

## 2017 ANALYSIS AND RECOMMENDATIONS

### ALABAMA

#### 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 or commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute child sex 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.*

The Representatives Jack Williams and Merika Coleman Act codifies Alabama's human trafficking law at Ala. Code §§ 13A-6-150 et seq. Human trafficking in the first degree specifically criminalizes the sex trafficking of minors, defined as individuals under 18, providing heightened penalties when the victim of sex trafficking is a minor. However, the definition of "sexual servitude" requires proof of coercion or deception to establish the offense, even when the victim is a minor. Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) states,

A person commits the crime of human trafficking in the first degree if:

....

(2) He or she knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.

<sup>1</sup> This report includes legislation enacted as of August 1, 2017.

While human trafficking in the first degree under Ala. Code § 13A-6-152(a)(2) does not require proof of force, fraud or coercion when the victim is a minor, the definition of “sexual servitude” requires the use of coercion or deception, even when the victim is a minor. For purposes of Ala. Code § 13A-6-152(a) and § 13A-6-153(a) (Human trafficking in the second degree), “sexual servitude” is defined in Ala. Code § 13A-6-151(7) (Definitions) as

a. Any sexual conduct as defined in subdivision (3) of Section 14-11-30, Code of Alabama 1975, for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception from a person.

b. Sexual conduct includes:

1. Sexually explicit performances, meaning an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet.
2. Commercial sex acts, meaning any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.
3. Acts defined in subdivision (3) of Section 14-11-30, Code of Alabama 1975.

Additionally, Ala. Code § 13A-6-151(5) defines a “minor” as “[a] person under the age of 18.”

A conviction under Ala. Code § 13A-6-152(a) is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$60,000.<sup>2</sup> Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code

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<sup>2</sup> Ala. Code § 13A-5-2(a), (d) (Penalties permitted or required) notes,

(a) Every person convicted of a felony shall be sentenced by the court to imprisonment for a term authorized by Sections 13A-5-6 [Prison terms; felonies], 13A-5-9 [Repeat or habitual offenders; generally] and 13A-5-10 [Repeat or habitual offenders; hearings; corporations].

....

(d) Every person convicted of a felony, misdemeanor or violation, except for the commission of a sex offense involving a child as defined in Section 15–20A–4(26), may be placed on probation as authorized by law.

Ala. Code § 15-20-21 is located in the article entitled, “Community Notification of Released Convicted Sex Offenders,” codified at Ala. Code §§ 15-20-20 et seq, but these statutes have since been repealed and replaced with the article entitled, “Alabama Sex Offender Registration and Community Notification Act,” codified at Ala. Code §§ 15-20A-1 et seq. Cross-references in other statutes throughout the Alabama Code to the old sex offender registry statutes have not been updated to reflect the renumbering of the sex offender registry statutes due to the passage of Senate Bill 296 in the 2011 Regular Session. These cross-references should be updated throughout the Alabama Code to fully implement the amendments made by Senate Bill 296. Here and in other places where this report cites Ala. Code §§ 15-20A-1 et seq. or Ala. Code §§ 15-20-20 et seq., the statute numbers and the substance of the analysis have been updated to reflect the new sex offender registry statutes. (LEXIS, however, does note in brackets the cross-referenced statutes that have been repealed and the new statutes that replaced them.) Ala. Code § 15-20A-48(a) states that “[f]or the purposes of sections 13A-5-2 [and] 13A-5-6, a criminal sex offense involving a child shall mean a conviction for any sex offense in which the victim was under the age of 12 or any offense involving child pornography.” See *infra* Component 2.10 for a list of sexual offenses. Additionally, the commentary to Ala. Code § 13A-5-2 on Lexis notes,

Section 13A-5-2 makes no attempt to revise the law on probation as provided outside this Criminal Code. Subsection (d). While some jurisdictions permit suspension of imposition of sentence or suspension of execution of sentence, Alabama follows the rule that a definite sentence must first be imposed, which may be suspended and defendant placed on probation on certain terms and conditions.

§ 13A-6-152 is under 12 years old and the “offense involves sexual servitude,”<sup>3</sup> a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a).

Ala. Code § 13A-6-153(a) (Human trafficking in the second degree) is applicable without regard to the age of the trafficking victim and makes it a crime when, in part,

(1) A person knowingly benefits, financially or by receiving anything of value, from participation in a venture or engagement for the purpose of sexual servitude or labor servitude.

(2) A person knowingly recruits, entices, solicits, induces, harbors, transports, holds, restrains, provides, maintains, subjects, or obtains by any means another person for the purpose of labor servitude or sexual servitude.

....

A conviction under Ala. Code § 13A-6-153(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-153(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).<sup>4</sup> If the victim of a violation of Ala. Code § 13A-6-153 is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(29), 15-20A-48(a).

1.1.1 Recommendation: Amend the definition of “sexual servitude” in Ala. Code § 13A-6-151(7) (Definitions) to remove the requirement that “coercion or deception” be used when the victim is a minor.<sup>5</sup>

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

The following laws make CSEC a crime in Alabama:

1. Under Ala. Code § 13A-12-111(a) (Promoting prostitution; first degree),

A person commits the crime of promoting prostitution in the first degree if he knowingly:

(1) Advances prostitution<sup>6</sup> by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or

(2) Advances or profits from prostitution<sup>7</sup> of a person less than 16 years of age.

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<sup>3</sup> See *supra* Component 1.1 for the definitions of “sexual servitude” and “sexual conduct.”

<sup>4</sup> For any felony in Alabama, the court may impose a fine greater than the maximum listed in the statute if it does not exceed “double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.” Ala. Code § 13A-5-11(a)(5). Ala. Code § 13A-5-11(b) defines “gain” as “the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized or surrendered to lawful authority prior to the time sentence is imposed.”

<sup>5</sup> Subsequent recommendations that discuss referring certain crimes to the human trafficking statute are predicated upon the recommendations in 1.1 being simultaneously or previously enacted.

<sup>6</sup> Ala. Code § 13A-12-110(1) (Definitions) states,

A person “advances prostitution” if, acting other than as a prostitute or a patron of a prostitute, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise.

<sup>7</sup> Ala. Code § 13A-12-110(2) (Definitions) states, “A person ‘profits from prostitution’ if, acting other than as a prostitute receiving compensation for personally-rendered prostitution services, he accepts or receives money or

A conviction under Ala. Code § 13A-12-111(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-12-111(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of Ala. Code § 13A-12-111 (Promoting prostitution; first degree) is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(12), 15-20A-48(a). A defendant convicted under Ala. Code § 13A-12-111 also faces a mandatory \$500 fine, or more for subsequent convictions, and may be ordered by the court to “attend counseling or an educational training program designed to reduce recidivism rates for these violations,” or participate in pretrial diversion. Ala. Code § 13A-6-181(a)–(c).<sup>8</sup>

2. Ala. Code § 13A-12-112(a) (Promoting prostitution; second degree) states,

A person commits the crime of promoting prostitution in the second degree if he knowingly:

- (1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes other than the defendant;
- or
- (2) Advances or profits from prostitution of a person less than 18 years of age.

A conviction under Ala. Code § 13A-12-112(a) is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-12-112(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3). A defendant convicted under Ala. Code § 13A-12-112 also faces a mandatory \$500 fine, or more for subsequent convictions, and may be ordered by the court to “attend counseling or an educational training program designed to reduce recidivism rates for these violations,” or participate in pretrial diversion. Ala. Code § 13A-6-181(a)–(c).<sup>9</sup>

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other property pursuant to a prior agreement with any person whereby he participates or is to participate in the proceeds of prostitution activity.”

<sup>8</sup> Pursuant to Ala. Code § 13A-6-181 (Additional fine for certain crimes relating to prostitution; pre-trial diversion programs),

- (a) (1) Notwithstanding any other fines, restitution, court costs, or docket fees, upon conviction for the offense of promoting prostitution under Division 1, Article 3, Chapter 12, Title 13A, Code of Alabama 1975, or a violation of subsection (b) or (d) of Section 13A-12-121, Code of Alabama 1975, a mandatory fine of five hundred dollars (\$ 500) shall be assessed. The court shall order the five hundred dollar (\$ 500) fine to be paid to the clerk of court to be distributed to a court-certified therapeutic counseling entity that provides education, treatment, and prevention counseling to adult persons convicted of prostitution offenses.
- (2) Any fine imposed by the court for a second or subsequent conviction under subdivision (1) shall increase by 50 percent for each subsequent conviction through a fourth conviction.
- (b) A court may order an adult person convicted of an offense under Division 1, Article 3, Chapter 12, Title 13A, or subsection (b) or (d) of Section 13A-12-121, Code of Alabama 1975, to successfully attend counseling or an educational training program designed to reduce recidivism rates for these violations. Attendance of such programs shall be at the cost and expense of the person convicted of the offense.
- (c) An adult person who is charged with an offense under subsection (b) or (d) of Section 13A-12-121, Code of Alabama 1975, and has no prior arrest or convictions for an offense under Sections 13A-12-111, 13A-12-112, 13A-12-113, and 13A-12-121, Code of Alabama 1975, or an offense in any other state that has the same or similar elements as those sections, may be accepted into a pretrial diversion program, provided the adult person satisfied the requirements of subsections (a) and (b), as well as any other conditions imposed pursuant to the pretrial diversion program.

<sup>9</sup> See *supra* note 8.

3. Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child) states in part,

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child . . . .

A conviction under Ala. Code § 13A-6-121 is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, "which imprisonment includes hard labor," and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

4. Ala. Code § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act) states in part,

Any person who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of facilitating the transport of a child for an unlawful sex act . . . .

A conviction under Ala. Code § 13A-6-125 is punishable as a Class A felony punishable by imprisonment for life or 10–99 years, "which imprisonment includes hard labor," and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-125, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-125 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(27), 15-20A-48(a).

The following sexual offenses also may be applicable in cases involving the commercial sexual exploitation of a child:

1. Ala. Code § 13A-6-124 (Traveling to meet a child for an unlawful sex act) states in part,

Any person who travels either within this state, to this state, or from this state by any means, who attempts to do so, or who knowingly causes another to do so or to attempt to do so for the purpose of engaging in any unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of traveling to meet a child for an unlawful sex act . . . .

A conviction under Ala. Code § 13A-6-124 is punishable as a Class A felony by imprisonment for life or 10–99 years, "which imprisonment includes hard labor," and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-124, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-124 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(26), 15-20A-48(a).

2. Ala. Code § 13A-12-196 (Permitting or allowing child to engage in production of obscene matter) states, "Any parent or guardian who knowingly permits or allows their child, ward, or dependent under the age of 17 years to engage in the production of any obscene matter containing a visual depiction of such child, ward, or dependent under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony." A Class A felony is punishable by life imprisonment or 10–99 years, "which imprisonment includes hard labor," and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-12-196, 13A-5-2(a), (b),

13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-196 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

3. Ala. Code § 13A-6-69(a) (Child molestation; luring child someplace in order to perform or to propose sexual acts) states,

It shall be unlawful for any person with lascivious intent to entice, allure, persuade, or invite, or attempt to entice, allure, persuade, or invite, any child under 16 years of age to enter any vehicle, room, house, office or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or . . . for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.

A conviction under Ala. Code § 13A-6-69(a) is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-6-69(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

4. Ala. Code § 13A-6-61(a)(3) (Rape; first degree), states, “(a) A person commits the crime of rape in the first degree if: . . . (3) He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.” Ala. Code § 13A-6-61(a)(3) is punishable as a Class A felony by imprisonment for life or 20–99 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-61(b), 13A-5-2(a), (b), 13A-5-6(a)(1), (4), 13A-5-11(a)(1), 15-20A-5(1), 15-20A-48(a). If the victim of Ala. Code § 13A-6-61(a)(3) is six years old or younger and the offender is twenty-one years old or older, the offender must be sentenced to life imprisonment. Ala. Code § 13A-5-6(d).

5. Ala. Code § 13A-6-62(a)(1) (Rape; second degree) states,

A person commits the crime of rape in the second degree if:

- (1) Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex.

A conviction under Ala. Code § 13A-6-62(a)(1) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-62(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).

6. Under Ala. Code § 13A-6-66(a)(1) (Sexual abuse; first degree), “A person commits the crime of sexual abuse in the first degree if: (1) He subjects another person to sexual contact by forcible compulsion.” A conviction under Ala. Code § 13A-6-66(a)(1) is punishable as a Class C felony and by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$15,000. Ala. Code §§ 13A-6-66(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).
7. Under Ala. Code § 13A-6-67(a) (Sexual abuse; second degree), a person is guilty of second degree sexual abuse if

- (1) He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old or
- (2) He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

A first offense under Ala. Code § 13A-6-67(a) is punishable as a Class A misdemeanor by “imprisonment in the county jail or to hard labor for the county” up to 1 year, a possible fine not to exceed \$6,000, or both. Ala. Code §§ 13A-6-67(b), 13A-5-2(c), 13A-5-7(a)(1), 13A-5-12(a)(1). The violation increases to a Class C felony where the defendant “commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense.” Ala. Code § 13A-6-67(b). Class C felonies are punishable by imprisonment of 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and possible fines not to exceed \$15,000. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

Ala. Code § 13A-6-69.1(a) (Sexual abuse of child under 12) states, “A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.” A conviction under Ala. Code § 13A-6-69.1(a) is a Class B felony punishable by a sentence of imprisonment for 10–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-69.1(b), 13A-5-2(a), (b), 13A-5-6(a)(2), (a)(5), 13A-5-11(a)(2), 15-20A-5(11), 15-20A-48(a).

8. Ala. Code § 13A-6-122<sup>10</sup> (Electronic solicitation of a child) states in part,

[A] person who, knowingly entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone . . . or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, deviate sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation or directs a child to engage in sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation is guilty of electronic solicitation of a child . . . .

A violation of Ala. Code § 13A-6-122 is a Class B felony, punishable by 2–20 years and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-6-122, 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).

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

Ala. Code § 13A-12-123 (Sexually exploited child) within the prostitution article, refers to the human trafficking law through the definition of a “sexually exploited child,” which is defined to include child sex trafficking victims. Ala. Code § 13A-12-123 (Sexually exploited child) states, “A sexually exploited child, as defined in Section 3,<sup>11</sup> who is alleged to have committed a violation of Section 13-A-12-120 [Prostitution Defined] or 13A-12-121 [Prohibited Activities], or any municipal ordinance prohibiting such acts, shall be treated pursuant to Section 4.”

Alabama also provides an affirmative defense to prostitution charges under Ala. Code § 13A-6-159 (Permitted defenses),

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<sup>10</sup> The text of Ala. Code § 13A-6-122 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 301 during the 2017 Regular Session of the Alabama Legislature (effective August 1, 2017).

<sup>11</sup> Ala. Code § 12-15-701 (Protection of sexually exploited child) states, “‘sexually exploited child’ shall mean an individual under the age of 18 years who is under the jurisdiction of the juvenile court and who has been subjected to sexual exploitation because he or she is . . . [a] victim of the crime of human trafficking sexual servitude as provided in Section 13A-6-150.”

In a prosecution for prostitution, or a sexually explicit performance<sup>12</sup> defined in this article, of a human trafficking victim for the victim's illegal acts engaged in or performed as a result of labor servitude or sexual servitude, it shall be an affirmative defense that the person was a victim of human trafficking.

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

Alabama does not have a state racketeering statute, and Ala. Code § 13A-12-233 (Drug trafficking enterprise defined; punishment), which applies to criminal enterprises, is solely focused on drug trafficking enterprises. While Alabama's law criminalizing compelling gang membership might reach the actions of sex trafficking networks that compel streetgang membership in the implementation of the trafficking crime, this offense is geared toward making the forced gang membership the criminal act, rather than criminalizing participation in a gang that commits the predicate crimes of human trafficking or CSEC, which might limit its use in combatting these crimes. Ala. Code § 13A-6-26 (Compelling streetgang membership) states,

- (a) For purposes of this section, the term "streetgang" means any combination, confederation, alliance, network, conspiracy, understanding, or other similar arrangement in law or in fact, of three or more persons that, through its membership or through the agency of any member, engages in a course or pattern of criminal activity.<sup>13</sup>
- (b) A person who expressly or by implication threatens to do bodily harm or does bodily harm to a person, a family member or a friend of the person, or any other person, or uses any other unlawful criminal means to solicit or cause any person to join or remain in a streetgang is guilty of the crime of compelling streetgang membership.
- (c) The crime of compelling streetgang membership is a Class C felony.
- (d) Notwithstanding subsection (c), the crime of compelling streetgang membership is a Class A felony if the defendant is over the age of 18 years and the other person is under the age of 18 years.
- (e) This section shall not be construed to repeal other criminal laws. Whenever conduct proscribed by this section is also proscribed by any other provision of law, the provision which carries the more serious penalty shall apply.

1.4.1 Recommendation: Enact a racketeering statute that includes CSEC and trafficking offenses as predicate crimes that may be used to prosecute trafficking enterprises.

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<sup>12</sup> Ala. Code § 13A-6-151(7)(b)(1) defines "sexually explicit performances" as "an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet."

<sup>13</sup> Ala. Code § 13A-6-26 (Compelling streetgang membership) does not define "course or pattern of criminal activity" and Ala. Code § 13A-6-1 (Definitions) which defines terms used in Articles 1 and 2 of Chapter 6, Title 13A, also does not define this term.



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

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

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) and § 13A-6-153(a)(2) (Human trafficking in the second degree) can apply to buyers of commercial sex with minors following federal precedent through the term “obtain.”<sup>14</sup> Ala. Code § 13A-6-152(a)(2) states, “A person commits the crime of human trafficking in the first degree if: . . . [h]e or she knowingly obtains . . . any minor for the purpose of causing a minor to engage in sexual servitude.” Under Ala. Code § 13A-6-153(a)(2), “A person commits the crime of human trafficking in the second degree if: . . . [a] person knowingly . . . obtains by any means another person for the purpose of labor servitude or sexual servitude.”

However, under the definition of “sexual servitude” in Ala. Code § 13A-6-151(7) (Definitions), the sexual conduct must be “induced or obtained by coercion or deception from a person.”

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<sup>14</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

2.1.1 Recommendation: Amend the definition of sexual servitude in Ala. Code § 13A-6-151(7) (Definitions) to make the statute applicable to the actions of buyers of commercial sex with minors without requiring coercion or deception.

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

None of Alabama’s CSEC laws include the crime of buying sex acts with a minor. Several sexual offenses could be used to prosecute a buyer of commercial sex acts with a minor, but these laws do not specifically criminalize the commercial sexual exploitation of a child.<sup>15</sup>

2.2.1 Recommendation: Enact a law that makes it a crime to purchase sex acts with a minor under 18.

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

Ala. Code § 13A-12-121(b) (Prohibited activity), which includes the crime of soliciting prostitution, does not distinguish between solicitation of minors and the solicitation of adults. Each conviction for violating Ala. Code § 13A-12-121(b) is punishable as a Class A misdemeanor, regardless of the age of the person patronized, by imprisonment up to 1 year, a possible fine up to \$6,000, or both imprisonment and a fine. Ala. Code §§ 13A-12-122, 13A-5-2(c), 13A-5-7(a)(1), 13A-5-12(a)(1). A buyer convicted under Ala. Code § 13A-12-121(b) (Prohibited activity) also faces a mandatory \$500 fine, or more for subsequent convictions, and may be ordered by the court to “attend counseling or an educational training program designed to reduce recidivism rates for these violations,” or participate in pretrial diversion. Ala. Code § 13A-6-181(a)–(c).<sup>16</sup>

2.3.1 Recommendation: Amend Ala. Code § 13A-12-121 (Prohibited activities) to distinguish solicitation of commercial sex acts with minors from solicitation of commercial sex acts with adults and provide a heightened penalty when offenses involve a minor under 18.

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

Buyers may be prosecuted for crimes ranging from Class A felonies to Class A misdemeanors. A buyer may be convicted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), or § 13A-6-61(a)(3) (Rape; first degree), all punishable as Class A felonies<sup>17</sup> punishable by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and possible fines up to \$60,000. Ala. Code §§ 13A-6-152(b), 13A-6-124, 13A-6-61(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of either offense is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(1), (28), 15-20A-48(a).

Under Ala. Code § 13A-5-6(c) (Prison terms; felonies),

In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20A-19,<sup>18</sup> or where an offender is

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<sup>15</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

<sup>16</sup> See *supra* note 8.

<sup>17</sup> If, in the commission of any Class A felony, the defendant used or attempted to use a firearm, a mandatory minimum imprisonment of 20 years applies. Ala. Code § 13A-5-6(a)(4).

<sup>18</sup> Ala. Code § 15-20A-48(d) now states that “for the purposes of section 13A-5-6(c) ., an offender is designated a sexually violent predator pursuant to section 15-20A-19.” See *supra* note 2 for a discussion of cross-referencing in light of Alabama’s statutory revisions. Additionally, Ala. Code § 13A-5-6(d) states,

convicted of a Class A felony criminal sex offense involving a child as defined in Section 15-20A-4(26) and, and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant's release from incarceration.

If a buyer is convicted under Ala. Code § 13A-6-122 (Electronic solicitation of a child), § 13A-6-62(a) (Rape; second degree), or § 13A-6-69.1 (Sexual abuse of child under 12), the buyer is guilty of a Class B felony punishable by a sentence of 2–20 years, “which imprisonment includes hard labor,” and possible fines not to exceed \$30,000. Ala. Code §§ 13A-6-122, 13A-6-62(b), 13A-6-69.1, 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of one of these offenses is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(2), (11), (24), 15-20A-48(a).

A buyer convicted under Ala. Code § 13A-6-69(a) (Child molestation; luring child someplace in order to perform or to propose sexual acts) or a second violation of Ala. Code § 13A-6-67(a)(2) (Sexual abuse; second degree) within one year of another sexual offense is guilty of a Class C felony,<sup>19</sup> punishable by 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and possible fines not to exceed \$15,000. Ala. Code §§ 13A-6-121, 13A-6-69(b), 13A-6-67(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

A buyer convicted under Ala. Code § 13A-12-121(b) (Prohibited activity), which includes soliciting prostitution, or § 13A-6-67(a) (Sexual abuse; second degree) for a first offense is guilty of a Class A misdemeanor punishable by imprisonment in the county jail up to 1 year, a possible fine up to \$6,000 and a mandatory fine of \$500 or more for subsequent offenses. Ala. Code §§ 13A-6-67(b), 13A-12-122, 13A-5-2(c), 13A-5-7(a)(1), 13A-5-12(a)(1), 13A-6-181(a).<sup>20</sup>

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>21</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the

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In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is convicted of a sex offense pursuant to Section 13A-6-61 [Rape; first degree], 13A-6-63 [Sodomy; first degree], or 13A-6-65.1 [Sexual torture], when the defendant was 21 years of age or older and the victim was six years of age or less at the time the offense was committed, the defendant shall be sentenced to life imprisonment without the possibility of parole.

<sup>19</sup> If the defendant uses or attempts to use a firearm or deadly weapon in the commission of any Class C felony, a minimum imprisonment of 10 years applies. Ala. Code § 13A-5-6(a)(5).

<sup>20</sup> See *supra* note 8.

<sup>21</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as,

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

extent buyers can be prosecuted under other federal CSEC laws,<sup>22</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>23</sup>

2.5 *Using the Internet or electronic communication 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.*

Using the Internet or other electronic communication to reach children under 16 for commercial sex acts is illegal under Ala. Code § 13A-6-122<sup>24</sup> (Electronic solicitation of a child).<sup>25</sup> Pursuant to Ala. Code § 13A-6-122,

[A] person who, knowingly entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service . . . or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, deviate sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation or directs the child to engage in sexual intercourse, deviate sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation, is guilty of electronic solicitation of a child . . .

A conviction for violating Ala. Code § 13A-6-122 is punishable as a Class B felony punishable by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-6-122, 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).

Ala. Code § 13A-6-111(a) (Child; transmission of obscene material) states in part,

A person is guilty of transmitting obscene material to a child if the person transmits, by means of any computer communication system allowing the input, output, examination, or transfer of computer programs from one computer to another, material which, in whole or in part, depicts actual or simulated nudity, sexual conduct, or sadomasochistic abuse, for the purpose of initiating or engaging in sexual acts with the child.

Pursuant to subsection (d), “Transmitting obscene material of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit to a child is a Class B felony” punishable by 2–20 years, “which imprisonment includes hard labor,” a possible fine not to

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<sup>22</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>23</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>24</sup> *See supra* note 10.

<sup>25</sup> For purposes of Ala. Code § 13A-6-122 (Electronic solicitation of a child), § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), § 13A-6-123 (Facilitating the on-line solicitation of a child), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), and § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act) a “child” means “a person under 16 years of age.” Ala. Code § 13A-6-120.

exceed \$30,000, and a mandatory fine of \$500, or more for subsequent offenses.<sup>26</sup> Ala. Code §§ 13A-6-111(d), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2), 13A-6-181(a). If the victim of a violation of Ala. Code § 13A-12-111(Child; transmission of obscene material) is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(20), 15-20A-48(a).

Additionally, pursuant to Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child),

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child . . . .

As a Class C felony, a conviction for violating Ala. Code § 13A-6-121 is punishable by 1 year and 1 day to 10 years, "which imprisonment includes hard labor," and a possible fine of up \$15,000. Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

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

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) is applicable to buyers, and § 13A-6-152(a)(3) expressly eliminates the use of mistake of age as a defense by stating that "it is not required that the defendant have knowledge of a minor victim's age, nor is reasonable mistake of age a defense to liability under this section." Furthermore, Ala. Code § 13A-6-154(5) (Prohibited defenses) states that a mistake in the age of the trafficking victim, "even if the mistake is reasonable," "shall not constitute a defense in a prosecution for human trafficking in the first or second degree."

Because there is no CSEC offense that is applicable to buyers, no CSEC offense criminalizes the buying of sex with a minor while expressly prohibiting a mistake of age defense.

2.6.1 Recommendation: Enact a CSEC law that applies to buyers expressly prohibiting 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.*

Alabama's trafficking law does not stagger penalties based on a minor's age, and penalties are sufficiently high. Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) applies to buyers in some cases and provides a heightened penalty when the victim is a minor without distinguishing between older and younger minors. A conviction under Ala. Code § 13A-6-152(a) is punishable as a Class A felony by imprisonment for life or 10–99 years, "which imprisonment includes hard labor," and a possible fine not to exceed \$60,000. Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-152 is under 12 years old and the "offense involves sexual servitude,"<sup>27</sup> a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a).

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<sup>26</sup> See *supra* note 8.

<sup>27</sup> See *supra* Component 1.1 for the definitions of "sexual servitude" and "sexual conduct."

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.*

Financial penalties include fines, restitution, and asset forfeiture. Buyers convicted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree), a Class A felony, may be required to pay a fine up to \$60,000. Those convicted under Ala. Code § 13A-12-192(b) (Possession of obscene matter), a Class C felony, may be ordered to pay a possible fine up to \$15,000. Ala. Code § 13A-5-11(a)(3). In a prosecution for the crimes listed above, the court may impose a fine “not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.” Ala. Code § 13A-5-11(a)(5).<sup>28</sup>

A buyer convicted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) will be required to pay restitution and civil damages to a human trafficking victim and forfeit property used in committing the crime. Pursuant to Ala. Code § 13A-6-155(a) (Mandatory restitution), buyers convicted under any provision of the human trafficking article, Ala. Code §§ 13A-6-150 to 13A-6-160, will be required to “pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 13A-6-156 applied first to payment of restitution.” Ala. Code § 13A-6-156 (Forfeiture of profits or proceeds and interest in property) states,

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

Additionally, under Ala. Code § 13A-12-198 (Forfeiture and condemnation of contraband), buyers convicted under, among other provisions, Ala. Code § 13A-12-192(b) (Possession of obscene matter) will be required to forfeit to the State “[a]ny article, equipment, machine, materials, matter, vehicle or other thing whatsoever used in the commercial production, transportation, dissemination, display or storage of any obscene matter displaying or depicting a person under the age of 17 years engaged in any of the obscene acts” described in that section.

Buyers convicted of prostitution-related offenses also face forfeiture under Ala. Code § 15-5-61(a) (Seizure and forfeiture of property criminally acquired) which states,

Any property, proceeds, or instrumentality of every kind, used or intended for use in the course of, derived from, or realized through the commission of a felony offense, as defined in this article, or a misdemeanor offense under Article 3, Chapter 12, Title 13A, relating to prostitution offenses, or as inducement or attempt or conspiracy to commit such offenses, is subject to civil forfeiture.

Buyers convicted of other offenses under Alabama’s criminal laws may also be required to make restitution to the victims of the crimes pursuant to Ala. Code § 15-18-67 (Hearings), which states,

When a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages<sup>29</sup> or loss to a victim, the court shall hold a hearing to determine the amount or type of

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<sup>28</sup> See *supra* note 4.

<sup>29</sup> Ala. Code 15-18-66(2) defines “pecuniary damages” is defined to include the following:

restitution due the victim or victims of such defendant's criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim's estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

However, "victim" is defined in Ala. Code § 15-18-66(4) (Definitions) as "[a]ny person whom the court determines has suffered a direct or indirect pecuniary damage as a result of the defendant's criminal activities. 'Victim' shall not include any participant in the defendant's criminal activities."

## 2.9 *Buying and possessing images of child sexual exploitation carries penalties as high as similar federal offenses.*

Pursuant to Ala. Code § 13A-12-192(b) (Possession of obscene matter), "Any person who knowingly possesses any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct shall be guilty of a Class C felony."

A conviction under Ala. Code § 13A-12-192(b) is punishable as a Class C felony by imprisonment for 1 year and 1 day to 10 years, "which imprisonment includes hard labor," and a possible fine up to \$15,000. Ala. Code §§ 13A-12-192(b), 13A-5-2(a), (b) (Authorized dispositions), 13A-5-6(a)(3) (Sentences of imprisonment for felonies), 13A-5-11(a)(3) (Fines for felonies).

In comparison, a federal conviction for possessing images of child sexual exploitation (ICSE)<sup>30</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>31</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>32</sup>

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All special damages which a person shall recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities; the term shall include, but not be limited to the money or other equivalent of property taken, broken, destroyed, or otherwise used or harmed and losses such as travel, medical, dental or burial expenses and wages including but not limited to wages lost as a result of court appearances.

<sup>30</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>31</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>32</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

Ala. Code § 15-20A-10(a)(1) (Registration rules for an adult sex offender) governs registration of adult sex offenders. An “adult sex offender” is defined as “[a] person convicted of a sex offense.” Ala. Code § 15-20A-4(1) (Definitions). Pursuant to Ala. Code § 15-20A-5<sup>33</sup> (Offenses),

For the purposes of this article, a sex offense includes any of the following offenses:

- (1) Rape in the first degree, as provided by Section 13A-6-61, Code of Alabama 1975.
- (2) Rape in the second degree, as provided by Section 13A-6-62, Code of Alabama 1975.
- ....
- (5) Sexual misconduct, as provided by Section 13A-6-65, Code of Alabama 1975, provided that on a first conviction or adjudication the sex offender is only subject to registration and verification pursuant to this article. On a second or subsequent conviction or adjudication of a sex offense, if the second or subsequent conviction or adjudication does not arise out of the same set of facts and circumstances as the first conviction or adjudication of a sex offense, the sex offender shall comply with all requirements of this article. The sentencing court may exempt from this article a juvenile sex offender adjudicated delinquent of sexual misconduct.
- ....
- (7) Sexual abuse in the first degree, as provided by Section 13A-6-66.
- (8) Sexual abuse in the second degree, as provided by Section 13A-6-67.
- ....
- (10) Enticing a child to enter a vehicle, room, house, office, or other place for immoral purposes, as provided by Section 13A-6-69.
- (11) Sexual abuse of a child less than 12 years old, as provided by Section 13A-6-69.1.
- ....
- (14) Violation of the Alabama Child Pornography Act, as provided by Sections 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 . . . .<sup>34</sup>
- ....
- (20) Transmitting obscene material to a child by computer, as provided by Section 13A-6-111.
- ....
- (23) Facilitating solicitation of unlawful sexual conduct with a child, as provided by Section 13A-6-121.
- (24) Electronic solicitation of a child, as provided by Section 13A-6-122.
- (25) Facilitating the on-line solicitation of a child, as provided by Section 13A-6-123.
- (26) Traveling to meet a child for an unlawful sex act, as provided by Section 13A-6-124.
- (27) Facilitating the travel of a child for an unlawful sex act, as provided by Section 13A-6-125.
- (28) Human trafficking in the first degree, as provided by Section 13A-6-152, provided that the offense involves sexual servitude.
- (29) Human trafficking in the second degree, as provided by Section 13A-6-153, provided that the offense involves sexual servitude.
- ....
- (34) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in subdivisions (1) to (31), inclusive.

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<sup>33</sup> The text of Ala. Code § 15-20A-5 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 301 during the 2017 Regular Session of the Alabama Legislature (effective August 1, 2017).

<sup>34</sup> “The sentencing court may exempt from this chapter a juvenile sex offender adjudicated delinquent of a violation of the Alabama Child Pornography Act after the juvenile has been counseled on the dangers of the conduct for which he or she was adjudicated delinquent.” Ala. Code § 15-20A-5(14).



....

(37) Any crime committed in another state, the District of Columbia, any United States territory, or a federal, military, Indian, or foreign country jurisdiction if that jurisdiction also requires that anyone convicted of that crime register as a sex offender in that jurisdiction.

....

Accordingly, buyers convicted of sex trafficking or possessing images of child sexual exploitation (ICSE) will be required to register as sex offenders. Because Alabama lacks a buyer-applicable CSEC law, however, buyers would not be required to register for all acts constituting commercial sexual exploitation of children.

**Legal Components:**

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
  - 3.2 *Creating and distributing images of child sexual exploitation 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 include sex trafficking or commercial sexual exploitation of children (CSEC) offenses as grounds for termination in order to prevent traffickers from exploiting their parental rights as a form of control.*
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**Legal Analysis:**

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

Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) makes it illegal if a trafficker “knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.”<sup>35</sup> A conviction under Ala. Code § 13A-6-152(a)(2) is punishable as a Class A felony<sup>36</sup> by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-6-152 is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a). Also, Ala. Code § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act) states that a person “who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another” commits a Class A felony punishable by life imprisonment or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-125, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). Under Ala. Code § 13A-5-6(c),

In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20A-19,<sup>37</sup> or where an offender is convicted of a Class A felony criminal sex offense involving a child as defined in Section 15-20A-4(26), and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant’s release from incarceration.

Traffickers may also be prosecuted under Ala. Code § 13A-12-111(a) (Promoting prostitution; first degree).<sup>38</sup> A conviction for violating Ala. Code § 13A-12-111(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” a possible fine up to \$30,000 and a mandatory fine of \$500, or more for subsequent offenses.<sup>39</sup> Ala. Code §§ 13A-12-111(b), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-

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<sup>35</sup> See *supra* Component 1.1 for the definitions of “sexual servitude” and “sexual conduct.”

<sup>36</sup> See *supra* note 17.

<sup>37</sup> See *supra* note 18.

<sup>38</sup> See *supra* Component 1.2 for the substantive provisions of Ala. Code § 13A-12-111(a).

<sup>39</sup> See *supra* note 8.

11(a)(2), 13A-6-181(a). If the victim of a violation of Ala. Code § 13A-12-111 is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(12), 15-20A-48(a).

Additionally, traffickers could be prosecuted under Ala. Code § 13A-12-112(a) (Promoting prostitution; second degree), punishable as a Class C felony<sup>40</sup> by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” a possible fine up to \$15,000, and a mandatory fine of \$500, or more for subsequent offenses. Ala. Code §§ 13A-12-112(b), 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3), 13A-6-181(a). Some traffickers could be prosecuted under Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), which is a Class C felony, and is punishable by 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” and a possible fine of up to \$15,000 Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

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. §§ 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 images of child sexual exploitation carries penalties as high as similar federal offenses.*

Alabama separately criminalizes the production, dissemination,<sup>43</sup> and possession with the intent to disseminate images of child sexual exploitation (ICSE). Ala. Code § 13A-12-197(a) (Production of obscene matter) states,

Any person who knowingly<sup>44</sup> films, prints, records, photographs or otherwise produces any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse,<sup>45</sup> sexual excitement,<sup>46</sup> masturbation, breast nudity, genital nudity, or other sexual conduct<sup>47</sup> shall be guilty of a Class A felony.

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<sup>40</sup> See *supra* note 19.

<sup>41</sup> See *supra* Component 2.4 for further discussion.

<sup>42</sup> See *supra* note 21.

<sup>43</sup> Ala. Code § 13A-12-190(1) (Definitions) defines “disseminate” as “[t]o sell, lend or show for monetary consideration or to offer or agree to do the same.”

<sup>44</sup> Ala. Code § 13A-12-190(4) (Definitions) defines “knowingly” as the following:

[a] person knowingly disseminates or publicly displays obscene matter when the person knows the nature of the matter. A person knows the nature of the matter when either of the following circumstances exist:

- a. The person is aware of the character and content of the matter; or
- b. The person recklessly disregards circumstances suggesting the character and content of the matter.

<sup>45</sup> Ala. Code § 13A-12-190(7) (Definitions) defines “sexual intercourse” as “[i]ntercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal.”

<sup>46</sup> Ala. Code § 13A-12-190(6) (Definitions) defines “sexual excitement” as “[t]he condition of human male or female genitals when in a state of sexual stimulation.”

<sup>47</sup> Ala. Code § 13A-12-190(9) (Definitions) defines “other sexual conduct” as “[a]ny touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.”

Pursuant to Ala. Code § 13A-12-197(b), each depiction of each individual under 17 counts as a separate offense. A conviction under Ala. Code § 13A-12-197 is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-197 is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

Ala. Code § 13A-12-191 (Dissemination or display of obscene matter) states,

Any person who shall knowingly disseminate or display publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony.

Ala. Code § 13A-12-192(a) (Possession of obscene matter) states,

Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.

Class B felonies are punishable by imprisonment of 2–20 years, “which imprisonment includes hard labor,” and possible fines up to \$30,000. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the child involved in the commission of Ala. Code § 13A-12-197(a) (Production of obscene matter) is under 12 years old, a mandatory minimum imprisonment of 20 years applies, while if the child involved in the commission of Ala. Code § 13A-12-191 (Dissemination or display of obscene matter) or § 13A-12-192(a) (Possession of obscene matter) is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(4), (a)(5), 15-20A-5(14), 15-20A-48(a).

Pursuant to Ala. Code § 13A-12-196 (Permitting or allowing child to engage in production of obscene matter),

Any parent or guardian who knowingly permits or allows their child, ward, or dependent under the age of 17 years to engage in the production of any obscene matter containing a visual depiction of such child, ward, or dependent under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.

A Class A felony is punishable by life imprisonment or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-5-6(a)(1), 13A-5-11(a)(1). Additionally, if the child involved is under the age of 12, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-2(a), (b), 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

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>48</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for

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<sup>48</sup> See *supra* note 21.

distribution of ICSE<sup>49</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>50</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>51</sup>

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

The use of the Internet or other electronic communication to reach children under 16 for commercial sex acts is illegal under Ala. Code § 13A-6-122<sup>52</sup> (Electronic solicitation of a child).<sup>53</sup> Pursuant to Ala. Code § 13A-6-122,

[A] person who, knowingly entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service . . . or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, deviate sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation or directs a child to engage in sexual intercourse, deviate sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation, is guilty of electronic solicitation of a child . . .

A conviction for violating Ala. Code § 13A-6-122 is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-6-122, 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2).

Additionally, pursuant to Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child),

A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or

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<sup>49</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>50</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>51</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>52</sup> *See supra* note 10.

<sup>53</sup> For purposes of Ala. Code § 13A-6-122 (Electronic solicitation of a child), § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), § 13A-6-123 (Facilitating the on-line solicitation of a child), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), and § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act), a “child” means “a person under 16 years of age.” Ala. Code § 13A-6-120.

disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child . . . .

As a Class C felony, a conviction for violating Ala. Code § 13A-6-121 is punishable by 1 year and 1 day to 10 years, "which imprisonment includes hard labor," and a possible fine of up to \$15,000. Ala. Code §§ 13A-6-121, 13A-5-2(a), (b), 13A-5-6(a)(3), 13A-5-11(a)(3).

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

Traffickers face a number of financial penalties, including fines, restitution, forfeiture, and civil damages. Traffickers convicted of Ala. Code § 13A-12-197 (Production of obscene matter), a Class A felony, are subject to a possible fine up to \$60,000 pursuant to Ala. Code § 13A-5-11(a)(1) (Fines for felonies). Traffickers convicted of Ala. Code § 13A-12-111 (Promoting prostitution; first degree), § 13A-6-122 (Electronic solicitation of a child), § 13A-12-191 (Dissemination or display of obscene matter), or § 13A-12-192 (Possession of obscene matter), all Class B felonies, are subject to possible fines up to \$30,000. Ala. Code § 13A-5-11(a)(2). Traffickers convicted of Ala. Code § 13A-12-112 (Promoting prostitution; second degree) or § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), both Class C felonies, are subject to a possible fine up to \$15,000. Ala. Code §§ 13A-12-112(b), 13A-6-121, 13A-5-11(a)(3). Pursuant to Ala. Code § 13A-5-11(a)(5),<sup>54</sup> the court may fix the fine at "[a]ny amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense." Additionally, pursuant to Ala. Code § 13A-6-181(a)<sup>55</sup> (Additional fine for certain crimes relating to prostitution; pre-trial diversion programs), traffickers convicted of Ala. Code § 13A-12-111 (Promoting prostitution; first degree) or § 13A-12-112 face a mandatory fine of \$500, or more for subsequent offenses.

Asset forfeiture provisions apply to traffickers convicted of Ala. Code § 13A-12-197(a), § 13A-12-191, and § 13A-12-192(a). Ala. Code § 13A-12-198 (Forfeiture and condemnation of contraband) states in part,

Any article, equipment, machine, materials, matter, vehicle or other thing whatsoever used in the commercial production, transportation, dissemination, display or storage of any obscene matter displaying or depicting a person under the age of 17 years engaged in any of the obscene acts described in Sections 13A-12-191, 13A-12-192, 13A-12-196 and 13A-12-197 shall be contraband and shall be forfeited to the State of Alabama.

Traffickers convicted of other offenses under Alabama's criminal laws may also be required to make restitution to the victims of the crimes pursuant to Ala. Code § 15-18-67 (Hearings), which states that

[w]hen a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages or loss<sup>56</sup> to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant's criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim's estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

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<sup>54</sup> See *supra* note 4.

<sup>55</sup> See *supra* note 8.

<sup>56</sup> See *supra* note 29.

However, “victim” is defined in Ala. Code § 15-18-66(4) (Definitions) as “[a]ny person whom the court determines has suffered a direct or indirect pecuniary damage as a result of the defendant’s criminal activities. ‘Victim’ shall not include any participant in the defendant’s criminal activities.”

Traffickers convicted of Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) are subject to additional forfeiture and restitution provisions. Pursuant to Ala. Code § 13A-6-156 (Forfeiture of profits or proceeds and interest in property),

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

Traffickers convicted of prostitution-related offenses, including the CSEC offense of promoting prostitution in the first degree, also face forfeiture under Ala. Code § 15-5-61(a) (Seizure and forfeiture of property criminally acquired) which states,

Any property, proceeds, or instrumentality of every kind, used or intended for use in the course of, derived from, or realized through the commission of a felony offense, as defined in this article, or a misdemeanor offense under Article 3, Chapter 12, Title 13A, relating to prostitution offenses, or as inducement or attempt or conspiracy to commit such offenses, is subject to civil forfeiture.

Pursuant to Ala. Code § 13A-6-155(a) (Mandatory restitution), traffickers convicted under any provision of the human trafficking article, Ala. Code § 13A-6-150 et seq., will be required to “pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution.”

Furthermore, under Ala. Code § 13A-6-157 (Civil action by victims; relief awarded),

An individual who is a victim of human trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages shall be awarded on proof of actual damages where defendant’s acts were willful and malicious.

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

Ala. Code § 15-20A-10(a)(1) (Registration rules for an adult sex offender) governs registration for adult sex offenders. An “adult sex offender” is defined as “[a] person convicted of a sex offense.” Ala. Code § 15-20A-4(1) (Definitions). Pursuant to Ala. Code § 15-20A-5<sup>57</sup> (Offenses),

For the purposes of this article, a sex offense includes any of the following offenses:

....

(12) Promoting prostitution in the first degree, as provided by Section 13A-12-111.

(13) Promoting prostitution in the second degree, as provided by Section 13A-12-112.

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<sup>57</sup> See *supra* note 33.

(14) Violation of the Alabama Child Pornography Act, as provided by Sections 13A-12-191 .

...<sup>58</sup>

....

(20) Transmitting obscene material to a child by computer, as provided by Section 13A-6-111.

....

(23) Facilitating solicitation of unlawful sexual conduct with a child, as provided by Section 13A-6-121.

(24) Electronic solicitation of a child, as provided by Section 13A-6-122.

(25) Facilitating the on-line solicitation of a child, as provided by Section 13A-6-123.

(26) Traveling to meet a child for an unlawful sex act, as provided by Section 13A-6-124.

(27) Facilitating the travel of a child for an unlawful sex act, as provided by Section 13A-6-125.

(28) Human trafficking in the first degree, as provided by Section 13A-6-152, provided that the offense involves sexual servitude.

(29) Human trafficking in the second degree, as provided by Section 13A-6-153, provided that the offense involves sexual servitude.

....

(34) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in subdivisions (1) to (31).

....

(37) Any crime committed in another state, the District of Columbia, any United States territory, or a federal, military, Indian, or foreign country jurisdiction if that jurisdiction also requires that anyone convicted of that crime register as a sex offender in that jurisdiction.

....

Accordingly, traffickers convicted of sex trafficking or CSEC offenses and those convicted of creating or distributing images of child sexual exploitation (ICSE) will be required to register as sex offenders.

### 3.6 *Laws relating to termination of parental rights include sex trafficking or commercial sexual exploitation of children (CSEC) offenses as grounds for termination in order to prevent traffickers from exploiting their parental rights as a form of control.*

Neither convictions under the human trafficking laws, Ala. Code § 13A-6-152(a)(1), (2) (Human trafficking in the first degree) and § 13A-6-153(a)(1), (2) (Human trafficking in the second degree), nor any CSEC law are expressly enumerated in Ala. Code § 12-15-319(a) (Grounds for termination of parental rights; factors considered; presumption arising from abandonment) as grounds for the termination of parental rights. However, the definition of “abuse,” which includes subjecting a child to prostitution and sexual exploitation, as well as “[c]onviction of and imprisonment for a felony” provide grounds for terminating a trafficker’s parental rights. Ala. Code § 12-15-319(a) states in part,

If the juvenile court finds from clear and convincing evidence, competent, material, and relevant in nature, that the parents of a child are unable or unwilling to discharge their responsibilities to and for the child, or that the conduct or condition of the parents renders them unable to properly care for the child and that the conduct or condition is unlikely to change in the foreseeable future, it may terminate the parental rights of the parents. In determining whether or not the parents are unable or unwilling to discharge their responsibilities to and for the child and to terminate the parental rights, the juvenile court shall consider the following factors including, but not limited to, the following:

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<sup>58</sup> “The sentencing court may exempt from this chapter a juvenile sex offender adjudicated delinquent of a violation of the Alabama Child Pornography Act after the juvenile has been counseled on the dangers of the conduct for which he or she was adjudicated delinquent.” Ala. Code § 15-20A-5(14).



....

(3) That the parent has tortured, abused,<sup>59</sup> cruelly beaten, or otherwise maltreated the child, or attempted to torture, abuse, cruelly beat, or otherwise maltreat the child, or the child is in clear and present danger of being thus tortured, abused, cruelly beaten, or otherwise maltreated as evidenced by the treatment of a sibling.

(4) Conviction of and imprisonment for a felony.

(5) Commission by the parents of any of the following:

a. Murder or manslaughter of another child of that parent.

b. Aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of that parent.

c. A felony assault or abuse which results in serious bodily injury to the surviving child or another child of that parent. The term serious bodily injury shall mean bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

....

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<sup>59</sup> Pursuant to Ala. Code § 12-15-301, abuse includes the following:

(2) Abuse. Harm or the risk of harm to the emotional, physical health, or welfare of a child. Harm or the risk of harm to the emotional, physical health, or welfare of a child can occur through nonaccidental physical or mental injury, sexual abuse, or attempted sexual abuse or sexual exploitation or attempted sexual exploitation.

....

(14) Sexual abuse. Sexual abuse includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct. Sexual abuse also includes rape, molestation, prostitution, or other forms of sexual exploitation or abuse of children, or incest with children, as those acts are defined in this article or by Alabama law.

(15) Sexual exploitation. Sexual exploitation includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child.

**Legal Components:**

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

**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.*

Ala. Code § 13A-6-153(a)(1) (Human trafficking in the second degree) makes it a crime if a person “knowingly benefits, financially or by receiving anything of value, from participation in a venture or engagement for the purpose of sexual servitude or labor servitude.”<sup>60</sup> Pursuant to Ala. Code § 13A-6-153(b), a conviction for violating Ala. Code § 13A-6-153(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-6-153(a)(4), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of Ala. Code § 13A-6-153 (Human trafficking in the second degree) is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(29), 15-20A-48(a). Pursuant to Ala. Code § 13A-6-153(a)(3),

A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the second degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person’s employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring.

Additionally, some facilitators could be prosecuted under Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree). Ala. Code § 13A-6-152(a)(2) states,

A person commits the crime of human trafficking in the first degree if:

. . . .

(2) He or she knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.

If the victim of a violation of Ala. Code § 13A-6-152 is under 12 years old and the “offense involves sexual servitude,” a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(28), 15-20A-48(a). Under subsection (b), this is a Class A felony,<sup>61</sup> punishable by life imprisonment or 10–99

<sup>60</sup> See *supra* Component 1.1 for the definitions of “sexual servitude” and “sexual conduct.”

<sup>61</sup> See *supra* note 17.

years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-152(b), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1).<sup>62</sup> Under Ala. Code § 13A-5-6(c),

In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20A-19,<sup>63</sup> or where an offender is convicted of a Class A felony criminal sex offense involving a child as defined in Section 15-20A-4(26), and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant’s release from incarceration.

Additionally, a facilitator may be prosecuted under Ala. Code § 13A-12-112(a) (Promoting prostitution; second degree).<sup>64</sup> A conviction under Ala. Code § 13A-12-112(a) is punishable as a Class C felony<sup>65</sup> by imprisonment for 1 year and 1 day to 10 years, “which imprisonment includes hard labor,” a possible fine up to \$15,000 and a mandatory fine of \$500, or more for subsequent offenses.<sup>66</sup> Ala. Code §§ 13A-12-112(b), 13A-5-2(a), (b), 13A-5-6(3), 13A-5-11(a)(3), 13A-6-181(a). Similarly, a facilitator may be prosecuted under Ala. Code § 13A-12-111(a) (Promoting prostitution; first degree).<sup>67</sup>

A conviction for violating Ala. Code § 13A-12-111(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine not to exceed \$30,000. Ala. Code §§ 13A-12-111(b), 13A-5-2(a), (b), 13A-5-6(a) (3), 13A-5-11(a) (3). If the victim of a violation of Ala. Code § 13A-12-111(a) is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(12), 15-20A-48(a).

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 first or second degree human trafficking face fines, may be subjected to forfeiture provisions, ordered to make restitution to the victim, and held liable for civil damages. Facilitators convicted of human trafficking or promoting prostitution face possible fines of \$15,000 to \$30,000, Ala. Code §§ 13A-6-153(a)(4), 13A-5-6(a)(2), 13A-5-11(a)(2), 13A-12-112(b), 13A-5-2(a), (b), 13A-5-6(3), 13A-5-11(a)(3).

Ala. Code § 13A-6-156 (Forfeiture of profits or proceeds and interest in property) states,

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the

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<sup>62</sup> Ala. Code § 13A-6-152(a)(4) states,

A corporation, or any other legal entity other than an individual, may be prosecuted for human trafficking in the first degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person’s employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring.

<sup>63</sup> See *supra* note 18.

<sup>64</sup> See *supra* Component 1.2 for a discussion of Ala. Code § 13A-12-112.

<sup>65</sup> See *supra* note 19.

<sup>66</sup> See *supra* note 8.

<sup>67</sup> See *supra* Component 1.2 for a discussion of Ala. Code § 13A-12-111.

second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

Additional forfeiture provisions apply to facilitators convicted of creating or disseminating images of child sexual exploitation (ICSE). Ala. Code § 13A-12-198 (Forfeiture and condemnation of contraband) states in part,

Any article, equipment, machine, materials, matter, vehicle or other thing whatsoever used in the commercial production, transportation, dissemination, display or storage of any obscene matter displaying or depicting a person under the age of 17 years engaged in any of the obscene acts described in Sections 13A-12-191 [Dissemination or display of obscene matter], 13A-12-192 [Possession of obscene matter], 13A-12-196 and 13A-12-197 [Production of obscene matter] shall be contraband and shall be forfeited to the State of Alabama.

Facilitators convicted of prostitution-related offenses, including the CSEC offense of promoting prostitution in the first degree also face forfeiture under Ala. Code § 15-5-61(a) (Seizure and forfeiture of property criminally acquired) which states,

Any property, proceeds, or instrumentality of every kind, used or intended for use in the course of, derived from, or realized through the commission of a felony offense, as defined in this article, or a misdemeanor offense under Article 3, Chapter 12, Title 13A, relating to prostitution offenses, or as inducement or attempt or conspiracy to commit such offenses, is subject to civil forfeiture.

Pursuant to Ala. Code § 13A-6-155(a) (Mandatory restitution), facilitators convicted under any provision of the human trafficking article, Ala. Code § 13A-6-150 et seq. will be required “to pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 6 [i.e. Section 13A-6-156] applied first to payment of restitution.” Facilitators convicted of other offenses may be subject to restitution under Ala. Code § 15-18-67 (Hearings), which states that

[w]hen a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages<sup>68</sup> or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant’s criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim’s estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

Finally, pursuant to Ala. Code § 13A-6-157 (Civil action by victims; relief awarded),

An individual who is a victim of human trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney’s fees and costs. Treble damages shall be awarded on proof of actual damages where defendant’s acts were willful and malicious.

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<sup>68</sup> See *supra* note 29.

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

Ala. Code § 13A-6-124 (Traveling to meet a child for an unlawful sex act) states,

Any person who travels either within this state, to this state, or from this state by any means, who attempts to do so, or who knowingly causes another to do so or to attempt to do so for the purpose of engaging in any unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of traveling to meet a child for an unlawful sex act.

Pursuant to Ala. Code § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act),

Any person who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of facilitating the transport of a child for an unlawful sex act.

A conviction for violating either Ala. Code § 13A-6-125 or § 13A-6-124 is punishable as a Class A felony by life imprisonment or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-6-125, 13A-6-124, 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of either statute is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(26), (27), 15-20A-48(a).

However, the act of selling or offering to sell travel services for the purpose of engaging in an unlawful sex act is not prohibited by statute.

- 4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor under 18, if the offer, sale, or travel occurs in Alabama.

#### 4.4 *Promoting and selling images of child sexual exploitation carries penalties as high as similar federal offenses.*

Under Ala. Code § 13A-12-191 (Dissemination or display of obscene matter),

Any person who shall knowingly<sup>69</sup> disseminate<sup>70</sup> or display publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse,<sup>71</sup> sexual excitement,<sup>72</sup> masturbation, breast nudity, genital nudity, or other sexual conduct<sup>73</sup> shall be guilty of a Class B felony.

Additionally, under Ala. Code § 13A-12-192(a) (Possession of obscene matter),

Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.

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<sup>69</sup> See *supra* note 44.

<sup>70</sup> See *supra* note 43.

<sup>71</sup> See *supra* note 45.

<sup>72</sup> See *supra* note 46.

<sup>73</sup> See *supra* note 47.

A conviction for violating either Ala. Code § 13A-12-191 or § 13A-12-192(a) is punishable as a Class B felony by imprisonment for 2–20 years, “which imprisonment includes hard labor,” and a possible fine up to \$30,000. Ala. Code §§ 13A-12-191, 13A-12-192(a), 13A-5-2(a), (b), 13A-5-6(a)(2), 13A-5-11(a)(2). If the victim of a violation of either offense is under 12 years old, a mandatory minimum imprisonment of 10 years applies. Ala. Code §§ 13A-5-6(a)(5), 15-20A-5(14), 15-20A-48(a).

A facilitator who “knowingly films, prints, photographs, or otherwise produces any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, general nudity, or other sexual conduct” will be guilty under Ala. Code § 13A-12-197(a) (Production of obscene matter). A conviction under Ala. Code § 13A-12-197(a) is punishable as a Class A felony by imprisonment for life or 10–99 years, “which imprisonment includes hard labor,” and a possible fine up to \$60,000. Ala. Code §§ 13A-12-197(a), 13A-5-2(a), (b), 13A-5-6(a)(1), 13A-5-11(a)(1). If the victim of a violation of Ala. Code § 13A-12-197 (Production of obscene matter) is under 12 years old, a mandatory minimum imprisonment of 20 years applies. Ala. Code §§ 13A-5-6(a)(4), 15-20A-5(14), 15-20A-48(a).

***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 *Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.*
- 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 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>74</sup>*

Alabama’s core child sex trafficking offense does not define all commercially sexually exploited children as victims of sex trafficking because the use of force, fraud, or coercion is required to commit the crime of human trafficking even when the victim is a minor. Ala. Code § 13A-6-152 (Human trafficking in the first degree) requires that a person “knowingly subjects another person to . . . sexual servitude through use of coercion or deception.” Since Alabama’s sex trafficking law provides criminal liability for buyers of sex with minors, third party control is not required to establish the crime of sex trafficking. Under the main sex trafficking statute, § 13A-6-152, a person can be charged with the crime of human trafficking if they “subject another person to . . . sexual servitude through the use of coercion or deception” or “knowingly obtains, recruits, entices, solicits, induces, threatens, isolates, harbors, holds, restrains, transports, provides, or maintains any minor for the purpose of causing a minor to engage in sexual servitude.” Control of a victim by another party is not needed to apply the crime to buyers or facilitators.

- 5.1.1 **Recommendation:** Amend Ala. Code § 13A-6-152 (Human trafficking in the first degree) to identify all commercially sexually exploited children as victims of sex trafficking regardless of the use of coercion or deception.

<sup>74</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).

5.2 *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.*

Ala. Code § 13A-6-154(3) (Prohibited defenses) expressly provides that evidence of certain facts or conditions, such as “[c]onsent of or permission by a victim of human trafficking or anyone else on the victim’s behalf to any commercial sex act or sexually explicit performance,” is not a defense to first or second degree human trafficking. However, Alabama’s CSEC and sexual offense laws are silent regarding the availability of such a defense.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>75</sup>

Pursuant to Ala. Code § 12-15-701(b) (Protection of sexually exploited child), “A sexually exploited child may not be adjudicated delinquent or convicted of a crime of prostitution as provided in Section 13A-12-120 [Prostitution defined] or 13A-12-121 [Prohibited activity], Code of Alabama 1975, or any municipal ordinance prohibiting such acts.” The definition of a “sexually exploited child” includes all commercially sexually exploited children. Pursuant to Ala. Code § 12-15-701(a),

For the purposes of this section, “sexually exploited child” shall mean an individual under the age of 18 years who is under the jurisdiction of the juvenile court and who has been subjected to sexual exploitation because he or she is any of the following:

- (1) A victim of the crime of human trafficking sexual servitude as provided in Section 13A-6-150, et seq., Code of Alabama 1975.
- (2) Engaged in prostitution as provided in Section [Prostitution defined] or 13A-12-121 [Prohibited activity], Code of Alabama 1975.
- (3) A victim of the crime of promoting prostitution as provided in Section 13A-12-111, 13A-12-112, or 13A-12-113, Code of Alabama 1975.

Under Ala. Code § 12-15-701(c), the term “arrest” is used with regard to taking a sexually exploited child into custody: “In any proceeding based upon a child's arrest for an act of prostitution, there is a presumption that the child satisfies the definition of a sexually exploited child as provided in this section.” However, Ala. Code § 12-15-701(g) states that “[a] sexually exploited child who commits an act of prostitution as provided in Section [Prostitution defined] or 13A-12-121 [Prohibited activity], Code of Alabama 1975, shall be afforded all rights pursuant to Section 12-15-202 [Rights of the child], Code of Alabama 1975.” Ala. Code § 12-15-202 (Rights of the child) governs the rights of children taken into custody for delinquency or as a child in need of supervision. Thus, the term “arrest” appears to contemplate a sexually exploited child being taken into custody either as a delinquent child or as a child in need of supervision.

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

**System response to child engaged in commercial sex act**

Under the Alabama Human Trafficking Safe Harbor Act, children identified as sexually exploited will be identified as dependent or in need of supervision, rather than as delinquent, and given access to a range of community-based services; however, these services are not required to be specialized to the needs of juvenile sex trafficking victims.

Pursuant to Ala. Code. § 13A-12-123 (Treatment of sexually exploited child),

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<sup>75</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.



A sexually exploited child, as defined in Section 3 [codified as Ala. Code § 12-15-701 (Protection of sexually exploited child)], who is alleged to have committed a violation of Section 13A-12-120 [Prostitution defined] or 13A-12-121 [Prohibited activity], or any municipal ordinance prohibiting such acts, shall be treated pursuant to Section 4 [codified as Ala. Code § 13A-6-181 (Additional fine for certain crimes relating to prostitution; pre-trial diversion programs)].<sup>76</sup>

Similarly, Ala. Code § 12-15-701(b) prohibits juvenile sex trafficking victims from being treated as delinquent for prostitution offenses, stating, “A sexually exploited child may not be adjudicated delinquent or convicted of a crime of prostitution as provided in Section 13A-12-120 or 13A-12-121, Code of Alabama 1975, or any municipal ordinance prohibiting such acts.” Instead, a “sexually exploited”<sup>77</sup> child, including a juvenile sex trafficking victim,<sup>78</sup> may have a complaint filed as a dependent child or as a child in need of supervision under Ala. Code § 12-15-701(d), which states,

If a law enforcement officer or a person seeks to file a complaint against a child for an offense of prostitution as provided in Section 13A-12-120 or 13A-12-121, Code of Alabama 1975, the juvenile court intake officer shall evaluate the complaint to determine if the child is a sexually exploited child and could have another complaint filed stating that the child is alleged to be in need of supervision<sup>79</sup> or alleged to be dependent, and not a child alleged to be delinquent, pursuant to Rule 12 of the Alabama Rules of Juvenile Procedure. A juvenile probation officer who is designated to be a juvenile court intake officer may determine if a child alleged to be in need of supervision is appropriate for an informal adjustment pursuant to Rule 15 of the Alabama Rules of Juvenile Procedure.

Ala. Code § 12-15-701(e) further provides,

If a petition alleging that a sexually exploited child is in need of supervision or is dependent is filed, a sexually exploited child may be adjudicated a child in need of supervision or a dependent child pursuant to Section 12-15-102(4) and (8), Code of Alabama 1975. Once the sexually exploited child is adjudicated, the juvenile court shall retain jurisdiction over the sexually exploited child and may enforce prior orders requiring payment of court-ordered monies pursuant to Section 12-15-117, Code of Alabama 1975. The juvenile court may issue any requisite order or conduct any hearing necessary to protect the health or safety of a sexually exploited child that is determined to be in the best interests of

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<sup>76</sup> While Ala. Code. § 13A-12-123 (Treatment of sexually exploited child) refers to Ala. Code § 13A-6-181 (Additional fine for certain crimes relating to prostitution; pre-trial diversion programs) for the treatment of a sexually exploited child, the provisions of Ala. Code § 13A-6-181 apply to the treatment of adult victims and a detailed process for minor victims is instead set out under Ala. Code § 12-15-701 (Protection of sexually exploited child).

<sup>77</sup> See *supra* Component 1.3 for the definition of sexually exploited child.

<sup>78</sup> See *supra* Component 5.1 for an explanation of why only victims who have been trafficked through coercion or fraud would be protected.

<sup>79</sup> Pursuant to Ala. Code § 12-15-102(4), a child in need of supervision is defined as

[a] child who has been adjudicated by a juvenile court for doing any of the following and who is in need of care, rehabilitation, or supervision:

- (a) Being subject to the requirement of compulsory school attendance, is habitually truant from school as defined by the State Board of Education in the Alabama Administrative Code. Notwithstanding the foregoing, a child shall not be found in need of supervision pursuant to this subdivision if the juvenile court determines that the parent, legal guardian, or legal custodian of the child was solely responsible for the nonattendance of the child.
- (b) Disobeys the reasonable and lawful demands of his or her parent, legal guardian, or legal custodian and is beyond the control of the parent, legal guardian, or legal custodian.
- (c) Leaves, or remains away from, the home without the permission of the parent, legal guardian, legal custodian, or person with whom he or she resides.
- (d) Commits an offense established by law but not classified as criminal.

the child. The juvenile court may also, on an emergency basis, enter an order of protection or restraint to protect the health or safety of a sexually exploited child.

Regardless of whether a juvenile sex trafficking victim is referred into the dependency process or into the child in need of supervision process, the child is entitled to access a range of services; however, specialized services are not specifically mandated. Ala. Code § 12-15-701(h) provides,

All social and community services shall be made available to a sexually exploited child. Services may include, but are not limited to, any of the following:

- (1) Forensic evidence collection.
- (2) Forensic interviewing.
- (3) Counseling.
- (4) Advocacy.
- (5) Shelter.
- (6) Alcohol or substance abuse treatment.
- (7) Mental health services.
- (8) Medical treatment.
- (9) Legal services.
- (10) Educational tutoring, counseling, and language interpreter services.
- (11) Crisis intervention services.
- (12) Safety planning.
- (13) Investigation and prosecution of the individuals subjecting the child to sexual exploitation or abuse.

## Summary

Although a juvenile sex trafficking victim will be identified as dependent or as a child in need of supervision rather than as delinquent, Alabama law does not provide a statutory avenue to specialized services.

- 5.4.1 Recommendation: Amend Alabama’s protective response for juvenile sex trafficking victims to require specialized services.

## 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>80</sup>

Child sex trafficking is not identified as a type of abuse and neglect within Alabama’s child protection statutes. However, the definition of abuse does include sexual exploitation. “Abuse” is defined in Ala. Code § 12-15-301(2) (Definitions) as

[h]arm or the risk of harm to the emotional, physical health, or welfare of a child. Harm or the risk of harm to the emotional, physical health, or welfare of a child can occur through nonaccidental physical or mental injury, sexual abuse, or attempted sexual abuse or sexual exploitation or attempted sexual exploitation.

Ala. Code § 12-15-301(14) defines “sexual abuse” as including the following:

[T]he employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct. Sexual abuse also includes

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<sup>80</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

rape, molestation, prostitution, or other forms of sexual exploitation or abuse of children . . . as those acts are defined in this article or by Alabama law.

The term “sexual exploitation” is defined as “allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child.” Ala. Code § 12-15-301(15).

The term “neglect” is defined as “[n]egligent treatment or maltreatment of a child, including, but not limited to, the failure to provide adequate food, medical treatment, supervision, education, clothing, or shelter.” Ala. Code § 12-15-301(8).

5.5.1 Recommendation: Amend Ala. Code § 12-15-301 (Definitions) to include Ala. Code § 13A-6-152(a)(2) (Human trafficking in the first degree) in the list of offenses within “sexual exploitation.”<sup>81</sup>

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.*

Based on the definitions of an abused or neglected child, a child who has been subjected to commercial sexual exploitation by a third party who is not a parent or caregiver would qualify for the protective services of child welfare because these definitions do not specify that the conduct must be committed by a parent or caregiver.<sup>82</sup> In addition, the definition of “dependent child” under Ala. Code § 12-15-102(8)(a).(8) (Definitions) defines a “dependent child” to include “A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances . . . [w]ho, for any other cause, is in need of the care and protection of the state.”<sup>83</sup>

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<sup>81</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>82</sup> See *supra* Component 5.5.

<sup>83</sup> However, the definition of a “dependent child” under Ala. Code § 12-15-102(a.) (Definitions) otherwise appears to require fault of a parent or caregiver. It states,

a. A child who has been adjudicated dependent by a juvenile court and is in need of care or supervision and meets any of the following circumstances:

1. Whose parent, legal guardian, legal custodian, or other custodian subjects the child or any other child in the household to abuse, as defined in subdivision (2) of Section 12-15-301 or neglect as defined in subdivision (4) of Section 12-15-301, or allows the child to be so subjected.
2. Who is without a parent, legal guardian, or legal custodian willing and able to provide for the care, support, or education of the child.
3. Whose parent, legal guardian, legal custodian, or other custodian neglects or refuses, when able to do so or when the service is offered without charge, to provide or allow medical, surgical, or other care necessary for the health or well-being of the child.
4. Whose parent, legal guardian, legal custodian, or other custodian fails, refuses, or neglects to send the child to school in accordance with the terms of the compulsory school attendance laws of this state.
5. Whose parent, legal guardian, legal custodian, or other custodian has abandoned the child, as defined in subdivision (1) of Section 12-15-301.
6. Whose parent, legal guardian, legal custodian, or other custodian is unable or unwilling to discharge his or her responsibilities to and for the child.
7. Who has been placed for care or adoption in violation of the law.

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

The Alabama Crime Victims Compensation Act contains certain ineligibility criteria that could operate to exclude victims of child sex trafficking from receiving crime victims' compensation. For the Act, a "victim" means "[a] person who suffered serious personal injury or death as a result of criminally injurious conduct." Ala. Code § 15-23-3(3). "Criminally injurious conduct" is defined in part as "[a]n act occurring or attempted within the geographical boundaries of this state which results in serious personal injury or death to a victim for which punishment by fine, imprisonment, or death may be imposed." Ala. Code § 15-23-3(2)(a). A victim may receive compensation from the Alabama Crime Victims Compensation Commission if the commission is "satisfied by a preponderance of the evidence that the requirements for compensation have been met." Ala. Code § 15-23-8(a).

To the extent child sex trafficking victims meet the definition of victim, they may be eligible for compensation; however, several requirements for compensation could present difficulties for these victims. Pursuant to Ala. Code § 15-23-12(a) (Grounds for denial—reduction of award),

Compensation shall not be awarded in any of the following circumstances:

- (1) A claim has been filed with the commission later than one year after the injury or death upon which the claim is based, unless the commission finds there was good cause for the failure to file within that time.
- (2) To a claimant who was the offender, or an accomplice of the offender, or who encouraged or in any way participated in the criminally injurious conduct.
- (3) If the award would unjustly benefit the offender or accomplice of the offender.
- (4) The criminally injurious conduct resulting in injury or death was reported to a law enforcement officer later than 72 hours after its occurrence, unless the commission finds there was good cause for the failure to report within that time.

Nothing expressly exempts child sex trafficking victims from these requirements or explains what constitutes good cause for the failure to report the crime or file a claim within the statutory timeframes.

- 5.7.1 Recommendation: Amend Ala. Code § 15-23-12 (Grounds for denial—reduction of award) to provide exceptions to the ineligibility factors in Ala. Code § 15-23-12(a) for victims of child sex trafficking.

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

Some victim-friendly criminal justice procedures and protections are afforded to minor victims of commercial sexual exploitation, but other critical protections, such as a rape shield law that protects victims from re-traumatizing cross-examination, are not available.

Alabama law provides special protections for children under the age of 16 who are victims in criminal prosecutions for sexual offenses or sexual exploitation. For example, pursuant to Ala. Code § 15-25-2 (Videotaped deposition) the court may allow victims of sexual offenses under the age of 16 to give videotaped depositions in criminal prosecutions while having a "person whose presence . . . contributes to the well-being of the child and who has dealt with the child in a therapeutic setting regarding the abuse" present during the deposition. Ala. Code § 15-25-2(c). Notably, the defendant's attorney, but not the defendant, may be present during the deposition. Ala. Code § 15-25-2(c). The videotaped deposition may be entered into evidence "in lieu of the direct testimony of the alleged victim or witness" unless "the court determines that its introduction . . . will unfairly prejudice the defendant." Ala. Code § 15-25-2(d).

Alternatively, pursuant to Ala. Code § 15-25-3(b) (Closed circuit examination of victim), a court may permit a victim of a sexual offense or sexual exploitation under the age of 16 to give testimony via closed circuit

equipment, which “shall be taken outside the courtroom in the judge’s chambers or in another suitable location designated by the judge.” Pursuant to Ala. Code § 15-25-3(c),

Examination and cross-examination of the alleged child victim or witness shall proceed as though he or she were testifying in the courtroom. Present in the room with the child during his or her testimony shall be the prosecuting attorney, the attorney of the defendant, and a person whose presence, in the judgment of the court, contributes to the well-being of the child and who has dealt with the child in a therapeutic setting regarding the abuse. Additional persons, such as the parent or parents or legal guardian, except the defendant, may be admitted into the room in the discretion of the court.

Ala. Code § 15-25-3(g) states, “Only the court, the prosecuting attorney and the attorney for the defendant may question the child.”

Other child-friendly victim provisions applicable in criminal prosecutions for sexual offenses include the “use of anatomically correct dolls or mannequins to assist an alleged victim or witness who is under the age of 10 in testifying on direct and cross-examination at trial, or in a videotaped deposition as provided in this article” pursuant to Ala. Code § 15-25-5 (Use of dolls or mannequins), a speedy trial “to minimize the length of time the child must endure the stress of involvement in the proceedings” pursuant to Ala. Code § 15-25-6 (Speedy trial), and “reasonable limits on the number of interviews a victim of sexual abuse or exploitation, who is under 12 years of age, must submit to” in order to protect the victim from psychological harm pursuant to Ala. Code § 15-1-2(a) (Child sexual abuse victims; protection from repeated interrogation; sealed court records).

Another child-friendly provision potentially protects child victims under 12 years of age from re-traumatizing cross examination by allowing a child’s out-of-court statement to be admitted into evidence when the child is a victim of certain offenses, however, child sex trafficking and CSEC offenses are not specifically enumerated. Pursuant to Ala. Code § 15-25-31 (Out-of-court statement – when admissible),

An out-of-court statement made by a child under 12 years of age at the time the statement is made concerning an act that is a material element of any crime involving child physical offense, sexual offense, and exploitation, as defined in Section 15-25-39<sup>84</sup> [Definition], which statement is not otherwise admissible in evidence is admissible in evidence in criminal proceedings if the requirements of Section 15-25-32<sup>85</sup> [Out-of-court statements; requirements for admissibility] are met.

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<sup>84</sup> Pursuant to Ala. Code § 15-25-39 (Definition),

For purposes of this article, "a child physical offense, sexual offense, and exploitation" is defined to include the following crimes, when one or more of the victims is a child under 12 years of age:

- (1) Rape in any degree.
- (2) Sodomy in any degree.
- (3) Sexual abuse in any degree.
- (4) Sexual misconduct.
- (5) Enticing a child to enter a vehicle, room, house, office, or other place, for immoral purposes.
- (6) Any crime involving the production of child pornography.
- (7) Torture and willful abuse of a child under 18 years of age by responsible person as defined in Section 26-15-3.
- (8) Sexual torture as defined in Section 13A-6-65.1.
- (9) Attempted murder.
- (10) Assault first degree.
- (11) Assault second degree.
- (12) Assault third degree.
- (13) Harassment.

<sup>85</sup> Pursuant to Ala. Code § 15-25-32 (Out-of-court statements; requirements for admissibility),

Interviews of younger minor victims may be limited and records of any minor victims should be kept confidential pursuant to Ala. Code § 15-1-2 (Limits on interviews of victims of sexual abuse or exploitation under 12 years of age; confidentiality of court records of victims under 18 years of age), which states,

- (a) The presiding judge of a judicial circuit, after consultation with the district attorney for the judicial circuit may provide for reasonable limits on the number of interviews a victim of sexual abuse or exploitation, who is under 12 years of age, must submit to for law enforcement or other purposes. The judge shall, to the extent possible, protect the victim from the psychological damage of repeated interrogation while preserving the rights of the public, the victim, and the person charged with the violation.
- (b) The court records of a child under the age of 18 years who is a victim of sexual abuse or exploitation shall not be open to the public, but shall be kept in the same manner as juvenile offender records are kept.

However, vital protections under rape shield laws are not provided for juvenile sex trafficking or CSEC victims. Regardless of the age of the victim, pursuant to Ala. Code § 12-21-203(b)–(c) (Rape shield),

- (b) In any prosecution for criminal sexual conduct<sup>86</sup> or for assault with intent to commit, attempt to commit or conspiracy to commit criminal sexual conduct, evidence relating to the past sexual behavior<sup>87</sup> of the complaining witness<sup>88</sup> . . . shall not be admissible, either as direct evidence or on cross-examination of the complaining witness or of other witnesses, except as otherwise provided in this section.
- (c) In any prosecution for criminal sexual conduct, evidence relating to the past sexual behavior of the complaining witness shall be introduced if the court following the procedure described in subsection (d) of this section . . . finds that such past sexual behavior directly involved the participation of the accused.

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An out-of-court statement may be admitted as provided in Section 15-25-31, if:

- (1) The child testifies at the proceeding, or testifies by means of video tape deposition as provided by Section 15-25-2, or testifies by means of closed circuit television as is provided in Section 15-25-3, and at the time of such testimony is subject to cross-examination about the out-of-court statements; or
- (2) a. The child is found by the court to be unavailable to testify on any of these grounds:
  - 1. The child's death;
  - 2. The court finds that there are reasonable grounds to believe that the defendant or someone acting on behalf of the defendant has intentionally removed the child from the jurisdiction of the court;
  - 3. The child's total failure of memory;
  - 4. The child's physical or mental disability;
  - 5. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; or
  - 6. Substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed circuit television; and
- b. The child's out-of-court statement is shown to the reasonable satisfaction of the court to possess particularized guarantees of trustworthiness.

<sup>86</sup> “Criminal sexual conduct” is defined in Ala. Code § 12-21-203(a)(2) as “[s]exual activity, including, but not limited to, rape, sodomy, sexual misconduct, sexual abuse or carnal knowledge.”

<sup>87</sup> “Evidence relating to past sexual behavior,” according to Ala. Code § 12-21-203(a)(3) “includes, but is not limited to, evidence of the complaining witness’s marital history, mode of dress and general reputation for promiscuity, nonchastity or sexual mores contrary to the community standards.”

<sup>88</sup> “Complaining witness” is defined in Ala. Code § 12-21-203(a)(1) as “[a]ny person alleged to be the victim of the crime charged, the prosecution of which is subject to the provisions of this section.”

5.9 *Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.*

Alabama law does not provide a mechanism for minors to vacate adjudications related to their trafficking victimization, and delinquency records may only be sealed or destroyed under narrow circumstances. Under Ala. Code § 12-15-136(a) (Proceedings for sealing legal and social files and records of courts, pertaining to certain persons and effect thereof),

On motion of a person who has been the subject of a delinquency or child in need of supervision petition, the juvenile court may order the sealing of the legal and social files and records of the juvenile court pertaining to the person if it finds that:

- (1) Two years have elapsed since the final discharge of the person from legal custody or supervision or two years after the entry of any other order of the juvenile court not involving custody or supervision; and
- (2) The person has not been convicted or adjudicated delinquent or a youthful offender of any felony or a misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, prior to the filing of the motion and no proceeding is pending seeking the conviction or adjudication.

Accordingly, Ala. Code § 12-15-136(a) mandates a 2 year waiting period and excludes many of the offenses for which a child sex trafficking victim may be adjudicated. Further, Ala. Code § 12-15-136(e) provides, “[a]ny adjudication of delinquency or youthful offender or conviction of a felony or misdemeanor involving sexual offenses, drugs, weapons, or violence, or threats of violence, subsequent to sealing shall have the effect of nullifying the sealing order.”

A minor may obtain a destruction order pursuant to Ala. Code § 12-15-137(a), (b) (Proceedings for destruction of legal and social files and records of juvenile courts pertaining to certain persons and effect thereof), which states,

- (a) A person who has been the subject of a delinquency petition and has met the conditions stipulated in subdivision (2) of subsection (a) of Section 12-15-136, five years after reaching the age of majority, may file a motion requesting the destruction of all records pertaining to his or her case. If the juvenile court grants the motion, copies of the order shall be sent to all offices, departments, or agencies that are repositories of the records, and all the offices, departments, and agencies shall comply with the order.
- (b) Upon the entry of a destruction order, all references including arrest, complaints, referrals, petitions, reports, and orders shall be removed from all department or agency official and institutional files and destroyed.

However, Ala. Code § 12-15-137 mandates a minimum 5 year waiting period and applies only to offenses that may be sealed under Ala. Code § 12-15-136(a), thereby excluding many of the offenses for which a child sex trafficking victim may be adjudicated.

- 5.9.1 Recommendation: Enact a law that allows child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.<sup>89</sup>

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<sup>89</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

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.*

Individuals convicted of human trafficking offenses are required to pay mandatory restitution to victims. Ala. Code § 13A-6-155(a) (Mandatory restitution) states,

A person or entity convicted of any violation of this article shall be ordered to pay mandatory restitution to the victim, prosecutorial or law enforcement entity, with the proceeds from property forfeited under Section 13A-6-156 applied first to payment of restitution. Restitution under this section shall include items covered under Article 4A, commencing with Section 15-18-65 [Legislative intent] of Chapter 18 of Title 15 of the Code of Alabama 1975, and any of the following:

- (1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion.
- (2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion.
- (3) Cost of the investigation and prosecution, attorney's fees, and other court-related costs such as victim advocate fees.
- (4) The greater of a. the value of the human trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA); or b. the gross income or value to the defendant of the victim's labor servitude or sexual servitude engaged in by the victim while in the human trafficking situation.
- (5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (6) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim.
- (7) Any and all other losses suffered by the victim as a result of any violation of this article.

Restitution is available more generally to victims of other crimes pursuant to Ala. Code § 15-18-67 (Hearings), which provides that

[w]hen a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages<sup>90</sup> or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant's criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim's estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings.

Pursuant to Ala. Code § 15-18-68(a) (Determination of amount),

In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration all of the following:

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<sup>90</sup> See *supra* note 29.



- (1) The financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant.
- (2) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court.
- (3) The anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment.
- (4) Any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts.
- (5) The mental, physical, and financial well-being of the victim.<sup>91</sup>

Civil remedies are also available to human trafficking victims. Ala. Code § 13A-6-157 (Civil action by victims; relief awarded) provides that human trafficking victims

may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.

Pursuant to Ala. Code § 13A-6-156 (Forfeiture of profits or proceeds and interest in property),

A person who commits the offense of human trafficking in the first degree or human trafficking in the second degree shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking in the first degree or human trafficking in the second degree. Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go toward the cost of the investigation and prosecution and the remaining assets shall be remitted to funding the Alabama Crime Victims Compensation Fund.

*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 to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Pursuant to Ala. Code § 15-3-1 (Felonies generally), all felonies "except those specified in Sections 15-3-3<sup>92</sup> [Conversion of public revenues] and 15-3-5 [Offenses having no limitation]" are subject to a 3-year statute of limitations. While Ala. Code § 15-3-5(a) (4) eliminates the statute of limitations for a prosecution for "[a]ny sex offense involving a victim under 16 years of age, regardless of whether it involves force or serious physical injury or death," this does not appear to include human trafficking offenses. "Sex offense" is not defined for purposes of Ala. Code § 15-3-5, and Article 4 of the Criminal Code only includes the non-commercial offenses of rape, sodomy, sexual misconduct, sexual abuse, indecent exposure, enticing a child, sexual abuse of a child

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<sup>91</sup> Ala. Code § 15-18-68(b)(2) (Criteria for determining restitution) adds,

When a defendant has been convicted of the following offenses after February 1, 2009, the court may consider the factors enumerated in subsection (a) and shall order restitution to be paid as follows:

.....

- (2) When a defendant has been convicted of rape in the first degree under Section 13A-6-61 [Rape in the first degree] and the person has one or more prior convictions under Section 13A-6-61, the court shall order restitution for an amount not less than ten thousand dollars (\$10,000) for each conviction under Section 13A-6-61.

<sup>92</sup> Ala. Code § 15-3-3 (Conversion of revenue) states, "A prosecution for conversion of the state or county revenue must be commenced within six years after the conversion."

under 12, lack of consent, and foster parent abusing a child. Consequently, the statute of limitations for human trafficking and commercial sexual exploitation of children offenses would be 3 years pursuant to Ala. Code § 15-3-1.

For civil actions under Ala. Code § 13A-6-157 (Civil action by victims; relief awarded), Ala. Code § 13A-6-158 (Limitation period) states,

- (a) (1) An action for an offense defined by this article where the victim is not a minor shall be brought within five years<sup>93</sup> from the date the victim was removed or escaped from the human trafficking situation.
- (2) Any statute of limitations that would otherwise preclude prosecution for an offense involving the trafficking of a minor, or the physical or sexual abuse of a minor, shall be tolled until such time as the victim has reached the age of 18 years.
- (3) The running of the statute of limitations shall be suspended where a person entitled to bring a claim of an offense defined by this article could not have reasonably discovered the crime due to circumstances resulting from the human trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.
- (b) Any statute of limitation period imposed for the filing of a civil action under this article will not begin to run until the plaintiff discovers both that the sex trade act occurred and that the defendant caused, was responsible for, or profited from the sex trade act.
  - (1) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.
  - (2) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.
  - (3) If the plaintiff's injury is caused by two or more acts that are part of a continuing series of sex trade acts by the same defendant, then the limitation period will not commence running until the last sex trade act in the continuing series occurs.
  - (4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time when these acts occur will not be part of the time limited for the commencement of this action.

5.11.1 Recommendation: Amend Ala. Code § 15-3-5(a) (Offenses having no limitation) to eliminate the statute of limitations for prosecutions for trafficking and CSEC offenses.

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<sup>93</sup> Pursuant to Ala. Code § 6-2-38 (Commencement of actions - Two years), generally actions for personal injury are subject to a two year statute of limitations.

***Legal Components:***

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking and commercial sexual exploitation of children (CSEC).*
- 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 *State law requires reporting of missing children and recovered missing children.*

***Legal Analysis:***

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

The Alabama Peace Officers’ Standards and Training Commission (APOSTC) has the authority to, among other things, “adopt and promulgate standards relating to the physical, mental, and moral fitness of any applicant for or appointee as a law enforcement officer,” to “make recommendations for improving [law enforcement training] schools, curriculum, and courses,” and to “encourage the establishment of law enforcement training schools and courses on law enforcement in existing institutions of learning.” Ala. Code § 36-21-45(3)–(5). Law enforcement officer applicants must complete a required training course as established by APOSTC. Ala. Code § 36-21-46(a)(3). While law enforcement officers must meet continuing education requirements, APOSTC rules do not specifically mandate or authorize training for law enforcement officers regarding human trafficking or the sexual exploitation of children.<sup>94</sup>

However, Ala. Code § 26-19-4(3), (14) (Alabama Center for Missing and Exploited Children; functions) requires the Alabama Center for Missing and Exploited Children (ACMEC) to, among other things, “provide training to law enforcement officers, other professionals, and medical examiners, when available, on issues relating to missing persons, exploited children, and unidentified bodies” and “[t]o operate a resource center of information regarding prevention of abduction and sexual exploitation of children.” As a result, resources and training regarding exploited children, including sexually exploited children, currently should be available for use by law enforcement in Alabama.

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

Single party consent to audio-recording and interception of oral communications is permitted in Alabama. Ala. Code § 13A-11-31(a) (Criminal eavesdropping) makes it unlawful if a person “intentionally uses any device to eavesdrop.” However, “eavesdrop” is defined as “[t]o overhear, record, amplify or transmit any part of the private communication of others without the consent of at least one of the persons engaged in the communication, except as otherwise provided by law.” Ala. Code § 13A-11-30(1). Therefore, when one party to the communication consents to audiotaping, the conduct is not considered “eavesdropping” and does not violate Ala. Code § 13A-11-31.

<sup>94</sup> Ala. Admin. Code r. 650-X-12-.02(1) (2011).

6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking and commercial sexual exploitation of children (CSEC).*

While Ala. Code § 13A-11-31 (Criminal eavesdropping) and § 13A-11-36(a) do not authorize wiretapping in child sex trafficking investigations, pursuant to Ala. Code § 13A-11-36(a) (Exceptions), “(a) A person does not commit a crime under this article if: (1) He was a peace officer engaged in the lawful performance of his duties; or . . . (3) He relies in good faith on a lawful court order or legislative authorization.”

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.*

Ala. Code § 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child) and § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act) prohibit a defense to prosecution based on the use of a law enforcement decoy posing as a minor. Pursuant to Ala. Code § 13A-6-127(a)(1) (Defenses), “(a) It shall not be a defense to prosecution under this article<sup>95</sup>: (1) That an undercover operative or law enforcement officer was involved in the detection and investigation of an offense.”

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

Ala. Code § 13A-6-122<sup>96</sup> (Electronic solicitation of a child) states in part,

[A] person who, knowingly entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone . . . or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, deviate sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation or directs a child to engage in sexual intercourse, deviate sexual intercourse, sexual contact, sexual performance, obscene sexual performance, sexual conduct, or genital mutilation, is guilty of electronic solicitation of a child . . . .

The standard of “believed by the defendant to be a child at least three years younger than the defendant” appears to allow for a law enforcement officer to use the Internet to pose as a minor in investigating this offense. Moreover, Ala. Code § 13A-6-127(a)(1) (Defenses) states, “(a) It shall not be a defense to prosecution under this article [Solicitation of Children by Electronic Means]<sup>97</sup>: (1) That an undercover operative or law enforcement officer was involved in the detection and investigation of an offense.”

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<sup>95</sup> The following offenses are listed under this article: Section 13A-6-121 (Facilitating solicitation of unlawful sexual conduct with a child), § 13A-6-122 (Electronic solicitation of a child), § 13A-6-123 (Facilitating the on-line solicitation of a child), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act).

<sup>96</sup> See *supra* note 10.

<sup>97</sup> The following offenses are listed under this article: Section 13A-6-121 Facilitating solicitation of unlawful sexual conduct with a child: § 13A-6-122 (Electronic solicitation of a child), § 13A-6-123 (Facilitating the on-line solicitation of a child), § 13A-6-124 (Traveling to meet a child for an unlawful sex act), § 13A-6-125 (Facilitating the travel of a child for an unlawful sex act).

6.6 *State law requires reporting of missing children and recovered missing children.*

Pursuant to Ala. Code § 26-19-5 (Missing person reports), “Any law enforcement agency in this state in which a complaint of a missing person has been filed shall prepare and send a report to [the Alabama Center for Missing and Exploited Children] ACMEC immediately on any missing person or unidentified deceased person.” Ala. Code § 26-19-6 (Missing person reports; dissemination) requires the law enforcement agency to then forward a copy of the report to the following:

- (1) All law enforcement agencies having jurisdiction of the location in which the missing person lives or was last seen.
- (2) All law enforcement agencies considered to be potentially involved by the law enforcement agency filing the report.
- (3) All law enforcement agencies which the complainant requests the report to be sent to, if the request is reasonable in light of the information contained in the report.
- (4) Any law enforcement agency requesting a copy of the missing person report.

Additionally, Ala. Code § 26-19-4(1), (2) (Alabama Center for Missing and Exploited Children; functions) requires ACMEC

- (1) To receive and promptly enter into the Department of Public Safety’s computer system all reports of law enforcement agencies, and other persons and agencies, of missing children and adults, exploited children . . . and all pertinent information submitted by the person or agency reporting which is contained in any investigation or investigations conducted pursuant to the report. ACMEC shall promptly enter the information in the NCIC computer network. If a missing person is subsequently found or if an unidentified deceased person is subsequently identified, and the information is reported to the ACMEC, ACMEC shall maintain, as necessary, the data for law enforcement purposes only.
- (2) To coordinate with and provide assistance to state and local public and private nonprofit agencies, including those of other states and the federal government, in investigating cases of missing persons, exploited children, and unidentified bodies and to conduct appropriate investigations.

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