

2018 ANALYSIS AND RECOMMENDATIONS

DISTRICT OF COLUMBIA

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 Analysis¹:

- 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 District of Columbia (D.C.) human trafficking law does not require force, fraud, or coercion for sex trafficking of minors. D.C. Code § 22-1834(a) (Sex trafficking of children) states, “It is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act² knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.” If a court finds a person guilty of this crime, the person can be imprisoned up to 20 years, fined up to \$50,000, or both. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9).

¹ This report includes legislation enacted as of August 1, 2018.

² D.C. Code § 22-1831(4) defines “commercial sex act” as “any sexual act or sexual contact on account of which or for which anything of value is given to, promised to, or received by any person. The term ‘commercial sex act’ includes a violation of § 22-2701 [Engaging in prostitution or soliciting for prostitution] et seq.; § 22-2704 [Abducting or enticing child from his or her home for purposes of prostitution]; § 22-2705 [Pandering; inducing or compelling an individual to engage in prostitution] et seq.; § 22-2713 [Premises occupied for lewdness, assignation, or prostitution declared nuisance] et seq.; and § 22-2722 [Keeping bawdy or disorderly houses].”

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

The following laws criminalize CSEC in D.C.:

1. D.C. Code § 22-2704(a) (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child) makes it a crime “for any person, for purposes of prostitution, to: (1) Persuade, entice, or forcibly abduct a child under 18 years of age from his or her home or usual abode, or from the custody and control of the child’s parents or guardian; or (2) Secrete or harbor any child so persuaded, enticed, or abducted from his or her home or usual abode, or from the custody and control of the child’s parents or guardian.” This is a felony punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2704(b), 22-3571.01(b)(9).
2. D.C. Code § 22-2705(a) (Pandering; inducing or compelling an individual to engage in prostitution) makes it illegal to do the following:
 - (1) Place or cause, induce, entice, procure, or compel the placing of any individual in the charge or custody of any other person, or in a house of prostitution, with intent that such individual shall engage in prostitution;
 - (2) Cause, compel, induce, entice, or procure or attempt to cause, compel, induce, entice, or procure any individual:
 - (A) To reside with any other person for the purpose of prostitution;
 - (B) To reside or continue to reside in a house of prostitution; or
 - (C) To engage in prostitution; or
 - (3) Take or detain an individual against the individual’s will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person.

When the victim of this crime is under 18, the offender is guilty of a felony punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

3. D.C. Code § 22-2707(a) (Procuring; receiving money or other valuable thing for arranging assignation) makes it illegal for a person “to receive any money or other valuable thing for or on account of arranging for or causing any individual to engage in prostitution or a sexual act or contact.” If the victim is under 18, this felony is punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2707(b)(2), 22-3571.01(b)(9).

Although the following statutes are not specifically for commercial sexual exploitation cases, the following offenses may also be used to prosecute CSEC cases:

1. D.C. Code § 22-3008 (First degree child sexual abuse) makes it a crime when a person “being at least 4 years older than a child, engages in a sexual act³ with that child or causes that child to engage in a sexual act.” For purposes of the chapter on “sexual abuse,” “child” is defined as “a person who has not yet attained the age of 16 years” for those offenses classified as sex offenses and general sexual abuse. D.C. Code § 22-3001(3). This is a Class A felony punishable by up to life imprisonment and a possible fine up to \$250,000. D.C. Code § 22-3008. “However, the court may impose a prison sentence in excess of 30

³“Sexual act” is defined as “(A) The penetration, however slight, of the anus or vulva of another by a penis; (B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. (D) The emission of semen is not required for the purposes of subparagraphs (A)–(C) of this paragraph.” D.C. Code § 22-3001(8).

years only in accordance with § 22-3020 [Aggravating circumstances] or § 24-403.01 (b-2) [Aggravating circumstances, one or more of which must exist for a sentence to exceed 30 years].” D.C. Code § 22-3008.

2. D.C. Code § 22-3009 (Second degree child sexual abuse) establishes a crime when a person “being at least 4 years older than a child, engages in sexual contact⁴ with that child or causes that child to engage in sexual contact.” A convicted offender may be sentenced to imprisonment up to 10 years and a possible fine not to exceed \$25,000. D.C. Code §§ 22-3009, 22-3571.01(b)(7).
3. D.C. Code § 22-3009.01 (First degree sexual abuse of a minor) establishes a crime when a person “being 18 years of age or older, is in a significant relationship⁵ with a minor,⁶ and engages in a sexual act with that minor or causes that minor to engage in a sexual act.” If guilty, the individual may be imprisoned up to 15 years, fined up to \$37,500, or both. D.C. Code §§ 22-3009.01, 22-3571.01(b)(8).
4. D.C. Code § 22-3009.02 (Second degree sexual abuse of a minor) occurs when a person “being 18 years of age or older, is in a significant relationship with a minor and engages in a sexual contact with that minor or causes that minor to engage in a sexual contact.” If guilty, the individual may be sentenced to imprisonment up to 7.5 years, a fine not to exceed \$25,000, or both. D.C. Code § 22-3009.02, 22-3571.01(b)(7).
5. D.C. Code § 22-3010 (Enticing a child or minor) states in part,
 - (a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor,
 - (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 [Sexual abuse in the first through fourth degrees and Misdemeanor sexual abuse] and 22-3008 to 22-3009.02 [First degree child sexual abuse, Second degree child sexual abuse, First degree sexual abuse of a minor, Second degree sexual abuse of a minor], or
 - (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in [section 101 of the Criminal Fine Proportionality Amendment Act of 2012], or both.
 - (b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts
 - (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or
 - (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01⁷, or both.

⁴ “Sexual contact” is defined as “the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.” D.C. Code § 22-3001(9).

⁵ “Significant relationship” is defined as including “[a] legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim.” D.C. Code § 22-3001(10)(B).

⁶ “Minor” is defined as “a person who has not yet attained the age of 18 years.” D.C. Code § 22-3001(5A).

⁷ Pursuant to D.C. Code § 22-3571.01, if a crime carries a maximum of 5 years of incarceration the proportional maximum fine is \$12,500.

6. Using the Internet to purchase commercial sex acts could potentially be charged under D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child).⁸ D.C. Code § 22-3010.02(a) states, “It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.”

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

The District of Columbia’s prostitution law, D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution), does not refer to the human trafficking law when the person engaged in prostitution is a minor.

- 1.3.1 Recommendation: Amend D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) to refer to D.C. Code § 22-1834 (Sex trafficking of children) 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.

Although District of Columbia has not enacted a racketeering statute, the criminal street gangs law is broad enough to include any felony as predicate activity. Pursuant to D.C. Code § 22-951 (Criminal street gangs),

- (a) (1) It is unlawful for a person to solicit, invite, recruit, encourage, or otherwise cause, or attempt to cause, another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang.
(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01,⁹ or imprisoned for not more than 6 months, or both.
- (b) (1) It is unlawful for any person who is a member of or actively participates in a criminal street gang to knowingly and willfully participate in any felony or violent misdemeanor committed for the benefit of, at the direction of, or in association with any other member or participant of that criminal street gang.
(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in [section 101 of the Criminal Fine Proportionality Amendment Act of 2012] or imprisoned for not more than 5 years, or both.
- (c) (1) It is unlawful for a person to use or threaten to use force, coercion, or intimidation against any person or property, in order to:
 - (A) Cause or attempt to cause an individual to:
 - (i) Join a criminal street gang;
 - (ii) Participate in activities of a criminal street gang;
 - (iii) Remain as a member of a criminal street gang; or
 - (iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state; or

⁸ According to the editor’s note below this statute on Lexis, “Section 209b of D.C. Law 10-257, as added by D.C. Law 18- (Act 18-722), § 11(a), was codified as this section by LexisNexis. If the act section is codified by the Codification Counsel, it may be placed elsewhere in the D.C. Code.”

⁹ Pursuant to D.C. Code § 22-3571.01, if a crime carries a maximum of 6 months of incarceration the proportional maximum fine is \$1,000.

- (B) Retaliate against an individual for a refusal to:
 - (i) Join a criminal street gang;
 - (ii) Participate in activities of a criminal street gang;
 - (iii) Remain as a member of a criminal street gang; or
 - (iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state.
- (2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in [section 101 of the Criminal Fine Proportionality Amendment Act of 2012], or imprisoned for not more than 10 years, or both.
- (d) The penalties under this section are in addition to any other penalties permitted by law.
- (e) For the purposes of this section, the term:
 - (1) “Criminal street gang” means an association or group of 6 or more persons that:
 - (A) Has as a condition of membership or continued membership, the committing of or actively participating in committing a crime of violence, as defined by § 23-1331(4)¹⁰; or
 - (B) Has as one of its purposes or frequent activities, the violation of the criminal laws of the District, or the United States, except for acts of civil disobedience.

....

¹⁰ Pursuant to D.C. Code § 23-1331(4) (Definitions),

The term “crime of violence” means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt or conspiracy to commit any of the foregoing offenses.

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 between soliciting sex acts with an adult and soliciting 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.*

Legal Analysis:

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

D.C. Code § 22-1834 (Sex trafficking of children) can apply to buyers of commercial sex acts with minors following federal precedent through the term “obtain.”¹¹ D.C. Code § 22-1834(a) states that “[i]t is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.”

- 2.1.1 Recommendation: Amend D.C. Code § 22-1834 (Sex trafficking of children) to clarify that buyer conduct is included as a violation of D.C. Code § 22-1834.

¹¹ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

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

A buyer can be charged under D.C. Code § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution). This statute includes the crime of “[c]aus[ing], compel[ing], induc[ing], entic[ing], or procur[ing] or attempt[ing] to cause, compel, induce, entice, or procure any individual: . . . (C) To engage in prostitution.” D.C. Code § 22-2705(a)(2). Although it appears that no cases have applied this statute to buyers, the language is potentially broad enough that it could apply.

To the extent that the CSEC offense under D.C. Code § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution) does not apply to a buyer of sex with a minor, the buyer may also be charged with the age-neutral soliciting offense under D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution), which states in part, “it is unlawful for any person to engage in prostitution or to solicit for prostitution.” D.C. Code § 22-2701(a). A first offense under this statute is punishable by imprisonment up to 90 days, a fine not to exceed \$500, or both. D.C. Code §§ 22-2701(b)(1)(A), 22-3571.01(b)(3). A second offense is punishable by imprisonment up to 180 days, a fine not to exceed \$1,000, or both. D.C. Code §§ 22-3571.01(b)(4), 22-2701(b)(1)(B). Subsequent offenses are punishable by imprisonment up to 2 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-2701(b)(2), 22-3571.01(b)(6).

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

Solicitation laws in D.C. do not differentiate between soliciting sex with an adult and soliciting sex with a minor. D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) is applicable to both those who solicit sex with adults and those who solicit sex with minors, broadly stating, “it is unlawful for any person to engage in prostitution or to solicit for prostitution.” D.C. Code § 22-2701(a).

2.3.1 Recommendation: Amend D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) to differentiate soliciting sex acts with a minor and soliciting sex acts with an adult by providing heightened penalties when the victim is a minor under 18.

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

A buyer convicted under D.C. Code § 22-1834(a) (Sex trafficking of children) can receive a sentence of imprisonment up to 20 years, a fine up to \$50,000, or both. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9). Additionally, the buyer could face asset forfeiture and lose “(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and (2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.” D.C. Code §§ 22-1838(a)(1)–(2).

A buyer convicted under D.C. Code § 22-2705(a)(2)(C) (Pandering; inducing or compelling an individual to engage in prostitution), when the victim is a minor under 18, is a felony punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

Buyers convicted for prostitution in spite of the victim being a minor, face up to 90 days, a fine up to \$500, or both for a first conviction under D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution). D.C. Code § 22-2701(b)(1)(A). For a second offense, a buyer can be imprisoned up to 180 days, fined up to \$1,000, or both. D.C. Code §§ 22-2701(b)(1)(B), 22-3571.01(b)(3). If a buyer has 2 or more prior convictions, then the buyer can be sentenced to imprisonment for up to 2 years, fined up to \$12,500, or both. D.C. Code §§ 22-2701(b)(2), 22-3571.01(b)(4). Additionally, a buyer’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.” D.C. Code § 22-2724(a).

In comparison, if the victim is under the age of 14, a conviction under the TVPA¹² 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 offense¹³ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,¹⁴ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.¹⁵

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.*

No statute specifically criminalizes using the Internet for purchasing commercial sex acts. However, D.C. Code § 22-3010 (Enticing a child or minor) could potentially apply to these crimes. That section states in part,

- (a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor,
 - (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 [Sexual abuse in the first through fourth degrees and Misdemeanor sexual abuse] and 22-3008 to 22-3009.02 [First degree child sexual abuse, Second degree child sexual abuse, First degree sexual abuse of a minor, Second degree sexual abuse of a minor], or
 - (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01¹⁶, or both.
- (b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts
 - (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or
 - (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned

¹² Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

¹³ 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).

¹⁴ 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).

¹⁵ 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), 2252b) (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).

¹⁶ Pursuant to D.C. Code § 22-3571.01, if a crime carries a maximum of 5 years of incarceration the proportional maximum fine is \$12,500.

for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01¹⁷, or both.

.....

Additionally, using the Internet to purchase commercial sex acts could potentially be charged under D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child). D.C. Code § 22-3010.02(a) states,

It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

If guilty of violating this statute, a person faces imprisonment up to 5 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-3010.02(b), 22-3571.01(b)(6).

2.5.1 Recommendation: Amend D.C. Code § 22-3010 (Enticing a child or minor) and § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child) to specifically criminalize using the Internet to lure, entice, recruit, or purchase commercial sex acts with a minor under 18 and include enhanced penalties for the same.

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

D.C. Code § 22-1834 (Sex trafficking of children) requires that the defendant committed the crime “knowing or in reckless disregard of the fact that the person has not attained the age of 18 years,” and “[i]n a prosecution under subsection (a) of this section in which the defendant had a reasonable opportunity to observe the person recruited, enticed, harbored, transported, provided, obtained, or maintained, the government need not prove that the defendant knew that the person had not attained the age of 18 years.” D.C. Code § 22-1834(a). This leaves open an argument by the defendant that he was merely negligent regarding the victim’s age.

Additionally, § 22-2705(a)(2) (Pandering; inducing or compelling an individual to engage in prostitution) does not mention a mistake of age defense.

2.6.1 Recommendation: Amend D.C. Code § 22-1834 (Sex trafficking of children) to expressly prohibit a mistake of age defense, regardless of actual knowledge, in prosecutions of child sex trafficking and CSEC offenses.

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

District of Columbia’s buyer-applicable trafficking and CSEC laws do not stagger penalties based on a minor’s age and provide sufficiently high penalties. D.C. Code § 22-1834(a) (Sex trafficking of children) and § 22-2705(a)(2) (Pandering; inducing or compelling an individual to engage in prostitution) are punishable by up to 20 years imprisonment. D.C. Code §§ 22-1837(a)(1), 22-2705(c)(2), 22-3571.01(b)(9).

¹⁷ See *supra* note 9.

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

A buyer convicted under D.C. Code § 22-1834(a) (Sex trafficking of children) could receive a fine up to \$50,000. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9). A buyer convicted of sex trafficking of children would also face mandatory criminal asset forfeiture and lose “(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and (2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.” D.C. Code § 22-1838(a). This statute does not provide specific seizure or distribution provisions.

D.C. Code § 22-2705(a)(2) (Pandering; inducing or compelling an individual to engage in prostitution) carries a possible fine not to exceed \$50,000. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

For a first conviction for soliciting a prostitute, a buyer could face a fine up to \$500. D.C. Code § 22-2701(b)(1)(A). For a second offense, the buyer could receive a fine up to \$1,000. D.C. Code § 22-2701(b)(1)(B). Subsequent offenses lead to a possible fine up to \$12,500. D.C. Code § 22-2701(b)(2). Additionally, a buyer’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.” D.C. Code § 22-2724(a).

A buyer’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.” D.C. Code § 22-2724(a). Buyers of commercial sex charged with prostitution offenses may also be subject to discretionary, civil asset forfeiture pursuant to D.C. Code § 22-2723 (Property subject to seizure and forfeiture). Subsection (a) makes the following property subject to forfeiture:

- (1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense; and,
- (2) All money, coins, and currency which are used, or intended for use, in violation of a prostitution-related offense.

Pursuant to D.C. Code § 22-2723(b), “All seizures and forfeitures of property under this section shall be pursuant to the standards and procedures set forth in D.C. Law 20-278 [Civil Asset Forfeiture Amendment Act of 2014]. Pursuant to D.C. Code § 41-301(4) (Definitions),¹⁸ “forfeitable offense” is defined to include “an alleged violation of District law that can give rise to forfeiture pursuant to . . . § 22-2723.”

Under D.C. Code § 41-303 (Seizure; pre-seizure hearings for real property), property may be seized by “judicial order” or “upon the District's determination that there is probable cause to believe that the property is subject to forfeiture.” D.C. Code § 41-303(a)(1), (a)(2).

Disposition of forfeited property is governed by D.C. Code § 41-310, which states,

- (a) When property is declared forfeited pursuant to § 41-305(c) [Contesting forfeiture] or § 41-308 [Forfeiture proceeding], the District shall:
 - (1) Sell property that is not required by law to be destroyed and that is not harmful to the public or dispose of the property in a manner consistent with District law or, consistent with § 41-313, return the property, or the sale proceeds, to the owner;

¹⁸ The Civil Asset Forfeiture Amendment Act of 2014, Act 20-619, has been codified as Title 41, Chapter 3 (Civil Asset Forfeiture).

- (2) Deposit in the General Fund of the District of Columbia any currency and any proceeds from the sale of property pursuant to paragraph (1) of this subsection; and
- (3) Beginning October 1, 2018, deposit in the General Fund of the District of Columbia the currency and sale proceeds received by a District agency from any state or federal agency pursuant to a multiple-jurisdiction or shared forfeiture program.

(b) The law enforcement agency that seized property forfeited under this chapter may not retain the property for its own use or sell it directly or indirectly to an employee of the agency, to a relative of an employee, or to another law enforcement agency; provided, that nothing in this section shall prohibit an employee of the law enforcement agency or relative of an employee of the law enforcement agency from purchasing property offered for sale at a public auction.

Finally, a buyer may be required to pay restitution. D.C. Code § 16-711 (Restitution or reparation) allows the court, at its discretion, to award restitution to victims of any offense. D.C. Code § 16-711 states,

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant's ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

....

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

D.C. Code § 22-3102(b) (Prohibited acts) states, "It shall be unlawful in the District of Columbia for a person, knowing the character and content thereof, to attend, transmit, or possess a sexual performance by a minor."

For a first violation, a person can be sentenced to a fine not to exceed \$25,000, imprisonment not more than 10 years, or both. D.C. Code §§ 22-3103(1), 22-3571.01(b)(7). Subsequent offenses result in a fine not to exceed \$50,000, imprisonment up to 20 years, or both. D.C. Code §§ 22-3103(2), 22-3571.01(b)(9).

In contrast, a federal conviction for possession of images of child sexual exploitation (ICSE)¹⁹ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁰ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²¹

¹⁹ 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).

²⁰ 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).

²¹ 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.

The D.C. sex offender registration law requires registration of those convicted of a range of commercial sexual exploitation laws as buyers of sex with a minor. D.C. Code § 22-4002. Specifically, a “registration offense,” as defined in D.C. Code § 22-4001(8)(C), includes “[a]ny of the following offenses where the victim is a minor: acts proscribed by § 22-1312 (lewd, indecent, or obscene acts), acts proscribed by § 22-2201 (obscenity), acts proscribed by § 22-3102 (sexual performances using minors), acts proscribed by § 22-1901 (incest), acts proscribed by § 22-2001 (kidnapping), and acts proscribed by §§ 22-2701 [Engaging in or soliciting for prostitution], 22-2701.01 [Definitions], 22-2703, 22-2704 [Abducting or enticing child from his or her home for purposes of prostitution; harboring such child], 22-2705 [Pandering; inducing or compelling an individual to engage in prostitution] to 22-2712 [Operating house of prostitution], 22-2713 [Premises occupied for lewdness, assignation, or prostitution declared nuisance] to 22-2720, 22-2722 [Keeping bawdy or disorderly houses] and 22-2723 (prostitution; pandering).” The registration law does not include violations of D.C. Code § 22-1834 (Sex trafficking of children) as a crime requiring sex offender registration.

- 2.10.1 Recommendation: Amend D.C. Code § 22-4001(8)(C) to include a violation of D.C. Code § 22-1834 (Sex trafficking of children) as an offense requiring registration.

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

Legal Analysis:

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

When convicted of violating D.C. Code § 22-1834 (Sex trafficking of children), a trafficker can receive a sentence of imprisonment up to 20 years, a fine up to \$50,000, or both. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9).

A trafficker may also be convicted of D.C. Code § 22-2704 (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child). This statute makes it “unlawful for any person, for purposes of prostitution, to: (1) Persuade, entice, or forcibly abduct a child under 18 years of age from his or her home or usual abode, or from the custody and control of the child’s parents or guardian; or (2) Secrete or harbor any child so persuaded, enticed, or abducted from his or her home or usual abode, or from the custody and control of the child’s parents or guardian.” D.C. Code § 22-2704(a). For violating this statute, a person can receive a prison sentence of not more than 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2704(b), 22-3571.01(b)(9).

Similarly, a trafficker may be charged with violating D.C. Code § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution). D.C. Code § 22-2705 provides enhanced penalties for this crime when the victim is under 18 years of age, imposing a sentence of imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-2705(c)(2), 22-3571.01(b)(9).

A trafficker may also be convicted under D.C. Code § 22-2707 (Procuring; receiving money or other valuable thing for arranging assignation). If the victim is under 18 years of age, then the crime is punishable by imprisonment not to exceed 20 years, a fine up to \$50,000, or both. D.C. Code §§ 22-2707(b)(2), 22-3571.01(b)(9).

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)²² 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 offense²³ against a minor. 18 U.S.C. § 3559(e)(1).

²² See *supra* note 12.

²³ See *supra* note 13.

3.2 *Creating and distributing images of child sexual exploitation carries penalties as high as similar federal offenses.*

Under D.C. Code § 22-3102(a) (Prohibited acts), knowingly creating and promoting images of child sexual exploitation (ICSE) is unlawful. D.C. Code § 22-3102(a) states,

It shall be unlawful in the District of Columbia for a person knowingly to use a minor in a sexual performance or to promote a sexual performance by a minor.

(1) A person is guilty of the use of a minor in a sexual performance if knowing the character and content thereof, he or she employs, authorizes, or induces a person under 18 years of age to engage in a sexual performance or being the parent, legal guardian, or custodian of a minor, he or she consents to the participation by a minor in a sexual performance.

(2) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 18 years of age.

The definition of “promote” includes “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish or distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.” D.C. Code § 22-3101(4).

A first offense of this statute results in imprisonment up to 10 years, a fine not to exceed \$25,000, or both. D.C. Code §§ 22-3103(1), 22-3571.01(b)(7). Second and subsequent offenses result in imprisonment up to 20 years, a fine not to exceed \$50,000, or both. D.C. Code §§ 22-3103(2), 22-3571.01(b)(9).

In contrast, if the victim is under the age of 14, a conviction under the TVPA²⁴ 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 offense²⁵ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of ICSE²⁶ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁷ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²⁸

²⁴ See *supra* note 12.

²⁵ See *supra* note 13.

²⁶ 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3)(B), (4)(A) (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) (Obscene visual representations of the sexual abuse of children).

²⁷ 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) or (a)(3) 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).

²⁸ 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (b)(1), 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 (b)(1), 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).

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.*

No D.C. statute specifically criminalizes using the Internet or an electronic communication to lure or entice a minor to engage in commercial sex acts. While not specific to use of the Internet, D.C. Code § 22-3010.02(a) (Arranging for a sexual contact with a real or fictitious child) could potentially apply to these crimes. It states,

It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

If guilty of this statute, a person will be sentenced to imprisonment not more than 5 years, a fine not to exceed \$12,500, or both. D.C. Code §§ 22-3010.02(b), 22-3571.01(b)(6).

Additionally, D.C. Code § 22-3010 (Enticing a child or minor) could potentially apply to these crimes and states in part,

- (a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor,
 - (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 [Sexual abuse in the first through fourth degrees and Misdemeanor sexual abuse] and 22-3008 to 22-3009.02 [First degree child sexual abuse, Second degree child sexual abuse, First degree sexual abuse of a minor, Second degree sexual abuse of a minor], or
 - (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01, or both.
- (b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts
 - (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or
 - (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01,²⁹ or both.

...

- 3.3.1 Recommendation: Amend D.C. Code § 22-3010.02(a) (Arranging for a sexual contact with a real or fictitious child) and § 22-3010 (Enticing a child or minor) to expressly apply to the conduct of traffickers who use the Internet or other electronic communications to lure, entice, recruit, or sell commercial sex acts with a minor under 18. to expressly apply to use of the Internet or other electronic communication to lure, entice, recruit, or sell commercial sex acts with a minor under 18.

²⁹ D.C. Code § 22-3571.01(6) states that offenses “punishable by imprisonment for 5 years or less but more than one year” may be fined up to, but not more than, \$12,500.

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

A conviction under D.C. Code § 22-1834 (Sex trafficking of children) can result in a fine up to \$50,000. D.C. Code §§ 22-1837(a)(1), 22-3571.01(b)(9). Additionally, a trafficker will face mandatory criminal asset forfeiture for conviction of violating of the human trafficking statute, including D.C. Code § 22-1834 (Sex trafficking of children). Under D.C. Code § 22-1838,

(a) In imposing sentence on any individual or business convicted of a violation of this chapter, the court shall order, in addition to any sentence imposed, that the individual or business shall forfeit to the District of Columbia:

(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and

(2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.

(b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them:

(1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

Other crimes for which traffickers could be charged also carry fines. A court may impose a fine not to exceed \$1,000 for any violation of D.C. Code §§ 22-2710, 22-3571.01(b)(4) (Procuring for house of prostitution), § 22-2711 (Procuring for third persons), and § 22-2712 (Operating house of prostitution). A trafficker could face a fine not to exceed \$50,000 for violating D.C. Code § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution) or § 22-2707 (Procuring; receiving money or other valuable thing for arranging assignation). D.C. Code §§ 22-2705(c)(2), 22-2707(2), 22-3571.01(b)(9).

A trafficker's vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of "[a]ny vehicle used in furtherance of a violation of a prostitution-related offense." D.C. Code § 22-2724(a).

Also, traffickers charged with prostitution offenses may be subject to discretionary, civil asset forfeiture pursuant to D.C. Code § 22-2723 (Property subject to seizure and forfeiture). Subsection (a) makes the following subject to forfeiture:

(1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense; and,

(2) All money, coins, and currency which are used, or intended for use, in violation of a prostitution-related offense.³⁰

Finally, a trafficker may be required to pay restitution. D.C. Code § 16-711 (Restitution or reparation) allows the court, at its discretion, to award restitution to victims of any offense. D.C. Code § 16-711 states,

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the

³⁰ See *supra* Component 2.8 for detailed discussion of asset forfeiture process under D.C. Code Title 41, Chapter 3 (Civil Asset Forfeiture).

defendant's ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

.....

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

The D.C. sex offender registration law requires registration of those convicted of a range of commercial sexual exploitation laws as traffickers of sex with a minor. D.C. Code § 22-4002. Specifically, a “registration offense,” as defined in D.C. Code § 22-4001(8)(C), includes “[a]ny of the following offenses where the victim is a minor: acts proscribed by § 22-1312 (lewd, indecent, or obscene acts), acts proscribed by § 22-2201 (obscenity), acts proscribed by § 22-3102 (sexual performances using minors), acts proscribed by § 22-1901 (incest), acts proscribed by § 22-2001 (kidnapping), and acts proscribed by §§ 22-2701 [Engaging in or soliciting for prostitution], 22-2701.01 [Definitions], 22-2703, 22-2704 [Abducting or enticing child from his or her home for purposes of prostitution; harboring such child], 22-2705 [Pandering; inducing or compelling an individual to engage in prostitution] to 22-2712 [Operating house of prostitution], 22-2713 [Premises occupied for lewdness, assignation, or prostitution declared nuisance] to 22-2720, 22-2722 [Keeping bawdy or disorderly houses] and 22-2723 (prostitution; pandering).” The registration law does not include violations of D.C. Code § 22-1834 (Sex trafficking of children) as a crime requiring sex offender registration.

3.5.1 Recommendation: Amend D.C. Code § 22-4001(8)(C) to include a violation of D.C. Code § 22-1834 (Sex trafficking of children) as an offense requiring registration.

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

Under D.C. Code § 16-2353(a) (Grounds for termination of parent and child relationship), “A judge may enter an order for the termination of the parent and child relationship when the judge finds from the evidence presented, after giving due consideration to the interests of all parties, that the termination is in the best interests of the child.” Under subsection (b), in making his decision, the judge is instructed to consider these factors:

- (1) the child’s need for continuity of care and caretakers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
- (2) the physical, mental and emotional health of all individuals involved to the degree that such affects the welfare of the child, the decisive consideration being the physical, mental and emotional needs of the child;
- (3) the quality of the interaction and interrelationship of the child with his or her parent, siblings, relative, and/or caretakers, including the foster parent;
- (4) to the extent feasible, the child’s opinion of his or her own best interests in the matter; and
- (5) evidence that drug-related activity continues to exist in a child’s home environment after intervention and services have been provided pursuant to section 106(a) of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; § 4-1301.06(a)). Evidence of continued drug-activity shall be given great weight.

D.C. Code § 16-2354(b)(3)(C) outlines the grounds for filing a motion to terminate the parental relationship. Grounds exist if “[a] court of competent jurisdiction has determined that the parent has: (i) Committed murder of a child sibling or another child; (ii) Committed voluntary manslaughter of a child sibling or another child; (iii) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or (iv) Committed a felony assault that has resulted in serious bodily injury to the child who is the subject of the petition, a child sibling, or another child.”

- 3.6.1 Recommendation: Add D.C. Code § 22-1834 (Sex trafficking of children) to the list of crimes constituting grounds enumerated in D.C. Code § 16-2354(b)(3)(C) for petitioning to terminate parental rights.

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.*

Facilitators of human trafficking can be charged under D.C. Code § 22-1836 (Benefitting financially from human trafficking), which states, “It is unlawful for an individual or business knowingly to benefit, financially or by receiving anything of value, from voluntarily participating in a venture which has engaged in any act in violation of § 22-1832 [Forced labor], § 22-1833 [Trafficking in labor or commercial sex acts], § 22-1834 [Sex trafficking of children], or § 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], knowing or in reckless disregard of the fact that the venture has engaged in the violation.” Under D.C. Code § 22-1837(c) (Penalties), “Whoever violates § 22-1836 shall be fined or imprisoned up to the maximum fine or term of imprisonment for a violation of each referenced section.” Additional facilitators could fall under D.C. Code § 22-1834(a), which includes those who “harbor” or “transport . . . by any means a person who will be caused as a result to engage in a commercial sex act”

A facilitator may also be charged under D.C. Code § 22-2711 (Procuring for third persons), which states, “Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of procuring and placing in the charge or custody of another person for sexual intercourse, prostitution, debauchery, or other immoral purposes any individual shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years” Additionally, a fine not exceeding \$12,500 may be imposed in addition to the imprisonment. D.C. Code §§ 22-2711, 22-3571.01(b)(7).

Similarly, a facilitator could also be charged with D.C. Code § 22-2712 (Operating house of prostitution), which criminalizes when an individual knowingly “accept[s], receive[s], lev[ies], or appropriate[s] any money or other valuable thing, without consideration other than the furnishing of a place for prostitution or the servicing of a place for prostitution, from the proceeds or earnings of any individual engaged in prostitution.” If guilty of this crime, a facilitator faces possible imprisonment up to 5 years and a fine not to exceed \$12,500. D.C. Code §§ 22-2712, 22-3571.01(b)(6).

- 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.*

Convicted facilitators are subject to mandatory, criminal asset forfeiture for violating D.C. Code § 22-1836 (Benefitting financially from human trafficking). Under D.C. Code § 22-1838,

(a) In imposing sentence on any individual or business convicted of a violation of this chapter, the court shall order, in addition to any sentence imposed, that the individual or business shall forfeit to the District of Columbia:

- (1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and

- (2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.
- (b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them:
 - (1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.
 - (2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

A facilitator’s vehicle could be impounded under D.C. Code § 22-2724, which allows for impoundment of “[a]ny vehicle used in furtherance of a violation of a prostitution-related offense.” D.C. Code § 22-2724(a). In addition, facilitators of child sex trafficking charged with prostitution offenses may be subject to discretionary, civil asset forfeiture pursuant to D.C. Code § 22-2723 (Property subject to seizure and forfeiture). Subsection (a) makes the following subject to forfeiture:

- (1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense; and,
- (2) All money, coins, and currency which are used, or intended for use, in violation of a prostitution-related offense.³¹

Finally, a facilitator may be required to pay restitution. D.C. Code § 16-711 (Restitution or reparation) allows the court, at its discretion, to award restitution to victims of any offense. D.C. Code § 16-711 states,

- (a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.
 - (b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant’s ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant’s ability to make restitution or reparation.
 - (c) The court shall fix the manner of performing restitution or reparation.
-

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

D.C. does not have a specific sex tourism statute.

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

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

D.C. Code § 22-3102(a)(2) (Prohibited acts) criminalizes knowingly promoting images of child sexual exploitation (ICSE), stating, “A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 18 years of age.” The definition of “promote” includes “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish or distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.” D.C. Code § 22-3101(4). A first

³¹ See *supra* Component 2.8 for detailed discussion of asset forfeiture process under D.C. Code Title 41, Chapter 3 (Civil Asset Forfeiture).

conviction results in a fine up to \$25,000, imprisonment not to exceed 10 years, or both. D.C. Code §§ 22-3103(1), 22-3571.01(b)(9). Second and subsequent offenses result in a fine up to \$50,000, imprisonment up to 20 years, or both. D.C. Code §§ 22-3103(2), 22-3571.01(b)(9).

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 children³².*

D.C. Code § 22-1834 (Sex trafficking of children) includes all commercially exploited children. Under D.C. Code § 22-1834(a), when the victim is a minor, the means of force, fraud, or coercion are not required. In addition, the human trafficking law prohibits the “obtain[ing] . . . by any means a person who will be caused as a result to engage in a commercial sex act . . .” Thus, buying the commercial sex with a minor who is under the age of eighteen constitutes human trafficking. D.C. Code § 22-1834(a). Finally, the offense of human trafficking pursuant D.C. Code § 22-1834(a) does not require that a trafficker or controlling third party be identified. Resultantly, the District of Columbia’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the minor without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. D.C. Code § 22-1834.

- 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.*

D.C. Code § 22-1834 (Sex trafficking of children), § 22-1833 (Trafficking in labor or commercial sex acts), § 22-2704 (Abducting or enticing child from his or her home for purposes of prostitution), and § 22-2705 (Pandering; inducing or compelling an individual to engage in prostitution) are silent regarding a defense based on the willingness of a minor to engage in the commercial sex act.

³² 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 (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).

In contrast, D.C. Code § 22-3011 (Defenses to child sexual abuse and sexual abuse of a minor) specifically prohibits such a defense to prosecutions “under §§ 22-3008 to 22-3010.01 [First and second degree child sexual abuse, first and second degree sexual abuse of a minor, first and second degree sexual abuse of a secondary education student, enticing a child or minor, and misdemeanor sexual abuse of a child or minor], prosecuted alone or in conjunction with charges under § 22-3018 [Attempts to commit sexual offenses] or § 22-403 [Assault with intent to commit any other offense].” D.C. Code § 22-3011(a).

5.2.1 Recommendation: Enact a provision specifically prohibiting a defense to any commercial sexual crime against a minor under 18 based on the minor’s willingness to engage in the sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*³³

D.C. Code § 22-2701 (Engaging in prostitution or soliciting for prostitution) prohibits the criminalization of minors for prostitution offenses, stating,

(a) Except as provided in subsection (d) of this section, it is unlawful for any person to engage in prostitution or to solicit for prostitution.

.....
(d) (1) A child who engages in or offers to engage in a sexual act or sexual contact in return for receiving anything of value shall be immune from prosecution for a violation of subsection (a) of this section.

.....
(3) For the purposes of this subsection, the term “child” means a person who has not attained the age of 18 years.

Additionally, the Metropolitan Police Department must refer such children to appropriate services pursuant to D.C. Code § 22-2701(d)(2), which states,

The Metropolitan Police Department shall refer any child suspected of engaging in or offering to engage in a sexual act or sexual contact in return for receiving anything of value to an organization that provides treatment, housing, or services appropriate for victims of sex trafficking of children under § 22-1834.

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

District of Columbia provides a specific protective response for juvenile sex trafficking victims that directs these victims to service providers while requiring law enforcement to file a report of abuse to child welfare. However, juvenile sex trafficking victims may become system-involved through various access points and encounter different responses. In District of Columbia, a commercially sexually exploited child could fall within multiple categories allowing for intervention, including “delinquent child,” “child in need of supervision,” or “neglected child.”

I. Services through child welfare

Juvenile sex trafficking victims may come to the attention of child welfare through several avenues, including reports of abuse or neglect, law enforcement notifications, and internal screenings.³⁴ Pursuant to D.C. Code §

³³ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

³⁴ See *infra* Components 5.5 and 5.6 for additional discussions of juvenile sex trafficking victims’ access to services through child welfare.

4-1321.02(h) (Persons required to make reports; procedure), law enforcement must report to the Child Family Services Agency if an officer has “any knowledge, information, or suspicion of a child engaging in or offering to engage in a sexual act . . . or sexual contact . . . in return for receiving anything of value.” The Child and Family Services Agency may also identify child victims through internal screenings required under D.C. Code § 4-1303.03e (Behavioral health screening and assessment requirements), which states,

- (a) (1) All children in the custody of the Agency shall, to the extent that it is not inconsistent with a court order, receive a behavioral health screening and, if necessary, a behavioral health assessment within 30 days of initial contact with the Agency or a placement disruption
- (2) As part of the behavioral health screening required by paragraph (1) of this subsection, the Agency shall identify children who are victims of, or who may be at risk for becoming victims of, sex trafficking of children under § 22-1834.
- (b) The Agency shall connect all children who are assessed as being in need of behavioral health care to an appropriate behavioral health service.

A child also may come to the attention of child welfare based on reports from medical personnel, teachers, human trafficking counselors, and related individuals. D.C. 4-1321.02(a), (b). Under D.C. 4-1321.02(e),³⁵

Notwithstanding § 14-307, any person specified in subsection (b) of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been, or is in immediate danger of being, the victim of ‘sexual abuse’ or ‘attempted sexual abuse’ prohibited by Chapter 30 of Title 22; or that the child was assisted, supported, caused, encouraged, commanded, enabled, induced, facilitated, or permitted to become a prostitute, as that term is defined in § 22-2701.01(3) [Definitions]; . . . shall immediately report or have a report made of such knowledge, information, or suspicion to the Metropolitan Police Department or the Child and Family Services Agency.

Based on these reports or other information, D.C. Code § 16-2309(a)(3) (Taking into custody) authorizes these children to be taken into custody “by any employee of the Agency authorized to do so, or a law enforcement officer, when he or she has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary, including when he or she has reasonable grounds to believe that the child is engaging in or offering to engage in a sexual act . . . or sexual contact . . . in return for receiving anything of value.”

Pursuant to D.C. Code § 16-2311(a) (Release or delivery to Family Division), with all reasonable speed, whoever took the child into custody must:

- (1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division . . . ;
- (2) bring a child alleged in need of supervision or delinquent before the Director of Social Services; or
- (3) bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical or evidentiary purposes and may order the child retained at the hospital subject to a further order of the Metropolitan Police Department of the District of Columbia, the Director of the Agency, or the Superior Court of the District of Columbia; or
- (4) bring a child alleged to be a neglected child, or a child alleged to be engaging in or offering to engage in a sexual act . . . or sexual contact . . . in return for receiving anything of value, to the Director of the Agency.

. . . .

³⁵ The text of D.C. Code § 4-1321.02 cited here and elsewhere in this report includes amendments made by the enactment of B 694 (Act A22-0301) during the 2018 Regular Session of the Council of the District of Columbia (effective May 2, 2018).

Pursuant to D.C. Code § 16-2316 (Conduct of hearings; evidence), “[t]he Division shall, without a jury, hear and adjudicate cases involving delinquency, need of supervision, or neglect.”

When a dispositional hearing is held, and after a child is found to be neglected, delinquent, or in need of supervision, the court will determine the actions taken in relation to the child pursuant to D.C. Code § 16-2320 (Disposition of child who is neglected, delinquent, or in need of supervision) and considering the “best interest of the child.” If the court finds that the child is neglected or in need of supervision, the court may decide whether it is in the best interest of the child to, among other things, remain in the custody of the child’s parents or other relatives, enter protective supervision, or transfer custody to an agency responsible for the care of neglected children or a child placement agency. D.C. Code § 16-2320(a).

II. Services through juvenile justice

D.C. Code § 22-2701(d)(1) (Engaging in prostitution or soliciting for prostitution) specifically provides that “[a] child who engages in or offers to engage in a sexual act or sexual contact in return for receiving anything of value shall be immune from prosecution for a violation of [Engaging in prostitution or soliciting for prostitution].” Further, law enforcement must refer juvenile sex trafficking victims to “an organization that provides treatment, housing, or services appropriate for victims of sex trafficking of children” pursuant to D.C. Code § 22-2701(d)(2).

To the extent that juvenile sex trafficking victims are charged with offenses other than prostitution, they could face possible arrest, detention, and adjudication as a delinquent child. However, the Department of Youth Rehabilitation Services may identify child victims in the juvenile justice system on other charges through an assessment required under D.C. Code § 2-1515.04a(a) (Behavioral health screening and assessment requirements), which states,

- (1) All youth in contact with the Department shall, to the extent that it is not inconsistent with a court order, receive a behavioral health screening and, if necessary, a behavioral health assessment within 30 days of initial contact; provided, that the Mayor may, through rulemaking, require that the behavioral health screening and assessment be conducted within fewer than 30 days of the initial contact.
- (2) As part of the behavioral health screening required by paragraph (1) of this subsection, the Department shall identify youth who are victims of, or who may be at risk for becoming victims of, sex trafficking of children under § 22-1834.

Further, diversion may be possible if certain criteria are met. Pursuant to D.C. Code § 16-2305.02 (Preliminary probation conferences; adjustment process), if the Department of Social Services determines a finding of delinquency for a child is not in the best of interest of the child or the public, “. . . the Director of Social Services shall so recommend to the Office of the Corporation Counsel, and the Corporation Counsel shall make a determination of the suitability of the case for adjustment, which may include diversion.” D.C. Code § 16-2305.02(b). To make the determination, the court is to consider:

- (1) The age of the child;
- (2) Whether the conduct allegedly involved:
 -
 - (C) The use or threatened use of violence to compel a person to engage in sexual intercourse, deviant sexual intercourse, or sexual contact;
 -
 - (H) An act which seriously endangered the safety of the child or another person;
 -
- (4) Whether there is a substantial likelihood that the child will not participate in the diversion programs or services developed and recommended by the Social Services Division or cooperate during the adjustment process;

(5) Whether there is a substantial likelihood that in order to adjust the case successfully, the child would require services that could not be administered effectively in less than 6 months;

.....

(7) Whether there is pending another proceeding to determine whether the child is a child in need of supervision or a delinquent;

(8) Whether there have been prior adjustments or adjournments in contemplation of dismissal in other delinquency proceedings;

(9) Whether there has been a prior adjudication of the child as a delinquent child or child in need of supervision;

(10) Whether there is a substantial likelihood that the adjustment process would not be successful unless the child is temporarily removed from his or her home and that such removal could not be accomplished without invoking the court process;

(11) Whether a proceeding has been or will be instituted against another person for acting jointly with the child; and

.....

The adjustment process may include drug testing, parenting classes, and counseling and has an initial period of up to 6 months, and may be extended for an additional 6 months. D.C. Code §§ 16-2305.02(d)(1), (4).

Summary

In District of Columbia, juvenile sex trafficking victims are immune from prosecution for prostitution offenses and may be diverted from the delinquency process for other offenses committed as a result of their trafficking victimization. When encountering a juvenile sex trafficking victim, law enforcement and others must refer the child to child welfare.

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*³⁶

For reporting purposes, child sex trafficking is identified as a form of abuse and neglect. D.C. Code § 4-1301.02³⁷ (Definitions)³⁸ states,

(1) (A) “Abused”, when used in reference to a child means:

(i) Abused as that term is defined in D.C. Official Code § 16-2301(23); or

(ii) Sexual abuse, which shall include sex trafficking or severe forms of trafficking in persons as those terms are defined in section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(10) and (9)(A)).

(B) Nothing in this paragraph shall be construed as preventing or intending to prevent sex trafficking or severe forms of trafficking in persons from being considered a form of sexual abuse for purposes of D.C. Official Code § 16-2301(32).

.....

(15A) “Neglected child” means a child who is a:

(A) Neglected child as that term is defined in D.C. Official Code § 16-2301(9); or

(B) Victim of sex trafficking or severe forms of trafficking in persons as those terms are defined in section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(10) and (9)(A)).

³⁶ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

³⁷ The text of D.C. Code § 4-1302.02 cited here and elsewhere in this report includes amendments made by the enactment of B 694 (Act A22-0301) during the 2018 Regular Session of the Council of the District of Columbia (effective May 2, 2018).

³⁸ Pursuant to Enacted B694, § 5, amendments to D.C. Code § 4-1301.02, which add child sex trafficking to the definition of abuse, are set to expire December 13, 2018.

For purposes of family court proceedings, D.C. Code § 16-2301(23)(A) (Definitions) defines child abuse to include commercial sexual exploitation, stating,

The term “abused”, when used with reference to a child, means:

- (i) infliction of physical or mental injury upon a child;
- (ii) sexual abuse or exploitation of a child; or
- (iii) negligent treatment or maltreatment of a child.

Pursuant to D.C. Code § 16-2301(25), “sexual exploitation” occurs when:

a parent, guardian, or other custodian allows a child to engage in prostitution as defined in . . . [D.C. Code § 22-2701.01(3) (Definitions)], or means a parent, guardian, or other custodian engages a child or allows a child to engage in obscene or pornographic photography, filming, or other forms of illustrating or promoting sexual conduct as defined in . . . (. . . D.C. Code § 22-3101(5) [Definitions--Sexual performances using minors]).

Because the definition of “sexual exploitation” includes both D.C. Code § 22-2701.01(3) (Definitions) [Prostitution; pandering] and § 22-3101(5) (Definitions) [Sexual performances using minors], a child sex trafficking victim may be identified as an abused child, albeit not expressly.

Further, D.C. Code § 16-2301(32) defines “sexual abuse” as

- (A) engaging in, or attempting to engage in, a sexual act or sexual contact with a child;
- (B) causing or attempting to cause a child to engage in sexually explicit conduct; or
- (C) exposing a child to sexually explicit conduct.

Although D.C. Code § 16-2301(32) is not expressly commercial in nature and does not specifically include child sex trafficking, D.C. Code § 4-1301.02(B) states that nothing found within that statute’s definition of abuse should be “construed as preventing or intending to prevent sex trafficking or severe forms of trafficking in persons from being considered a form of sexual abuse for purposes of D.C. Official Code § 16-2301(32).” Accordingly, child sex trafficking victims may also be identified as abused based on the definition of “sexual abuse.”

Finally, D.C. Code § 16-2301(9)(A) defines “neglected child” as a child

- (i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term “reasonable efforts” includes filing a petition for civil protection from intrafamily violence pursuant to § 16-1003;
- (ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;
-
- (v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;
- (vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;
-

5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*

For reporting purposes, the definition of “custodian” or another related term is not a barrier to a sex trafficked child accessing the protection of child welfare because D.C. Code § 4-1301.02 (Definitions) defines abuse to include child sex trafficking without specifying a relationship between the child and the perpetrator of the abuse.³⁹

Similarly, the definition of sexual abuse for purposes of family court proceedings under D.C. Code § 16-2301(32) (Definitions) does not require fault by a parent, guardian, or custodian.⁴⁰ In contrast, the definition of “sexual exploitation” under D.C. Code § 16-2301(23)(A)(ii) requires fault by a parent, guardian, or custodian. “Custodian,” as defined under D.C. Code § 16-2301(12)(A), means

a person or agency, other than a parent or legal guardian: (A) to whom the legal custody of a child has been granted by the order of a court; (B) who is acting in loco parentis;⁴¹ or (C) who is a day care provider or an employee of a residential facility, in the case of the placement of an abused or neglected child.

Based on this definition, the term “custodian” is unlikely to include conduct by non-familial offenders, creating a barrier to child welfare protection and services in cases of sexual exploitation.

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

D.C. Code § 4-501 (Definitions), provides the definitions for the chapter on “compensation of victims of violent crime.” That section defines “victim” for the purposes of crime victims’ compensation to include “a person who suffers personal injury or death in the District of Columbia . . . as a direct result of: (A) A crime; (B) Assisting lawfully to apprehend a person reasonably suspected of committing or attempting to commit a crime; (C) Assisting a person against whom a crime has been committed or attempted, if the assistance was rendered in a reasonable manner; (D) Attempting to prevent the commission of a crime” D.C. Code § 4-501(14). D.C. Code § 4-501(6) defines both “crime of violence” and “crime” in part as “the offense of, or the attempt to commit the offense of . . . sexual abuse, kidnapping, . . . cruelty to children, . . . benefitting financially from human trafficking, using a minor in a sexual performance, promoting a sexual performance by a minor, attending or possessing a sexual performance by a minor, trafficking in labor or commercial sex acts, sex trafficking of children, a felony violation of an act codified in Chapter 27 of Title 22 of the District of Columbia Code, where a person was compelled to engage in prostitution or was a minor These terms include an offense where the perpetrator and victim are members of the same family or household, an offense whether prosecuted under the District of Columbia Code or the United States Code A crime occurs whether or not any person is identified, arrested, prosecuted, or convicted. Unless an application for rehearing, appeal, or petition for certiorari is pending or a new trial or hearing has been ordered, the conviction of a person whose acts gave rise to the claim is conclusive evidence that a crime was committed.”

However, several eligibility requirements might inhibit a domestic minor sex trafficking victim’s ability to receive funds through this program. First, a claim must be filed “within 1 year after the crime occurred or 1 year

³⁹ See *supra* Component 5.5 for substantive provisions of D.C. Code § 4-1301.02.

⁴⁰ See *supra* Component 5.5 for substantive provisions of D.C. Code § 16-2301.

⁴¹ The term “in loco parentis” is not statutorily defined. However, various cases provide definitions for in loco parentis. The District of Columbia Court of Appeals has stated, “The term “*in loco parentis*,” according to its generally accepted common law meaning, refers to a person who has put himself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption. It embodies the two ideas of assuming the parental status and discharging the parental duties.” Fuller v. Fuller, 247 A.2d 767, 770 (D.C. 1968) (quoting Niewiadomski v. United States, 159 F.2d 683, 686 (6th Cir. 1947)).

after learning of the Program with an adequate showing that the delay in learning of the Program was reasonable.” D.C. Code § 4-506(a)(2). Additionally, the crime must be reported to law enforcement “within 7 days of its occurrence,” and “[i]f the crime cannot be reasonably reported within that time period, the crime must be reported within 7 days from the time a report can reasonably be made.” D.C. Code § 4-506(a)(3). Many victims of domestic minor sex trafficking are slow to come forward and thus may become ineligible for crime victims’ compensation due to this requirement. It is possible that “[t]he time limit requirements of this section may be waived for good cause shown, including compelling health or safety concerns.” D.C. Code § 4-506(d). Through this subsection, it may be determined that a domestic minor sex trafficking victim did have good cause for delay, but no clarification exists to guarantee this protection for victims.

Domestic minor sex trafficking victims are specifically protected from disqualification and reductions in awards under D.C. Code § 4-508(a)(1) (Disqualification and reductions), which states “The Court shall not award compensation if the: (1) Claimant knowingly or willingly participated in the commission of the crime which forms the basis for the claim; provided, that a claimant who was a minor and a victim of sex trafficking of children, may be awarded compensation.” Therefore, if the victims meet the other eligibility requirements, their participation in activities such as prostitution will not inhibit their ability to recover funds.

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

Domestic minor sex trafficking victims are protected from the introduction of certain evidence at trial. Pursuant to D.C. Code § 22-1839 (Reputation or opinion evidence),

In a criminal case in which a person is accused of trafficking in commercial sex, as prohibited by § 22-1833, sex trafficking of children, as prohibited by § 22-1834, or benefitting financially from human trafficking, as prohibited by § 22-1836, reputation or opinion evidence of the past sexual behavior of the alleged victim is not admissible. Evidence of an alleged victim’s past sexual behavior other than reputation or opinion evidence also is not admissible, unless such evidence other than reputation or opinion evidence is admitted in accordance with § 22-3022(b), and is constitutionally required to be admitted.

The D.C. Code does not codify additional protections for domestic minor sex trafficking victims or child victims in general, such as the ability to testify via closed circuit television. However, under D.C. Code § 23-1903(d) (Crime victim privacy and security),

In a proceeding in which a child is called to give testimony, on motion by the attorney for the government or the victim’s legal or court-appointed representative, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must be involved with the criminal justice system. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child’s well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child witness.

Though not specific to the trial process, D.C. Code § 4-555.03⁴² (Program applications and certification of participants) allows a trafficking victim to apply for a substitute address if he or she is in fear for his or her safety. D.C. Code §§ 4-555.01(5),⁴³ 4-555.03(d).

⁴² The text of D.C. Code § 4-555.03 cited here and elsewhere in this report includes amendments made by the enactment of B 37 (Act A22-0337) during the 2018 Regular Session of the Council of the District of Columbia (effective July 3, 2018).

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.*

D.C. law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization,⁴⁴ but juvenile records may be sealed after a waiting period. Specifically, juvenile criminal records may be sealed in D.C. after “two years have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervision; and (2) [the juvenile] has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.” D.C. Code § 16-2335(a)(1)(B), (2).

However, D.C. Code § 16-2335(e) states that “any adjudication of delinquency or need of supervision or conviction of a felony subsequent to sealing shall have the effect of nullifying the . . . sealing order.”

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.

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.*

Under D.C. Code § 22-1840, civil remedies are expressly allowed. D.C. Code § 22-1840(a) states,

An individual who is a victim of an offense prohibited by § 22-1832 [Forced labor], § 22-1833 [Trafficking in labor or commercial sex acts], § 22-1834 [Sex trafficking of children], § 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], or § 22-1836 [Benefitting financially from human trafficking] may bring a civil action in the Superior Court of the District of Columbia. 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 a defendant’s acts were willful and malicious.

⁴³ The text of D.C. Code § 4-555.01 cited here and elsewhere in this report includes amendments made by the enactment of B 37 (Act A22-0337) during the 2018 Regular Session of the Council of the District of Columbia (effective July 3, 2018).

⁴⁴ D.C. Code § 16-2335.01(a) (Motion to vacate adjudication or grant a new factfinding hearing on the ground of actual innocence) allows for vacatur but only “on grounds of actual innocence based on new evidence.”

D.C. Code § 16-2335(a) (Sealing of records) allows for vacatur if the court finds:

- (1) (A) a neglected child has reached his majority; or
(B) two years have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervisions; and
- (2) he has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to filing the motion, and no proceeding is pending seeking such conviction or adjudication.

However, “[a]ny adjudication of delinquency or need of supervision or conviction of a felony subsequent to sealing shall have the effect of nullifying the vacating and sealing order.” D.C. Code § 16-2335(e). Accordingly, a delinquency adjudication may still have a negative impact even after being vacated.

In any event, neither D.C. Code § 16-2335.01 nor D.C. Code Ann. § 16-2335 specifically allow child sex trafficking victims to vacate delinquency adjudications related to their victimization.

A domestic minor sex trafficking victim could receive restitution under D.C. Code § 16-711 (Restitution or reparation), which allows the court to award restitution to victims of any offense. D.C. Code § 16-711 states,

- (a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.
- (b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant's ability to make restitution or reparation.
- (c) The court shall fix the manner of performing restitution or reparation.

....

5.10.1 Recommendation: Amend D.C. Code § 16-711 (Restitution or reparation) to require that courts mandate restitution in all cases of minor sex trafficking.

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.*

Regarding civil actions, “[a]ny statute of limitation imposed for the filing of a civil suit under this section shall not begin to run until the plaintiff knew, or reasonably should have known, of any act constituting a violation of § 22-1832 [Forced labor], § 22-1833 [Trafficking in labor or commercial sex acts], § 22-1834 [Sex trafficking of children], § 22-1835 [Unlawful conduct with respect to documents in furtherance of human trafficking], or § 22-1836 [Benefitting financially from human trafficking], or until a minor plaintiff has reached the age of majority, whichever is later.” D.C. Code § 22-1840(b) (Civil action). Additionally, D.C. Code § 22-1840(d) states, “[a] defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action.”

Criminal actions related to domestic minor sex trafficking have a 10 year statute of limitations. D.C. Code § 23-113(a)(3)(H), (J), (K), (L), (M). Furthermore, this statute of limitations does not begin to run until the minor has reached 21. D.C. Code § 23-113(d)(2)(D), (H), (I), (J). D.C. Code § 23-113(a)(3) states, in part,

A prosecution for the following crimes and any offense that is properly joinable with any of the following crimes is barred if not commenced within ten (10) years after it is committed:

....

(H) using a minor in a sexual performance or promoting a sexual performance by a minor (D.C. Official Code § 22-3102);

....

(J) Trafficking in labor or commercial sex and sex trafficking of children as prohibited by [D.C. Official Code §§ 22-1833 and 22-1834], respectively,

(K) Section [D.C. Official Code § 22-2704] [Abducting or enticing child from his or her home for purposes of prostitution; harboring such child];

(L) Section [D.C. Official Code 22-2705] [Pandering; inducing or compelling an individual to engage in prostitution]; and

(M) Sections [D.C. Official Code 22-2706 [Compelling an individual to live life of prostitution against his or her will] and 22-2708] [Causing spouse to live in prostitution].

Additionally, under D.C. Code § 23-113(d)(2),

The period of limitation shall not begin to run until the victim reaches 21 years of age for the following offenses:

- (A) first degree child sexual abuse (§ 22-3008);
- (B) second degree child sexual abuse (§ 22-3009);
- (C) enticing a child for the purpose of committing felony sexual abuse (§ 22-3010);
- (D) using a minor in a sexual performance or promoting a sexual performance by a minor (§ 22-3102);
- (E) incest (§ 22-1901);
- (F) Sections [D.C. Official Code 22-3009.01 and 22-3009.02];
- (G) Section [D.C. Official Code 22-2704];
- (H) Section [D.C. Official Code 22-2705];
- (I) S Section [D.C. Official Code 22-2706], where the victim is a minor; and
- (J) Forced labor, trafficking in labor or commercial sex, sex trafficking of children, and benefitting financially from human trafficking as prohibited by the Human Trafficking Act [D.C. Law 18-239] where the victim is a minor.

Similarly, under D.C. Code § 23-113(d)(5) the statute of limitations is tolled until the victim is no longer in the trafficking situation. D.C. Code § 23-113(d)(5) states, “The period of limitation shall not begin to run for forced labor, trafficking in labor or commercial sex, sex trafficking of children, and benefitting financially from human trafficking until the victim is no longer subject to the means used to obtain or maintain his or her labor or services or commercial sex acts.”

- 5.11.1 Recommendation: Eliminate the statute of limitation applicable to both D.C. Code § 22-1840(b) (Civil action) and D.C. Code § 23-113 (Limitations on actions for criminal violations) for child victims of sex trafficking and commercial sexual exploitation.

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 to investigate buying or selling commercial sex 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 located missing children.*

Legal Analysis:

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

D.C. Code § 22–1842 (Training program) requires human trafficking training for law enforcement officers, social workers, and case workers employed by the Metropolitan Police Department, the Child and Family Services Agency, and the Department of Youth Rehabilitation Services. D.C. Code § 22–1842 states,

- (a) The Metropolitan Police Department (“MPD”), the Child and Family Services Agency (“CFSA”), and the Department of Youth Rehabilitation Services (“DYRS”) shall provide training on human trafficking to:
 - (1) New law enforcement officers, social workers, and case managers; and
 - (2) Current law enforcement officers, social worker employees, and case managers who have not previously received comparable training.
- (b) The training shall be a minimum of 4 hours and shall include:
 - (1) The nature and dimension of human trafficking;
 - (2) The legal rights and remedies available to a victim of human trafficking;
 - (3) The services and facilities available to a victim of human trafficking;
 - (4) The legal duties imposed on a police officer, social worker, or case manager to enforce the provisions of the Sex Trafficking of Children Prevention Amendment Act of 2014 [D.C. Law 20-276], and to offer protection and assistance to a victim of human trafficking;
 - (5) Techniques for determining when a person may be a victim of trafficking;
 - (6) Techniques for handling a human trafficking offense that promotes the safety of the victim; and
 - (7) The particular needs of youth and minor trafficking victims;
- (c) MPD, CFSA, and DYRS shall consult with community organizations that provide training, resources, advocacy, or services to victims of human trafficking for assistance in developing and presenting training on human trafficking.

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

Single party consent for audiotaping in law enforcement investigations is permitted under D.C. law. Under D.C. Code § 23-542 (Interception, disclosure, and use of wire or oral communications prohibited), it is generally illegal for one to intercept wire communications. However, exceptions exist under D.C. Code § 23-542(b), which states, in part,

It shall not be unlawful under this section for—

-
- (2) a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception; or
 - (3) a person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.

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

District of Columbia’s human trafficking and CSEC offenses are not included within the list offenses for which wiretapping is permitted as an investigative tool.

- 6.3.1 Recommendation: Amend D.C. Code § 23-546(c) to allow wiretapping in investigations for the offenses of D.C. Code § 22-1834 (Sex trafficking of children) and § 22-1836 (Benefitting financially from human trafficking).

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

District of Columbia’s trafficking and CSEC laws do not prohibit a defense based on the use of a law enforcement decoy posing as a minor to investigate the solicitation, purchase, or sale of sex with a minor;⁴⁵ however, this defense is prohibited under D.C. Code § 22-3010.02 (Arranging for sexual contact with a real or fictitious child), a non-CSEC, buyer-applicable offense. D.C. Code § 22-3010.02(a) states, in part:

For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

For reasons stated above, the defense would not be available for charges brought against buyers or traffickers through reverse sting operations, which are the most likely situations in which a defendant would try to assert such a defense.

However, a loop hole may remain in D.C. Code § 22-3010.02 (Arranging for sexual contact with a real or fictitious child) and § 22-3010 (Enticing a child) for children who are less than four years younger than the person arranging to engage in sexual act or sexual contact with a child. Both provisions prohibit a defense based on the use of law enforcement decoys when the person arranging a sexual act or sexual contact does so with “an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person.” D.C. Code § 22-3010. Therefore, buyers seeking to engage in the commercial exploitation of a child may not be prohibited from raising a defense related to the use of law enforcement decoy when the real or fictitious child is less than 4 years younger than the buyer.

⁴⁵ See Component 2.1 for more information about buyer-applicable sex trafficking provision D.C. Stat. § 22-1834(a) (Sex Trafficking of Children) and Section 2.2 for more information on buyer-applicable CSEC provision D.C. Stat. § 22-2704(a) (Abducting or enticing a child from his or her home for purposes of prostitution); D.C. Stat. § 22-2705(a) (Pandering, inducing, or compelling an individual to engage in prostitution); and D.C. Stat § 22-2707(a) (Procuring; receiving money or other valuable thing for arranging assignment).

6.4.1 Recommendation: Enact a law that expressly prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor to investigate D.C.'s trafficking and CSEC offenses.

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

No D.C. statute specifically addresses the use of the Internet to investigate buyers and traffickers. D.C. Code § 22-3010.02 (Arranging for a sexual contact with a real or fictitious child) could be utilized potentially although it does not expressly relate to Internet use to arrange for sexual contact.⁴⁶

6.5.1 Recommendation: Amend trafficking in children and CSEC offenses to allow law enforcement to use the Internet or other electronic communications to investigate these offenses, or enact a separate law authorizing use of the Internet for investigations of these offenses.

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

D.C. Code § 4-1323.01 (Missing Persons) creates procedures for reporting by the Child and Family Services Agency of missing children at risk for sex trafficking to the Metropolitan Police Department. In addition, it requires the Metropolitan Police Department to report critically missing children to the National Center for Missing and Exploited Children. Pursuant to D.C. Code § 4-1323.01,

- (a) The Child and Family Services Agency shall file a missing person report with the Metropolitan Police Department ("MPD") for any child in the custody of the Child and Family Services Agency immediately after discovering that the child is missing from the child's home or out-of-home placement.
- (b) A person required to make a report of abuse or neglect under § 4-1321.02(b), may file a missing person report with the MPD.
- (c) The MPD shall immediately report a missing child to the National Center for Missing and Exploited Children if the child has been:
 - (1) Deemed critical missing by the MPD, as defined by MPD General Order 304-03; or
 - (2) Missing for more than 30 days from the date the Child and Family Services Agency filed a missing person report with MPD pursuant to subsection (a) of this section.
- (d) For the purposes of this section, the term "child" means a person who has not attained the age of 18 years.

However, D.C. Code § 4-1323.01 (Missing Persons) does not require law enforcement or any other entity to report when a missing child is located.

6.6.1 Recommendation: Amend D.C. Code § 4-1323.01 (Missing Persons) to require reporting of a missing child who has been located.

⁴⁶ D.C. Code § 22-3010.02, enacted in 2011, currently has no precedent case law to demonstrate applicability to situations involving the Internet.

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