no statute specifically related to sex tourism.

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

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

Pursuant to Nev. Rev. Stat. Ann. § 200.720 (Promotion of sexual performance of minor unlawful), it is a category A felony to “knowingly promote[] a performance of a minor: 1. Where the minor engages in or simulates, or assists others to engage in or simulate, sexual conduct;<sup>59</sup> or 2. Where the minor is the subject of a sexual portrayal.”<sup>60</sup> For the purpose of this statute, “promote” means “to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.” Nev. Rev. Stat. Ann. § 200.700(2). When the minor is 14 or older, a violation is punishable by imprisonment “for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(1). When the minor is under 14, the crime is punishable by imprisonment “for life with the possibility of parole, with eligibility for

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<sup>58</sup> See *supra* note 29.

<sup>59</sup> See *supra* note 31.

<sup>60</sup> See *supra* note 30.

parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$100,000.” Nev. Rev. Stat. Ann. § 200.750(2).

Pursuant to Nev. Rev. Stat. Ann. § 200.725 (Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty), it is a category B felony when a person “knowingly prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct . . . .” The crime is punishable by imprisonment for 1–15 years, a fine not to exceed \$15,000, or both. Nev. Rev. Stat. Ann. § 200.725. Violations of either of these statutes subjects “[a]ll assets derived from or relating to any violation . . . to forfeiture.” Nev. Rev. Stat. Ann. § 200.760.

Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses),

Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct<sup>61</sup> and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

- (a) Promoted<sup>62</sup> the film, photograph or other visual presentation;
- (b) Possessed the film, photograph or other visual presentation; or
- (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff’s actual damages, which shall be deemed to be at least \$150,000, plus attorney’s fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

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<sup>61</sup> See *supra* note 33.

<sup>62</sup> See *supra* note 45.

***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 child sex trafficking offense include all commercially sexually exploited children.<sup>63</sup>*

Nevada’s human trafficking offense includes all commercial sexual exploitation of minors. Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception), when the victim is a minor, means of force, fraud, or coercion are not required. In addition, the human trafficking law applies to buyers; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking. Nev. Rev. Stat. Ann. § 201.300(2)(a)(1) (Pandering: definition; penalties; exception). Finally, in establishing the crime of sex trafficking, third party control is not required. Consequently, Nevada’s human trafficking offenses include any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker.

- 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.*

Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: Definitions; penalties; exception) expressly prohibits a defendant from raising a defense based on the willingness of the minor to engage in the commercial sex act. Nev. Rev. Stat. Ann. § 201.300(4) states, “Consent of a victim of pandering or sex trafficking to an act of prostitution is not a defense to a prosecution for any of the acts prohibited by this section.”

<sup>63</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).

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>64</sup>

Nev. Rev. Stat. Ann. § 201.354<sup>65</sup> (Engaging in prostitution or solicitation for prostitution: Penalty; exception) does not exclude minors from prosecution. The statute establishes a misdemeanor “for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.” Nev. Rev. Stat. Ann. § 201.354(1). Similarly, Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) does not exclude minors from prosecution and makes it a crime to “[o]ffer or agree to engage in, engage in or aid and abet any act of prostitution.” The crime is a misdemeanor, with heightened penalties for subsequent violations committed within 3 years of the first violation. Nev. Rev. Stat. Ann. § 207.030(2).

However, protections are in place that may allow juvenile sex trafficking victims to avoid a delinquency adjudication. Pursuant to Nev. Rev. Stat. Ann. § 62C.240 [Court referral for court supervision pursuant to supervision and consent decree of child alleged to have engaged in prostitution or solicitation of prostitution; violation of supervision and consent decree or order; dismissal of petition],

1. If the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution, the juvenile court:

(a) Except as otherwise provided in paragraph (b), shall:

- (1) Place the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency; and
- (2) Order that the terms and conditions of the supervision and consent decree include, without limitation, services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive.

(b) If the child originated from a jurisdiction outside this State, may return the child to the jurisdiction from which the child originated.

2. If a child is placed under a supervision and consent decree pursuant to this section, the juvenile court may issue any order authorized by chapter 62E of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child’s best interest.

3. If a child is alleged to have violated the provisions of a supervision and consent decree under this section or an order issued pursuant to this section:

(a) The district attorney must not file a petition alleging that the child has violated the decree or order and the allegation must be placed before the court pursuant to a motion or a request for judicial review. This paragraph does not prohibit the district attorney from filing a petition alleging that the child has committed a delinquent act.

(b) The juvenile court may issue any order authorized by chapter 62E of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child’s best interest.

....

5.3.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception) and Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty) to eliminate liability for prostitution offenses for all minors under 18.

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<sup>64</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>65</sup> In Nevada, counties also regulate prostitution laws and have additional offenses that could apply to victims of domestic minor sex trafficking. See *infra* Appendix A for a list of county ordinances applicable to victims.

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

### Child Identified as In Need of Protection

Pursuant to Nev. Rev. Stat. Ann. § 432B.330 (Circumstances under which child is or may be in need of protection),

1. A child is in need of protection if:
  - (a) The child has been abandoned by a person responsible for the welfare of the child;<sup>66</sup>
  - (b) The child has been subjected to abuse or neglect<sup>67</sup> by a person responsible for the welfare of the child;
  - (c) The child is in the care of a person responsible for the welfare of the child and another child has:
    - (1) Died as a result of abuse or neglect by that person; or
    - (2) Been subjected to abuse by that person, unless the person has successfully completed a plan for services that was recommended by an agency which provides child welfare services pursuant to NRS 432B.340 to address the abuse of the other child;
  - (d) The child has been placed for care or adoption in violation of law; or
  - (e) The child has been delivered to a provider of emergency services pursuant to NRS 432B.630 [Delivery of newborn child to provider of emergency services].
2. A child may be in need of protection if the person responsible for the welfare of the child:
  - (a) Is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;
  - (b) Fails, although the person is financially able to do so or has been offered financial or other means to do so, to provide for the following needs of the child:
    - (1) Food, clothing or shelter necessary for the child's health or safety;
    - (2) Education as required by law; or
    - (3) Adequate medical care; or
  - (c) Has been responsible for the neglect of a child who has resided with that person; or
  - (d) Has been responsible for the abuse of another child regardless of whether that person has successfully completed a plan for services that was recommended by an agency which provides child welfare services pursuant to NRS 432B.340 to address the abuse of the other child.
- ....
5. As used in this section:
  - (a) "Abuse" means:
    - ....
    - (2) Sexual abuse or sexual exploitation, of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.
  - (b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.
- ....<sup>68</sup>

<sup>66</sup> See *infra* Component 5.6 for definition of "person responsible for the welfare of the child."

<sup>67</sup> See *infra* Component 5.5 for definition of "abuse or neglect of a child."

<sup>68</sup> Nev. Rev. Stat. Ann. § 432B.330 also provides,

- (c) "Neglect" means abandonment or failure to:
  - (1) Provide for the needs of a child set forth in paragraph(b) of subsection 2; or

I. *Initial custody*

a. Authority for initial custody

One way a child may come to the attention of the Department of Family and Child Services as a child in need of protection is through a mandatory report pursuant to Nev. Rev. Stat. Ann. § 432B.220(1), which states,

Any person who is described in subsection 4 [includes certain medical, religious, and educational workers] and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall:

- (a) Except as otherwise provided in subsection 2,<sup>69</sup> report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and
- (b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

A trafficked child under the age of 12 may also be identified through a mandatory report of a sexual offense under Nev. Rev. Stat. Ann. § 202.882(1) (Duty to report violent or sexual offense against child 12 years of age or younger; penalty for failure to report; contents of report), which states,

Except as otherwise provided in NRS 202.885 [Limitation on prosecution or conviction for failure to report] and 202.888 [Persons exempt from duty to report], a person who knows or has reasonable cause to believe that another person has committed a violent or sexual offense against a child who is 12 years of age or younger shall:

- (a) Report the commission of the violent or sexual offense against the child to a law enforcement agency; and
- (b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the other person has committed the violent or sexual offense against the child.

Pursuant to Nev. Rev. Stat. Ann. § 202.876 ("Violent or sexual offense" defined),

"Violent or sexual offense" means any act that, if prosecuted in this State, would constitute any of the following offenses:

- ....
- 3. Kidnapping pursuant to NRS 200.310 to 200.340, inclusive.

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(2) Provide proper care, control and supervision of a child as necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.

<sup>69</sup> Nev. Rev. Stat. 432B.220(2) states,

If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

- (a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of the home for a portion of the day, the person shall make the report to a law enforcement agency.
- (b) An agency which provides child welfare services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

- 4. Sexual assault pursuant to NRS 200.366.  
.....
- 9. False imprisonment pursuant to NRS 200.460 if the false imprisonment involves the use or threatened use of force or violence against the victim or the use or threatened use of a firearm or a deadly weapon.  
.....
- 12. An offense involving pornography and a minor pursuant to NRS 200.710 or 200.720.  
.....
- 14. Open or gross lewdness pursuant to NRS 201.210.
- 15. Lewdness with a child pursuant to NRS 201.230.
- 16. An offense involving pandering or sex trafficking in violation of NRS 201.300 [Pandering: definition; penalties; exception] or prostitution in violation of 201.320 [Living from earnings of prostitute; penalty].  
.....
- 18. An attempt, conspiracy or solicitation to commit an offense listed in subsections 1 to 18, inclusive.

A child who comes under the court’s jurisdiction pursuant to Chapter 432 may be taken into custody as a child in need of protection pursuant to Nev. Rev. Stat. Ann. § 432B.390 (Placement of child in protective custody), or brought within child protective services but not into custody pursuant to Nev. Rev. Stat. Ann. § 432B.340 (Determination that child needs protection but is not in imminent danger).

b. Placement

If immediate action is needed for a child to be taken into protective custody, several placement options exist. Pursuant to Nev. Rev. Stat. Ann. § 432B.390 (Placement of child in protective custody),

- 1. An agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services:
  - (a) May place a child in protective custody without the consent of the person responsible for the child’s welfare if the agent, officer or designee has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.  
.....
- 6. A child placed in protective custody pending an investigation and a hearing held pursuant to NRS 432B.470 [Hearing required; notice] must be placed, except as otherwise provided in NRS 432B.3905[Limitation on transfer and placement of child who is under 6 years of age; notice; reports], in the following order of priority:
  - (a) In a hospital, if the child needs hospitalization.
  - (b) With a person who is related within the fifth degree of consanguinity or a fictive kin, and who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.
  - (c) In a foster home that is licensed pursuant to chapter 424 of NRS.
  - (d) In any other licensed shelter that provides care to such children.
- 7. Whenever possible, a child placed pursuant to subsection 6 must be placed together with any siblings of the child. Such a child must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.  
.....

## *II. Process following initial custody*

Upon being taken into custody pursuant to Nev. Rev. Stat. Ann. § 432B.390, a child must be given a hearing under Nev. Rev. Stat. Ann. § 432B.470(1) (Hearing required; notice) and, pursuant to Nev. Rev. Stat. Ann. § 432B.480(1)(b) (Hearing; Court required to advise parties of rights; determinations by court; order to continue custody or release child),

The court shall determine whether there is reasonable cause to believe that it would be:

- (1) Contrary to the welfare of the child for the child to reside at his or her home; or
- (2) In the best interests of the child to place the child outside of his or her home.

The court shall prepare an explicit statement of the facts upon which each of its determinations is based. If the court makes an affirmative finding regarding either subparagraph (1) or (2), the court shall issue an order keeping the child in protective custody pending a disposition by the court.

If the court opts not to place the child in protective custody, “[a]n agency [that] provides child welfare services” may conduct an investigation and file a petition. Nev. Rev. Stat. Ann. § 432B.490(1)(c). If the agency fails to initiate proceedings within 10 days of the protective custody hearing, the agency must, “recommend against further action,” or “file a motion to determine whether the child should be returned to the person responsible for the welfare of the child pending further action by the court.” Nev. Rev. Stat. Ann. §§ 432B.490(4)(a), (b).

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

Pursuant to Nev. Rev. Stat. Ann. § 432B.530(1), “An adjudicatory hearing must be held within 30 days after the filing of the petition, unless good cause is shown or the hearing has been continued until a later date pursuant to NRS 432B.513.”

## *IV. Outcomes*

Pursuant to Nev. Rev. Stat. Ann. § 432B.550(1) (Determination of custody of child by court; determination of whether agency which provides child welfare services has made reasonable efforts required) provides,

If the court finds that a child is in need of protection, it may, by its order, after receipt and review of the report from the agency which provides child welfare services:

- (a) Permit the child to remain in the temporary or permanent custody of the parents of the child or a guardian with or without supervision by the court or a person or agency designated by the court . . . ;
- (b) Place the child in the temporary or permanent custody of a relative, a fictive kin, or other person the court finds suitable to receive and care for the child with or without supervision . . . ; or
- (c) Place the child in the temporary custody of a public agency or institution authorized to care for children, the local juvenile probation department, the local department of juvenile services or a private agency or institution licensed by the Department of Health and Human Services or a county whose population is 100,000 or more to care for such a child.

. . . .

## Child Identified as In Need of Services

A “child in need of supervision” is defined as “a child who is adjudicated to be in need of supervision pursuant to the provisions of this title.” Nev. Rev. Stat. Ann. § 62A.040. Pursuant to Nev. Rev. Stat. Ann. § 62B.320,

1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is alleged or adjudicated to be in need of supervision because the child:

- (a) Is subject to compulsory school attendance and is a habitual truant from school;
  - (b) Habitually disobeys the reasonable and lawful demands of the parent or guardian of the child and is unmanageable;
  - (c) Deserts, abandons or runs away from the home or usual place of abode of the child and is in need of care or rehabilitation;
  - (d) Uses an electronic communication device to transmit or distribute a sexual image of himself or herself to another person or to possess a sexual image in violation of NRS 200.737;
  - (e) Violates a county or municipal ordinance imposing a curfew on a child; or
  - (f) Violates a county or municipal ordinance restricting loitering by a child.
2. A child who is subject to the jurisdiction of the juvenile court pursuant to this section must not be considered a delinquent child.

....

4. As used in this section:

....

- (b) “Electronic communication device” has the meaning ascribed to it in NRS 200.737.
- (c) “Sexual image” has the meaning ascribed to it in NRS 200.737.

### I. *Initial custody*

#### a. Authority for initial custody

The juvenile court may assume jurisdiction of a commercially sexually exploited child pursuant Nev. Rev. Stat. Ann. § 62C.240(1), which states,

If the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution, the juvenile court:

- (a) Except as otherwise provided in paragraph (b), shall:
  - (1) Place the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency; and
  - (2) Order that the terms and conditions of the supervision and consent decree include, without limitation, services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive.
- (b) If the child originated from a jurisdiction outside this State, may return the child to the jurisdiction from which the child originated.

Also, a trafficked child may be identified and taken into custody as a delinquent child or as a child in need of supervision pursuant to Nev. Rev. Stat. Ann. § 62C.010 (Grounds for taking child into custody;

notification of parent or guardian of child and probation officer; release or further detention of child),<sup>70</sup> which states,

Except as otherwise provided in this title and NRS 484C.160 [Implied consent to evidentiary test; exemption from blood test; choice of test; when blood test may be required; when other tests may be used; reasonable force authorized to obtain test in certain circumstances; notification of parent or guardian of minor directed to submit to test]:

1. A peace officer or probation officer may take into custody any child:
  - (a) Who the officer has probable cause to believe is violating or has violated any state or local law, ordinance, or rule or regulation having the force of law; or
  - (b) Whose conduct indicates that the child is in need of supervision.

....

## *II. Process following initial custody*

Pursuant to Nev. Rev. Stat. Ann. § 62C.240(2)–(3), if a minor is within the juvenile court’s supervision because the minor allegedly engaged in prostitution or the solicitation of prostitution,

2. . . . the juvenile court may issue any order authorized by chapter 62E [Disposition of cases by juvenile court] of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child’s best interest.
3. If a child is alleged to have violated the provisions of a supervision and consent decree under this section or an order issued pursuant to this section:
  - (a) The district attorney must not file a petition alleging that the child has violated the decree or order and the allegation must be placed before the court pursuant to a motion or a request for judicial review. This paragraph does not prohibit the district attorney from filing a petition alleging that the child has committed a delinquent act.
  - (b) The juvenile court may issue any order authorized by chapter 62E of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child’s best interest.

If a child is taken into custody under Nev. Rev. Stat. Ann. § 62C.010(1), subsection (2) requires the officer to notify the parent or guardian of the child taken into custody, and the facility where the child is detained must notify a probation officer and, if the officer’s attempts at notification are not successful, also attempt to notify the parent or guardian of the child taken into custody. Nev. Rev. Stat. Ann. § 62C.010(2)(a), (b). The child must be released to a parent, guardian, or responsible adult that agrees in writing to bring the child to juvenile court at a stated time unless the release is “impracticable or inadvisable or has been otherwise ordered by the juvenile court.” Nev. Rev. Stat. Ann. § 62C.010(2)(c). Regarding the written agreement signed by the responsible adult, subsection (c) also states in part, “If the person fails to produce the child at the time sated in the agreement or upon a summons from the juvenile court, a writ may be issued for the attachment of the person or of the child requiring that the person or child, or both, be brought before the juvenile court at a time stated in the writ.” Nev. Rev. Stat. Ann. § 62C.010(2)(c).

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<sup>70</sup> The juvenile court may also receive a petition that a child is in need of services, but upon an initial receipt of this petition “the juvenile court: (a) Shall admonish the child to obey the law and to refrain from repeating the acts for which the petition was filed; (b) Shall maintain a record of the admonition; (c) Shall refer the child to services available in the community for counseling, behavioral modification and social adjustment; and (d) Shall not adjudicate the child to be in need of supervision, unless a subsequent petition based upon additional facts is filed with the juvenile court after admonition and referral pursuant to this subsection.” Nev. Rev. Stat. Ann. § 62E.410(1).

If a child in custody is not released as stated above, the child must be taken to juvenile court or a “place of detention designated by the juvenile court.” Nev. Rev. Stat. Ann. § 62C.010(3)(a). The juvenile court then may order the child to be released to a parent, guardian, or other appointed person, to be detained in a designated place, or to be conditionally released for supervised detention in the child’s home that may include electronic surveillance. Nev. Rev. Stat. Ann. § 62C.010(3)(b).

When a child is taken into custody as an alleged child in need of supervision, Nev. Rev. Stat. Ann. § 62C.050 (Release of child alleged to be in need of supervision required within certain period; exceptions) provides,

1. Except as otherwise provided in this section, if a child who is alleged to be in need of supervision is taken into custody and detained, the child must be released not later than 24 hours, excluding Saturdays, Sundays and holidays, after the child’s initial contact with a peace officer or probation officer to:
  - (a) A parent or guardian of the child;
  - (b) Any other person who is able to provide adequate care and supervision for the child; or
  - (c) Shelter care.
2. A child does not have to be released pursuant to subsection 1 if the juvenile court:
  - (a) Holds a detention hearing;
  - (b) Determines that the child:
    - (1) Has threatened to run away from home or from the shelter;
    - (2) Is accused of violent behavior at home; or
    - (3) Is accused of violating the terms of a supervision and consent decree; and
  - (c) Determines that the child needs to be detained to make an alternative placement for the child.  
The child may be detained for an additional 24 hours but not more than 48 hours after the detention hearing, excluding Saturdays, Sundays and holidays.
3. A child does not have to be released pursuant to this section if the juvenile court:
  - (a) Holds a detention hearing; and
  - (b) Determines that the child:
    - (1) Is a ward of a federal court or held pursuant to a federal statute;
    - (2) Has run away from another state and a jurisdiction within that state has issued a want, warrant or request for the child; or
    - (3) Is accused of violating a valid court order.  
The child may be detained for an additional period as necessary for the juvenile court to return the child to the jurisdiction from which the child originated or to make an alternative placement for the child.
4. For the purposes of this section, an alternative placement must be in a facility in which there are no physical restraining devices or barriers.

### *III. Outcomes*

Pursuant to Nev. Rev. Stat. Ann. § 62C.240, regarding a minor who is placed within the juvenile court’s jurisdiction because it is alleged that the youth “engaged in prostitution or the solicitation of prostitution”,

the juvenile court shall dismiss the petition upon the successful completion of the terms and conditions of the supervision and consent decree or at the time the child reaches 18 years of age, whichever is earlier. A child who has reached 18 years of age may consent to remain under the supervision of the juvenile court for the purpose of receiving services provided under the supervision and consent decree.

Once a child is adjudicated pursuant to Nev. Rev. Stat. Ann. § 62D.040 to be a child in need of supervision, Nev. Rev. Stat. Ann. § 62E.420 (Placement in certain facilities prohibited) prohibits the juvenile court from placing a child in need of supervision in “a state facility for the detention of children or any other facility that provides correctional care.” But, the juvenile court has several options for placement of a child through

disposition. Pursuant to Nev. Rev. Stat. Ann. § 62E.110(1) (Placement of child in home; commitment of child to institution or facility),

Except as otherwise provided in this chapter, the juvenile court may:

- (a) Place a child in the custody of a suitable person for supervision in the child's own home or in another home; or
- (b) Commit the child to the custody of a public or private institution or agency authorized to care for children.

In addition to commitment inside or outside the home, alternative placement may be available for juveniles adjudicated delinquent or in need of supervision for the first time. Pursuant to Nev. Rev. Stat. Ann. § 62E.210(1) (When juvenile court may order completion of certain alternative programs; payment of cost of participation in such programs),

If a child has not previously been adjudicated delinquent or in need of supervision and the unlawful act committed by the delinquent child did not involve the use or threatened use of force or violence against a victim, the juvenile court may order a child to complete any or all of the following programs:

- (a) A program of cognitive training and human development established pursuant to NRS 62E.220.
- (b) A program for the arts as described in NRS 62E.240.
- (c) A program of sports or physical fitness as described in NRS 62E.240.

### **Child Identified as Delinquent**

A child may also be adjudicated delinquent pursuant to Nev. Rev. Stat. Ann. § 62D.040.<sup>71</sup> A “delinquent child” is defined as “a child who is adjudicated delinquent pursuant to the provisions of this title.” Nev. Rev. Stat. Ann. § 62A.070. Under Nev. Rev. Stat. Ann. § 62B.330(2), “a child commits a delinquent act if the child: (a) Violates a county or municipal ordinance other than those specified in paragraph (e) or (f) of subsection 1 of NRS 62B.320 (Loitering and curfew offenses) other than an offense related to tobacco; (b) Violates any rule or regulation having the force of law; or (c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada . . . .” Therefore, for a violation of county prostitution ordinances, Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution; Penalty; exception) or Nev. Rev. Stat. Ann. § 207.030(1)(b) (Prohibited acts; penalty), the child can be

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<sup>71</sup> Nev. Rev. Stat. Ann. § 62D.040(2)–(6) (Procedure at first appearance at intake and before juvenile court; when adjudicating hearing is required; standards of proof; actions of court after determination of whether or not allegations have been established) provides,

- . . . .
- 2. If the child denies the allegations in the petition, the juvenile court shall:
    - (a) Conduct an adjudicatory hearing concerning the allegations; and
    - (b) Record its findings on whether the allegations have been established.
  - 3. If the child is alleged to be in need of supervision, the allegations in the petition must be established by a preponderance of the evidence based upon competent, material and relevant evidence.
  - 4. If the child is alleged to have committed a delinquent act, the allegations in the petition must be established by proof beyond a reasonable doubt based upon competent, material and relevant evidence.
  - 5. If the juvenile court finds that the allegations in the petition have not been established, the juvenile court shall dismiss the petition and order that the child be discharged from any facility for the detention of children or temporary care, unless otherwise ordered by the juvenile court.
  - 6. If the juvenile court finds that the allegations in the petition have been established, the juvenile court shall make a proper disposition of the case.

considered a delinquent child. However, protections are in place that may allow juvenile sex trafficking victims to avoid a delinquency adjudication pursuant to Nev. Rev. Stat. Ann. § 62C.240.

## *I. Initial custody*

### *a. Authority for initial custody*

A trafficked child may be identified and taken into custody as a delinquent child or as a child in need of supervision pursuant to Nev. Rev. Stat. Ann. § 62C.010 (Grounds for taking child into custody; notification of parent or guardian of child and probation officer; release or further detention of child),<sup>72</sup> which states,

Except as otherwise provided in this title and NRS 484C.160 (Implied consent to evidentiary test; exemption from blood test; choice of test; when blood test may be required; when other tests may be used; reasonable force authorized to obtain test in certain circumstances; notification of parent or guardian of minor directed to submit to test):

1. A peace officer or probation officer may take into custody any child:

- (a) Who the officer has probable cause to believe is violating or has violated any state or local law, ordinance, or rule or regulation having the force of law; or
- (b) Whose conduct indicates that the child is in need of supervision.

....

However, for minors who are commercially sexually exploited, the juvenile court may ensure access to services and avoid a delinquency adjudication by assuming jurisdiction pursuant to Nev. Rev. Stat. Ann. § 62C.240(1), which states,

If the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution, the juvenile court:

(a) Except as otherwise provided in paragraph (b), shall:

- (1) Place the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency; and
- (2) Order that the terms and conditions of the supervision and consent decree include, without limitation, services to address the sexual exploitation of the child and any other needs of the child, including, without limitation, any counseling and medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive.

(b) If the child originated from a jurisdiction outside this State, may return the child to the jurisdiction from which the child originated.

## *II. Process following initial custody*

For minors under a supervision and consent decree resulting from the district attorney having filed a petition regarding a minor's engagement in prostitution, "the juvenile court may issue any order authorized by chapter 62E of NRS, including, without limitation, any placement of the child that the juvenile court finds to be in the child's best interest." Nev. Rev. Stat. Ann. § 62C.240.

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<sup>72</sup> The juvenile court may also receive a petition that a child is in need of services, but upon an initial receipt of this petition "the juvenile court: (a) Shall admonish the child to obey the law and to refrain from repeating the acts for which the petition was filed; (b) Shall maintain a record of the admonition; (c) Shall refer the child to services available in the community for counseling, behavioral modification and social adjustment; and (d) Shall not adjudicate the child to be in need of supervision, unless a subsequent petition based upon additional facts is filed with the juvenile court after admonition and referral pursuant to this subsection." Nev. Rev. Stat. Ann. § 62E.410(1).

Additionally, if a child is taken into custody under Nev. Rev. Stat. Ann. § 62C.010(1), subsection (2) requires the officer to notify the parent or guardian of the child taken into custody, and the facility where the child is detained must notify a probation officer and, if the officer's attempts at notification are not successful, also attempt to notify the parent or guardian of the child taken into custody. Nev. Rev. Stat. Ann. § 62C.010(2)(a), (b). The child must be released to a parent, guardian, or responsible adult that agrees in writing to bring the child to juvenile court at a stated time unless the release is "impracticable or inadvisable or has been otherwise ordered by the juvenile court." Nev. Rev. Stat. Ann. § 62C.010(2)(c). Regarding the written agreement signed by the responsible adult, subsection (c) also states in part, "If the person fails to produce the child at the time stated in the agreement or upon a summons from the juvenile court, a writ may be issued for the attachment of the person or of the child requiring that the person or child, or both, be brought before the juvenile court at a time stated in the writ." Nev. Rev. Stat. Ann. § 62C.010(2)(c).

If a child in custody is not released as stated above, the child must be taken to juvenile court or a "place of detention designated by the juvenile court." Nev. Rev. Stat. Ann. § 62C.010(3)(a). The juvenile court then may order the child to be released to a parent, guardian, or other appointed person, to be detained in a designated place, or to be conditionally released for supervised detention in the child's home that may include electronic surveillance. Nev. Rev. Stat. Ann. § 62C.010(3)(b).

### *III. Outcomes*

Pursuant to Nev. Rev. Stat. Ann. § 62C.240(4), for minors under a supervision and consent decree resulting from the district attorney having filed a petition regarding a minor's engagement in prostitution,

Except as otherwise provided in this subsection, if a child is placed under the supervision of the juvenile court pursuant to a supervision and consent decree under this section, the juvenile court shall dismiss the petition upon the successful completion of the terms and conditions of the supervision and consent decree or at the time the child reaches 18 years of age, whichever is earlier. A child who has reached 18 years of age may consent to remain under the supervision of the juvenile court for the purpose of receiving services provided under the supervision and consent decree.

In other cases, in addition to commitment inside or outside the home, alternative placement may be available for juveniles adjudicated delinquent or in need of supervision for the first time. Pursuant to Nev. Rev. Stat. Ann. § 62E.210(1) (When juvenile court may order completion of certain alternative programs; payment of cost of participation in such programs),

If a child has not previously been adjudicated delinquent or in need of supervision and the unlawful act committed by the delinquent child did not involve the use or threatened use of force or violence against a victim, the juvenile court may order a child to complete any or all of the following programs:

- (a) A program of cognitive training and human development established pursuant to NRS 62E.220.
- (b) A program for the arts as described in NRS 62E.240.
- (c) A program of sports or physical fitness as described in NRS 62E.240.

A delinquent child under 12 may not be committed in "a state facility for the detention of children." Nev. Rev. Stat. Ann. § 62E.510(1). In contrast, for a child 12 or older, "the juvenile court shall not commit the child to a private institution." Nev. Rev. Stat. Ann. § 62E.510(2).

Alternatively, in certain circumstances, a delinquent child may be routed into Child and Family Services for placement. Pursuant to Nev. Rev. Stat. Ann. § 62E.520(1) (Commitment of child to Division of Child

and Family Services: Conditions and limitations; notice; investigation and recommendation for placement of child),

The juvenile court may commit a delinquent child to the custody of the Division of Child and Family Services for suitable placement if:

- (a) The child is at least 8 years of age but less than 12 years of age, and the juvenile court finds that the child is in need of placement in a correctional or institutional facility; or
- (b) The child is at least 12 years of age but less than 18 years of age, and the juvenile court finds that the child:
  - (1) Is in need of placement in a correctional or institutional facility; and
  - (2) Is in need of residential psychiatric services or other residential services for the mental health of the child.

However, the court will not have jurisdiction over a child charged with a delinquent offense if the child committed “[a]ny . . . offense if, before the offense was committed, the person previously had been convicted of a criminal offense.” Nev. Rev. Stat. Ann. § 62B.330(3)(f). This means that, if a child is convicted of one criminal offense in Nevada, the child will be tried as an adult if charged with any other criminal offense. Nev. Rev. Stat. Ann. § 62B.370(2)(a).

Under Nev. Rev. Stat. Ann. § 62A.380 (Use of services and facilities of agencies which provide child welfare services; duties of such agencies),

1. In carrying out the objects and purposes of this title, the juvenile court may use the services and facilities of the agency which provides child welfare services.<sup>73</sup>

2. The agency which provides child welfare services shall determine the plans, placements and services to be provided to any child pursuant to the provisions of this title, chapter 432 of NRS [Protection of Children from Abuse and Neglect], NRS 432B.010 to 432B.400, inclusive, and 432B.4681 to 432B.469, inclusive.

...

If a child is in need of protection but is not in imminent danger, the child may be sent in various routes. Pursuant to Nev. Rev. Stat. Ann. § 432B.340 (Determination that child needs protection but is not in imminent danger),

1. If the agency which provides child welfare services determines that a child needs protection, but is not in imminent danger from abuse or neglect, it may:

- (a) Offer to the parents or guardian a plan for services and inform the parents or guardian that the agency has no legal authority to compel the parents or guardian to accept the plan but that it has the authority to petition the court pursuant to NRS 432B.490 [Procedure following hearing or investigation] or to refer the case to the district attorney or a law enforcement agency; or
- (b) File a petition pursuant to NRS 432B.490 and, if a child is adjudicated in need of protection, request that the child be removed from the custody of the parents or guardian or

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<sup>73</sup> Nev. Rev. Stat. Ann. § 62A.380(3) states,

As used in this section, “agency which provides child welfare services” means:

- (a) In a county whose population is less than 100,000, the office of the Division of Child and Family Services; or
- (b) In a county whose population is 100,000 or more, the agency of the county, which provides or arranges for necessary child welfare services.

that the child remain at home with or without the supervision of the court or of any person or agency designated by the court.

2. If the parent or guardian accepts the conditions of the plan offered by the agency pursuant to paragraph (a) of subsection 1, the agency may elect not to file a petition and may arrange for appropriate services, including medical care, care of the child during the day, management of the home or supervision of the child, the parents or guardian.

#### 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>74</sup>

Child sex trafficking is not expressly identified as a type of abuse and neglect within Nevada’s child protection statutes. Pursuant to Nev. Rev. Stat. Ann. § 432B.020(1)(b) (“Abuse or neglect of a child” defined), “abuse or neglect of a child” includes “sexual abuse or sexual exploitation . . . of a child caused or allowed by a person responsible for the welfare of the child under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.” Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined) states,

“Sexual exploitation” includes forcing, allowing<sup>75</sup> or encouraging a child:

1. To solicit for or engage in prostitution;
2. To view a pornographic film or literature; and
3. To engage in:
  - a. Filming, photographing or recording on videotape; or
  - b. Posing, modeling, depiction or a live performance before an audience, which involves the exhibition of a child’s genitals or any sexual conduct with a child, as defined in NRS 200.700 [Definitions].

Nev. Rev. Stat. Ann. § 432B.100 (“Sexual abuse” defined) states,

“Sexual abuse” includes acts upon a child constituting:

1. Incest under NRS 201.180;
2. Lewdness with a child under NRS 201.230;
3. Sado-masochistic abuse under NRS 201.262;
4. Sexual assault under NRS 200.366;
5. Statutory sexual seduction under NRS 200.368;
6. Open or gross lewdness under NRS 201.210; and
7. Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this State for the purpose of mutilating the genitalia of the child under NRS 200.5083.

As a result of the inclusion of “sexual exploitation” and “sexual abuse” within the definition of “abuse or neglect of a child,” domestic minor sex trafficking victims may be considered abused or neglected.

- 5.5.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined) and Nev. Rev. Stat. Ann. § 432B.100 (“Sexual abuse” defined) to expressly include victims of Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception) to ensure juvenile sex trafficking victims are identified as an abused or neglected child pursuant to Nev. Rev. Stat. Ann. § 432B.020(1)(b) (“Abuse or neglect of a child” defined).

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<sup>74</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>75</sup> “‘Allow’ means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.” Nev. Rev. Stat. Ann. § 432B.020(3).

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.*

Nev. Rev. Stat. Ann. § 432B.130 (Persons responsible for child’s welfare) states,

A person is responsible for a child’s welfare under the provisions of this chapter if the person is the child’s parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, a public or private home, institution or facility where the child actually resides or is receiving care outside of the home for all or a portion of the day, or a person directly responsible or serving as a volunteer for or employed by such a home, institution or facility.

This definition is not broad enough to allow for child welfare intervention into non-familial trafficking cases.

5.6.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 432B.130 (Persons responsible for child’s welfare) to allow child welfare protection for juvenile sex trafficking victims irrespective of the perpetrator of the abuse.

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

Domestic minor sex trafficking victims are entitled to compensation. For “compensation for certain victims of criminal acts,” pursuant to Nev. Rev. Stat. Ann. § 217.070 (“Victim” defined) a “victim” is defined as

1. A person who is physically injured or killed as the direct result of a criminal act;
2. A minor who was involved in the production of pornography in violation of NRS 200.710 [Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance], 200.720 [Promotion of sexual performance of minor unlawful], 200.725 [Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty] or 200.730 [Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties];
3. A minor who was sexually abused, as “sexual abuse” is defined in NRS 432B.100 [“Sexual abuse” defined];
- ....
8. A person who is trafficked in violation of subsection 2 of NRS 201.300 [Pandering: definition; penalties; exception].
- ....

Furthermore, under Nev. Rev. Stat. Ann. § 217.180(2), “If the case involves a victim of domestic violence, sexual assault, or sex trafficking,<sup>76</sup> the compensation officer shall not consider the provocation, consent or any other behavior of the victim that directly or indirectly contributed to the injury or death of the victim.” In addition, Nev. Rev. Stat. Ann. § 217.180(2) states that “[a]n order for compensation may be made whether or not a person is prosecuted or convicted of an offense arising from the act on which the claim for compensation is based.”

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<sup>76</sup> Pursuant to Nev. Rev. Stat. Ann. § 217.180(5),

- (a) “Domestic violence” means an act described in NRS 33.018.
- ....
- (c) “Sex trafficking” means a violation of subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception].
- (d) “Sexual assault” has the meaning ascribed to it in NRS 200.366.

Pursuant to Nev. Rev. Stat. Ann. § 217.210(1) (Limitations on time for making order for payment of compensation; exception),

Except as otherwise provided in subsection 2, an order for the payment of compensation must not be made unless the application is made within 1 year after the date of the personal injury or death on which the claim is based, unless waived by the board of examiners or a person designated by the Board for good cause shown and the personal injury or death was the result of an incident or offense that was reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within 5 days of the time when a report could reasonably have been made.

However, these time limits “do not apply to a minor who is sexually abused or who is involved in the production of pornography,” and “[s]uch a minor must apply for compensation before reaching 21 years of age.” Nev. Rev. Stat. Ann. § 217.210(2).

Additional ineligibility factors could preclude a domestic minor sex trafficking victim from receiving compensation. If the compensation board considers the domestic minor sex trafficking victim’s act of prostitution an act that makes the victim “a coconspirator, codefendant, accomplice . . . of the offender whose crime caused the victim’s injuries,” the victim will not receive compensation. Nev. Rev. Stat. Ann. § 217.220(1)(c). Additionally, the victim will not receive compensation if the victim “[f]ails to cooperate with law enforcement agencies.” Nev. Rev. Stat. Ann. § 217.220(1)(f).

Nevada also has specialized aid to victims of sexual assault, victims of domestic violence, and victims of sexual abuse. Domestic minor sex trafficking victims will likely not be considered victims of sexual assault due to the requirement of the action occurring “against the will of the victim” or victims of domestic violence. However, some of these victims may be considered victims of sexual abuse. Nev. Rev. Stat. Ann. §§ 217.280, 200.366(1). Those domestic minor sex trafficking victims who are also considered “victims of sexual abuse” may receive counseling upon request. Nev. Rev. Stat. Ann. § 217.480(1).

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

Nevada provides some victim-friendly procedures and protections for victims of sex trafficking as defined by Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception).<sup>77</sup> First, under Nev. Rev. Stat. Ann. § 174.227 (1),

- [a] court on its own motion or on the motion of the district attorney may, for good cause shown, order the taking of a videotaped deposition of
- (a) A victim of sexual abuse as that term is defined in NRS 432B.100 ["Sexual abuse" defined];
  - (b) A prospective witness in any criminal prosecution if the witness is less than 14 years of age; or
  - (c) A victim of sex trafficking as that term is defined in subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception]. There is a rebuttable presumption that good cause exists where the district attorney seeks to take the deposition of a person alleged to be the victim of sex trafficking.

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<sup>77</sup> See *supra* Component 1.1 for substantive provisions of Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception).

“Except as limited by NRS 174.228 [Videotaped depositions: use], the court may allow the videotaped deposition to be used at any proceeding in addition to or in lieu of the direct testimony of the deponent.” Nev. Rev. Stat. Ann. § 174.227(4). However, pursuant to Nev. Rev. Stat. Ann. § 174.228,

A court may allow a videotaped deposition to be used instead of the deponent's testimony at trial only if:

1. In the case of a victim of sexual abuse, as that term is defined in NRS 432B.100:
  - (a) Before the deposition is taken, a hearing is held by a justice of the peace or district judge who finds that:
    - (1) The use of the videotaped deposition in lieu of testimony at trial is necessary to protect the welfare of the victim; and
    - (2) The presence of the accused at trial would inflict trauma, more than minimal in degree, upon the victim; and
  - (b) At the time a party seeks to use the deposition, the court determines that the conditions set forth in subparagraphs (1) and (2) of paragraph (a) continue to exist. The court may hold a hearing before the use of the deposition to make its determination.
2. In the case of a victim of sex trafficking as that term is defined in subsection 2 of NRS 201.300 (Pandering and sex trafficking: definition; penalties; exception):
  - (a) Before the deposition is taken, a hearing is held by a justice of the peace or district judge and the justice or judge finds that cause exists pursuant to paragraph (c) of subsection 1 of NRS 174.227; and
  - (b) Before allowing the videotaped deposition to be used at trial, the court finds that the victim is unavailable as a witness.
3. In all cases:
  - (a) A justice of the peace or district judge presides over the taking of the deposition;
  - (b) The accused is able to hear and see the proceedings;
  - (c) The accused is represented by counsel who, if physically separated from the accused, is able to communicate orally with the accused by electronic means;
  - (d) The accused is given an adequate opportunity to cross-examine the deponent subject to the protection of the deponent deemed necessary by the court; and
  - (e) The deponent testifies under oath.

Victims of human trafficking can apply for an issuance of a fictitious address, pursuant to Nev. Rev. Stat. Ann. § 217.462 which states, “An adult person, a parent or guardian acting on behalf of a child, or a guardian acting on behalf of an incompetent person may apply to the Attorney General to have a fictitious address designated by the Attorney General serve as the address of the adult, child or incompetent person.” Nev. Rev. Stat. Ann. § 217.400(7) defines “victim of human trafficking” as

a person who is a victim of:

- (a) Involuntary servitude as set forth in NRS 200.463 [Involuntary servitude; penalties] or 200.464 [Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty].
- (b) A violation of any provision of NRS 200.465 [Assuming rights of ownership over another person; purchase or sale of person; penalty].
- (c) Trafficking in persons in violation of any provision of NRS 200.467 [Trafficking in persons for financial gain; penalties] or 200.468 [Trafficking in persons for illegal purposes; penalty].
- (d) Sex trafficking in violation of any provision of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception].
- (e) A violation of NRS 201.320 [Living from earnings of prostitute; penalty].”

Furthermore, under Nev. Rev. Stat. Ann. § 217.468(2),

The Attorney General shall not cancel the fictitious address of a participant if, before the fictitious address of the participant is cancelled, the participant shows to the satisfaction of the Attorney General that the participant remains in imminent danger of becoming a victim of domestic violence, human trafficking, sexual assault or stalking.

There are situations when a domestic minor sex trafficking victim will not be afforded the protections of Nevada's rape shield laws. Pursuant to Nev. Rev. Stat. Ann. § 50.090 (Evidence of previous sexual conduct of victim of sexual assault or statutory sexual seduction inadmissible to challenge victim's credibility; exceptions), the protections only apply to "any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime . . ." Similarly, the protections in Nev. Rev. Stat. Ann. § 48.069 (Previous sexual conduct of victim of sexual assault: Procedure for admission of evidence to prove victim's consent) only apply to a "prosecution for sexual assault or for attempt to commit or conspiracy to commit a sexual assault."

Pursuant to Nev. Rev. Stat. Ann. § 128.091 (Evidence of previous sexual conduct inadmissible to challenge child's credibility; exceptions) ,

In any proceeding held pursuant to this chapter 432B of NRS [Protection Of Children From Abuse And Neglect], a party may not present evidence of any previous sexual conduct of a child to challenge the child's credibility as a witness unless the attorney for the child has first presented evidence or the child has testified concerning such conduct, or the absence of such conduct, on direct examination by the district attorney or the attorney for the child, in which case the scope of the cross-examination of the child or rebuttal must be limited to the evidence presented by the child's attorney or the child.

Child witnesses, defined as "a child under the age of 14 years who has been or will be called to testify in a proceeding," may testify via an "alternative method." Nev. Rev. Stat. Ann. §§ 50.530, 50.560, 50.520. Pursuant to Nev. Rev. Stat. Ann. § 50.520 ("Alternative method" defined),

"Alternative method" means a method by which a child witness testifies which does not include all of the following:

1. Having the child testify in person in an open forum;
2. Having the child testify in the presence and full view of the finder of fact and presiding officer; and
3. Allowing all of the parties to be present, to participate and to view and be viewed by the child.

A child witness is allowed to testify via an alternative method in a criminal proceeding only if the court "finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact" either due to "testify[ing] in the open forum" of the court or "be[ing] confronted face-to-face by the defendant." Nev. Rev. Stat. Ann. § 50.580(1)(a), (b). Pursuant to Nev. Rev. Stat. Ann. § 50.590 (Factors for determining whether to permit alternative method), the court will consider the following factors when determining whether to allow a child to testify by an alternative method:

1. [Whether] [a]lternative methods [are] reasonably available;
2. [Whether there are] [a]vailable means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;

5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

Pursuant to Nev. Rev. Stat. Ann. § 51.385(1), (2) (Admissibility; notice of unavailability or inability of child to testify),

1. In addition to any other provision for admissibility made by statute or rule of court, a statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible in a criminal proceeding regarding that act of sexual conduct or physical abuse if:

(a) The court finds, in a hearing out of the presence of the jury, that the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness; and

(b) The child testifies at the proceeding or is unavailable or unable to testify.

2. In determining the trustworthiness of a statement, the court shall consider, without limitation, whether:

(a) The statement was spontaneous;

(b) The child was subjected to repetitive questioning;

(c) The child had a motive to fabricate;

(d) The child used terminology unexpected of a child of similar age; and

(e) The child was in a stable mental state.

Within the chapter on Sexual Assault and Seduction, additional protections are provided for victims<sup>78</sup> of Nev. Rev. Stat. Ann. § 200.366 (Sexual assault: Definitions; penalties), Nev. Rev. Stat. Ann. § 200.368 (Statutory sexual seduction: Penalties), and sex trafficking under Nev. Rev. Stat. Ann. § 201.300 (Pandering and sex trafficking: definition; penalties; exception). Specifically, the information in records or reports and the identities of sexual assault and sexual seduction victims are kept confidential, including through the use of pseudonyms on their files. Nev. Rev. Stat. Ann. §§ 200.3771 (Victims of certain sexual offenses: confidentiality or records and reports that reveal identity; when disclosure permitted; penalty), 200.3772 (Victims of certain sexual offenses: procedure for substituting pseudonym for name on files, records and reports; actual identity confidential; when disclosure required; immunity for unintentional disclosure), 200.3773 (Victims of certain sexual offenses: public officer or employee prohibited from disclosing identity; exceptions; penalty).<sup>79</sup>

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<sup>78</sup> Pursuant to Nev. Rev. Stat. Ann. § 200.364(3), (4), (7), “[a]s used in NRS 200.364 to 200.3784, inclusive, . . . “[v]ictim” means a person who is a victim of a sexual offense . . . or sex trafficking” where “sexual offense” means either sexual assault pursuant to Nev. Rev. Stat. Ann. § 200.366 or statutory sexual seduction pursuant to Nev. Rev. Stat. Ann. § 200.368, and “[s]ex trafficking” means a violation of subsection 2 of NRS 201.300 (Pandering and sex trafficking: definition; penalties; exception).”

<sup>79</sup> Nev. Rev. Stat. Ann. § 200.377 states,

The Legislature finds and declares that:

1. This State has a compelling interest in assuring that the victim of a sexual offense . . . or sex trafficking:

(a) Reports the sexual offense . . . or sex trafficking to the appropriate authorities;

(b) Cooperates in the investigation and prosecution of the sexual offense . . . or sex trafficking; and

(c) Testifies at the criminal trial of the person charged with committing the sexual offense . . . or sex trafficking.

2. The fear of public identification and invasion of privacy are fundamental concerns for the victims of sexual offenses, offenses involving a pupil or sex trafficking. If these concerns are not addressed and

Nev. Rev. Stat. Ann. Chapter 201 (Crimes against public decency and good morals) allows expert testimony regarding the grooming of child victims in prosecutions for pandering or sex trafficking pursuant to NRS 201.300.

1. The prostitution subculture, including, without limitation, the effect of physical, emotional or mental abuse on the beliefs, behavior and perception of the alleged victim of the pandering or sex trafficking that is offered by the prosecution or defense is admissible for any relevant purpose, including, without limitation, to demonstrate:
  - (a) The dynamics of and the manipulation and psychological control measures used in the relationship between a prostitute and a person who engages in pandering or sex trafficking in violation of NRS 201.300; and
  - (b) The normal behavior and language used in the prostitution subculture.
2. The effect of pandering or sex trafficking may not be offered against a defendant pursuant to subsection 1 to prove the occurrence of an act which forms the basis of a criminal charge against the defendant.

Under Nev. Rev. Stat. Ann. § 171.196(6) (Preliminary examination: Waiver; time for conducting; postponement; introduction of evidence and cross-examination of witnesses by defendant) and under Nev. Rev. Stat. Ann. § 172.135(2) (Evidence receivable before grand jury) hearsay statements are allowed in preliminary examinations and before grand juries from alleged victims of sexual offenses, pursuant to Nev. Rev. Stat. Ann § 179D.097 (“Sexual offense” defined ) who are under the age of 16 or from alleged child abuse victims, pursuant to Nev. Rev. Stat. Ann § 200.508 (Abuse, neglect or endangerment of child: Penalties; definitions) under the age of 16.

Nev. Rev. Stat. Ann. Chapter 50 (Witnesses) provides that “a court may not order the victim of or a witness to the sexual offense to take or submit to a psychological or psychiatric examination.”<sup>80</sup>

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the victims are left unprotected, the victims may refrain from reporting and prosecuting sexual offenses, offenses involving a pupil or sex trafficking.

3. A victim of a sexual offense . . . or sex trafficking may be harassed, intimidated and psychologically harmed by a public report that identifies the victim. A sexual offense . . . or sex trafficking is, in many ways, a unique, distinctive and intrusive personal trauma. The consequences of identification are often additional psychological trauma and the public disclosure of private personal experiences.

4. Recent public criminal trials have focused attention on these issues and have dramatized the need for basic protections for the victims of sexual offenses, offenses involving a pupil or sex trafficking.

5. The public has no overriding need to know the individual identity of the victim of a sexual offense, an . . . or sex trafficking.

6. The purpose of NRS 200.3771 to 200.3774, inclusive, is to protect the victims of sexual offenses, offenses involving a pupil or sex trafficking from harassment, intimidation, psychological trauma and the unwarranted invasion of their privacy by prohibiting the disclosure of their identities to the public.

<sup>80</sup> Nev. Rev. Stat. Ann. § 171.196(6) (Court may not order victim or witness to take or submit to psychological or psychiatric examination; exclusion of testimony of licenses psychologist, psychiatrist or clinical social worker) provides,

As used in this section, “sexual offense” includes, without limitation:

- (a) Sexual assault pursuant to NRS 200.366;
- (b) Statutory sexual seduction pursuant to NRS 200.368;
- . . . .
- (d) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation;
- (e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;
- . . . .
- (h) Indecent or obscene exposure pursuant to NRS 201.220;

Nev. Rev. Stat. Ann. § 62D.415 (Use of instrument of restraint on child during proceeding) disallows placing a child in restraints during a trial unless the judge determines that they are necessary to prevent the child from “(a) Inflicting physical harm on himself or herself or another person; or (b) Escaping from the courtroom.”<sup>81</sup>

5.9 *Expungement or sealing of juvenile delinquency records resulting from arrests or adjudications for prostitution-related offenses committed as a result of, or in the course of, the commercial sexual exploitation of a minor is available within a reasonable time after turning 18.*<sup>82</sup>

Unless the child falls under the exception in Nev. Rev. Stat. Ann. § 62H.150 (Limitations on sealing records related to certain delinquent acts),<sup>83</sup> once a child reaches 21 years old, “all records relating to the child must be sealed automatically.” Nev. Rev. Stat. Ann. § 62H.140. If the child is less than 21, a child or a “child’s probation or parole officer on behalf of the child” may petition to seal records “(a) not earlier than 3 years after the child was last adjudicated in need of supervision, adjudicated delinquent, or placed under the supervision of the juvenile court pursuant to NRS 62C.230 [Court referral for informal supervision or court supervision pursuant to supervision and consent decree; effect of successful completion of supervision and consent decree]; and (b) If, at the time the petition is filed, the child does not have any delinquent or criminal charges pending.” Nev. Rev. Stat. Ann. § 62H.130(1). After a hearing on the petition, the court “may enter an order sealing all records relating to the child if the child is less than 18 years of age” and “the juvenile court shall enter an order sealing all records relating to the child if the child is 18 years of age or older, provided that the juvenile court finds that: during the applicable 3 year period, the child has not been convicted of a felony or of any misdemeanor involving moral turpitude and the child has been rehabilitated to the satisfaction of the juvenile court.” Nev. Rev. Stat. Ann. § 62H.130(4).

5.9.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 62H.150 (Limitations on sealing records related to certain delinquent acts) to allow a juvenile sex trafficking victim to expunge juvenile records related to their trafficking victimization upon turning 18 or earlier.

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- (i) Lewdness with a child pursuant to NRS 201.230;
  - . . . .
  - (m) Luring a child or a person with mental illness pursuant to NRS 201.560;
  - (n) An offense that is found to be sexually motivated pursuant to NRS 175.547 or 207.193;
  - (o) Pandering of a child pursuant to NRS 201.300;
  - (p) Any other offense that has an element involving a sexual act or sexual conduct with another person;
  - or
  - (q) Any attempt or conspiracy to commit an offense listed in this subsection.

<sup>81</sup> See *supra* note 2 and Component 3.5.

<sup>82</sup> For adults, Nev. Rev. Stat. Ann. § 176.515(5) (Court may grant new trial or motion to vacate judgment in certain circumstances) allows the court to vacate prostitution, trespassing, or loitering convictions of trafficking victims if,

- . . . .
- (b) The participation . . . in the offense was the result of . . . having been a victim of:
  - (1) Trafficking in persons as described in the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101 et seq.; or
  - (2) Involuntary servitude as described in NRS 200.463 [Involuntary servitude; penalties] or 200.4631 [Involuntary servitude of minors; penalties]; and
- (c) The defendant makes a motion under this subsection with due diligence after the defendant has ceased being a victim of trafficking or involuntary servitude or has sought services for victims of such trafficking or involuntary servitude.

<sup>83</sup> A child’s records may not be sealed until the child is 30 years old if the child committed a sexual assault, battery with intent to commit sexual assault, or lewdness with a child. Nev. Rev. Stat. 62H.150.

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.*

A court must consider restitution in all cases, and is required to order it where appropriate. Nev. Rev. Stat. Ann. § 176.033(1)(c). Specifically, “If a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount for each victim of the offense . . . .” Nev. Rev. Stat. Ann. § 176.033(1)(c). Additionally, “The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant makes full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable.” Nev. Rev. Stat. Ann. § 176A.430(1).

Specifically, pursuant to Nev. Rev. Stat. Ann. § 201.325 (Power of court to order restitution), a court may order convicted buyers, traffickers, and/or facilitators to pay restitution to victims of Nev. Rev. Stat. Ann. §§ 201.300 (Pandering and sex trafficking: definition; penalties; exception) or 201.320 (Living from earnings of prostitute; penalty), in addition to any other penalty. Nev. Rev. Stat. Ann. § 201.325(2) further provides,

[r]estitution ordered pursuant to this section may include, without limitation:

- (a) The cost of medical and psychological treatment, including, without limitation, physical and occupational therapy and rehabilitation;
- (b) The cost of transportation, temporary housing and child care;
- (c) The return of property, the cost of repairing damaged property or the full value of the property if it is destroyed or damaged beyond repair;
- (d) Expenses incurred by a victim in relocating away from the defendant or his or her associates, if the expenses are verified by law enforcement to be necessary for the personal safety of the victim;
- (e) The cost of repatriation of the victim to his or her home country, if applicable; and
- (f) Any and all other losses suffered by the victim as a result of the violation of any provision of [Nev. Rev. Stat. Ann. §§ 201.300 (Pandering and sex trafficking: definition; penalties; exception) or 201.320 (Living from earnings of prostitute; penalty)].

Pursuant to Nev. Rev. Stat. Ann. § 41.1399 (Action by victim of human trafficking; venue; damages and other relief; attorney’s fees and costs; statute of limitations; joinder of parties; limitation on defenses), “[a]ny person who is a victim of human trafficking<sup>84</sup> may bring a civil action against any person who caused, was responsible for or profited from the human trafficking.”<sup>85</sup> Nev. Rev. Stat. Ann. § 41.1399 (10)(b) states, “It is not necessary that the defendant be investigated, arrested, prosecuted or convicted for a violation of any provision of NRS 200.463 to 200.468, inclusive, 201.300 [Pandering and sex trafficking: definition; penalties; exception] or 201.320 [Living from earnings of prostitute; penalty], or 18 U.S.C. Section 1589 [Forced labor], 1590 [Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor] or 1591 [Sex trafficking of children or by force, fraud, or coercion] to be found liable in an action brought under this section.”

Under Nev. Rev. Stat. Ann. § 41.1399 (3), “[t]he court may award such injunctive relief as the court deems appropriate.” Furthermore, a victim who prevails in an action brought under Nev. Rev. Stat. Ann. § 41.1399, “may recover actual damages, compensatory damages, punitive damages or any other appropriate relief.” Nev. Rev. Stat. Ann. § 41.1399 (4). In addition, if a victim recovers actual damages,

<sup>84</sup> Pursuant to Nev. Rev. Stat. Ann. § 41.1399(10)(a), “a victim of human trafficking is a person against whom a violation of any provision of NRS 200.463 to 200.468, inclusive [Involuntary servitude; purchase or sale of person; trafficking in persons], 201.300 [Pandering and sex trafficking: definition; penalties; exception] or 201.320 [Living from earnings of prostitute; penalty], or 18 U.S.C. Section 1589 [Forced Labor], 1590 [Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor] or 1591 [Sex trafficking of children or by force, fraud, or coercion] has been committed.”

<sup>85</sup> Under Nev. Rev. Stat. Ann. § 41.1399(9), “[t]he consent of a victim is not a defense to a cause of action brought under this section.”

the court may also award attorney's fees and costs or, when the defendant's act were willful and malicious, treble damages to the plaintiff. Nev. Rev. Stat. Ann. § 41.1399 (4).

Minor victims, under the age of 16, who “appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result,” also have a civil cause of action. Nev. Rev. Stat. Ann. § 41.1396(1). Pursuant to Nev. Rev. Stat. Ann. § 41.1396(1) (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney's fees and costs; protection of victim's identity; limitation on defenses),

1. Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:
  - (a) Promoted the film, photograph or other visual presentation;
  - (b) Possessed the film, photograph or other visual presentation; or
  - (c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

In this civil action, a successful plaintiff is entitled to “recover the plaintiff's actual damages, which shall be deemed to be at least \$150,000, plus attorney's fees and costs.” Nev. Rev. Stat. Ann. § 41.1396(2).

*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.*

In Nevada, most felonies have a 3 year statute of limitations.<sup>86</sup> Nev. Rev. Stat. Ann. § 171.085(2). However, certain enumerated felonies, including sex trafficking, have a four year statute of limitations. Nev. Rev. Stat. Ann. § 171.085(1). Gross misdemeanors generally have a two year statute of limitations, and misdemeanors have a 1 year statute of limitations. Nev. Rev. Stat. Ann. § 171.090. If a sexual assault victim or victim of sex trafficking files a written report with a law enforcement officer during the statute of limitation period, then the statute of limitations is eliminated for that case, and an offender may be charged at any time. Nev. Rev. Stat. Ann. § 171.083(1). Similarly, if a kidnapping victim files a written report with a law enforcement officer, the statute of limitations is extended for 5 years. Nev. Rev. Stat. Ann. § 171.084(1). The statute of limitations is also extended if the crime is “committed in a secret manner.” Nev. Rev. Stat. Ann. § 171.095(1). Pursuant to Nev. Rev. Stat. Ann. § 171.095(1)(b) (Limitations for offenses committed in secret manner and offenses constituting sexual abuse of child),

An indictment must be found, or an information or complaint filed, for any offense constituting sexual abuse of a child, as defined in NRS 432B.100 or sex trafficking of a child as defined in NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception], before the victim is:

- (1) Thirty-six years old if the victim discovers or reasonably should have discovered that he or she was a victim of the sexual abuse or sex trafficking by the date on which the victim reaches that age; or
- (2) Forty-three years old if the victim does not discover and reasonably should not have discovered that he or she was a victim of the sexual abuse or sex trafficking by the date on which the victim reaches 36 years of age.

For a civil action brought by victims of human trafficking under Nev. Rev. Stat. Ann. § 41.1399, the statute of limitations does not commence until:

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<sup>86</sup> Only acts of murder and terrorism automatically eliminate the statute of limitations. Nev. Rev. Stat. Ann. § 171.080.

- (a) The plaintiff discovers or reasonably should have discovered that he or she is a victim of human trafficking and that the defendant caused, was responsible for or profited from the human trafficking;
- (b) The plaintiff reaches 18 years of age; or
- (c) If the injury to the plaintiff results from two or more acts relating to the human trafficking, the final act in the series of acts has occurred, whichever is later.

Nev. Rev. Stat. Ann. § 41.1399 (5). Furthermore, the statute of limitations “is tolled for any period during which the plaintiff was under a disability” which is when “the plaintiff is insane, a person with an intellectual disability, mentally incompetent or in a medically comatose or vegetative state.” Nev. Rev. Stat. Ann. § 41.1399(6). Additionally, Nev. Rev. Stat. Ann. § 41.1399(7) provides,

[a] defendant in an action brought under this section is estopped from asserting that the action was not brought within the statute of limitations if the defendant, or any person acting on behalf of the defendant, has induced the plaintiff to delay bringing an action under this section by subjecting the plaintiff to duress, threats, intimidation, manipulation or fraud or any other conduct inducing the plaintiff to delay bringing an action under this section.

For civil actions, a plaintiff must generally bring within 3 years “[a]n action upon a liability created by statute, other than a penalty or forfeiture.” Nev. Rev. Stat. Ann. § 11.190(3)(a). Actions for injuries to a person must generally be brought within 2 years, except as provided in Nev. Rev. Stat. Ann. § 11.215. Nev. Rev. Stat. Ann. § 11.190(4)(e). The statute of limitations will not begin running until the plaintiff reaches the age of 18. Nev. Rev. Stat. Ann. § 11.250(1). Pursuant to Nev. Rev. Stat. Ann. § 11.215 (Actions for damages for injury arising from sexual abuse of minor; exception for actions involving injury arising from appearances of minor in pornography), an action for injuries arising from the sexual abuse of a person under 18 “must be commenced within 10 years after the plaintiff: (a) Reaches 18 years of age; or (b) Discovers or reasonably should have discovered that his or her injury was caused by sexual abuse, whichever occurs later.” Nev. Rev. Stat. Ann. § 11.215(1). A claim under Nev. Rev. Stat. Ann. § 41.1396 (Action for damages for injury suffered by victim of pornography involving minors; presumed statutory damages; attorney’s fees and costs; protection of victim’s identity; limitation on defenses)<sup>87</sup> must be brought “within 3 years after the occurrence of the following, whichever is later: (a) The court enters a verdict in a related criminal case; or (b) The victim reaches the age of 18 years.” Nev. Rev. Stat. Ann. § 11.215(2).

- 5.11.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 171.083 to allow prosecutions for CSEC and sex trafficking offenses to be commenced at any time, regardless of whether the victim filed a report with law enforcement during the statute of limitations period.

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<sup>87</sup> The cross-reference to Nev. Rev. Stat. Ann. § 41.1396 incorrectly appears as “NRS § 41.139” in the Nevada Code on the Lexis online database. The correct language for Nev. Rev. Stat. Ann. § 11.215 can be found on the Nevada legislature’s website. NEVADA LEGISLATURE, <http://www.leg.state.nv.us/NRS/NRS-011.html#NRS011Sec215> (last visited November 21, 2011).

**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.*

**Legal Analysis:**

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

Nevada requires that all Category I peace officers<sup>88</sup> complete a program designed to train them in detecting, investigating, and responding to the sexual abuse or sexual exploitation of minors. Nev. Rev. Stat. Ann. § 432B.610(1)(a). Additionally, an officer who is regularly assigned to investigate “cases of sexual abuse or sexual exploitation of children under the age of 18 years must be certified to carry out those duties by the Peace Officers’ Standards and Training Commission.” Nev. Rev. Stat. Ann. § 432B.620(1). This training must be completed annually and covers “a program of training for the detection and investigation of and response to cases of sexual abuse or sexual exploitation of children under the age of 18 years.” Nev. Rev. Stat. Ann. § 432B.620(2). Additionally, pursuant to Nev. Rev. Stat. Ann. § 432B.620 (Certification of peace officers who regularly investigate cases of sexual abuse or sexual exploitation of children; regulations), “[i]f a law enforcement agency does not have a peace officer who is certified to investigate cases of sexual abuse or sexual exploitation of children under the age of 18 years pursuant to Nev. Rev. Stat. Ann. § 432B.610 [Training of certain peace officers for detection and investigation of and response to cases of sexual abuse or sexual exploitation of children; regulations], it may consult with a peace officer of another law enforcement agency who is so certified.” Nev. Rev. Stat. Ann. § 432B.620(3).

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

Nevada case law requires both parties to consent to audio-taping over the telephone, but allows single-party consent to in-person conversations.<sup>89</sup> Pursuant to Nev. Rev. Stat. Ann. § 200.620 (Interception and attempted interception of wire communication prohibited; exceptions), applicable to audio-recording in general, “it is unlawful for any person to intercept or attempt to intercept any wire communication unless: (a) The interception or attempted interception is made with the prior consent of one of the parties to the communication; and (b) An emergency situation exists and it is impractical to obtain a court order . . . .”<sup>90</sup> Nev. Rev. Stat. Ann. §

<sup>88</sup> For a complete list of Category I peace officers see Nev. Rev. Stat. Ann. § 432B.610(2).

<sup>89</sup> In *Lane v. Allstate Ins. Co.*, 969 P.2d 938, 940 (Nev. 1998), the Supreme Court of Nevada held that, although the “plain language” of Nev. Rev. Stat. Ann. § 200.620 seemed to allow for single party consent, the stronger language of ““unless authorized to do so by one of the persons engaging in the conversation”” showed the legislature’s intent “that intrusion upon Nevadans’ privacy by nonconsensual recording of telephone conversations was a greater intrusion than the recording of conversations in person.” Additionally, in *Summer v. State*, 718 P.2d 676, 680 (Nev. 1986), the Supreme Court of Nevada held that the “body bugging” of a police informant was permissible under Nev. Rev. Stat. Ann. § 600.650.

<sup>90</sup> Nev. Rev. Stat. Ann. § 200.620(3) further states,

200.620(1). In contrast, under Nev. Rev. Stat. Ann. § 200.650 (Unauthorized, surreptitious intrusion of privacy by listening device prohibited), “a person shall not intrude upon the privacy of other persons by surreptitiously listening to, monitoring or recording . . . any private conversation engaged in by the other persons, or disclose the existence, content, substance, purport, effect or meaning of any conversation so listened to, monitored or recorded, unless authorized to do so by one of the persons engaging in the conversation.”

6.2.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 200.620 (Interception and attempted interception of wire communication prohibited; exceptions) to allow for single party consent to audio-taping over the telephone during the course of law enforcement investigations of human trafficking and CSEC offenses.

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

Wiretapping may be authorized to investigate cases of domestic minor sex trafficking. Pursuant to Nev. Rev. Stat. Ann. § 179.460(1) (Cases in which interception of wire or oral communications may be authorized) an application to authorize “the interception of wire, electric or oral communications” can be made “for the investigation of the offense as to which the application is made, when the interception may provide evidence of the commission of murder, kidnapping, robbery, extortion, bribery, escape of an offender in the custody of the Department of Corrections, destruction of public property by explosives, a sexual offense against a child, sex trafficking . . . .” Pursuant to Nev. Rev. Stat. Ann. § 179.460(3),

As used in this section, “sexual offense against a child” includes any act upon a child constituting:

- (a) Incest pursuant to NRS 201.180;
- (b) Lewdness with a child pursuant to NRS 201.230;
- (c) Sado-masochistic abuse pursuant to NRS 201.262;
- (d) Sexual assault pursuant to NRS 200.366;
- (e) Statutory sexual seduction pursuant to NRS 200.368;
- (f) Open or gross lewdness pursuant to NRS 201.210; or
- (g) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.

An emergency exception is allowed to audio recording when one party consents and “[a]n emergency situation exists and it is impractical to obtain a court order as required by NRS 179.410 [Definitions] to 179.515 [Interception of Wire or Oral Communication].” Nev. Rev. Stat. Ann. § 200.620(1)(b). After making the emergency interception, within 72 hours, the supreme court or district judge must ratify the interception, and the applicant for ratification must show that: “(a) An emergency situation existed and it was impractical to obtain a court order before the interception; and (b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.” Nev. Rev. Stat. Ann. § 200.620(3). As a result, the emergency recording may only be made for cases authorized in non-emergency situations, and thus do not include domestic minor sex trafficking cases.

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Any person who has made an interception in an emergency situation as provided in paragraph (b) of subsection 1 shall, within 72 hours of the interception, make a written application to a justice of the Supreme Court or district judge for ratification of the interception. The interception must not be ratified unless the applicant shows that:

- (a) An emergency situation existed and it was impractical to obtain a court order before the interception; and
- (b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive.

6.3.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 179.460(3) (Cases in which interception of wire or oral communications may be authorized) to include Nevada’s CSEC laws within the definition of a “sexual offense against a child.”

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.*

Nevada’s trafficking and CSEC laws do not prohibit a defense based on the use of a decoy by law enforcement for the purpose of investigating child sex trafficking.<sup>91</sup> However, a decoy may be used under the non-commercial sex offense, Nev. Stat. Ann. § 201.560(1) (Definitions; exceptions; penalties), which provides

a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with: . . . (b) Another person whom he or she believes to be a child less than 16 years of age and at least 5 years younger than he or she is, regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.<sup>92</sup>

6.4.1 Recommendation: Amend Nev. Rev. Stat. Ann. § 201.300(2) (Pandering and sex trafficking: definition; penalties; exception) and CSEC laws to prohibit a defense to prosecution based on the use of a law enforcement decoy posing as a minor.

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

Nev. Rev. Stat. Ann. § 201.560 (Definitions; exception; penalties) allows law enforcement to utilize the internet or electronic communications to investigate domestic minor sex trafficking. Nev. Rev. Stat. Ann. § 201.560(4) makes it a crime for a person “through the use of a computer, system or network: (a) with the intent to engage in sexual conduct with the child, [or] person believed to be a child . . . to engage in sexual conduct.”<sup>93</sup> Through the inclusion of the term “believed to be a child,” the statute appears to permit law enforcement to pose as minors and investigate cases of domestic minor sex trafficking online.

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<sup>91</sup> Some statutes may assist law enforcement using decoys in undercover operations, but do not prohibit a defense based on use of a law enforcement decoy. Under Nev. Rev. Stat. Ann. § 200.735 (Exemption for purposes of law enforcement),

The provisions of NRS 200.710 to 200.730 [Definitions; Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance; Promotion of sexual performance of minor unlawful; Preparing, advertising or distributing materials depicting pornography involving minor unlawful; Use of Internet to control visual presentation depicting sexual conduct of person under 16 years of age; Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful], inclusive, do not apply to law enforcement personnel during the investigation or prosecution of a violation of the provisions of NRS 200.710 to 200.730, inclusive.

Under the chapter entitled “Motor Vehicle Drivers’ Licenses (Uniform Act)”, and pursuant to Nev. Rev. Stat. Ann. § 483.340(3), “The Department may issue a driver’s license for purposes of identification only for use by officers of local police and sheriffs’ departments, agents of the Investigation Division of the Department of Public Safety while engaged in special undercover investigations relating to narcotics or prostitution . . . .” It is unclear whether this statute can allow the officer to pose as a minor, but it is clear an officer is allowed to conduct undercover investigations related to prostitution, which could involve domestic minor sex trafficking victims.

<sup>92</sup> See *supra* note 31.

<sup>93</sup> See *supra* note 31.

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

Nevada imposes certain reporting requirements concerning missing and exploited children.<sup>94</sup> An “exploited child” is defined as “a person under the age of 18 years who has been: (a) Used in the production of pornography in violation of the provisions of NRS 200.710; (b) Subjected to sexual exploitation as defined in NRS 432B.110 [“Sexual exploitation” defined];<sup>95</sup> or (c) Employed or exhibited in any injurious, immoral or dangerous business or occupation in violation of the provisions of NRS 609.210.” Nev. Rev. Stat. Ann. 432.150(3).

Pursuant to Nev. Rev. Stat. Ann. § 432.200(1) (Duties of law enforcement agency receiving report of missing child; request for and use of identifying information; notification that child is found or returned),

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<sup>94</sup> Pursuant to Nev. Rev. Stat. Ann. § 432.157,

1. The Office of Advocate for Missing or Exploited Children is hereby created within the Office of the Attorney General. The Advocate for Missing or Exploited Children may be known as the Children's Advocate.
2. The Attorney General shall appoint the Children's Advocate. The Children's Advocate is in the unclassified service of the State.
3. The Children's Advocate:
  - (a) Must be an attorney licensed to practice law in this state;
  - (b) Shall advise and represent the Clearinghouse on all matters concerning missing or exploited children in this state; and
  - (c) Shall advocate the best interests of missing or exploited children before any public or private body.
4. The Children's Advocate may:
  - (a) Appear as an amicus curiae on behalf of missing or exploited children in any court in this state;
  - (b) If requested, advise a political subdivision of this state concerning its duty to protect missing or exploited children;
  - (c) Recommend legislation concerning missing or exploited children; and
  - (d) Investigate and prosecute any alleged crime involving the exploitation of children, including, without limitation, sex trafficking in violation of subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception] or a violation of NRS 201.320 [Living from earnings of prostitute; penalty].
5. Upon request by the Children's Advocate, a district attorney or local law enforcement agency in this state shall provide all information and assistance necessary to assist the Children's Advocate in carrying out the provisions of this section.
6. The Children's Advocate may apply for any available grants and accept gifts, grants, bequests, appropriations or donations to assist the Children's Advocate in carrying out his or her duties pursuant to this section. Any money received by the Children's Advocate must be deposited in the Special Account for the Support of the Office of Advocate for Missing or Exploited Children, which is hereby created in the State General Fund.
7. Interest and income earned on money in the Special Account must be credited to the Special Account.
8. Money in the Special Account may only be used for the support of the Office of Advocate for Missing or Exploited Children and its activities pursuant to subsection 2 of NRS 201.300 [Pandering and sex trafficking: definition; penalties; exception], NRS 201.320 [Living from earnings of prostitute; penalty] and 432.150 to 432.220, inclusive.
9. Money in the Special Account must remain in the Special Account and must not revert to the State General Fund at the end of any fiscal year.

<sup>95</sup> Pursuant to Nev. Rev. Stat. Ann. § 432B.110 (“Sexual exploitation” defined), “sexual exploitation” is defined as “forcing, allowing or encouraging a child: 1. To solicit for or engage in prostitution; 2. To view a pornographic film or literature; and 3. To engage in: (a) Filming, photographing or recording on videotape; or (b) Posing, modeling, depiction or a life performance before an audience, which involves the exhibition of a child’s genitals or any sexual conduct with a child as defined in NRS 200.700.”

A law enforcement agency shall accept every report of a missing child which is submitted to the agency, including, but not limited to, a report made by telephone. Upon receipt of such a report, the agency shall immediately conduct a preliminary investigation and classify the cause of the disappearance of the child as “runaway,” “abducted by the parent of the child,” “abducted by a stranger” or “cause of disappearance unknown,” and shall:

(a) Transmit all available information about the child to the Clearinghouse within 36 hours after the report is received;<sup>96</sup>

(b) Immediately notify such persons and make such inquiries concerning the missing child as the agency deems necessary;

. . . .

(d) Enter into the National Crime Information Center’s Missing Person File, as miscellaneous information, any person reasonably believed to have unlawfully abducted or detained the missing child, or aided or abetted the unlawful abduction or detention.

If the child is recovered, the law enforcement agency must transmit this information to the national Crime Information Center and Clearinghouse. Nev. Rev. Stat. Ann. § 432.200(4).

Pursuant to Nev. Rev. Stat. Ann. § 432B.165 (Authority of agency which provides child welfare services and other entities to provide information to assist in locating a missing child; information not confidential), child welfare agencies must promptly report missing children who have been in agency custody. Nev. Rev. Stat. Ann. § 432B.165 states,

An agency which provides child welfare services that receives information concerning a child who has been placed in the custody of the agency who is missing, including, without limitation, a child who has run away or has been abducted, shall report the information to the appropriate law enforcement agency as soon as practicable, but not later than 24 hours after receiving such information, for investigation pursuant to NRS 432.200.

And, pursuant to Nev. Rev. Stat. Ann. § 432B.190 (Regulations to be adopted by Division of Child and Family Services.), the Division of Child and Family Services must adopt procedures for

(a)Expediently locating any missing child who has been placed in the custody of an agency which provides child welfare services;

(b)Determining the primary factors that contributed to a child who has been placed in the custody of an agency which provides child welfare services running away or otherwise being absent from foster care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements; and

(c) Determining the experiences of a child who has been placed in the custody of an agency which provides child welfare services during any period the child was missing, including, without limitation, determining whether the child may be a victim of sexual abuse or sexual exploitation.

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<sup>96</sup> “A law enforcement agency, upon receiving and verifying a report of a missing child, shall immediately transmit the full contents of the report by the fastest means available to the Clearinghouse.” Nev. Rev Stat. Ann. § 432.205.

## APPENDIX A

- **Carson City:** Pursuant to Carson City, Nev., Mun. Code § 8.04.110<sup>97</sup> (Prostitution and related offenses),

It is unlawful, anywhere in Carson City, for any person:

1. To commit prostitution, or to offer to secure another for the purpose of prostitution, or for other lewd or indecent act or to induce, entice or procure a person who is in any thoroughfare or public or private place, to commit any such acts, or who, in any way, aids or abets or participates in the doing of any of the acts enumerated in this section;
2. To keep, set up, maintain, or operate, lease or rent, any place, structure, building or conveyance for the purpose of prostitution;
3. To occupy any place, structure, building or conveyance for the purpose of prostitution, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, with the knowledge or reasonable cause to know that the same is, or is to be used for such purpose; or for any person to lease or rent to another person any place, structure, building or room for the purpose of prostitution;
4. To receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution; or to permit any person to remain there for such purpose;
5. To transport or direct any other person to any place within Carson City, when the announced purpose of such person is to be transported or directed to any such place for the purpose of prostitution, or to offer or agree so to transport or direct any such other person;
6. To advertise or publicly solicit in Carson City the availability of transportation from Carson City to some other place for the express or obvious purpose of prostitution even if such activities are not prohibited in such other place.

A violation of this ordinance is punishable by imprisonment in the city jail for up to 6 months, a fine not to exceed \$1,000, or both. Carson City, Nev., Mun. Code § 8.04.130 (Penalties).

- **Churchill County:** Pursuant to Churchill Cnty., Nev., Code § 5.20.040<sup>98</sup> (Prostitution unlawful unless licensed),

A. It is unlawful for any person to keep, own or operate any house of prostitution within the county, except as provided in this chapter.

B. It is unlawful to practice prostitution,<sup>99</sup> to allow acts of prostitution or sex for hire services, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the county, except on a premises licensed under this chapter. “Out dates”<sup>100</sup> or “outcalls”<sup>101</sup> are prohibited. This chapter does not authorize operation of an escort service.

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<sup>97</sup> All Carson City, Nevada, Municipal Code provisions, unless otherwise noted, are taken from Carson City, Nev., Mun. Code (Codified through Ord. No. 2010-15, passed December 16, 2010 (Supp. No. 41, 3-11)), *available at* <http://library.municode.com/index.aspx?clientID=16249&stateID=28&statename=Nevada>.

<sup>98</sup> All Churchill County, Nevada, Code provisions, unless otherwise noted, are taken from Churchill Cnty., Nev., Code (Current through bill 2011-B passed April 20, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=351](http://www.sterlingcodifiers.com/codebook/index.php?book_id=351).

<sup>99</sup> Churchill Cnty., Nev., Code § 5.20.010(B) (Applicability; definitions) defines “prostitution” as “[t]he performing of any of the following acts for hire by a prostitute with a patron, for a fee: engaging in sexual intercourse; oral-genital contact; or any touching of the sexual organs or any intimate part of the body of another person for the purpose of arousing or gratifying the sexual desire of either person. The term prostitution does not comprehend any sexually related act or activity defined as a crime pursuant to the Nevada Revised Statutes.”

<sup>100</sup> Churchill Cnty., Code § 5.20.010(B) defines “out date” as “[a]ny arrangement or arrangements whereby a prostitute and a patron meet at a location other than the licensed premises for the purpose of engaging in an act of prostitution.”

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Pursuant to Churchill Cnty., Nev., Code § 5.20.200(D)(6) (Work permit registration required), brothels may not employ persons under 21 years of age.

A violation of Churchill Cnty., Nev., Code § 5.20.040 or Churchill Cnty., Nev., Code § 5.20.200 is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Churchill Cnty., Nev., Code § 5.20.060 (Violation; criminal penalty)

- **Clark County:** Under Clark Cnty., Nev., Code § 12.08.015<sup>102</sup> (Prostitution unlawful), “It is unlawful for any person to commit an act of prostitution.”<sup>103</sup> Pursuant to Clark Cnty., Nev., Code § 12.08.020 (Accosting and soliciting unlawful), “It is unlawful for any person to accost, solicit or invite another in any public place<sup>104</sup> or in or from any building or vehicle by word, gesture, publication or any other means to commit, offer, agree to afford an opportunity to commit an act of prostitution.” Clark Cnty., Nev., Code § 12.08.060 (Resorting unlawful) makes it illegal for a person to “resort to any public place for the purpose of inducing, enticing, soliciting for or procuring another to commit an act of prostitution.”

It is also unlawful under Clark Cnty., Nev., Code § 12.08.025 (Maintaining a place of prostitution unlawful) “for any person to own, lease, operate, maintain, reside in, visit or entice or attempt to entice another to reside in or visit any building or place with knowledge that acts of prostitution occurs [sic] therein.” Clark Cnty., Nev., Code § 12.08.050 (Allowing premises to be used for prostitution unlawful) makes it illegal for any person or business enterprise to knowingly lease or rent a building or portion of a building for use in an act of prostitution.

Under Clark Cnty., Nev., Code § 12.08.030 (Loitering for the purpose of soliciting unlawful),

It is unlawful for any person to remain or wander about in a public place and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of prostitution, or of patronizing a prostitute.

Clark Cnty., Nev., Code § 12.08.040 (Aiding and abetting unlawful) states,

It is unlawful for any person to knowingly aid or abet any act of prostitution or to:

- (a) Secure or offer to secure another for the purpose of committing an act of prostitution; or
  - (b) Knowingly transport a person into or within the county with the purpose to promote that person’s engaging in prostitution, or procuring or paying for transportation with that purpose;
- or

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<sup>101</sup> Churchill Cnty., Nev., Code § 5.20.010 (B) defines “outcall” as “[a]ny arrangement or arrangements whereby a prostitute and a patron agree to meet at a location other than the licensed premises for the purpose of engaging in an act of prostitution.”

<sup>102</sup> All Clark County, Nevada, Code provisions, unless otherwise noted, are taken from Clark Cnty, Nev., Code (Codified through Ordinance No. 3959, passed June 7, 2011 (Supplement No. 90, 6-11)), *available at* <http://library.municode.com/index.aspx?clientID=16214&stateID=28&statename=Nevada>.

<sup>103</sup> Clark Cnty., Nev., Code § 12.08.010(a) (Definitions) defines prostitution as “engaging in sexual intercourse, oral-genital contact, anal-genital contact, oral-anal contact, or sado-masochistic abuse as defined in NRS 201.262, or any touching of the sexual organs or female breast of a person for monetary consideration, whether by credit, cash or check except between persons who are legally married to each other.”

<sup>104</sup> Clark Cnty., Nev., Code § 12.08.010(e) defines public place as, “any place of business, public building, or other building open to the general public, street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.”

- (c) Knowingly receive, offer or agree to receive another into any place or building for the purpose of performing an act of prostitution, or knowingly permit another to remain there for any such purpose; or
- (d) Direct another to any place for the purpose of committing an act of prostitution.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Clark Cnty., Nev., Code § 12.08.090(a) (Penalties).

- **Las Vegas:** Las Vegas, Nevada is a city incorporated in Clark County, Nevada. Pursuant to Las Vegas, Nev., Mun. Code § 10.36.020<sup>105</sup> (Acts of prostitution or pandering),
  - (A) It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to:
    - (1) Commit, engage in, institute, solicit, offer or agree to commit an act of prostitution;<sup>106</sup>
    - (2) Attempt to commit, engage in, or institute an act of prostitution; or
    - (3) Intentionally facilitate, allow, permit, encourage, procure, negotiate or provide a fee<sup>107</sup> for an act of prostitution.
  - (B) It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to:
    - (1) Secure or offer to secure another person for the purpose of committing a violation of Subsection (A) of this Section;
    - (2) Knowingly transport, offer to transport, or seek transport for a person into or within the City for the purpose of committing a violation of Subsection (A) of this Section, or to procure or pay for transportation for that purpose;
    - (3) Knowingly receive, offer or agree to receive another into any motor vehicle, place or building for the purpose of committing a violation of Subsection (A) of this Section;
    - (4) Direct another to any motor vehicle or place for the purpose of committing a violation of Subsection (A) of this Section;
    - (5) Attempt to detect the presence or identity of a Police Officer, Peace Officer, or other law enforcement officer for the purpose of attempting to avoid or escape criminal liability for violating, or attempting to violate this Chapter, by:
      - (a) Exposing or touching or seeking to expose or touch an intimate body part of another or one's self, or asking, soliciting, encouraging or attempting to procure another to do the same; or
      - (b) Inquiring, in any manner, as to whether another person is a Peace Officer, Police Officer, or other law enforcement officer;
    - (6) Possess or acquire a prescription or non-prescription controlled substance for the purposes of facilitating a violation of this Chapter or a benefit therefrom, including acquiring or possessing such substance to:
      - (a) Complete a barter, trade or exchange;

<sup>105</sup> All Las Vegas, Nevada, Municipal Code provisions, unless otherwise noted, are taken from Las Vegas, Nev., Mun. Code (Codified through Ordinance No. 6149, passed May 4, 2011 (Supp. No. 7)), available at <http://library.municode.com/index.aspx?clientID=14787&stateID=28&statename=Nevada>.

<sup>106</sup> Las Vegas, Nev., Mun. Code § 10.36.010 (Definitions) defines prostitution as, “an act, by any person, for a fee, of engaging in an act of lewdness, sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of another person, clothed or unclothed, for the purpose of arousing or gratifying the sexual desire of either person or a third person.”

<sup>107</sup> Las Vegas, Nev., Mun. Code § 10.36.010 defines fee, regardless of whether it is “quantified”, as “anything of monetary value, service, consideration, trade, barter, exchange, accommodation, or other compensation, whether agreed to, received, offered, solicited, promised, suggested, or expected by any party to a transaction.”

- (b) Enhance sexual performance or sexual gratification; or
- (c) Incapacitate another so as to steal a thing of value from such other person; or
- (7) Knowingly, in any other way, aid, abet or participate in an act of prostitution or pandering.

(C) It is not a defense to a charge of offering or agreeing to an act of prostitution that there was an absence of an intent to institute, commit, engage in, procure, facilitate or carry through with an act of prostitution.

Under Las Vegas, Nev., Mun. Code § 10.36.030 (Loitering for prostitution), It is unlawful for anyone, other than a Peace Officer acting within the scope of his or her employment, to do the following:

- (A) Remain or wander about in a public place and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of committing a violation of Section 10.36.020<sup>108</sup>; or
- (B) Remain or wander about in or upon private property after having been warned against trespassing on such property and repeatedly beckon to, or repeatedly stop, or repeatedly attempt to stop, or repeatedly attempt to engage passers-by in conversation, or repeatedly stop or attempt to stop motor vehicles, or repeatedly interfere with the free passage of other persons, for the purpose of committing a violation of Section 10.36.020.<sup>109</sup>

A first violation of Las Vegas, Nev., Mun. Code § 10.36.020 or Las Vegas, Nev., Mun. Code § 10.36.030 is a misdemeanor, punishable by up to six months imprisonment, a \$1000 fine, or both. Las Vegas, Nev., Mun. Code §§ 10.36.050(A) (Violation—penalty), 1.24.010 (Designated). A second offense of either ordinance committed within 3 years of the first offense of either ordinance is punishable by at least 30 days in jail and a fine not less than \$250. Las Vegas, Nev., Mun. Code § 10.36.050(A)(1). Any subsequent offense of either ordinance committed within 3 years of a second offense of either ordinance is punishable by imprisonment of at least 6 months and a fine not less than \$250. Las Vegas, Nev., Mun. Code § 10.36.050(A)(2).

- **Douglas County:** Pursuant to Douglas Cnty., Nev., Code, § 9.20.020<sup>110</sup> (Solicitation of prostitution—Unlawful),

- A. It is unlawful in Douglas County for any person to accost, solicit<sup>111</sup> or invite another in any public place, or in or from any building or vehicle by word, gesture or any other means to commit, offer, agree, or afford an opportunity to commit an act of prostitution.<sup>112</sup>
- B. It is unlawful for any person to resort to an [sic] public place for the purpose of inducing, enticing, procuring or soliciting another to commit an act of prostitution.

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<sup>108</sup> Las Vegas, Nev., Mun. Code § 10.36.020 (Acts of prostitution or pandering).

<sup>109</sup> Las Vegas, Nev., Mun. Code § 10.36.020 (Acts of Prostitution or Pandering).

<sup>110</sup> All Douglas County, Nevada, Code provisions, unless otherwise indicated, are taken from Douglas Cnty., Nev., Code, available at [http://www.douglascountynv.gov/sites/County\\_Code/](http://www.douglascountynv.gov/sites/County_Code/) (last visited Aug. 31, 2011).

<sup>111</sup> Douglas Cnty., Nev., Code § 9.20.010(B) (Definitions) defines solicitation of an act of prostitution as, “asking, appealing, entreating, inviting, imploring, luring, pleading, tempting, or otherwise importuning another to commit an act of prostitution.”

<sup>112</sup> Douglas Cnty., Nev., Code § 9.20.010(A) defines prostitution as, “engaging in any sexual activity, including but not limited to, sexual intercourse, masturbation, fellatio, cunnilingus, sodomy, or other infamous crime against nature, or other sexual activity or conduct of a deviate nature, for compensation of any kind.”

Under Douglas Cnty., Nev., Code, § 9.20.030 (Loitering for the purposes of prostitution—unlawful),

A. It is unlawful for any person to loiter in or near any public place, quasi-public place or thoroughfare in a manner and under circumstances manifesting the purpose of inducing, enticing or soliciting another to commit an act of prostitution.

B. Among the circumstances which may be considered in determining whether the purpose is manifested is that the person repeatedly beckons to, stops, attempts to stop or repeatedly engages persons passing in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture, or any combination of this chapter.

C. No arrest shall be made for violation of this subsection unless the arresting party first affords the person an opportunity to explain his or her conduct. No one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.

Pursuant to Douglas Cnty., Nev., Code § 9.20.040 (Abetting prostitution—unlawful),

A. It is unlawful for any person to knowingly in any manner aid or abet any act of prostitution, which includes, but is not limited to:

1. Securing or offering to secure another for the purpose of committing an act of prostitution; or
2. Knowingly transport a person into or within the county with the purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
3. Knowingly receive, offer or agree to receive another into any place or building for the purpose of performing an act of prostitution, or to knowingly permit another to remain there for any such purpose; or
4. Direct another to any place in the county for the purpose of committing an act of prostitution.

B. It is unlawful for any person, partnership, firm, association or corporation to knowingly lease or rent any hotel, motel, building, house, apartment, office, room, premises or portion thereof to any person, partnership, firm, association or corporation to be used as, or for the purpose of using the premises for a place of prostitution or to knowingly suffer or permit the same to be used for prostitution.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Douglas Cnty., Nev., Code §§ 9.20.050 (Penalties), 1.08.010(A) (Designated).

- **Elko County:** Pursuant to Elko Cnty., Nev., Code § 7-1-6(A)<sup>113</sup> (Prostitution), prostitution is unlawful in unincorporated areas of the county. The “unincorporated area” of the county does not include, “those areas of Elko County that are incorporated pursuant to the laws of the state: the cities of Elko, Carlin and Wells.” Elko Cnty., Nev., Code § 7-1-6(F). A violation of this ordinance is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not exceeding \$500.00, or both. Elko Cnty., Nev., Code § 7-1-6(B).

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<sup>113</sup> Unless otherwise stated, all Elko County, Nevada, Code provisions are taken from Elko Cnty., Nev., Code (codified through Ord. No. 06-2010, passed August 5, 2010), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=569](http://www.sterlingcodifiers.com/codebook/index.php?book_id=569).

- **Carlin, Elko County:** Carlin is a city incorporated in Elko County, Nevada. Pursuant to Carlin, Nev., City Code § 5-9-4<sup>114</sup> (Prostitution; unlawful under certain conditions),

(A) It is unlawful for any person, firm or corporation to keep or operate any house of prostitution, house of ill fame or bawdyhouse of any description within the city, except as herein provided in [Carlin, Nev., Mun. Code, Title 5, Chapter 9, Carlin Brothel Code].

(B) It is unlawful for any person to practice prostitution, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the city, except as herein provided in [Carlin, Nev., Mun. Code, Title 5, Chapter 9, Carlin Brothel Code].

No prostitute below the age of 21 can be given a work card. Carlin, Nev., City Code § 5-9-14(C)(8) (Prostitute Registration and work card).

A violation of Carlin, Nev., City Code § 5-9-4 or Carlin, Nev., City Code § 5-9-14 is a misdemeanor, punishable by imprisonment in the city or county jail for up to 6 months, a fine not exceeding \$1,000, or both. Carlin, Nev., City Code § 1-4-1 (General Penalty).

- **Elko, Elko County:** Elko is a city incorporated in Elko County, Nevada. Pursuant to Elko, Nev., City Code § 4-9-3<sup>115</sup> (Unlawful under certain conditions),

A. It is unlawful for any person, firm or corporation to keep, own or operate any house of prostitution<sup>116</sup>, house of ill fame or bawdy house of any description within the city, except as herein provided in [Elko, Nev., Mun. Code, Title 4, Chapter 9, Prostitution].

B. It is unlawful for any owner or bartender/manager of a licensed brothel<sup>117</sup> to allow any person to practice prostitution or to solicit business for a prostitute or to procure any person for the purpose of prostitution within the city, except within the premises of a licensed brothel and within the boundaries of the restricted commercial district as set forth in the city zoning code. There will be no “out dates.” That is, prostitutes shall not be hired from a brothel for the purpose of prostitution to accompany a customer outside the brothel from which the prostitute is employed. All soliciting of prostitution and acts of prostitution must take place inside the premises of a licensed brothel.

C. In the trial of any case arising under the provisions of subsection A or B of this section, evidence of general reputation shall be competent evidence as to the question of the ill fame of any house of prostitution and to the question of the ill fame of any person alleged to be practicing prostitution.

Pursuant to Elko, Nev., City Code § 4-9-13(D)(7) (Work permit registration requirements), no prostitute can be younger than 21 years of age.

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<sup>114</sup> Unless otherwise stated, all Carlin, Nevada Code provisions are taken from Carlin, Nev., City Code (codified through Ord. No. 234, passed December 8, 2010), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=677](http://www.sterlingcodifiers.com/codebook/index.php?book_id=677).

<sup>115</sup> Unless otherwise stated, all Elko, Nevada Code provisions are taken from Elko, Nev., City Code (codified through Ord. No. 735, passed May 10, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=316](http://www.sterlingcodifiers.com/codebook/index.php?book_id=316)[http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=569](http://www.sterlingcodifiers.com/codebook/index.php?book_id=569).

<sup>116</sup> Elko, Nev., City Code § 4-9-4 (Definitions) defines a house of prostitution as, “any building in which sexual acts are provided or performed for a fee.”

<sup>117</sup> Elko, Nev., City Code § 4-9-4 defines a brothel as, “a duly licensed house of prostitution operated in accordance with the provisions of [Elko, Nev., Mun. Code Title 4 Ch. 9 Prostitution].”

A violation of Elko, Nev., City Code § 4-9-3 or Elko, Nev., City Code § 4-9-13 is a misdemeanor, punishable by imprisonment for up to 6 months, a fine not exceeding \$1,000, or both. Elko, Nev., City Code § 4-9-20 (Criminal penalty).

- **West Wendover, Elko County:** West Wendover is a city incorporated in Elko County, Nevada. Pursuant to West Wendover, Nev., City Code § 4-2-7<sup>118</sup> (Prostitution),

- .....
- B. Prostitution<sup>119</sup> Prohibited: It shall be unlawful for any person to engage in prostitution or solicitation within the city.
- C. House Of Ill Fame Prohibited: It shall be unlawful for any person to establish, maintain or operate a house of ill fame or repute or any other business employing any male or female for the purpose of prostitution within the city.
- .....

Violation of this ordinance is a misdemeanor, punishable by imprisonment in the city or county jail for up to 6 months, a fine not exceeding \$1,000, or both. West Wendover, Nev., City Code §§ 4-2-7(D), 1-4-1(A) (General Penalty).

- **Humboldt County:**

- **Winnemucca, Humboldt County:** Winnemucca is a city incorporated in Humboldt County, Nevada. Pursuant to Winnemucca, Nev., Mun. Code § 9.12.030<sup>120</sup> (Prostitution and pandering—exceptions),

- A. Except as provided in subsection C of this section, it is unlawful for any person:
  1. To aid, offer or agree to commit any lewd or indecent act or any act of prostitution;
  2. To offer to secure or secure another for the purpose of committing any act of prostitution, fornication, assignation or any other lewd or indecent act with any other person
  3. To be in or near any thoroughfare or public place for the purpose of inducing, enticing or procuring another to commit an act of lewdness, fornication or unlawful sexual intercourse;
  4. Knowingly to receive, offer or agree to receive any person into any place or building for the purpose of assignation or of performing any act of lewdness or fornication or knowingly to permit any person to remain there for any such purposes;
  5. In any way to aid, abet or participate in the doing of any of these acts prohibited by this subsection.
- .....
- C. Notwithstanding the provisions of subsections A and B of this section, prostitution may be engaged in within any structure or building which is situated in Block 40 or Block 41 of the Riverside Addition to the city, provided that such premises has been issued a valid city brothel business license and each employee or independent contractor therein holds a valid city brothel work and valid health card, if applicable.

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<sup>118</sup> Unless otherwise stated, all West Wendover, Nevada Code provisions are taken from West Wendover, Nev., City Code (codified through Ord. No. 2011-05, passed July 5, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=393](http://www.sterlingcodifiers.com/codebook/index.php?book_id=393).

<sup>119</sup> West Wendover, Nev., City Code § 4-2-7(A) defines prostitution as “[t]he act or practice of offering the body for sexual relations for hire, by males or females.”

<sup>120</sup> All Winnemucca, Nevada, Code provisions, unless otherwise noted, are taken from Winnemucca, Nev., Mun. Code (Codified through Ordinance 767, enacted October 6, 2009 (Supplement No. 6), *available at* <http://library.municode.com/index.aspx?clientID=16703&stateID=28&statename=Nevada>.

A violation of this ordinance is a misdemeanor punishable by imprisonment for up to 6 months, a fine not to exceed \$1,000, or both. Winnemucca, Nev., Mun. Code §§ 9.12.050 (Prostitution and Pandering—exceptions), 1.16.020 (Punishment for misdemeanors).

- **Lincoln County:** Pursuant to Lincoln Cnty., Nev., Code § 7-2-1<sup>121</sup> (Prostitution prohibited),

It shall be unlawful, as an act of prostitution, for any person within the county to engage in sexual intercourse for any money or thing of value with a person to whom he or she is not married, or to solicit a person to whom he or she is not married to have sexual intercourse for any money or thing of value with the person so soliciting.

Under Lincoln Cnty., Nev., Code, § 7-2-2 (Sexual intercourse for hire and lewd acts),

It shall be unlawful for any person to:

- A. Receive money or other thing of value in exchange for another person committing a lewd act or an act of sexual intercourse.
- B. Pay or offer or agree to pay another person to commit a lewd act or an act of sexual intercourse.
- C. Commit or offer or agree to commit any lewd act.
- D. Secure or offer another person for the purpose of committing a lewd act or an act of sexual intercourse for hire.
- E. Induce, entice or procure, or attempt to induce, entice or procure another person, in or near any place frequented by the public or any public place, to commit a lewd act or an act of sexual intercourse for hire.
- F. Knowingly transport any person to any place for the purpose of committing a lewd act or any act of sexual intercourse for hire.
- G. Knowingly transport any person to any place for the purpose of offering or agreeing to pay another person to commit a lewd act or an act of sexual intercourse.
- H. Knowingly receive, or offer or agree to receive, any person into any place or building for the purpose of performing a lewd act, or an act of sexual intercourse for hire, or to knowingly permit any person to remain in any place or building for such purpose.
- I. Aid, abet, allow, permit or participate in the commission of any of the acts prohibited in subsections A through H of this section.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. Lincoln Cnty., Nev., Code §§ 7-2-5 (Violation a misdemeanor), 1-4-1(B) (General penalty).

Lincoln Cnty., Nev., Code § 7-2-4 (Exception) creates an exception to these ordinances for activities “in a licensed house of prostitution pursuant to Nevada Revised Statutes section 201.354 et seq. (2003 Code).”<sup>122</sup> However, Lincoln County no longer licenses houses of prostitution.<sup>123</sup>

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<sup>121</sup> All Lincoln County, Nevada, Code provisions, unless otherwise noted, are taken from Lincoln Cnty., Nev., Code (Codified through Ordinance 2010-03, enacted August 2, 2010), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=612](http://www.sterlingcodifiers.com/codebook/index.php?book_id=612).

<sup>122</sup> Under Nev. Rev. Stat. 201.354 (Engaging in prostitution or solicitation for prostitution: penalty; exception),

1. It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution.
2. Except as otherwise provided in subsection 3, a person who violates subsection 1 is guilty of a misdemeanor.
3. A person who violates subsection 1 by soliciting a child for prostitution:

- **Lyon County:** Pursuant to Lyon Cnty. Nev., Code § 5.03.04<sup>124</sup> (Prostitution permitted; compliance with provisions),

A. Prostitution Permitted: The operation of a house of prostitution within the County in accordance with the provisions of this Chapter does not constitute a public nuisance or an offense to public decency.

B. Compliance with Provisions:

1. Chapter Provisions:

a. It is unlawful for any person to keep or operate any house of prostitution, house of ill fame or bawdy house of any description within the County except as provided in this Chapter.

b. It is unlawful for any person to practice prostitution, to solicit business for a prostitute or to procure any person for the purpose of prostitution within the County except as provided in this Chapter.

2. Zoning: No licenses shall be issued without the prospective licensee first obtaining proper zoning for the proposed operation.

Violation of this ordinance is a misdemeanor. Lyon Cnty. Nev., Code § 1.04.01 (General penalty). Pursuant to Lyon Cnty., Nev., Code § 1.04.01 (General Penalty), misdemeanors are “punishable as provided in the [Nevada Revised Statutes] for misdemeanor violations.” The Nevada Revised Statutes punish misdemeanors by either imprisonment for not more than 6 months, a fine not exceeding \$1,000, or both or a period of community service. Nev. Rev. Stat. 193.150 (Punishment of misdemeanors).

- **Nye County:** Pursuant to Nye Cnty., Nev., Code § 9.20.160<sup>125</sup> (General prohibitions),

It is unlawful:

A. For any person under the age of twenty one (21) years to enter or be a patron of any house of prostitution;

B. For a licensee of any licensed house of prostitution, or for any employee of such licensee, to compel, entice, encourage, permit or suffer any person under the age of twenty one (21) years to enter or be a patron of any licensed house of prostitution;

D. For any person to engage in prostitution<sup>126</sup> or solicitation<sup>127</sup> therefor, except in a house of prostitution<sup>128</sup> licensed under this chapter.

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(a) For a first offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130 [.] and by a fine of not more than \$5,000.

(b) For a second offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(c) For a third or subsequent offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130. The court shall not grant probation to or suspend the sentence of a person punished pursuant to this paragraph.

<sup>123</sup> See *Kuban v. McGinsey*, 65 P.2d 623, 624 (Nev. 1980).

<sup>124</sup> All Lyon County, Nevada, Code provisions, unless otherwise noted, are taken from Lyon Cnty., Nev., Code (Codified through Ordinance 551, enacted May 19, 2011), available at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=536](http://www.sterlingcodifiers.com/codebook/index.php?book_id=536).

<sup>125</sup> All Nye County, Nevada, Code provisions, unless otherwise noted, are taken from Nye Cnty., Nev., Code (Codified through Ordinance 434, enacted 2012), available at [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=648](http://www.sterlingcodifiers.com/codebook/index.php?book_id=648)

A violation of this ordinance is a misdemeanor, punishable by imprisonment for up to 6 months, a fine not to exceed \$1,000, or both. Nye Cnty., Nev., Code §§ 9.20.250 (Violation; penalty), 1.01.180 (General penalty).

- **Pershing County:** Under Pershing Cnty., Nev., Code § 9.08.020<sup>129</sup> (Prostitution), “Any person who engages in or accepts an offer to engage in any act of prostitution shall be guilty of prostitution under this chapter.”

Pursuant to Pershing Cnty., Nev., Code 9.08.030 (Solicitation),

- A. Any person who solicits, engages in, or accepts an offer to engage in any act of prostitution shall be guilty of solicitation under the provisions of this Chapter.
- B. Any person who solicits, engages in, or accepts an offer to engage in any lewd or dissolute conduct shall be guilty of solicitation under the provisions of this Chapter.
- C. Any person who directs any person to any place for the purpose of committing any lewd or indecent act, or any act of prostitution or fornication shall be guilty of solicitation under the provisions of this Chapter.
- D. Any peace officer while functioning in the scope of his duty shall be exempt from the provisions of this Section.

Pershing Cnty., Nev., Code § 9.08.010 (Pandering), makes it illegal for

- A. Any person who shall induce, persuade, encourage, inveigle, entice, force, or cause another person, including a spouse, to become a prostitute or an inmate of a house of prostitution shall be guilty of pandering.
- B. Any person who shall knowingly accept, receive, levy or appropriate any money or valuable thing without consideration from the proceeds of any person engaged in prostitution or detain any person for purposes of prostitution because of any debt, shall be guilty of pandering.
- C. Any person who shall knowingly transport any other person for the purpose of prostitution shall be guilty of pandering.
- D. Any person who is a pimp, panderer, or procurer or who commits any such acts or who lives in a house of prostitution shall be guilty of pandering.

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<sup>126</sup> Nye Cnty., Nev., Code § 9.20.020 (Definitions) states prostitution occurs when a “male or female person who for a fee engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.”

<sup>127</sup> Nye Cnty., Nev., Code § 9.20.020 states that solicitation occurs when a person, “Induces, persuades, encourages, inveigles or compels a person to engage in ‘sexual conduct’ as defined in this section” or “Offers to engage in ‘sexual conduct’ as defined in this section.” Nye Cnty., Nev., Code § 9.20.020 defines sexual conduct as “Any of the acts defined in the definition of prostitution in this section.” The acts listed in the definition of prostitution are “sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person.” Nye Cnty., Nev., Code § 9.20.020.

<sup>128</sup> Nye Cnty., Nev., Code § 9.20.020 defines a house of prostitution as “Any house, building, trailer (with or without wheels), vehicle, tent or other structure or “premises” as defined in this section wherein or whereon acts of prostitution are committed, or offered to be committed.”

<sup>129</sup> All Pershing County, Nevada, Code provisions, unless otherwise noted, are taken from Pershing Cnty., Nev., Code (Codified through Ordinance 279 enacted February 3, 2011), *available at* [http://www.sterlingcodifiers.com/codebook/index.php?book\\_id=640](http://www.sterlingcodifiers.com/codebook/index.php?book_id=640).

Pursuant to Pershing Cnty., Nev., Code § 9.08.040 (Houses of ill fame),

A. Any person who shall keep or rent any house, trailer, vehicle, boat or other place for the purpose of carrying on prostitution shall be guilty of keeping a house of ill fame under the provisions of this Chapter.

B. In the trial of all cases arising under the provisions of subsection A of this Section, evidence of general reputation shall be deemed competent evidence as to the question of the ill fame of any house alleged to be so kept.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the County jail for up to 6 months, a fine not to exceed \$1,000, or both. Pershing Cnty., Nev., Code, §§ 9.080.050 (Criminal penalties), 1.08.010 (Violations; penalty).

- **Washoe County:** Pursuant to Washoe Cnty., Nev., Code, § 50.238<sup>130</sup> (Unlawful acts),

It is unlawful in any unincorporated area of the county for any person to:

1. Commit prostitution, or to offer to secure another for the purpose of prostitution or for any other lewd or indecent act, or to induce, entice or procure a person who is in any thoroughfare or public or private place to commit any such acts, or who in any way aids or abets or participates in the doing of any of the acts enumerated in sections 50.238 to 50.242<sup>131</sup>, inclusive.
2. Keep, set up, maintain or operate, lease or rent any place, structure, building or conveyance for the purpose of prostitution.
3. Occupy any place, structure, building or conveyance for the purpose of prostitution, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, with the knowledge or reasonable cause to know that the same is, or is to be used for, such purpose, or for any person to lease or rent to another person any place, structure, building or room for the purpose of prostitution.
4. Receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, or to permit any person to remain there for such purpose.
5. Transport or direct any other person to any place within the county, when the announced purpose of such person is to be transported or directed to any such place for the purpose of prostitution, or to offer or agree so to transport or direct any such other person.

A violation is a misdemeanor punishable by imprisonment in the county jail for up to 6 months, a fine between \$100 and \$1,000, or both. Washoe Cnty., Nev., Code § 50.242 (Penalty).

- **Sparks, Washoe County:** Sparks is a city incorporated in Washoe County, Nevada. Pursuant to Sparks, Nev., Mun. Code § 9.24.030<sup>132</sup> (Prostitution—solicitation),

A. It is unlawful for any person to loiter in or near any public place or thoroughfare in a manner and under circumstances manifesting the purpose of offering or soliciting to commit an act of prostitution<sup>133</sup>, or offering to procure another to commit an act of prostitution.

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<sup>130</sup> All Washoe County, Nevada, Code provisions, unless otherwise noted, are taken from Washoe Cnty., Nev., Code available at <http://cityofsparks.us/municode/index> (last visited Aug. 31, 2011).

<sup>131</sup> Washoe Cnty., Nev., Code § 50.240 (Evidence) and Washoe Cnty., Nev., Code § 50.242 (Penalty) do not contain any criminal violations.

<sup>132</sup> All Sparks, Nevada, Code provisions, unless otherwise noted, are taken from Sparks, Nev., Mun. Code, available at <http://cityofsparks.us/municode/index> (last visited Sep. 8, 2011).

B. Among the circumstances which may be considered in determining whether such purpose is manifested are that such person repeatedly beckons to, stops, attempts to stop or engages persons passing by in conversation, repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms, or any other bodily gesture.

C. No arrest shall be made for a violation of this section unless the arresting officer first affords such person an opportunity to explain such conduct, and no one shall be convicted of violating this section if it appears at trial that the explanation given was true and disclosed a lawful purpose.

Pursuant to Sparks, Nev., Mun. Code § 9.24.020 (Prostitution), “It is unlawful for any person in the city to commit, offer to commit, or agree to commit an act of prostitution. This section does not apply to the customer of a prostitute.”

A violation of this ordinance is a misdemeanor, punishable by up to 6 months imprisonment, a \$1,000 fine, or both. Sparks, Nev., Mun. Code §§ 9.75.010 (Violation—penalty), 1.12.010 (Violation—penalty).

- **White Pine County:** Pursuant to White Pine Cnty., Nev., Code § 10.36.010<sup>134</sup> (Prohibited),

It is unlawful, as an act of prostitution, for any person, within the unincorporated areas of the county of White Pine, state of Nevada, to engage in sexual intercourse, for any money or thing of value, with a person to whom he or she is not married, or to solicit a person, to whom he or she is not married, to have sexual intercourse, for any money or thing of value, with the person so soliciting.

Under White Pine Cnty., Nev., Code § 10.36.020 (Sexual intercourse for hire and lewd acts prohibited),

In the unincorporated areas of the county of White Pine, state of Nevada, it is unlawful for any person to:

- (1) Receive money or other thing of value in exchange for another person committing an act of sexual intercourse or an act of moral perversion;
- (2) Pay or offer or agree to pay another person to commit a lewd act or an act of sexual intercourse;
- (3) Commit or offer or agree to commit any act of moral perversion;
- (4) Secure or offer another person for the purpose of committing a lewd act or an act of sexual intercourse for hire or of moral perversion;
- (5) Induce, entice or procure, or attempt to induce, entice or procure, another person, in or near any place frequented by the public or any public place, to commit a lewd act or an act of sexual intercourse for hire or of moral perversion;
- (6) Knowingly transport any person to any place in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of committing a lewd act or an act of sexual intercourse for hire or moral perversion;
- (7) Knowingly transport any person to any place in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of offering or agreeing to pay another person to commit a lewd act or an act of sexual intercourse;

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<sup>133</sup>Sparks, Nev., Mun. Code § 9.24.010 defines prostitution as, “engaging in sexual intercourse, masturbation, fellatio, cunnilingus, sodomy, an infamous crime against nature, or other sexual activity for compensation of any kind.”

<sup>134</sup> All White Pine County, Nevada, Code provisions, unless otherwise noted, are taken from White Pine Cnty., Nev., Code (Codified through Ordinance 437 enacted February 24, 2010), *available at* <http://www.sterlingcodifiers.com/NV/White%20Pine%20County/index.htm>.

(8) Knowingly receive, or offer to agree to receive, any person into any place or building in the unincorporated areas of the county of White Pine, state of Nevada, for the purpose of performing a lewd act, or an act of sexual intercourse for hire or of moral perversion, or to knowingly permit any person to remain in any place or building in the unincorporated areas of the county of White Pine, state of Nevada, for any such purpose;

(9) Aid, abet, allow, permit or participate in the commission of any of the acts prohibited in subsections (1) through (8) above.

White Pine Cnty., Nev., Code § 10.36.030 (Operation of a house of prostitution prohibited) makes it illegal for

a person in the unincorporated areas of the county of White Pine, state of Nevada, to keep, set up, maintain, operate, lease or rent any person or place, structure, building or conveyance for the purpose of having therein sexual intercourse for any money or thing of value between persons not married to each other, knowing that said persons are not married to each other.

A violation of any of these ordinances is a misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed \$1,000, or both. White Pine Cnty., Nev., Code §§ 10.36.040 (Penalty), 1.01.140 (Violations—penalty).

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