

## 2018 ANALYSIS AND RECOMMENDATIONS

### LOUISIANA

#### FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

##### *Legal Components:*

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*
- 1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*
- 1.3 *Prostitution statutes refer to the sex trafficking statute to acknowledge the intersection of prostitution with trafficking victimization.*
- 1.4 *The state racketeering or gang crimes statute includes sex trafficking or commercial sexual exploitation of children (CSEC) offenses as predicate acts allowing the statute to be used to prosecute child sex trafficking crimes.*

##### *Legal Analysis<sup>1</sup>:*

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*

La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking) states,

A. It shall be unlawful:

- (1) (a) For any person to knowingly recruit, harbor, transport, provide, solicit, receive, isolate, entice, obtain, or maintain the use of another person through fraud, force, or coercion<sup>2</sup> to provide services or labor.

<sup>1</sup> This report includes legislation enacted as of August 1, 2018.

<sup>2</sup> La. Rev. Stat. Ann. § 14:46.2(C)(2) defines “fraud, force, or coercion” to include but not be limited to

- (a) Causing or threatening to cause serious bodily injury.
- (b) Physically restraining or threatening to physically restrain another person.
- (c) Abduction or threatened abduction of an individual.
- (d) The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual.
- (e) The abuse or threatened abuse of law or legal process.

- (b) For any person to knowingly recruit, harbor, transport, provide, solicit, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of twenty-one years for the purpose of engaging in commercial sexual activity regardless of whether the person was recruited, harbored, transported, provided, solicited, sold, purchased, received, isolated, enticed, obtained, or maintained through fraud, force, or coercion. It shall not be a defense to prosecution for a violation of the provisions of this Subparagraph that the person did not know the age of the victim or that the victim consented to the prohibited activity.
- (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.
- (3) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.

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 D. It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, solicited, received, isolated, enticed, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.

A conviction under this statute is ordinarily punishable by imprisonment up to 10 years at hard labor and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:46.2(B)(1).<sup>3</sup> A conviction “when the services include commercial sexual activity<sup>4</sup> or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2)(a). Additionally, for offenders who traffic a child under 21 years of age for commercial sexual services, under La. Rev. Stat. Ann. § 14:46.2(B)(2)(b), “in violation of the provisions of Subparagraph (A)(1)(b) of this Section shall be fined not more than \$50,000, imprisoned at hard labor for not less than 15 years, nor more than 50 years, or both.” Furthermore, when a person commits an offense of trafficking involving a person under 18, the sentence is increased to imprisonment for 5–25 years at hard labor, 5 years of which “shall be without the benefit of parole, probation, or suspension of sentence,” and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

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- (f) The actual or threatened destruction, concealment, removal, confiscation, or possession of any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person.
  - (g) Controlling or threatening to control an individual’s access to a controlled dangerous substance as set forth in R.S. 40:961 et seq.
  - (h) The use of an individual’s physical or mental impairment, where such impairment has substantial adverse effects on the individual’s cognitive or volitional functions.
  - (i) The use of debt bondage or civil or criminal fraud.

<sup>3</sup> Offenders prosecuted under human trafficking, some sexual offenses, or some CSEC statutes are not eligible for waiver of minimum mandatory sentences. La. Code Crim. Proc. art. 890.1 establishes that waiver of minimum mandatory sentences shall not apply to

- .....
- (9) R.S. 14:42 (First degree rape),
  - (10) R.S. 14:42.1 (Second degree rape),
  - (11) R.S. 14:43 (Third degree rape),
  - (12) R.S. 14:43.1 (Sexual battery),
  - (13) R.S. 14:43.2 (Second degree sexual battery),
- .....
- (17) R.S. 14:46.2 (Human trafficking),
  - (18) R.S. 14:46.3 (Trafficking of children for sexual purposes)
- .....

<sup>4</sup> La. Rev. Stat. Ann. § 14:46.2(C)(1) defines “commercial sexual activity” as “any sexual act performed or conducted when anything of value has been given, promised, or received by any person.”

Louisiana has enacted a separate statute making the sex trafficking of children a crime that does not require a showing of force, fraud, or coercion. La. Rev. Stat. Ann. § 14:46.3 (A), (B) (Trafficking of children for sexual purposes) states,

A. It shall be unlawful:

- (1) For any person to knowingly recruit, harbor, transport, provide, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.
- (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section.
- (3) For any parent, legal guardian, or person having custody of a person under the age of eighteen years to knowingly permit or consent to such minor entering into any activity prohibited by the provisions of this Section.
- (4) For any person to knowingly facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.
- (5) For any person to knowingly advertise any of the activities prohibited by this Section.
- (6) For any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section.

B. For purposes of this Section, “commercial sexual activity” means any sexual act performed or conducted when anything of value has been given, promised, or received by any person.

Pursuant to La. Rev. Stat. § 14:46.3(C)(3), “It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, transported, provided, sold, purchased, received, isolated, enticed, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.” A conviction under this statute is ordinarily<sup>5</sup> punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by a possible fine of \$75,000 and imprisonment for 25–50 years at hard labor with no possibility of “probation, parole, or suspension of sentence” for at least 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b). Furthermore, any person who violates any of La. Rev. Stat. Ann. § 14:46.3(A)(1), (2), (4), (5) or (6) who was previously convicted of a sex offense when the victim of the sex offense was under 18, shall be fined up to \$100,000 and shall be imprisoned at hard labor for not less than 50 years or life with no possibility of “probation, parole, or suspension of sentence” for at least 50 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(c).

In addition, a convicted violator of La. Rev. Stat. Ann. § 14:46.3(A)(3) must “serve at least five years of the sentence provided for in subparagraph (D)(1)(a) of this Section without the benefit of probation, parole, or suspension of sentence,” and if the victim is under 14, at least 10 years. La. Rev. Stat. Ann. § 14:46.3(D)(2).

Lastly, pursuant to La. Code Crim. Proc. art. 890.3(A)(1), (C) (Sentencing for crimes of violence), persons convicted of committing or attempting to commit offenses under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) or § 14:46.3 (Trafficking of children for sexual purposes) are considered offenders of “crimes of violence” and, thus, have restricted “eligibility for suspension or deferral of sentence[s] . . .” La. Code Crim. Proc. art. 893(A), (E) (Suspension and deferral of sentence and probation in felony case) further limits any eligibility for sentence suspensions or deferments, stating,

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<sup>5</sup> Pursuant to La. Rev. Stat. Ann. § 14:46.3(D)(2) (Trafficking of children for sexual purposes), “Whoever violates the provisions of Paragraph (A)(3) of this Section shall be required to serve at least five years of the sentence imposed provided for in Subparagraph (D)(1)(a) of this Section without benefit of probation, parole, or suspension of sentence. Whoever violates the provisions of Paragraph (A)(3) when the victim is under the age of fourteen years shall be required to serve at least ten years of the sentence provided for in Subparagraph (D)(1)(b) of this Section without benefit of probation, parole, or suspension of sentence.”

A. . . . .  
(2) The court shall not suspend the sentence of a conviction of an offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 . . . .

. . . . .

E. (1) . . . . .  
(b) The court shall not defer a sentence under this provision for an offense or attempted offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 or that is defined as a sex offense as defined by R.S. 15:541, involving a child under the age of seventeen years . . . . .

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 state laws create separate and specific crimes of commercial sexual exploitation of children:

1. La. Rev. Stat. Ann. § 14:82(C) (Prostitution; definition; penalties; enhancement) states in part,

. . . . .

(4) Whoever commits the crime of prostitution with a person under the age of eighteen years shall be fined not more than fifty thousand dollars, imprisoned at hard labor for not less than fifteen years nor more than fifty years, or both.

(5) Whoever commits the crime of prostitution with a person under the age of fourteen years shall be fined not more than seventy-five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor more than fifty years, or both.

. . . . .

2. La. Rev. Stat. Ann. § 14:82.2<sup>6</sup> (Purchase of commercial sexual activity; penalties) states,

It shall be unlawful for any person to knowingly give, agree to give, or offer to give anything of value to another in order to engage in sexual intercourse<sup>7</sup> with a person who receives or agrees to receive anything of value as compensation for such activity.

A person convicted under La. Rev. Stat. Ann. § 14:82.2 is subject to a fine of \$750, imprisonment up to six months, or both. However, a person who violates La. Rev. Stat. Ann. § 14:82.2 and knows the person “to be under the age of eighteen years, or with a person the offender knows to be a victim of human trafficking as defined by R.S. 14:46.2 or trafficking of children for sexual purposes as defined by R.S. 14:46.3” is subject to imprisonment at hard labor for 15–50 years, a fine of \$3,000–\$50,000, or both. If the offender knows the person is under the age of fourteen years, he is subject to a fine of \$5,000–\$75,000, imprisonment at hard labor 25–50 years, or both. La. Rev. Stat. Ann. § 14:82.2(C)(1), (4), (5).<sup>8</sup>

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<sup>6</sup> The text of La. Rev. Stat. Ann. § 14:82 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 335 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

<sup>7</sup> “For purposes of this Component, ‘sexual intercourse’ means anal, oral, or vaginal intercourse or any other sexual activity constituting a crime pursuant to the laws of this state.” La. Rev. Stat. Ann. § 14:82.2(B).

<sup>8</sup> Further, La. Rev. Stat. Ann. § 14:82(D) requires the court to “order the offender to complete the Buyer Beware Program, as provided for in R.S. 15:243, to educate the offender about the harms, exploitation, and negative effects of prostitution. The court shall impose additional court costs in the amount of [\$200] to defer the costs of the program.”

3. La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses) makes it unlawful “[f]or any person over the age of seventeen to engage in sexual intercourse<sup>9</sup> with any person under the age of eighteen who is practicing prostitution, and there is an age difference of greater than two years between the two persons.” A conviction under this statute is punishable by imprisonment for 15–50 years of hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:82.1(D)(1).

4. La. Rev. Stat. Ann. § 14:86(A) (Enticing persons into prostitution) states,

Enticing persons into prostitution is committed when any person over the age of seventeen entices, places, persuades, encourages, or causes the entrance of any other person under the age of twenty-one into the practice of prostitution, either by force, threats, promises, or by any other device or scheme . . . .

A conviction under this statute when the person being enticed is under 18 years is punishable by imprisonment at hard labor for 15–50 years, a possible fine of \$50,000, or both, and if the person being enticed into prostitution is under 14 years, a conviction is punishable by 25–50 years at hard labor, a possible fine of \$75,000, or both. La. Rev. Stat. Ann. § 14:86(B)(1)(b), (c).

5. La. Rev. Stat. Ann. § 14:81.3(A)(1) (Computer-aided solicitation of a minor) states,

Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication,<sup>10</sup> with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct<sup>11</sup> or a crime of violence as defined in R.S. 14:2(B) [Definitions],<sup>12</sup> or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet

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<sup>9</sup> “Sexual intercourse” is defined in La. Rev. Stat. Ann. § 14:82.1(C) as “anal, oral, or vaginal sexual intercourse.”

<sup>10</sup> “Electronic textual communication” is defined in La. Rev. Stat. Ann. § 14:81.3(D)(1) as “a textual communication made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or on-line messaging service.”

<sup>11</sup> “Sexual conduct” is defined in La. Rev. Stat. Ann. § 14:81.3(D)(2) as “actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, lewd exhibition of the genitals, or any lewd or lascivious act.”

<sup>12</sup> La. Rev. Stat. Ann. § 14:2(B) defines a “crime of violence” as

an offense that has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. The following enumerated offenses and attempts to commit any of them are included as “crimes of violence”:

- . . . .
- (9) Aggravated or first degree rape.
- (10) Forcible or second degree rape.
- (11) Simple or third degree rape.
- . . . .
- (42) Trafficking of children for sexual purposes.
- (43) Human trafficking.
- . . . .



attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen.

Subsection (2) states in part that it is a crime for a person as described above to communicate “for the purpose of or with the intent to arrange for any third party to engage in any of the conduct proscribed by the provisions of Paragraph (1) of this Subsection,” and subsection (3) criminalizes the use of electronic textual communication “for the purpose of recruiting, enticing, or coercing” a minor for commercial sexual activity. Subsection (4) ensures that the criminal liability attaches in cases where “the contact or communication is initially made through the use of electronic textual communication and subsequent communication is made through the use of any other form of communication.” La. Rev. Stat. Ann. § 14:81.3(A)(2), (3), (4).

All convictions under La. Rev. Stat. Ann. § 14:81.3(A), unless specifically mentioned below, are punishable by imprisonment at hard labor “without benefit of parole, probation, or suspension of sentence” and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). If the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and, if the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). If the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

6. La. Rev. Stat. Ann. § 14:81.1(A)(2) (Pornography involving juveniles) makes it a crime “for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.” A conviction under La. Rev. Stat. Ann. § 14:81.1(A)(2) is punishable by imprisonment for 5–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence,” and a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:81.1(E)(3).<sup>13</sup> Additionally, it is unlawful “for a person to produce, promote, advertise, distribute, possess, or possess with the intent to distribute pornography involving juveniles” and a conviction is punishable by a possible fine of \$50,000 and 5–20 years imprisonment at hard labor “without the benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(A)(1), (E)(1)(a), (2)(a), (4). A subsequent conviction for the intentional possession of, distribution of, or intent to distribute images of child sexual exploitation (ICSE) shall result in a possible fine of \$75,000 and 10–40 years imprisonment at hard labor “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(1)(b), (2)(b).
7. La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) provides, “Crime against nature by solicitation is the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation.” Pursuant to La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), “Whoever violates the provisions of this Section, when the person being solicited is under the age of eighteen years,” shall be fined not more than \$50,000, imprisoned at hard labor for 15–50 years, or both, and when the person being solicited is under the age of 14 years a conviction is subject to a possible fine of \$75,000, 25–50 years imprisonment at hard labor, or both and “[t]wenty-five years of

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<sup>13</sup> The text of La. Rev. Stat. Ann. § 14:81.1 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 237 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:89.2(B)(2), (3).

8. La. Rev. Stat. Ann. § 14:83.2 (Promoting prostitution) is “the knowing and willful control of, supervision of, or management of an enterprise for profit in which customers are charged a fee for services which include prostitution, regardless of what portion of the fee is actually for the prostitution services.” A conviction under La. Rev. Stat. Ann. § 14:83.2 is punishable by a fine not to exceed \$50,000, 15–50 years imprisonment at hard labor, or both when prostitution of a person under 18 is involved, and an offender faces a fine not to exceed \$75,000, 25–50 years imprisonment at hard labor, or both if the person engaged in prostitution is under 14. La. Rev. Stat. Ann. § 14:83.2(B)(2), (3).
9. La. Rev. Stat. Ann. § 14:84(A) (Pandering) makes any of the following intentional acts a crime:
  - (1) Enticing, placing, persuading, encouraging, or causing the entrance of any person into the practice of prostitution, either by force, threats, promises, or by any other device or scheme.
  - (2) Maintaining a place where prostitution is habitually practiced,
  - (3) Detaining any person in any place of prostitution by force, threats, promises, or by any other device or scheme,
  - (4) Receiving or accepting by a person as a substantial part of support or maintenance anything of value which is known to be from the earnings of any person engaged in prostitution,
  - (5) Consenting, on the part of any parent or tutor of any person, to the person's entrance or detention in the practice of prostitution,
  - (6) Transporting any person from one place to another for the purpose of promoting the practice of prostitution.

Whoever commits the crime of pandering involving the prostitution of persons under the age of 18 shall be fined up to \$50,000, imprisoned at hard labor for 15–50 years, or both. Additionally, whoever commits the crime of pandering involving a person under the age of 14 shall be subject to a possible fine of \$75,000 and 25–50 years imprisonment with hard labor, or both. La. Rev. Stat. Ann. § 14:84(B)(2), (3).

10. La. Rev. Stat. Ann. § 14:104(A) (Keeping a disorderly place) is “the intentional maintaining of a place to be habitually used for any illegal purpose.” A person who “commits the crime of keeping a disorderly place for the purpose of prostitution of persons under the age of eighteen” shall be fined not more than \$50,000, imprisoned at hard labor 15–50 years, or both, and if the purpose of the offender is prostitution of persons under 14, the penalty shall be a fine not more than \$75,000, 25–50 years imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:104(B)(2), (3).
11. La. Rev. Stat. Ann. § 14:105(A) (Letting a disorderly place) is the “granting of the right to use any premises knowing that they are to be used as a disorderly place, or allowing the continued use of the premises with such knowledge.” A person who “commits the crime of letting a disorderly place for the purpose of prostitution of persons under the age of eighteen” shall be fined not more than \$50,000, imprisoned at hard labor 15–50 years, or both, and if the purpose of the offender is prostitution of persons under 14, the penalty shall be a fine not more than \$75,000, 25–50 years imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:105(B)(2), (3).

12. La. Rev. Stat. Ann. § 14:83<sup>14</sup> (Soliciting for prostitutes) criminalizes “soliciting, inviting, inducing, directing, or transporting a person to any place with the intention of promoting prostitution.” A conviction, when the person being solicited is under 18, is punishable by a possible fine of \$3,000–\$50,000, 15–50 years imprisonment at hard labor, or both, and when the person being solicited is under 14, a violation is punishable by a possible fine of \$5,000–\$75,000, 25–50 years imprisonment at hard labor, or both. La. Rev. Stat. Ann. § 14:83(B)(2), (3).<sup>15</sup>
13. La. Rev. Stat. Ann. § 14:83.1 (Inciting prostitution) is the unlawful aiding, abetting, or assisting in an enterprise for profit which:
- (1) Customers are charged a fee for services which include prostitution . . . ,
  - (2) When the person knows or when a reasonable person in such a position would know that such aiding, abetting, or assisting is for prostitution, and
  - (3) When the proceeds or profits are to be in any way divided by the prostitute and the person aiding, abetting, or assisting the prostitute.

Whoever commits the crime of inciting prostitution involving the prostitution of persons under the age of 18 years shall be fined not more than \$50,000, imprisoned at hard labor for 15–50 years, or both. Additionally, whoever commits the crime of inciting prostitution involving a person under the age of 14 years shall be subject to a possible fine of \$75,000 and 25–50 years imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:83:1(B)(2), (3).

14. La. Rev. Stat. Ann. § 14:85 (Letting premises for prostitution) makes unlawful “the granting of the right of use or the leasing of any premises, knowing that they are to be used for the practice of prostitution, or allowing the continued use of the premises with such knowledge.” When La. Rev. Stat. Ann. § 14:85 is committed for prostitution of persons under 18, the crime is punishable by a possible fine of \$50,000, 15–50 years imprisoned at hard labor, or both, and when the purpose of the offense is prostitution of a person under 14 years it is punishable by a possible fine of \$75,000, 25–50 years imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:85(B)(2), (3).

15. La. Rev. Stat. Ann. § 14:282(A) (Operation of places of prostitution; prohibited; penalty) states,

No person shall maintain, operate, or knowingly own any place or any conveyance used for the purpose of . . . prostitution, or shall rent or let any place or conveyance to any person with knowledge of or good reason to believe that the lessee intends to use the place or conveyance for the purpose of . . . prostitution or reside in, enter, or remain in any place for the purpose of . . . prostitution.

For a conviction pursuant to La. Rev. Stat. Ann. § 14:282 where the purpose is the prostitution of persons under 18 years of age the penalty is a possible fine of \$50,000, 15–50 years imprisoned at hard labor, or both, and if the person is under 14 years the penalty is a possible fine of \$75,000, 25–50 years imprisoned at hard labor, or both. La. Rev. Stat. Ann. § 14:282(B)(2), (3).

Other laws that may apply in cases of commercial sexual exploitation of a child despite not specifically referring to commercial exchanges include,

<sup>14</sup> The text of La. Rev. Stat. Ann. § 14:83 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 335 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

<sup>15</sup> Further, La. Rev. Stat. Ann. § 14:83(B)(4) requires the court to “order the offender to complete the Buyer Beware Program, as provided for in R.S. 15:243, to educate the offender about the harms, exploitation, and negative effects of prostitution . . . . [T]he court shall impose additional court costs in the amount of [\$200] to defer the costs of the program . . . .”



1. La. Rev. Stat. Ann. § 14:42 (A)(4) (First degree rape) states that first degree rape occurs “where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed . . . [w]hen the victim is under the age of thirteen years. Lack of knowledge of the victim’s age shall not be a defense.” If a capital verdict is sought by the district attorney, a conviction is punishable by “death<sup>16</sup> or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury.” La. Rev. Stat. Ann. § 14:42(D)(2)(a). If a capital verdict is not sought, a conviction is punishable “by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:42(D)(2)(b).

2. Pursuant to La. Rev. Stat. Ann. § 14:43.1 (A) (Sexual battery),

Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when any of the following occur:

- (1) The offender acts without the consent of the victim.
- (2) The victim has not yet attained fifteen years of age and is at least three years younger than the offender.

. . . .<sup>17</sup>

If the victim is 13–14 years old, a conviction under this statute is punishable by imprisonment up to 10 years, “with or without hard labor, without benefit of parole, probation, or suspension of sentence;” however, where the victim is under 13 and the offender is 17 or older, a conviction is punishable by imprisonment for 25–99 years at hard labor, and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:43.1(C)(1), (2).

3. La. Rev. Stat. Ann. § 14:43.3(A) (Oral sexual battery) states,

Oral sexual battery is the intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender, or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim, when any of the following occur:

- (1) The victim, who is not the spouse of the offender, is under the age of fifteen years and is at least three years younger than the offender.

. . . .

If the victim is 13–14 years old, a conviction under this statute is punishable by imprisonment up to 10 years, “with or without hard labor, without benefit of parole, probation, or suspension of

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<sup>16</sup> In *Kennedy v. Louisiana*, 554 U.S. 407, 412 (2008), the Supreme Court held that imposing the death sentence for child rape when the rape does not cause, or is not intended to cause, the child’s death violates the Eighth Amendment’s prohibition on cruel or unusual punishments.

<sup>17</sup> Defendants can also be charged with misdemeanor sexual battery under La. Rev. Stat. Ann. § 43.1.1(A), which states,

Misdemeanor sexual battery is the intentional touching of the breasts or buttocks of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or the intentional touching of the breasts or buttocks of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when the offender acts without the consent of the victim.

sentence;” however, if the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 25–99 years “at hard labor,” and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:43.3(C)(1), (2).

4. La. Rev. Stat. Ann. § 14:89<sup>18</sup> (Crime against nature) makes unlawful “the unnatural carnal copulation by a human being with another of the same sex or opposite sex . . .” and when the person solicited is under 18 years is punishable by a possible fine of \$50,000, 15–50 years imprisonment at hard labor, or both, and when the person solicited is under 14 years is punishable by a possible fine of \$75,000, 25–50 years imprisonment at hard labor, or both. La. Rev. Stat. Ann. § 14:89(B)(2), (3).
5. La. Rev. Stat. Ann. § 14:92(A)(7) (Contributing to the delinquency of juveniles) prohibits “the intentional enticing, aiding, soliciting, or permitting, by anyone over the age of seventeen, of any child under the age of seventeen . . . to . . . (7) [p]erform any sexually immoral act.” A conviction under this statute is punishable by imprisonment up to 2 years, “with or without hard labor,” a possible fine of \$1,000, or both. La. Rev. Stat. Ann. § 14:92(D).
6. La. Rev. Stat. Ann. § 14:80(A) (Felony carnal knowledge of a juvenile) states,

Felony carnal knowledge of a juvenile is committed when:

- (1) A person who is seventeen years of age or older has sexual intercourse,<sup>19</sup> with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater; or
- (2) A person commits a second or subsequent offense of misdemeanor carnal knowledge of a juvenile, or a person who has been convicted one or more times of violating one or more crimes for which the offender is required to register as a sex offender under R.S. 15:542 [Registration of sex offenders and child predators] commits a first offense of misdemeanor carnal knowledge of a juvenile.

A conviction under this statute is punishable by imprisonment up to 10 years, “with or without hard labor,” a possible fine of \$5,000, or both, and “the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.” La. Rev. Stat. Ann. § 14:80(D)(1).

7. La. Rev. Stat. Ann. § 14:80.1(A) (Misdemeanor carnal knowledge of a juvenile) states,

Misdemeanor carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender, and when the difference between the age of the victim and age of the offender is greater than two years, but less than four years.

A conviction under this statute is punishable by imprisonment up to 6 months, a possible fine of \$1,000, or both. La. Rev. Stat. Ann. § 14:80.1(D).

8. La. Rev. Stat. Ann. § 14:81(A) (Indecent behavior with juveniles) states,

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<sup>18</sup> The text of La. Rev. Stat. Ann. § 14:89 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 236 during the 2018 Regular Session of the Louisiana Legislature (effective May 25, 2018).

<sup>19</sup> “Sexual intercourse” is defined in La. Rev. Stat. Ann. § 14:80(B) as “anal, oral, or vaginal sexual intercourse.”

Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

- (1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons . . . ; or
- (2) The transmission, delivery or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender . . . .

If the victim is 13–17, a conviction under this statute is punishable by imprisonment up to 7 years, “with or without hard labor,” a possible fine of \$5,000, or both, and “the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.” La. Rev. Stat. Ann. § 14:81(H)(1). If the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 2–25 years at hard labor, at least 2 years of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81(H)(2).

9. La. Rev. Stat. Ann. § 14:106(A) (Obscenity) states, in part,

The crime of obscenity is the intentional:

- (1) Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place open to public view . . . with the intent of arousing sexual desire or which appeals to the prurient interest or is patently offensive.
- (2)(a) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or display of, hard core sexual conduct<sup>20</sup> when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is presented in a patently offensive way; and the conduct taken as a whole lacks serious literary, artistic, political, or scientific value.  
.....
- (5) Solicitation or enticement of an unmarried person under the age of seventeen years to commit any act prohibited by Paragraphs (1), (2), or (3) above.

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<sup>20</sup> Pursuant to La. Rev. Stat. Ann. § 14:106(A)(2)(b), “hard core sexual conduct” is defined as

the public portrayal, for its own sake, and for ensuing commercial gain of:

- (i) Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being; or
- (ii) Masturbation, excretory functions or lewd exhibition, actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples; or
- (iii) Sadomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or in the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed; or
- (iv) Actual, simulated, or animated touching, caressing, or fondling of, or other similar physical contact with a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or
- (v) Actual, simulated, or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured, or marketed for such purpose.

.....

A first conviction is punishable by imprisonment for 6 months–3 years, “with or without hard labor,” a fine of \$1,000–\$2,500, or both. La. Rev. Stat. Ann. 14:106(G)(1). A second conviction is punishable by imprisonment for 6 months–3 years, “with or without hard labor,” a fine of \$2,500–\$5,000, or both. La. Rev. Stat. Ann. 14:106(G)(2). Third and subsequent convictions are punishable by imprisonment for 2–5 years, “with or without hard labor,” a fine of \$5,000–\$10,000, or both. La. Rev. Stat. Ann. 14:106(G)(3). A conviction under subsection 1 or 2 of this statute is punishable by imprisonment for 2–5 years, “with or without hard labor,” but “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000 if committed “with or in the presence of an unmarried person under the age of seventeen years.” La. Rev. Stat. Ann. § 14:106(G)(4).

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

Louisiana’s prostitution statutes, La. Rev. Stat. Ann. § 14:83.3(D) (Prostitution by massage), § 14:83.4(C) (Massage; sexual conduct prohibited), and § 14:82(G) (Prostitution; definition; penalties; enhancement), refer to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) by providing an affirmative defense for minor trafficking victims. Each of these provisions state,

- (1) It shall be an affirmative defense to prosecution for a violation of this Section that, during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes as provided in R.S. 14:46.3(E). Any child determined to be a victim pursuant to the provisions of this Paragraph shall be eligible for specialized serviced for sexually exploited children.
- (2) It shall be an affirmative defense to prosecution for a violation of this Section that, during the time of the alleged commission of the offense, the defendant is determined to be a victim of human trafficking pursuant to the provisions of R.S. 14:46.2(F). Any person determined to be a victim pursuant to the provisions of this Paragraph shall be notified of any treatment or specialized services for sexually exploited persons to the extent that such services are available.

Further, La. Rev. Stat. Ann. § 14:46.2(F) (Human trafficking) establishes an affirmative defense for victims of human trafficking, stating,

- (1) A victim of trafficking involving services that include commercial sexual activity or any sexual contact which constitutes a crime pursuant to the laws of this state shall have an affirmative defense to prosecution for any of the following offenses which were committed as a direct result of being trafficked:
  - (a) R.S. 14:82 (Prostitution)
  - (b) R.S. 14:83.3 (Prostitution by massage)
  - (c) R.S. 14:83.4 (Massage; sexual conduct prohibited)
  - (d) R.S. 14:89 (Crime against nature)
  - (e) R.S. 14:89.2 (Crime against nature by solicitation)

- .....
- (3) Any person determined to be a victim pursuant to the provisions of this Subsection shall be notified of any treatment or specialized services for sexually exploited persons to the extent that such services are available.

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.*

The Louisiana Racketeering Act is codified under Title 15, Chapter 11 of La. Rev. Stat. Ann. Under the act, La. Rev. Stat. Ann. § 15:1353 prohibits the following activities:

A. It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise.

B. It is unlawful for any person, through a pattern of racketeering activity, knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or immovable property.

C. It is unlawful for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.

D. It is unlawful for any person to conspire or attempt to violate any of the provisions of Subsections A, B, or C of this Section.

Racketeering Activity is defined under La. Rev. Stat. Ann. § 15:1352(A) (Definitions) as “committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is punishable under the [select listed] provisions of Title 14 of the Louisiana Revised Statutes of 1950, the Uniform Controlled Dangerous Substances Law, or the Louisiana Securities Law . . . .” Notably, the CSEC offenses listed as racketeering activity under this definition are La. Rev. Stat. Ann. § 14:84 (Pandering), § 14:46.2 (Human trafficking), § 14:46.3 (Trafficking of children for sexual purposes), § 14:286 (Sale of minor children), § 14:81.1 (Pornography involving juveniles), § 14:81.3 (Computer-aided solicitation of a minor), § 14:82.1 (Prostitution; persons under eighteen; additional offenses), § 14:83 (Soliciting for prostitutes), § 14:83.1 (Inciting prostitution), § 14:83.2 (Promoting prostitution), § 14:85 (Letting premises for prostitution), § 14:86 (Enticing persons into prostitution), § 14:104 (Keeping a disorderly place), § 14:105 (Letting a disorderly place), and § 14:282 (Operation of places of prostitution; prohibited; penalty).

Racketeering is punishable under the act by imprisonment up to 50 years at hard labor, a possible fine of \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred,” or both. La. Rev. Stat. Ann. § 15:1354(a).



**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.*

La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) applies to buyers by making it illegal for a person to “knowingly . . . purchase, receive . . . entice, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”<sup>21</sup>

In addition, La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking) can apply to buyers of sex with minors through the terms, “purchase, receive, . . . [and] entice,” as well as through the term “obtain,” following federal precedent.<sup>22</sup> La. Rev. Stat. Ann. § 14:46.2(A) states in part, “It shall be unlawful:

<sup>21</sup> See *supra* Component 1.1 for a full description of the relevant provisions of La. Rev. Stat. Ann. § 14:46.3.

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

- (1) (a) For any person to knowingly recruit, harbor, transport, provide, solicit, receive, isolate, entice, obtain, or maintain the use of another person through fraud, force, or coercion<sup>23</sup> to provide services or labor.
- (b) For any person to knowingly recruit, harbor, transport, provide, solicit, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of twenty-one years for the purpose of engaging in commercial sexual activity regardless of whether the person was recruited, harbored, transported, provided, solicited, sold, purchased, received, isolated, enticed, obtained, or maintained through fraud, force, or coercion. It shall not be a defense to prosecution for a violation of the provisions of this Subparagraph that the person did not know the age of the victim or that the victim consented to the prohibited activity.
- (2) For any person to knowingly benefit from activity prohibited by the provisions of this Section<sup>24</sup> . . . .

Resultantly, buyers may be offenders under both trafficking statutes, La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of child for sexual purposes) and § 14:46.2(A)(1)(b) (Human trafficking) when a buyer knowingly entices, solicits, purchases, obtains, or maintains a minor for the purposes of commercial sex acts.

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

Louisiana CSEC laws clearly identify the crime of buying sex acts with a minor under 18. La. Rev. Stat. Ann. § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses) makes it a crime “[f]or any person over the age of seventeen to engage in sexual intercourse with any person under the age of eighteen who is practicing prostitution, and there is an age difference of greater than two years between the two persons.” A conviction under this statute is punishable by imprisonment at hard labor for 15–50 years, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:82.1(A)(1), (D)(1). Furthermore, a person who violates La. Rev. Stat. Ann. § 14:82.1(A)(1) when the person practicing prostitution is under 14 shall be fined up to \$75,000, imprisoned at hard labor 25–50 years, or both. “Twenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:82.1(D)(2).

La. Rev. Stat. Ann. § 14:82(C)(4), (5) (Prostitution; definition; penalties; enhancement) makes it a crime for a person to commit “the crime of prostitution with a person under the age of eighteen [or fourteen] years.” When this offense is committed with a person under 18, the buyer “shall be fined not more than fifty thousand dollars, imprisoned at hard labor for not less than fifteen years nor more than fifty years, or both,” and when the offense is committed with a person under 14, a buyer “shall be fined not more than seventy-five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor more than fifty years, or both.”

Additionally, La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation) includes the crime of buying oral or anal sex with a minor, making “the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation” a crime. When the individual solicited is under 18, the crime is punishable by a fine not to exceed \$50,000, 15–50 years imprisonment at hard labor, or both, and if these offenses are committed with an individual under 14, the crime is punishable by a fine not to exceed \$75,000, 25–50 years imprisonment at hard labor, or both, and “[t]wenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), (b).

La. Rev. Stat. Ann. § 14:82.2 (Purchase of commercial sexual activity; penalties) makes it unlawful to give anything of value in exchange for sexual intercourse with a person who receives compensation for sexual intercourse. A person convicted under La. Rev. Stat. Ann. § 14:82.2 is subject to a fine of \$750, imprisonment up to six months, or both. However, a person who violates La. Rev. Stat. Ann. § 14:82.2 and knows the person

<sup>23</sup> See *supra* note 2.

<sup>24</sup> See *supra* Component 1.1 for a full description of the relevant provisions of La. Rev. Stat. Ann. § 14:46.2.

“to be under the age of eighteen years, or with a person the offender knows to be a victim of human trafficking as defined by R.S. 14:46.2 or trafficking of children for sexual purposes as defined by R.S. 14:46.3” is subject to imprisonment at hard labor for 15–50 years, a fine of \$3,000–\$50,000, or both. If the offender knows the person is under the age of fourteen years, he is subject to a fine of \$5,000–\$75,000, imprisonment at hard labor 25–50 years, or both. La. Rev. Stat. Ann. § 14:82.2(C)(1), (4), (5).<sup>25</sup>

Where a computer is used, buyers may also be convicted under La. Rev. Stat. Ann. § 14:81.3(A) (Computer-aided solicitation of a minor), which criminalizes using a computer to solicit a minor to engage in sexual acts. Pursuant to La. Rev. Stat. Ann. § 14:81.3(B),

- (1) (a) Whoever violates the provisions of this Section when the victim is thirteen years of age or more but has not attained the age of seventeen shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than ten years, without benefit of parole, probation, or suspension of sentence.
- (b) Whoever violates the provisions of this Section when the victim is under thirteen years of age shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than ten years nor more than twenty years, without benefit of parole, probation, or suspension of sentence.
- (c) Whoever violates the provisions of this Section, when the victim is a person reasonably believed to have not yet attained the age of seventeen, shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than two years nor more than ten years, without benefit of parole, probation, or suspension of sentence.
- (d) If the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater, the offender shall be fined not more than ten thousand dollars and shall be imprisoned, with or without hard labor, for not less than seven years nor more than ten years.
- (2) On a subsequent conviction, the offender shall be imprisoned for not less than ten years nor more than twenty years at hard labor without benefit of parole, probation, or suspension of sentence.

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

Louisiana’s solicitation laws distinguish between the crime of soliciting sex with an adult and soliciting sex with a minor by enhancing the penalty when the person solicited is a minor. Pursuant to La. Rev. Stat. Ann. § 14:82(C)(1) (Prostitution; definition; penalties; enhancement), a first conviction for soliciting an adult is punishable by up to 6 months imprisonment, a possible fine of \$500, or both. In contrast, solicitation of a minor under 18 is punishable by imprisonment at hard labor for 15–50 years, a possible fine of \$50,000, or both, and solicitation of a minor under 14 is punishable by imprisonment at hard labor for 25–50 years, a possible fine up to \$75,000, or both. La. Rev. Stat. Ann. § 14:82(C)(4), (5).

Similarly, La. Rev. Stat. Ann. § 14:89.2(B)(3) (Crime against nature by solicitation) provides a penalty of 15–50 years imprisonment at hard labor, a possible fine of \$50,000, or both when these offenses are committed with a minor under 18, and a penalty of imprisonment of 25–50 years of imprisonment at hard labor, a possible fine of \$75,000, or both when the offenses involve a minor under 14. When the minor is under 14, “[t]wenty-five

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<sup>25</sup> Further, La. Rev. Stat. Ann. § 14:82(D) requires the court to “order the offender to complete the Buyer Beware Program, as provided for in R.S. 15:243, to educate the offender about the harms, exploitation, and negative effects of prostitution. The court shall impose additional court costs in the amount of [\$200] to defer the costs of the program.”

*See supra* note 6.

years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), (b).

Additionally, La. Rev. Stat. Ann. § 14:82.2 (Purchase of commercial sexual activity; penalties) establishes that a person convicted for offering or agreeing to give anything of value to engage commercial sexual activity is subject to a fine of \$750, imprisonment up to six months, or both. However, a person who violates La. Rev. Stat. Ann. § 14:82.2 and knows the person “to be under eighteen years, or with a person the offender knows to be a victim of human trafficking as defined by R.S. 14:46.2 or trafficking of children for sexual purposes as defined by R.S. 14:46.3” is subject to imprisonment at hard labor for 15–50 years, a fine of \$3,000–\$50,000, or both. If the offender knows the person is under age 14, he is subject to a fine of \$5,000–\$75,000, imprisonment at hard labor 25–50 years, or both. La. Rev. Stat. Ann. § 14:82.2(C)(1), (4), (5).<sup>26</sup>

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

A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) generally is punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a possible fine of \$75,000, with no eligibility for parole, probation, or suspension of sentence for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b). A conviction under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) “when the services include commercial sexual activity<sup>27</sup> or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Additionally, “whoever commits the crime of ‘human trafficking’ under Subparagraph (A)(1)(b) of this section shall be fined not more than \$50,000, imprisoned at hard labor for not less than 15 years, nor more than 50 years, or both.” La. Rev. Stat. Ann. § 14:46.2(B)(2)(b). Also, a conviction involving a person under 18 is punishable by imprisonment up to 5–25 years at hard labor, “without the benefit of parole, probation, or suspension of sentence” for at least five years, and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Furthermore, pursuant to La. Code Crim. Proc. art. 890.3(A)(1), (C) (Sentencing for crimes of violence), persons convicted of committing or attempting to commit offenses under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) or § 14:46.3 (Trafficking of children for sexual purposes) are considered offenders of “crimes of violence” and, thus, have restricted “eligibility for suspension or deferral of sentence[s] . . . .” La. Code Crim. Proc. art. 893(A), (E) (Suspension and deferral of sentence and probation in felony cases) further limits any sentence suspensions or deferments, stating,

A. . . . .

(2) The court shall not suspend the sentence of a conviction of an offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 . . . .

. . . . .

E. (1) . . . . .

(b) The court shall not defer a sentence under this provision for an offense or attempted offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 or that is defined as a sex offense as defined by R.S. 15:541, involving a child under the age of seventeen years . . . .

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<sup>26</sup> Further, La. Rev. Stat. Ann. § 14:82(D) requires the court to “order the offender to complete the Buyer Beware Program, as provided for in R.S. 15:243, to educate the offender about the harms, exploitation, and negative effects of prostitution. The court shall impose additional court costs in the amount of [\$200] to defer the costs of the program.”

*See supra* note 6.

<sup>27</sup> *See supra* note 4.



Similarly, if prosecuted under the CSEC laws, a conviction under La. Rev. Stat. Ann. § 14:82(C)(4), (5) (Prostitution; definition; penalties; enhancement), § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses), § 14:89(A) (Crime against nature), § 14:82.2 (Purchase of commercial sexual activity; penalties), or § 14:89.2(A) (Crime against nature by solicitation) is punishable by imprisonment at hard labor for 15–50 years, a possible fine up to \$50,000, or both when the minor victim is under 18, and when the minor victim is under 14, a buyer faces 25–50 years imprisonment at hard labor, a fine up to \$75,000, or both. La. Rev. Stat. Ann. §§ 14:82(C)(4), (5), 14:82.1(D)(1), (2), 14:89(B)(2), (3), 14:82.2(C)(4), (5),<sup>28</sup> 14:89.2(B)(3)(a), (b). For offenses under La. Rev. Stat. Ann. §§ 14:89.2 and 14:82.1 that involve a minor victim under 14, “[t]wenty-five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. §§ 14:82.1(D)(2), 14:89.2(B)(3)(b).

A conviction under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) is punishable by imprisonment for 5–10 years and a fine not to exceed \$10,000 if the victim is 13–16 years of age or by imprisonment for 10–20 years and a fine not to exceed \$10,000 if the victim is under 13. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). If the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years and a fine not to exceed \$10,000. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor,” and a fine not to exceed \$10,000. La. Rev. Stat. Ann. § 14:81.3(B)(1)(d).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>29</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>30</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>31</sup>

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<sup>28</sup> See *supra* note 6.

<sup>29</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>30</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>31</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both.) 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a possible fine of \$250,000 for any felony conviction).



Finally, a buyer of commercial sex acts with a minor under La. Rev. Stat. Ann. §15:539.3 will be mandated to pay restitution to the victim. La. Rev. Stat. Ann. § 15:539.3(A) states,

A person convicted of violation of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), . . . R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution) shall be ordered to pay mandatory restitution to the victim.

. . . .

Restitution under this Section shall include any of the following;

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items . . . .

. . . .

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.*

It is a crime in Louisiana to use the Internet to solicit a minor to engage in sex acts. Pursuant to La. Rev. Stat. Ann. § 14:81.3(A) (Computer-aided solicitation of a minor),

- (1) Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication,<sup>32</sup> with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct or a crime of violence as defined in R.S. 14:2(B), or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen.
- (2) It shall also be a violation of the provisions of this Section when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to arrange for any third party to engage in any of the conduct proscribed by the provisions of Paragraph (1) of this Subsection.
- (3) It shall also be a violation of the provisions of this Section when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen, or a person reasonably believed to have not yet attained the age of seventeen, for the purpose of recruiting, enticing, or coercing the person to engage in commercial sexual activity.

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<sup>32</sup> See *supra* note 10.

All convictions under La. Rev. Stat. Ann. § 14:81.3(A), unless specifically mentioned below, are punishable by imprisonment at hard labor that is “without benefit of parole, probation, or suspension of sentence” and are subject to a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). Where the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and where the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). Where the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

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

Louisiana’s human trafficking law expressly prohibits a mistake of age defense for buyers who purchase sex with any person under the age of 21 years. Pursuant to La. Rev. Stat. Ann. § 14:46.2(A)(1)(b) (Human trafficking), states, “It shall not be a defense to prosecution for a violation of the provisions of this Subparagraph that the person did not know the age of the victim . . . .”

Additionally, several of Louisiana’s CSEC offenses and the child sex trafficking law specifically state that no age mistake defense is permitted for a buyer of commercial sex acts with a minor. La. Rev. Stat. Ann. § 14:46.3(C)(2) (Trafficking of children for sexual purposes) and § 14:81.1(D)(1) (Pornography involving juveniles) state, “Lack of knowledge of the victim’s [juvenile’s] age shall not be a defense.” La. Rev. Stat. Ann. § 14:82.1(B)(1) (Prostitution; persons under eighteen; additional offenses) states, “Lack of knowledge of the age of the person practicing prostitution shall not be a defense.” Finally, La. Rev. Stat. Ann. § 14:89.2(D)(2) (Crime against nature by solicitation) provides, “Lack of knowledge of the age of the person being solicited shall not be a defense.”

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

Three of Louisiana’s buyer-applicable offenses stagger penalties based on a minor’s age, but base penalties under these offenses are sufficiently high. The child sex trafficking statute creates a substantial base penalty for the trafficking of minors, including any person under 21 years of age; additionally, an enhanced penalty is established for victims under 14 years of age, paralleling the federal Trafficking Victims Protect Act. La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes). A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) is generally punishable by imprisonment for 15–50 years at hard labor. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a). However, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor. La. Rev. Stat. Ann. § 14:46.3(D)(1)(b). Similarly, the operable statute regarding purchasing oral or anal sex acts with a minor, La. Rev. Stat. Ann. § 14:89.2(A) (Crime against nature by solicitation), punishes convictions by 15–50 years imprisonment at hard labor. If the minor is under 14 years of age, the offense is punishable by 25–50 years imprisonment at hard labor. La. Rev. Stat. Ann. § 14:89.2(B)(3)(a), (b).

Buyers convicted under La. Rev. Stat. Ann. § 14:81.3(A) (Computer-aided solicitation of a minor), which criminalizes using a computer to solicit a minor to engage in a sexual act, face imprisonment for 5–10 years if the victim is 13–16 or 10–20 years imprisonment if the victim is under 13. However, La. Rev. Stat. Ann. § 14:81.3(A) only protects minors who are less than 17 years of age.

Louisiana's other buyer-applicable trafficking and CSEC offenses do not stagger penalties based on a minor's age and provide sufficiently high penalties. If convicted under La. Rev. Stat. Ann. § 14:46.2(A)(1), (2) (Human trafficking) for commercial sex acts with any person under 21 years of age, buyers "shall be . . . imprisoned at hard labor for not less than fifteen years, nor more than fifty years . . ." La. Rev. Stat. Ann. § 14:82 (Prostitution; definition; penalties; enhancement) and § 14:82.1 (Prostitution; persons under eighteen; additional offenses) make offenses involving any minor under 18 punishable by imprisonment for 15–50 years at hard labor.

Another of Louisiana's buyer-applicable CSEC offenses staggers penalties based on the offender's knowledge regarding the victim's age. La. Rev. Stat. Ann. § 14:82.2 (Purchase of commercial sexual activity; penalties) establishes that a person who knows the person "to be under the age of eighteen years, or with a person the offender knows to be a victim of human trafficking as defined by R.S. 14:46.2 or trafficking of children for sexual purposes as defined by R.S. 14:46.3" is subject to imprisonment at hard labor for 15–50 years. However, if the offender knows the person is under the age of fourteen years, he is subject to imprisonment at hard labor 25–50 years. La. Rev. Stat. Ann. § 14:82.2(C)(1), (4), (5).<sup>33</sup>

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.*

Various fines ranging from \$500 to \$75,000 are in place for buyers of commercial sex with minors. A conviction under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes) is punishable by a possible fine of \$50,000, or a possible fine of \$75,000 if the victim was under 14. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). Under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking), a sentencing court may add an additional fine of up to \$50,000 if the victim is under 21 years of age. A conviction under La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under eighteen; additional offenses), § 14:82.2 (Purchase of commercial sexual activity; penalties), or § 14:89.2 (Crime against nature by solicitation) also carries a possible fine up to \$50,000 for minors under 18 and \$75,000 for minor under 14. La. Rev. Stat. Ann. §§ 14:82.1(D)(1), (2), 14:82.2(C)(4), (5),<sup>34</sup> 14:89.2(B)(1), (2), (3). Lastly, a conviction under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) is punishable by a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B)(1).

La. Rev. Stat. Ann. § 15:539.2(A) (Exploited children's fund) states, "Any person who is convicted or pleads guilty or nolo contendere to an offense involving trafficking of children for sexual purposes . . ." is required to pay a fine of \$2,000 in addition to other mandatory restitution.

Asset forfeiture provisions also apply to buyers. La. Rev. Stat. Ann. § 14:46.3(D)(3) (Trafficking of children for sexual purposes) provides for criminal, mandatory asset forfeiture in conjunction with a conviction for child sex trafficking, stating,

(a) In addition, the court shall order that the personal property used in the commission of the offense, or the proceeds of any such conduct, shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney, or otherwise distributed or disposed of, in accordance with R.S. 15:539.1 [Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property].

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media, and currency, instruments, or securities.

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<sup>33</sup> See *supra* note 6.

<sup>34</sup> See *supra* note 6.

Similarly, La. Rev. Stat. Ann. § 14:46.2(B)(4) (Human trafficking) states,

(a) In addition, the court shall order that the personal property used in the commission of the offense, or the proceeds of any such conduct, shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney, or otherwise distributed or disposed of, in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media, and currency, instruments, and securities.

Likewise, La. Rev. Stat. Ann. § 14:84(B)(4)(a) (Pandering), and § 14:82.1(D)(4)(a) (Prostitution; persons under eighteen; additional offenses), provide for mandatory criminal asset forfeiture, both stating in part,

(a) In addition, the court shall order that the personal property used in the commission of the offense, or the proceeds of any such conduct, shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney, or otherwise distributed or disposed of, in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media, and currency, instruments, or securities.

La. Rev. Stat. Ann. § 14:81.3(B)(4)(b) (Computer-aided solicitation of a minor) contains a similar asset forfeiture provision. Further, buyers convicted under La. Rev. Stat. Ann. § 14:81.1 (Pornography involving juveniles) shall have “personal property used in the commission of the offense, or the proceeds of any such conduct, . . . seized and impounded, and after conviction, sold at public sale.” La. Rev. Stat. Ann. § 14:81.1(E)(5)(c).

Distribution of the forfeited property is governed by La. Rev. Stat. Ann. § 15:539.1 (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property), which states,

(A) When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes) . . . R.S. 14:81.1 (pornography involving juveniles) . . . R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83 (soliciting for prostitutes) . . . R.S. 14:84 (pandering) . . . the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public. Any currency, instruments, or securities forfeited shall be distributed or disposed of as provided in this Section.

. . . .  
(E) Notwithstanding Subsection D of this Section, when the currency, instruments, securities, or other property is forfeited pursuant to the provisions of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation

of places of prostitution), the currency, instruments, and securities and proceeds of the public sale or public auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining currency, instruments, securities, or proceeds shall be distributed in the following manner:

- (1) Twenty-five percent to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) Twenty-five percent to the prosecution agency.
- (3) Fifty percent to the Exploited Children's Special Fund pursuant to R.S. 15:538.2.

A buyer of commercial sex acts with a minor under La. Rev. Stat. Ann. §15:539.3 will be mandated to pay restitution to the victim. La. Rev. Stat. Ann. § 15:539.3(A) states;

A person convicted of a violation of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83 (soliciting for prostitutes), . . . R.S. 14:84 (pandering) . . . shall be ordered to pay mandatory restitution to the victim, with the proceeds from property forfeited under R.S. 15:539.1 applied first to payment of restitution, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied . . . . Restitution under this Section shall include any of the following:

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items . . . .

Buyers are also subject to mandatory restitution orders where pecuniary damages can be shown. La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim) provides, "In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose."<sup>35</sup>

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<sup>35</sup> La. Rev. Stat. Ann. § 46:1844(M) (Basic rights for victim and witness) states,

- (1) If the defendant is found guilty, the court or the committee on parole shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the court or the committee on parole may require the defendant to perform community service work in an amount and according to a schedule determined by the court.
- (2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the committee on parole. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.
- (3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.



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

Possessing images of child sexual exploitation (ICSE) is prohibited under La. Rev. Stat. Ann. § 14:81.1(A)(1) (Pornography involving juveniles), which states that “[i]t shall be unlawful for a person to . . . possess . . . pornography involving juveniles.”<sup>36</sup> A conviction under this statute generally is punishable by imprisonment for 5–20 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$50,000; however, if the victim is under 13 and the offender is at least 17, a conviction is punishable by “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment provided,” which also will “be served without benefit of parole, probation, or suspension of sentence,” and under a second conviction for the intentional possession of ICSE, the offender shall be fined up to \$75,000 and imprisoned at hard labor for 10–40 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(1)(a), (b),<sup>37</sup> (E)(5)(a). Convicted offenders also will have any “personal property used in the commission of the offense, or the proceeds of any such conduct, . . . seized and impounded, and after conviction, sold at public sale or public auction by the district attorney, or otherwise distributed or disposed of . . .”<sup>38</sup> La. Rev. Stat. Ann. § 14:81.1(E)(5)(c).

Additionally, La. Rev. Stat. Ann. § 14:73.8(A) (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) states that “[u]nauthorized use of a wireless router system is the accessing or causing to be accessed of any computer, computer system, computer network, or any part thereof via any wireless router system for the purposes of uploading, downloading, or selling of pornography involving juveniles as defined in R.S. 14:81.1[Pornography involving juveniles].”<sup>39</sup> If the victim is 13–17 years old, a violation is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:73.8(C). However, if the victim is under 13, a violation is punishable by imprisonment for 25–99 years at hard labor, to “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(D).

In comparison, a federal conviction for possession of ICSE<sup>40</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>41</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>42</sup>

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<sup>36</sup> “Pornography involving juveniles” is defined in La. Rev. Stat. Ann. § 14:81.1(B)(5) as “any photograph, videotape, film, or other reproduction, whether electronic or otherwise, of any sexual performance involving a child under the age of seventeen.”

<sup>37</sup> See *supra* note 13.

<sup>38</sup> La. Rev. Stat. Ann. § 14:81.1(E)(5)(d) states,

The personal property made subject to seizure and sale pursuant to Subparagraph (c) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media, and currency, instruments, or securities.

<sup>39</sup> La. Rev. Stat. Ann. § 14:73.8(B) defines “wireless router system” as “a device in a wireless local area network that determines the next network point to which a unit of data is routed between an origin and a destination on the Internet.”

<sup>40</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>41</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section

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

Convicted buyers of commercial sex acts with minors and those convicted of possessing images of child sexual exploitation (ICSE) are required to register as sex offenders under La. Rev. Stat. Ann. § 15:542 (Registration of sex offenders and child predators). La. Rev. Stat. Ann. § 15:542(A)(1) states,

The following persons shall be required to register and provide notification as a sex offender or child predator in accordance with the provisions of this Chapter:

(1) Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or any conspiracy to commit either of the following:

(a) A sex offense as defined in R.S. 15:541[Definitions],<sup>43</sup> with the exception of those convicted of felony carnal knowledge of a juvenile as provided in Subsection F of this Section;

(b) A criminal offense against a victim who is a minor as defined in R.S. 15:541.<sup>44</sup>

Therefore, buyers convicted under La. Rev. Stat. Ann. § 14:46.3(A)(1) (Trafficking of children for sexual purposes), § 14:82.1(A)(1) (Prostitution; persons under eighteen; additional offenses), § 14:82.2(C)(4), (5) (Purchase of commercial sexual activity), and § 14:89.2(A) (Crime against nature by solicitation) will be required to register as sex offenders.

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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 possible fine of \$250,000 for any felony conviction).

<sup>42</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a possible fine of \$250,000 for any felony conviction).

<sup>43</sup> La. Rev. Stat. Ann. § 15:541(24)(a) (Definitions) defines “sex offense” as

deferred adjudication, adjudication withheld, or conviction for the perpetration or attempted perpetration of or conspiracy to commit human trafficking when prosecuted under the provisions of R.S. 14:46.2(B)(2), R.S. 14:46.3 (trafficking of children for sexual purposes), . . . R.S. 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S.14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator and student), R.S. 14:82.1 (Prostitution; persons under eighteen), R.S. 14:82.2(C)(4) and (5) (Purchase of commercial sexual activity), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), . . . R.S. 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), . . . R.S. 14:42 (aggravated or first degree rape) . . . committed on or after June 18, 1992 . . .

The text of La. Rev. Stat. Ann. § 15:541 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 236 during the 2018 Regular Session of the Louisiana Legislature (effective May 25, 2018).

<sup>44</sup> La. Rev. Stat. Ann. § 15:541(12)(b), (c) (Definitions) defines “criminal offense against a victim who is a minor” in part as a “conviction for the perpetration or attempted perpetration of or conspiracy to commit . . . (b)(i) A violation of any of the following provisions when the victim is under eighteen years of age: R.S. 14:84(1), (3), (5), or (6) [Pandering], or 86 [Enticing persons into prostitution], or R.S. 23:251(A)(4) [Minors under sixteen; prohibited employments or occupations; penalty—In any illegal, indecent, or immoral exhibition or practice] (ii) A violation of R.S. 14:46.2 when the victim is under twenty-one years of age and (c) a violation of R.S. 14:83 (Soliciting for prostitutes), 83.1 (Inciting prostitution), 83.2 (Promoting prostitution), and 14:282 (Operation of places of prostitution prohibited; penalty) when the prostitution involves persons under the age of 18 years.

Finally, buyers required to register as sex offenders are prohibited from the unlawful use of a social networking websites. La. Rev. Stat. Ann. § 14:91.5(A)(1) (Unlawful use of a social networking website), makes unlawful “the intentional use of a social networking website<sup>45</sup> by a person who is required to register as a sex offender and who was convicted of R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.3 (Computer-aided solicitation of a minor), or R.S. 14:283 (Video voyeurism) or was previously convicted of a sex offense as defined in R.S. 15:541 in which the victim of the sex offense was a minor.”<sup>46</sup> Buyers that “commit the crime of unlawful use of a social networking website” are subject to a possible fine of \$10,000 and imprisonment at hard labor for up to 10 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:91.5(C)(1).

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<sup>45</sup> La. Rev. Stat. Ann. § 14:91.5 (2)(a) defines “social networking website” in part as “an Internet website, the primary purpose of which is facilitating social interaction with other users of the website . . . .”

<sup>46</sup> La. Rev. Stat. Ann. § 15:541(25) (Definitions) defines “sexual offense against a victim who is a minor” in part as a “conviction for the perpetration or attempted perpetration of or conspiracy to commit . . . (d) R.S. 14:81.1 (Pornography involving juveniles, . . . (f) R.S. 14:81.3 (Computer-aided solicitation of a minor), (g) R.S. 14:82.1 (Prostitution; persons under eighteen), (hg) R.S. 14:86 (Enticing minors into prostitution), (i) R.S. 14:84(1), (3), (5), (6) (Pandering), and (j) R.S. 14:83 (Soliciting for prostitutes when the person being solicited for prostitution is under the age of eighteen years), (k) R.S. 14:83.1 (Inciting prostitution when the prostitution involves persons under the age of eighteen years), (l) R.S. 14:83.2 (Promoting prostitution when the prostitution being promoted involves persons under the age of eighteen years), (m) 14:282 (Operation of places of prostitution when the prostitution involves persons under the age of eighteen years), . . . (o) 14:46.2 (Human trafficking when the trafficking involves a person under the age of twenty-one years or when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state.”

**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.

La. Rev. Stat. Ann. § 14:46.3(A) (Trafficking of children for sexual purposes) makes it a crime for a person to “knowingly recruit, harbor, transport, provide, sell, purchase, receive, isolate, entice, obtain, or maintain the use of a person under the age of eighteen years for the purpose of engaging in commercial sexual activity.”<sup>47</sup> A conviction under this statute is punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both; however, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor and a possible fine of \$75,000, with no eligibility for “probation, parole, or suspension of sentence” for the first 25 years. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). Pursuant to La. Rev. Stat. Ann. § 14:46.3(D)(1)(c), “Any person who violates the provisions of Paragraph (A)(1), (2), (4), (5), or (6) of this Section, who was previously convicted of a sex offense as defined in R.S. 15:541 when the victim of the sex offense was under the age of eighteen years, shall be fined not more than one hundred thousand dollars and shall be imprisoned at hard labor for not less than fifty years or for life. At least fifty years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.”

In addition, a trafficker could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking).<sup>48</sup> A conviction “when the services include commercial sexual activity<sup>49</sup> or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2)(a). Furthermore, “Whoever commits the crime of human trafficking” under Subparagraph (A)(1)(b), which includes all victims under 21 years of age, shall be fined no more than \$50,000, imprisoned at hard labor for not less than 15 years, nor more than 50 years, or both. La. Rev. Stat. Ann. § 14:46.2(B)(2)(b). Additionally, a conviction when the victim is under 18 is punishable by imprisonment for 5–25 years at hard labor, “which shall be without the benefit of parole, probation, or suspension of sentence” for 5 years, and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

Pursuant to La. Code Crim. Proc. art. 890.3(A)(1), (C) (Sentencing for crimes of violence), traffickers convicted of committing or attempting to commit offenses under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) or § 14:46.3 (Trafficking of children for sexual purposes) are considered offenders of “crimes of violence” and, thus, have restricted “eligibility for suspension or deferral of sentence[s] . . . .” La. Code Crim. Proc. art. 893(A), (E)

<sup>47</sup> See *supra* Component 1.1 for a full description of the applicable provisions of La. Rev. Stat. Ann. § 14:46.3.

<sup>48</sup> See *supra* Component 1.1 for a full description of the applicable provisions of La. Rev. Stat. Ann. § 14:46.2.

<sup>49</sup> See *supra* note 4.

(Suspension and deferral of sentence and probation in felony cases) further limits any sentence suspensions or deferments, stating,

A. . . . .

(2) The court shall not suspend the sentence of a conviction of an offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 . . . .

. . . . .

E. (1) . . . . .

(b) The court shall not defer a sentence under this provision for an offense or attempted offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 or that is defined as a sex offense as defined by R.S. 15:541, involving a child under the age of seventeen years . . . . .

Traffickers may also be convicted under Louisiana’s CSEC offenses, including La. Rev. Stat. Ann. § 14:86(A) (Enticing persons into prostitution), § 14:282 (Operation of places of prostitution prohibited; penalty), § 14:83.2 (Promoting prostitution), § 14:84 (Pandering), § 14:104 (Keeping a disorderly place), § 14:105 (Letting a disorderly place), § 14:83 (Soliciting for prostitutes), § 14:83.1 (Inciting Prostitution) and § 14:85 (Letting premises for prostitution). These crimes are punishable by imprisonment at hard labor for 15–50 years if the minor victim is under 18 and 25–50 years imprisonment at hard labor if the minor victim is under 14. La. Rev. Stat. Ann. §§ 14:86 (B)(1)(b), (c), 14:282(B)(2), (3), 14:83.2(B)(2), (3), 14:84(B)(2), (3), 14:104(B)(2), (3), 14:105(B)(2), (3), 14:83.1(B)(2), (3), 14:85(B)(2), (3), 14:83(B)(2), (3).<sup>50</sup>

A parent-trafficker may be convicted under La. Rev. Stat. Ann. § 14:81.1(A)(2) (Pornography involving juveniles), which makes it unlawful “for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.” A conviction for violating La. Rev. Stat. Ann. § 14:81.1(A)(2) is punishable by imprisonment for 5–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence,” and a possible fine of \$50,000; however, if the victim is under 13, the parent-trafficker will be punished by “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment [otherwise] provided . . . without benefit of probation, parole, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(3), (E)(5)(a).

Traffickers may also be prosecuted under La. Rev. Stat. Ann. § 14:230(B) (Money laundering; transactions involving proceeds of criminal activity) if they

- (1) Conduct, supervise, or facilitate a financial transaction involving proceeds known to be derived from criminal activity,<sup>51</sup> when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or the control of proceeds known to be derived from such violation or to avoid a transaction reporting requirement under state or federal law.
- (2) Give, sell, transfer, trade, invest, conceal, transport, maintain an interest in, or otherwise make available anything of value known to be for the purpose of committing or furthering the commission of any criminal activity.
- (3) Direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of criminal activity.

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<sup>50</sup> See *supra* note 14.

<sup>51</sup> “Criminal activity” is defined in La. Rev. Stat. Ann. § 14:230(A)(1) as “any offense, including conspiracy and attempt to commit the offense, that is classified as a felony under the laws of this state or the United States or that is punishable by confinement for more than one year under the laws of another state.” Further, a “felony” is defined in La. Rev. Stat. Ann. § 14:2(A)(4) (Definitions) as “any crime for which an offender may be sentenced to death or imprisonment at hard labor.”



- (4) Receive or acquire proceeds derived from any violation of criminal activity, or knowingly or intentionally engage in any transaction that the person knows involves proceeds from any such violations.
- (5) Acquire or maintain an interest in, receive, conceal, possess, transfer, or transport the proceeds of criminal activity.
- (6) Invest, expend, or receive, or offer to invest, expend, or receive, the proceeds of criminal activity.

Because criminal activities include convictions under La. Rev. Stat. Ann. § 14:46.3(A)(1), (2), (4), or (5) (Trafficking of children for sexual purposes), § 14:83.2(A) (Promoting prostitution), and § 14:86(A) (Enticing persons into prostitution), persons convicted would be subject to the provisions of La. Rev. Stat. Ann. § 14:230. Punishments for convictions under La. Rev. Stat. Ann. § 14:230 vary based on the value of the funds derived, invested, spent, or received in the violation. If the value is less than \$3,000, a conviction is punishable by imprisonment up to 6 months, a possible fine of \$1,000, or both; if the value is \$3,000–\$19,999.99, a conviction is punishable by imprisonment for 2–10 years and a possible fine of \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by imprisonment for 2–20 years at hard labor and a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by imprisonment for 2–50 years and a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E).

The Louisiana Racketeering Act, codified at La. Rev. Stat. Ann. Title 15 (Criminal procedure), Chapter 11 (Drug racketeering and related organizations) provides greater financial penalties through criminal fines and civil remedies. La. Rev. Stat. Ann. § 15:1352(A) (Definitions) defines “racketeering activity” as “committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any crime that is punishable under the following provisions of Title 14 of the Louisiana Revised Statutes of 1950: . . . (17) R.S. 14:230 (Money laundering), . . . (47) R.S. 14:46.2 (Human trafficking), (48) R.S. 14:46.3 (Trafficking of children for sexual purposes), . . . (51) R.S. 14:286 (Sale of minor children), (52) R.S. 14:81.1 (Pornography involving juveniles), (53) R.S. 14:81.3 (Computer-aided solicitation of a minor), (54) R.S. 14:82.1 (Prostitution; persons under eighteen; additional offenses), (55) R.S. 14:83 (Soliciting for prostitutes), (56) R.S. 14:83.1 (Inciting prostitution), (57) R.S. 14:83.2 (Promoting prostitution), (58) R.S. 14:85 (Letting premises for prostitution), (59) R.S. 14:86 (Enticing persons into prostitution), (60) R.S. 14:104 (Keeping a disorderly place), (61) R.S. 14:105 (Letting a disorderly place), and (62) R.S. 14:282 (Operation of places of prostitution; prohibited; penalty) . . . .”

La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) states,

- A. It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in immovable property or in the establishment or operation of any enterprise.
- B. It is unlawful for any person, through a pattern of racketeering activity, knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or immovable property.
- C. It is unlawful for any person employed by, or associated with, any enterprise knowingly to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.
- D. It is unlawful for any person to conspire or attempt to violate any of the provisions of Subsections A, B, or C of this Section.

A conviction under La. Rev. Stat. Ann. § 15:1353 is punishable by imprisonment up to 50 years at hard labor, a possible fine of \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred,” or both. La. Rev. Stat. Ann. § 15:1354(A), (B).

Finally, any person convicted of commercial sex acts with a minor under R.S. 15:539.3 will be mandated to pay restitution to the victim. La. Rev. Stat. Ann. § 15:539.3(A) states,

A person convicted of a violation of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), . . . R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution) shall be ordered to pay mandatory restitution to the victim . . . . Restitution under this Section shall include any of the following:

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items . . . .

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

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

La. Rev. Stat. Ann. § 14:81.1(A) (Pornography involving juveniles) states,

- (1) It shall be unlawful for a person to produce,<sup>52</sup> promote, advertise, distribute,<sup>53</sup> possess, or possess with the intent to distribute pornography involving juveniles.
- (2) It shall also be a violation of the provision of this Section for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.

Distributing images of child sexual exploitation (ICSE) is punishable by imprisonment for 5–20 years at hard labor, “without benefit of parole, probation, or suspension of sentence” and a possible fine of \$50,000; however, where the victim is under 13 and the offender is at least 17, the trafficker can be punished by “imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment [otherwise] provided,” and on a second or subsequent conviction for distributing ICSE, the offender shall be

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<sup>52</sup> La. Rev. Stat. Ann. § 14:81.1(B)(6) defines “produce” as “to photograph, videotape, film, or otherwise reproduce pornography involving juveniles, or to solicit, promote, or coerce any child for the purpose of pornography involving juveniles.”

<sup>53</sup> La. Rev. Stat. Ann. § 14:81.1(B)(3) defines “distribute” as “to issue, sell, give, provide, lend, mail, deliver, transfer, transmute, distribute, circulate, or disseminate by any means.”

fined up to \$75,000 and imprisoned at hard labor for 10–40 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(2)(a), (b),<sup>54</sup> (E)(5)(a).

The promotion, advertisement, and production of ICSE is punishable by imprisonment for 10–20 years at hard labor, “without benefit of probation, parole, or suspension of sentence” and a possible fine of \$50,000; however, if the victim is under 13 and the offender is at least 17, the trafficker can be punished by imprisonment for 25–99 years at hard labor, at least 25 of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(4)(a), (E)(5)(b).

Traffickers who sell or upload ICSE using a computer also may be prosecuted under La. Rev. Stat. Ann. § 14:73.8 (Unauthorized use of a wireless router system; pornography involving juveniles; penalty).<sup>55</sup> If the victim is 13–17, a conviction under this statute is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000; however, if the victim is under 13, a conviction is punishable by imprisonment for 25–99 years at hard labor, 25 years of which must “be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(C), (D).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>56</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of ICSE<sup>57</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>58</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>59</sup>

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

It is a crime in Louisiana for a person at least 17 years old to use the Internet to communicate with a minor under 17 who is at least two years younger for the purpose of persuading that person to engage in or arranging for a third party to engage in sex acts (including acts constituting trafficking of children for sexual purposes)

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<sup>54</sup> See *supra* note 13.

<sup>55</sup> See *supra* Component 2.9 for a more complete description of relevant provisions of La. Rev. Stat. Ann. § 14:73.8.

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

<sup>57</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>58</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a possible fine of \$250,000 for any felony conviction).

<sup>59</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a possible fine of \$250,000 for any felony conviction).

under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor).<sup>60</sup> All convictions under La. Rev. Stat. Ann. § 14:81.3, unless specifically mentioned below, are punishable by imprisonment at hard labor that is “without benefit of parole, probation, or suspension of sentence” and are subject to a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). If the victim is 13–16, a conviction is punishable by imprisonment for 5–10 years, and, if the victim is under 13, a conviction is punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(a), (b). If the victim is “reasonably believed to have not yet attained the age of seventeen,” a conviction is punishable by imprisonment for 2–10 years. La. Rev. Stat. Ann. § 14:81.3(B)(1)(c). If “the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five years or greater,” a conviction is punishable by imprisonment for 7–10 years, “with or without hard labor.” La. Rev. Stat. Ann. § 14:81.3(B)(1)(d). Subsequent convictions are punishable by imprisonment for 10–20 years. La. Rev. Stat. Ann. § 14:81.3(B)(2). Finally, for any conviction under La. Rev. Stat. Ann. § 14:81.3(A), the court also may limit or restrict the offender’s “access to the Internet when the Internet was used in the commission of the crime.” La. Rev. Stat. Ann. § 14:81.3(B)(3).

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

Several statutes impose significant financial penalties for trafficking a child for sexual exploitation, including fines, asset forfeiture, restitution, and potential civil damages. A trafficker convicted under La. Rev. Stat. Ann. § 14:46.3(A)(1), (A)(2), (A)(4), or (A)(5) (Trafficking of children for sexual purposes), if the victim is 14–17, may be required to pay a possible fine of \$50,000, and, if the victim is under 14, a trafficker is required to pay a possible fine of \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (1)(b). Pursuant to La. Rev. Stat. Ann. § 14:46.3(D)(1)(c), “Any person who violates the provisions of Paragraph (A)(1), (2), (4), (5), or (6) of this Section, who was previously convicted of a sex offense as defined in R.S. 15:541 when the victim of the sex offense was under the age of eighteen years, shall be fined not more than one hundred thousand dollars.” A trafficker could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking). A conviction “when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” is punishable by a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2)(a). Additionally, “whoever commits the crime of human trafficking” under Subparagraph (A)(1)(b), which includes all victims under 21 years of age, shall be fined no more than \$50,000, imprisoned at hard labor for not less than 15 years, nor more than 50 years, or both. La. Rev. Stat. Ann. § 14:46.2(B)(2)(b). When the victim is under 18, the fine is up to \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3).

A trafficker who produces or distributes images of child sexual exploitation (ICSE) faces a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:81.1(E)(2)(a), (E)(4)(a).<sup>61</sup> A person convicted under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) is subject to a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:81.3(B). A conviction under La. Rev. Stat. Ann. § 14:73.8 (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) is also punishable by a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:73.8(D).

La. Rev. Stat. Ann. § 15:539.2(A) (Exploited children’s fund) states, “Any person who is convicted or pleads guilty or nolo contendere to an offense involving trafficking of children for sexual purposes . . .” will be required to pay a fine of \$2,000 in addition to other mandatory restitution.

Louisiana’s CSEC laws may also subject traffickers to fines. A conviction under La. Rev. Stat. Ann. § 14:83 (Soliciting for prostitutes), § 14:86(A) (Enticing persons into prostitution), § 14:83.2 (Promoting prostitution), § 14:84 (Pandering), or § 14:83.1 (Inciting Prostitution) is punishable by a possible fine up to \$50,000 if the person solicited is under 18 and \$75,000 if the person solicited is under 14. La. Rev. Stat. Ann. §§ 14:83(B)(2),

<sup>60</sup> See *supra* Components 1.2 and 2.5 for more complete descriptions of relevant provisions of La. Rev. Stat. Ann. § 14:81.3.

<sup>61</sup> See *supra* note 13.



(3),<sup>62</sup> 14:86(B)(1)(b), (c), 14:83.2(B)(2), (3), 14:84(B)(2), (3), 14:83:1(B)(2), (3). A conviction under La. Rev. Stat. Ann. § 14:104 (Keeping a disorderly place), § 14:282 (Operation of places of prostitution prohibited; penalty), § 14:105 (Letting a disorderly place), or § 14:85 (Letting premises for prostitution) is punishable by a possible fine of \$50,000 if the purpose of the offense is prostitution of a person under 18 or by a possible fine of \$75,000 if the person is under 14. La. Rev. Stat. Ann. §§ 14:104(B)(2), (3), 14:105(B)(2), (3), 14:282(B)(2), (3), 14:85(B)(2), (3).

Convicted traffickers of certain crimes face asset forfeiture. The “personal property used in the commission of” La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes), “or the proceeds of any such conduct, shall be seized and impounded, and, after conviction, sold at public sale or public auction . . .” La. Rev. Stat. Ann. § 14:46.3(D)(3)(a). Similarly, La. Rev. Stat. Ann. § 14:46.2(B)(4) (Human trafficking) states,

(a) In addition, the court shall order that the personal property used in the commission of the offense, or the proceeds of any such conduct, shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney, or otherwise distributed or disposed of, in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media, and currency, instruments, and securities.

Traffickers convicted under La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution), § 14:83.1 (Inciting prostitution), § 14:83.2 (Promoting prostitution), § 14:84 (Pandering), § 14:85 (Letting premises for prostitution), § 14:104 (Keeping a disorderly place), § 14:105 (Letting a disorderly place), § 14:282 (Operation of places of prostitution prohibited; penalty) or § 14:81.1 (Pornography involving juveniles) are also subject to mandatory, criminal asset forfeiture and shall have any “personal property used in the commission of the offense, or the proceeds of any such conduct, . . . seized and impounded, and after conviction, sold at public sale or public auction . . .” La. Rev. Stat. Ann. §§ 14:86(B)(2), 14:83.1(B)(4)(a), 14:83.2(B)(4)(a), 14:84(B)(4)(a), 14:85(B)(4)(a), 14:104(B)(4)(a), 14:105(B)(4)(a), 14:282(B)(4)(a), 14:81.1(E)(5)(c). La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor) contains a similar asset forfeiture provision.

Distribution of the forfeited property is governed by La. Rev. Stat. Ann. § 15:539.1 (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property), which states,

(A) When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution; prohibited; penalty), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public. Any currency, instruments, or securities forfeited shall be distributed or disposed of as provided in this Section.

. . . .  
(E) Notwithstanding Subsection D of this Section, when the currency, instruments, securities, or other property to be is forfeited is related to human trafficking under pursuant to the provisions of R.S. 14:46.2 or trafficking of children for sexual purposes under (human trafficking), R.S.

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<sup>62</sup> See *supra* note 14.



14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), . . . R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), . . . R.S. 14:85 (letting premises for prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution), the currency, instruments, and securities and proceeds of the public sale or public auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining currency, instruments, securities, or proceeds shall be distributed in the following manner:

- (1) Twenty-five percent to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) Twenty-five percent to the prosecution agency.
- (3) Fifty percent to the Exploited Children’s Special Fund pursuant to R.S. 15:538.2.

Any person convicted of trafficking a minor under La. Rev. Stat. Ann. § 15:539.3 (Mandatory restitution) must pay restitution to the victim. La. Rev. Stat. Ann. § 15:539.3(A) states;

A person convicted of a violation of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), . . . R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution) shall be ordered to pay mandatory restitution to the victim . . . . Restitution under this Section shall include any of the following:

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items . . . .

Fines for convictions under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by a possible fine of \$1,000; if the value is \$3,000–\$19,999.99, a conviction is punishable by a possible fine of \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E). Lastly, those traffickers convicted under La. Rev. Stat. Ann. § 15:1353 (Prohibited activities) may be required to pay a possible fine of \$1,000,000 or up to “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred.” La. Rev. Stat. Ann. § 15:1354(A), (B).

To the extent that a victim suffers “an actual pecuniary loss” or incurs costs “in connection with a criminal prosecution,” a trafficker will also be subject to a mandatory order of restitution to the victim pursuant to La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim).<sup>63</sup>

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

Traffickers convicted under Louisiana’s human trafficking and CSEC laws, along with those convicted of creating or distributing images of child sexual exploitation (ICSE), are required to register as sex offenders under La. Rev. Stat. Ann. § 15:542 (Registration of sex offenders and child predators). La. Rev. Stat. Ann. § 15:542(A)(1) states,

The following persons shall be required to register and provide notification as a sex offender or child predator in accordance with the provisions of this Chapter:

(1) Any adult residing in this state who has pled guilty to, has been convicted of, or where adjudication has been deferred or withheld for the perpetration or attempted perpetration of, or any conspiracy to commit either of the following:

(a) A sex offense as defined in R.S. 15:541 [Definitions], with the exception of those convicted of felony carnal knowledge of a juvenile as provided in Subsection F of this Section;

(b) A criminal offense against a victim who is a minor as defined in R.S. 15:541.

Therefore, traffickers convicted under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking), § 14:46.3 (Trafficking of children for sexual purposes), § 14:81.1 (Pornography involving juveniles), § 14:81.3 (Computer-aided solicitation of a minor), § 14:86(A) (Enticing persons into prostitution), § 14:83.2 (Promoting prostitution), § 14:83 (Soliciting for prostitutes), § 14:83.1 (Inciting prostitution), § 14:84 (Pandering), or § 14:282 (Operation of places of prostitution prohibited; penalty) will be required to register as required in La. Rev. Stat. Ann. § 15:542 (Registration of sex offenders and child predators). La. Rev. Stat. Ann. §§ 15:541(12), (24), (25), 15:542(A)(1).

Additionally, traffickers required to register as sex offenders are prohibited from the unlawful use of a social networking websites. La. Rev. Stat. Ann. § 14:91.5(A)(1) (Unlawful use of a social networking website), makes unlawful “the intentional use of a social networking website<sup>64</sup> by a person who is required to register as a sex offender and who was convicted of R.S. 14:81 (Indecent behavior with juveniles), R.S. 14:81.1 (Pornography involving juveniles), R.S. 14:81.3 (Computer-aided solicitation of a minor), or R.S. 14:283 (Video voyeurism) or was previously convicted of a sex offense as defined in R.S. 15:541 in which the victim of the sex offense was a minor.”<sup>65</sup> Traffickers that “commit the crime of unlawful use of a social networking website” are subject to a possible fine of \$10,000 and imprisonment at hard labor for up to 10 years “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:91.5(C)(1).

### 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.*

Convictions under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking), § 14:46.3(A)(1), (2), (4), or (5) (Trafficking of children for sexual purposes), or any of Louisiana’s CSEC laws are expressly provided as

<sup>63</sup> See *infra* Component 5.10 for the provisions of La. Code Crim. Proc. Art. 883.2(A) and La. Rev. Stat. Ann. § 46:1844 (Basic rights for victim and witness).

<sup>64</sup> See *supra* note 45 for the definition of “social networking website.”

<sup>65</sup> See *supra* note 46 for the definition of “sexual offense against a minor.”

grounds for terminating parental rights under La. Child. Code Ann. art. 1015 (Grounds). The grounds provided in La. Child. Code Ann. art. 1015<sup>66</sup> include, in part,

.....

(3) Conviction of a sex offense as defined in R.S. 15:541 by the natural parent which resulted in the conception of the child.

(4) Misconduct of the parent toward this child or any other child of the parent or any other child in his household which constitutes extreme abuse,<sup>67</sup> cruel and inhuman treatment,<sup>68</sup> or grossly negligent behavior<sup>69</sup> below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit any of the following:

.....

(h) A felony that has resulted in serious bodily injury.<sup>70</sup>

(i) Abuse<sup>71</sup> or neglect<sup>72</sup> which is chronic, life-threatening, or results in gravely disabling physical or psychological injury or disfigurement.

(j) Abuse or neglect after the child is returned to the parent's care and custody while under department supervision, when the child had previously been removed for his safety from the parent pursuant to a disposition judgment in a child in need of care proceeding.

.....

(l) Sexual exploitation or abuse, which shall include, but is not limited to acts which are prohibited by R.S. 14: 43.1 [Sexual battery], 43.2 [Second degree sexual battery], 46.3 [Trafficking of children for sexual purposes], 80 [Felony carnal knowledge of a juvenile], 81 [Indecent behavior with juveniles], 81.1 [Pornography involving juveniles], 81.2 [Molestation of a juvenile], 82.1(A)(2) [Prostitution; persons under eighteen; additional offenses], 89 [Crime against nature] and 89.1 [Aggravated crime against nature].

(m) Human trafficking when sentenced pursuant to the provisions of R.S. 14:46(B)(2) or (3) [Human trafficking].

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<sup>66</sup> The text of La. Child Code Ann. art. 1015 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 326 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

<sup>67</sup> "Extreme abuse" is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>68</sup> "Cruel and inhuman treatment" is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>69</sup> "Grossly negligent behavior" is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>70</sup> "Serious bodily injury" is not defined in La. Child. Code Ann. art. 1003 (Definitions).

<sup>71</sup> "Abuse" is defined in La. Child. Code Ann. art. 1003(1) (Definitions) as

any of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

(a) The infliction or attempted infliction, or, as a result of inadequate supervision, the allowance or toleration of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.

(b) The exploitation or overwork of a child by a parent or any other person.

(c) The involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

<sup>72</sup> "Neglect" is defined in La. Child. Code Ann. art. 1003(10) (Definitions) in part as "the refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired."

In addition, persons who conceive a child as a result of a committing a sex offence may have their parental rights terminated. Pursuant to La. Child. Code Ann. art. 1004(I) (Petition for termination of parental rights; authorization to file),

When a child is conceived as the result of a sex offense as defined in R.S. 15:541, the victim of the sex offense may petition to terminate the rights of the perpetrator of the sex offense. Termination may result in the loss of custody, visitation, contact, and other parental rights of the perpetrator regarding the child, but shall not affect the inheritance rights of the child . . . .

**Legal Components:**

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

La. Rev. Stat. Ann. § 14:46.3(A)(2), (4) (Trafficking of children for sexual purposes) makes it unlawful to “knowingly benefit from” trafficking or “to knowingly facilitate . . . by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.”<sup>73</sup> A conviction under this statute is punishable by imprisonment for 15–50 years at hard labor, a possible fine of \$50,000, or both; however, if the victim is under 14, a conviction is punishable by imprisonment for 25–50 years at hard labor, 25 years of which must be “served without benefit of probation, parole, or suspension of sentence,” and a possible fine of \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b).

In addition, a facilitator could be convicted under La. Rev. Stat. Ann. § 14:46.2(A) (Human trafficking), which makes it unlawful for a person to knowingly “benefit from activity prohibited by the provisions of this Section” or “facilitate any of the activities prohibited by the provisions of this Section by any means, including but not limited to helping, aiding, abetting, or conspiring, regardless of whether a thing of value has been promised to or received by the person.” La. Rev. Stat. Ann. § 14:46.2(A)(2), (3). A conviction “when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” is punishable by imprisonment up to 20 years at hard labor and a possible fine of \$15,000. La. Rev. Stat. Ann. § 14:46.2(B)(2). Additionally, “whoever commits the crime of human trafficking” under Subparagraph (A)(1)(b), which includes all victims under 21 years of age, shall be fined no more than \$50,000, imprisoned at hard labor for not less than 15 years, nor more than 50 years, or both. La. Rev. Stat. Ann. § 14:46.2(B)(2)(b). Additionally, a conviction when the victim is under 18 is punishable by imprisonment for 5–25 years at hard labor, “which shall be without the benefit of parole, probation, or suspension of sentence” for 5 years, and a possible fine of \$25,000. La. Rev. Stat. Ann. § 14:46.2(B)(3). Pursuant to La. Code Crim. Proc. art. 890.3(A)(1), (C) (Sentencing for crimes of violence), facilitators convicted of committing or attempting to commit offenses under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) or § 14:46.3 (Trafficking of children for sexual purposes) are considered offenders of “crimes of violence” and, thus, have restricted “eligibility for suspension or deferral of sentence[s] . . . .” La. Code Crim. Proc. art. 893(A), (E) (Suspension and deferral of sentence and probation in felony cases) further limits any sentence suspensions or deferments, stating,

- A. . . . .
  - (2) The court shall not suspend the sentence of a conviction of an offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 . . . .
  - . . . . .
- E. (1) . . . . .

<sup>73</sup> See *supra* Component 1.1 for the substantive provisions of La. Rev. Stat. Ann. § 14:46.3.



(b) The court shall not defer a sentence under this provision for an offense or attempted offense that is designated in the court minutes as a crime of violence pursuant to Article 890.3 or that is defined as a sex offense as defined by R.S. 15:541, involving a child under the age of seventeen years . . . .

Facilitators also may face penalties for convictions under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity).<sup>74</sup> Punishments under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by imprisonment up to 6 months, a possible fine of \$1,000, or both; if the value is \$3,000–\$19,999.99, a conviction is punishable by imprisonment for 2–10 years and a possible fine of \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by imprisonment for 2–20 years and a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by imprisonment for 2–50 years and a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E).

Finally, facilitators could be convicted under La. Rev. Stat. Ann. § 14:104(A) (Keeping a disorderly place) which is “the intentional maintaining of a place to be used habitually for any illegal purpose.” A facilitator who violates La. Rev. Stat. Ann. § 14:104 for the purpose of prostitution of persons under eighteen shall be fined up to \$50,000, imprisoned at hard labor for 15–50 years, or both, and if the person is under 14 the facilitator shall be fined up to \$75,000, imprisoned at hard labor 25–50 years, or both. La. Rev. Stat. Ann. § 14:104(B)(2), (3). Similarly, a facilitator could be convicted of La. Rev. Stat. Ann. § 14:105(A) (Letting a disorderly place), which is “the granting of the right to use any premises knowing that they are to be used as a disorderly place, or allowing the continued use of the premises with such knowledge.” A facilitator who violates La. Rev. Stat. Ann. § 14:105 for the purpose of prostitution of persons under eighteen shall be fined up to \$50,000, imprisoned at hard labor for 15–50 years, or both, and if the person is under 14 the facilitator shall be fined up to \$75,000, imprisoned at hard labor for 25–50 years, or both. La. Rev. Stat. Ann. § 14:105(B)(2), (3).

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

Facilitators face fines ranging from \$15,000–\$1,000,000. A facilitator convicted under La. Rev. Stat. Ann. § 14:46.3(A)(2), (4) (Trafficking of children for sexual purposes), if the victim is 14–17, may be required to pay a possible fine of \$50,000, and if the victim is under 14, a facilitator will be required to pay a possible fine of \$75,000. La. Rev. Stat. Ann. § 14:46.3(D)(1)(a), (b). If force, fraud, or coercion is involved in commission of the offense, a facilitator convicted under La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) faces up to a possible fine of \$15,000 when the services include “commercial sexual activity or any sexual conduct constituting a crime under the laws of this state” and a possible fine of \$25,000 when the victim is under 18. La. Rev. Stat. Ann. § 14:46.2(B)(2), (3). Additionally, “whoever commits the crime of human trafficking” under Subparagraph (A)(1)(b), which includes all victims under 21 years of age, shall be fined no more than \$50,000, imprisoned at hard labor for not less than 15 years, nor more than 50 years, or both. La. Rev. Stat. Ann. § 14:46.2(B)(2)(b).

Similarly, penalties related to facilitating CSEC offenses pursuant to La. Rev. Stat. Ann. § 14:83.1 (Inciting prostitution), § 14:85 (Letting premises for prostitution), § 14:84 (Pandering), and § 14:282 (Operation of places of prostitution prohibited; penalty) include up to a \$50,000 fine if the person is under 18 years or up to \$75,000 if the person is under 14 years of age. La. Rev. Stat. Ann. §§ 14:83.1(B)(2), (3), 14:85(B)(2), (3), 14:84(B)(2), (3), 14:282(B)(2), (3). Furthermore, a facilitator convicted under La. Rev. Stat. Ann. § 14:104(A) (Keeping a disorderly place) or § 14:105(A) (Letting a disorderly place) shall be fined \$50,000 if the purpose of keeping or letting the disorderly place is for the purpose of prostitution of persons under 18, and the fine increases to \$75,000 when the purpose of keeping or letting the disorderly place is prostitution of a person under 14 years of

<sup>74</sup> See *supra* Component 3.1 for the substantive provisions of La. Rev. Stat. Ann. § 14:230.

age. La. Rev. Stat. Ann. § 14:104(B)(2) (3), 105(B)(2), (3). Fines applicable to facilitators convicted under La. Rev. Stat. Ann. § 14:230 (Money laundering; transactions involving proceeds of criminal activity) vary based on the value of the funds involved in the violation. If the value is less than \$3,000, a conviction is punishable by a possible fine of \$1,000; if the value is \$3,000–\$19,999.99, a conviction is punishable by a fine of up to \$10,000; if the value is \$20,000–\$99,999.99, a conviction is punishable by a possible fine of \$20,000; if the value is \$100,000 or more, a conviction is punishable by a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:230(E). Lastly, a facilitator convicted under La. Rev. Stat. Ann. § 15:1353 may be required to pay a possible fine of \$1,000,000 or “three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred.” La. Rev. Stat. Ann. § 15:1354(A), (B).

Facilitators also are subject to mandatory criminal asset forfeiture for committing certain crimes. Specifically, “personal property used in the commission of” La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes), “or the proceeds of any such conduct, shall be seized and impounded, and after conviction, sold at public sale or auction . . . .” La. Rev. Stat. Ann. § 14:46.3(D)(3)(a). Similarly, La. Rev. Stat. Ann. § 14:46.2(B)(4) (Human trafficking) states,

- (a) In addition, the court shall order that the personal property used in the commission of the offense, or the proceeds of any such conduct, shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney, or otherwise distributed or disposed of, in accordance with R.S. 15:539.1.
- (b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media, and currency, instruments, and securities.

A facilitator convicted under La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution), § 14:83.1 (Inciting prostitution), § 14:85 (Letting premises for prostitution), § 14:104 (Keeping a disorderly place), § 14:105(A) (Letting a disorderly place), § 14:282 (Operation of places of prostitution prohibited; penalty) or § 14:81.1 (Pornography involving juveniles) is also subject to mandatory, criminal asset forfeiture and, following a conviction, shall have any “personal property used in the commission of the offense, or proceeds of any such conduct, . . . seized and impounded, and after conviction, sold at public sale . . . .” La. Rev. Stat. Ann. §§ 14:86(B)(2), 14:83.1(B)(4)(a), 14:85(B)(4)(a), 14:104(B)(4)(a), 14:105(B)(4)(a), 14:282(B)(4)(a), 14:81.1(E)(5)(c).

The distribution of the forfeited property is governed by La. Rev. Stat. Ann. § 15:539.1 (Forfeited property related to certain sex crimes; exempt property; allocation of forfeited property), which states,

- (A) When personal property is forfeited under the provisions of . . . R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution; prohibited; penalty), the district attorney shall authorize a public sale or a public auction conducted by a licensed auctioneer, without appraisal, of that which is not required by law to be destroyed and which is not harmful to the public. Any currency, instruments, or securities forfeited shall be distributed or disposed of as provided in this Section.

....

(E) Notwithstanding Subsection D of this Section, when the currency, instruments, securities, or other property is forfeited pursuant to the provisions of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:85 (letting premises for prostitution), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution), the currency, instruments, and securities and proceeds of the public sale or public auction shall be applied first to any restitution granted to the victim, after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied. Any remaining currency, instruments, securities, or proceeds shall be distributed in the following manner:

- (1) Twenty-five percent to the seizing agency or agencies allocated among the seizing agencies in proportion to their participation in the management of the investigation, seizure, and forfeiture.
- (2) Twenty-five percent to the prosecution agency.
- (3) Fifty percent to the Exploited Children’s Special Fund pursuant to R.S. 15:538.2.

Additionally, to the extent that a victim suffers “an actual pecuniary loss” or incurs costs “in connection with a criminal prosecution,” a facilitator will be required to make restitution to the victim pursuant to La. Code Crim. Proc. Art. 883.2(A) (Restitution to victim).<sup>75</sup>

La. Rev. Stat. Ann. § 15:539.2(A) (Exploited children’s fund) states, “Any person who is convicted or pleads guilty or nolo contendere to an offense involving trafficking of children for sexual purposes . . .” will have to pay a fine of \$2,000 in addition to other mandatory restitution. Thus, any person that assists in any manner and is found guilty or pleas guilty to trafficking children for sexual purposes as stated under La. Rev. Stat. Ann. § 14:63:3 (Trafficking of children), § 14:82.1 (Prostitution with a minor under 17 years of age), or § 14:86 (Enticing persons into prostitution) will deposit \$2,000 into the Exploited Children’s Special Fund. La. Rev. Stat. Ann. § 15:539.1.

Additionally, Stat. Ann. § 15:539.3 mandates that any person:

. . . convicted of violation of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:83.1 (inciting prostitution), . . . R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution) shall be ordered to pay mandatory restitution to the victim . . . . Restitution under this Section shall include any of the following;

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items . . . .

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<sup>75</sup> See *supra* Component 2.8.

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

La. Rev. Stat. Ann. § 14:46.3(A)(6) (Trafficking of children for sexual purposes) makes it unlawful “for any person to knowingly sell or offer to sell travel services that include or facilitate any of the activities prohibited by this Section.” Additionally, La. Rev. Stat. Ann. § 14:46.3(A)(5) (Trafficking of children for sexual purposes) makes it unlawful “[f]or any person to knowingly advertise any of the activities prohibited by this Section.”

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

Promoting or selling images of child sexual exploitation (ICSE) is prohibited. La. Rev. Stat. Ann. § 14:81.1(A)(1) (Pornography involving juveniles) states, “It shall be unlawful for a person to produce, promote, advertise, distribute, possess, or possess with the intent to distribute pornography involving juveniles.” A conviction under this statute for distributing or possessing with intent to distribute is punishable by imprisonment for 5–20 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$50,000. La. Rev. Stat. Ann. § 14:81.1(E)(2)(a). On a second conviction for distributing ICSE, the offender shall be fined up to \$75,000 and imprisoned at hard labor for 10–40 years, “without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:81.1(E)(2)(b).<sup>76</sup> However, if the victim is under 13, and the facilitator is at least 17, a conviction is punishable “by imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment [otherwise] provided.” La. Rev. Stat. Ann. § 14:81.1(E)(5)(a).

Additionally, La. Rev. Stat. Ann. § 14:73.8(A) (Unauthorized use of a wireless router system; pornography involving juveniles; penalty) makes the “[u]nauthorized use of a wireless router system . . . for the purposes of . . . selling . . . pornography involving juveniles” unlawful. If the victim is 13–17 years old, a conviction under this statute is punishable by imprisonment for 2–10 years at hard labor, “without benefit of parole, probation, or suspension of sentence,” and a possible fine of \$10,000. La. Rev. Stat. Ann. § 14:73.8(C). However, if the victim is under 13 and the offender is at least 17, a conviction is punishable by imprisonment for 25–99 years at hard labor, and “[a]t least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.” La. Rev. Stat. Ann. § 14:73.8(D).

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<sup>76</sup> See *supra* note 13.

**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.*
- 5.9 *Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

**Legal Analysis:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.<sup>77</sup>*

All commercially sexually exploited children are identifiable as sex trafficking victims under Louisiana’s core trafficking statutes. Pursuant to La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) and § 14:46.2 (Human trafficking), when the victim is a minor under the age of 18 years and 21 years, respectively, means of force, fraud, or coercion are not required.<sup>78</sup> Additionally, both trafficking laws apply to buyers; thus, buying commercial sex with a minor, as established under each statute, constitutes human trafficking. Finally, the offense of human trafficking under La. Rev. Stat. Ann. §§ 14:46.3, 14:46.2, does not require that a trafficker or controlling third party be identified. Consequently, Louisiana’s human trafficking offenses include any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. La. Rev. Stat. Ann. §§ 14:46.3, 14:46.2.

<sup>77</sup> See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>78</sup> See *supra* discussion in Component 1.1.



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

La. Rev. Stat. Ann. § 14:46.3(C)(1) (Trafficking of children for sexual purposes) expressly states that the “[c]onsent of the minor shall not be a defense to a prosecution pursuant to the provisions of this Section.” La. Rev. Stat. Ann. § 14:46.2(A)(1)(b) (Human trafficking) also prohibits the defense, stating, “It shall not be a defense to prosecution . . . that the victim consented to the prohibited activity.”

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>79</sup>

Louisiana’s prostitution laws do not expressly prevent the criminalization of minors for prostitution-related offenses. However, Louisiana’s laws governing delinquent acts appear to establish an affirmative defense to prostitution charges. Despite the specific exclusion in La. Child. Code Ann. art. 804(3) and (5) of prostitution offenses from the definition of “delinquent act” and “felony grade delinquent act” for child sex trafficking victims, La. Child. Code Ann. art. 839(D) sets out a diversion process for minors charged with a delinquent act in violation of the prostitution laws. Thus, the exclusion of prostitution offenses from the definition of delinquent act appears to act as an affirmative defense because it only applies if the child was a victim of trafficking at the time of the offense, shifting the burden to the victim to prove that status in order to avoid prosecution.

This interpretation of the Children’s Code also appears consistent with the protections provided under the criminal code. La. Rev. Stat. § 14:46.3(E) (Trafficking of children for sexual purposes) states, “No victim of trafficking as defined by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked.” However, Louisiana’s prostitution offenses, La. Rev. Stat. Ann. § 14:82(G)(1) (Prostitution; definition; penalties; enhancement), § 14:83.3(D)(1) (Prostitution by massage), and § 14:83.4(C)(1) (Massage; sexual conduct prohibited), provide an affirmative defense from prosecution for prostitution offenses if “during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes,” and further provide that “[a]ny child determined to be a victim pursuant to the provisions of this Paragraph shall be eligible for specialized services for sexually exploited children.” Consequently, the prohibition on prosecution in § 14:46.3 when read together with the prostitution statutes also appears to establish an affirmative defense if a juvenile sex trafficking victim is charged with prostitution.

5.3.1 Recommendation: Amend state law to ensure that all minors are protected from criminalization for prostitution offenses.<sup>80</sup>

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

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

Under Louisiana law, a juvenile sex trafficking victim should be identified as a child in need of care<sup>81</sup> or as a child in need of services,<sup>82</sup> rather than as delinquent,<sup>83</sup> and given access to a range of specialized services.

<sup>79</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>80</sup> See generally SHARED HOPE INTERNATIONAL, “Seeking Justice: Legal approaches to eliminate criminal liability for child sex trafficking victims” (2018), [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (discussing need to eliminate a minor’s criminal liability for prostitution and other offenses committed pursuant to trafficking victimization and to establish a statutory avenue to specialized services).

<sup>81</sup> Pursuant to La. Child. Code Ann. art. 606(A) (Grounds; child in need of care), a child will be deemed a “child in need of care” when

Following an encounter with a suspected trafficking victim, law enforcement and state prosecutors must make a preliminary assessment as to whether the person is a victim of human trafficking. La. Rev. Stat. Ann. § 46:2162 (Assistance to victims of human trafficking) states,

(a) If it is determined that the victim or possible victim appears to meet such criteria, then the agency or office shall report the finding to the victim and shall refer the child victim to appropriate services available, including legal service providers.

(b) If the victim or possible victim is under the age of eighteen . . . the agency or office shall also notify the appropriate protective service agency.

In addition, La. Child. Code Ann. art. 725.4 (Duties of law enforcement) states,

The officer shall notify the Crime Victims Services Bureau of the Department of Public Safety and Corrections that the child may be eligible for special services and, as a mandatory reporter as required by Children’s Code Article 610, shall notify the Department of Children and Family Services that the child is in need of protective services.

In turn, La. Child. Code Ann. art. 725.5(B) (Duties of the Department of Children and Family Services) requires the Department of Children and Family Services to “cooperate with law enforcement, prosecutors, and court staff in the investigation and prosecution of child sexual exploitation, including ensuring that all state, federal, and community-based resources for sexually exploited children are known to the child.”

Pending a continued custody hearing, a juvenile sex trafficking victim may be placed in a shelter care facility. La. Child. Code Ann. art. 622(B)(5) (Placement pending a continued custody hearing). La. Child. Code Ann.

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. . . .  
(6) The child is a victim of human trafficking or trafficking of children for sexual purposes.

(7) The child is a victim of commercial sexual exploitation, human trafficking, or trafficking of children for sexual purposes perpetrated by any person regardless of their relationship to the child.

The text of La. Child Code Ann. art. 606 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 488 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

<sup>82</sup> Pursuant to La. Child. Code Ann. art. 730 (Grounds), a child will be deemed in need of services if the court finds

. . . .  
(6) That a child under ten years of age has committed any act which if committed by an adult would be a crime under any federal, state, or local law.

. . . .  
(8) That a child is a sexually exploited child [which includes child sex trafficking victims and children who engage in prostitution].

<sup>83</sup> La. Child. Code Ann. art. 804(3) (Definitions) defines a “delinquent act” as “an act committed by a child of ten years of age or older which if committed by an adult is designated an offense under the statutes or ordinances of this state, or of another state if the offense occurred there, or under federal law, except traffic violations.”

However, La. Child. Code Ann. art. 804(3) further provides,

“Delinquent act” shall not include a violation of R.S. 14:82 [Prostitution; definition; penalties; enhancement], § 83.3 [Prostitution by massage], § 83.4 [Massage; sexual conduct prohibited], § 89 [Crime against nature] or § 89.2 [Crime against nature by solicitation] for a child who, during the time of the alleged commission of the offense, was a victim of trafficking of children for sexual purposes pursuant to R.S. § 14:46.3(E).

art. 116(25) (Definitions) defines “shelter care facility” to include “a licensed, physically unrestricting public or private child carding facility, a residential facility operated for runaway, homeless, or sexually exploited children, or a safe house<sup>84</sup> as defined in Children’s Code Article 725.1 [Definitions] which provides temporary care for children.”

Safe houses must provide specialized services. La Child. Code Ann. art. 725.2(A) (Safe house for sexually exploited children) states,

.....  
(2) The department may . . . operate or contract with an appropriate nongovernmental agency with experience working with sexually exploited children to operate one or more safe houses in a geographically appropriate area of the state.

(3) Each safe house shall provide safe and secure housing and specialized services for sexually exploited children.  
.....

Additionally, La. Rev. Stat. Ann. § 46:1861(A)(1)(f) (Family justice centers) states, “[a] family justice center may be established in any judicial district to provide support, services, and assistance to victims of . . . [h]uman trafficking as defined by R.S. 14:46.2 and trafficking of children for sexual purposes as defined by R.S. 14:46.3.” Furthermore, subsection (D) provides,

No family justice center shall:

(1) Deny services to any victim on the grounds of the victim's criminal history.

(2) Request the criminal history of a victim without the victim's written consent unless pursuant to a criminal investigation.

(3) Require a victim to participate in the criminal justice system or cooperate with law enforcement in order to receive counseling, medical care, or any other services at a family justice center.

(4) Require a victim to sign a consent form to share information in order to access services at the family justice center. La. Rev. Stat. Ann. § 46:1861(D).

Additionally, La. Child. Code Ann. art. 681(B) (Dispositional alternatives) provides that “[a] child in need of care shall not be committed to the Department of Public Safety and Corrections, nor shall such department accept a child in need of care.”

To the extent that a juvenile sex trafficking victim enters the juvenile justice system, La. Child. Code Ann. art. 839 (Availability of an informal adjustment agreement) states,

(A) Prior to the filing of a petition, the district attorney or the court with the consent of the district attorney may authorize an informal adjustment agreement.  
.....

(C) When entering an informal adjustment agreement, the court may, with concurrence of the district attorney, utilize or initiate a teen or youth court program . . . .

(D) (1) Where a petition involves an allegation of an act of prostitution pursuant to R.S. 14:82, prostitution by massage pursuant to R.S. 14:83.3 or 83.4, or crimes against nature by solicitation pursuant to R.S. 14:89.2 and it is the child’s first offense and the child expresses a willingness to cooperate and receive specialized services for sexually exploited children, the district attorney may effect an informal adjustment agreement which includes specialized services for the child.

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<sup>84</sup> “Safe house” means “a residential facility or a shelter care facility operated by an authorized agency, including a nonprofit agency, with experience in providing services to sexually exploited children and approved by the department to provide shelter for sexually exploited children.” La. Child Code Ann. art. 725.1(2).

(2) If, however, the child has previously been adjudicated a delinquent in violation of R.S. 14:82, 83.3, 83.4, or 89.2 or is unwilling to cooperate with specialized services for sexually exploited children, continuing with the delinquency proceeding shall be within the discretion of the district attorney.

(3) The specialized services referenced in Subparagraph (1) of this Paragraph may include but are not limited to safe and stable housing, comprehensive on-site case management, integrated mental health and chemical dependency services, including specialized trauma recovery services, education and employment training, and referrals to off-site specialized services, as appropriate.

La. Child. Code Ann. art. 841(B) (Effect of agreement) explains that

[a]n informal adjustment agreement suspends the proceedings on the delinquent acts charged in the complaint or petition. If any of the terms of the agreement are violated, the case may proceed to an adjudication hearing on the charges. If the child satisfies the terms of the agreement, he shall be discharged from further supervision, and the pending complaint or petition shall be dismissed with prejudice.

Finally, La Child. Code Ann. art. 725.3(1) (Statewide protocol; applicability of child in need of care procedure) establishes a statewide protocol for victim's services, stating,

The department shall develop a statewide protocol for helping to coordinate the delivery of services to sexually exploited children and shall work with court intake officers to ensure that all state, federal, and community-based resources for sexually exploited children are known to children who have been granted diversion under Article 839.

## Summary

Louisiana law provides a juvenile sex trafficking victim with a statutory avenue to specialized services. Further, these children may be able to avoid delinquency adjudications through informal adjustments, which include specialized services as a condition for participation.

### 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>85</sup>

Child victims of sex trafficking and commercial sexual exploitation will be identified as abused and in need of care. "Abuse" is defined to include commercial sexual exploitation of a child under La. Child. Code Ann. art. 502(1)<sup>86</sup> (Definitions),<sup>87</sup> which states,

"Abuse" means any one of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child<sup>88</sup>:

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<sup>85</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>86</sup> The text of La. Child Code Ann. art. 502 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 488 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

<sup>87</sup> A similar definition of "abuse" is found in La. Child. Code Ann. art. 603(2).

The text of La. Child Code Ann. art. 603 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 488 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

<sup>88</sup> La. Child. Code Ann. art. 502(2) (Definitions) defines a "child" as "a person under the age of eighteen years who has not been judicially emancipated or emancipated by marriage as provided by law." La. Child. Code Ann. art. 603(6) defines "child" very similarly.

(a) The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person.

(b) The exploitation or overwork of a child by a parent or any other person.<sup>89</sup>

(c) The involvement of the child in any sexual act with a parent or any other person, the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person, the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

....

In addition, La. Child. Code Ann. art. 606(A)<sup>90</sup> (Grounds; child in need of care) states,

Allegations that a child is in need of care shall assert one or more of the following grounds:

....

(6) The child is a victim of human trafficking or trafficking of children for sexual purposes.

NOTE: Paragraph (A)(7) shall become effective when a child, who is a victim of commercial sexual exploitation, human trafficking, or trafficking of children for sexual purposes perpetrated by someone other than a parent or caretaker, becomes an eligible victim for which federal match funds are available through Title IV-E of 47 U.S.C. 672.

(7) The child is a victim of commercial sexual exploitation, human trafficking, as provided for in R.S. 14:46.2, or trafficking of children for sexual purposes, as provided for in R.S. 14:46.3, perpetrated by any person regardless of the perpetrator's relationship to the child.

....

Lastly, La. Child. Code Ann. art. 502(5)<sup>91</sup> states, “‘Neglect’ means the unreasonable refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child’s physical, mental, or emotional health and safety is substantially threatened or impaired . . . .”

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.*

The definition of “caretaker”<sup>92</sup> creates a barrier to a sex trafficked child accessing the protection of child welfare. Although a child sex trafficking victim may be identified as a “child in need of care” regardless of the child’s relationship to the perpetrator,<sup>93</sup> La. Child. Code Ann. art. 725.5(A) (Duties of the Department of Children and Family Services) only requires DCFS to investigate as follows:

The department shall be responsible for investigating reports of abuse or neglect where the abuser is believed to be a parent or caretaker, a person who maintains an interpersonal dating or engagement

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<sup>89</sup> “‘Commercial sexual exploitation’ means involvement of the child’ [in] *sic* activity prohibited by the following statutes: R.S. 14:46.2, 46.3, 81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.” La. Child. Code Ann. art. 603(9.1).

<sup>90</sup> See *supra* note 81.

<sup>91</sup> A similar definition of “neglect” is found in La. Child. Code Ann. art. 603(18).

<sup>92</sup> As used in Title 6 (Child in need of care), La. Child. Code Ann. art. 603(4) (Definitions) defines “caretaker” as “any person legally obligated to provide or secure adequate care for a child, including a parent, tutor, guardian, legal custodian, foster home parent, an employee of a public or private day care center, an operator or employee of a registered family child day care home, or other person providing a residence for the child.” Additionally, as used in Title 7 (Families in need of services), a “caretaker” is “any person providing a residence for the child or any person legally obligated to provide or secure adequate care for the child, including a parent, tutor, guardian, or legal custodian.” La. Child. Code Ann. art. 728(1).

<sup>93</sup> See *supra* Component 5.5 for grounds for identification as a “child in need of care.”



relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not.

- 5.6.1 Recommendation: Amend La. Child. Code Ann. art. 725.5(A) (Duties of the Department of Children and Family Services) to require child welfare investigation in cases of child sex trafficking regardless of the child's relationship to the perpetrator of the abuse.

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

Child sex trafficking victims may be eligible to receive compensation under Louisiana's Crime Victims Reparations Act. La. Rev. Stat. Ann. § 46:1804 (Eligibility to apply for reparations) states,

A person who believes he is a victim of a crime enumerated in R.S. 46:1805 [Crimes to which chapter applies],<sup>94</sup> or his legal representative, or in the case of death, a dependent or the legal representative of a dependent, or the rightful claimant as defined in R.S. 46:1802 (4) [Definitions], shall be eligible to make application to the board for reparations and shall be eligible for an award of reparations in accordance with the provisions of this Chapter.

As used in La. Rev. Stat. Ann. § 46:1804, a "victim" is defined to include trafficking and CSEC crimes under La. Rev. Stat. Ann. § 46:1802(13)(a) and states that

[a]ny person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by this Chapter. This includes any person who is a victim of human trafficking as defined by R.S. 14:46.2, a victim of trafficking of children for sexual purposes as defined by R.S. 14:46.3, or a victim of any offense involving commercial sexual exploitation including but not limited to R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.

However, certain requirements under La. Rev. Stat. Ann. § 46:1806 (Application; requirements; confidentiality) may hinder the ability of commercially sexually exploited children to obtain compensation. Under La. Rev. Stat. Ann. § 46:1806(A), an application for compensation

shall be valid only if the act resulting in the personal injury, death, or catastrophic property loss was reported to the appropriate law enforcement officers within seventy-two hours after the date of the personal injury . . . or within such longer period as the board determines is justified by the circumstances.

Furthermore, La. Rev. Stat. Ann. § 46:1806(B) provides that

(1) An application for reparations related to a sexually-oriented criminal offense shall be filed in writing with the board within one year after the date on which the personal injury, death, or catastrophic property loss occurred or within such longer period as the board determines is justified by the circumstances.

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<sup>94</sup> La. Rev. Stat. Ann. § 46:1805(A) (Crimes to which Chapter applies) allows the board to award reparations for pecuniary loss for "personal injury, death, or catastrophic property loss resulting from any act or omission to act that is defined as a misdemeanor under any local ordinance or as a crime under state or federal law and involves the use of force or the threat of the use of force or any human trafficking-related offense." La. Rev. Stat. Ann. § 46:1805(B)(3) defines "human trafficking-related offense" to include "the perpetration or attempted perpetration of R.S. 14:46.2 or 46.3 or any other crime involving commercial exploitation including R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282."

(2) A victim of a sexually-oriented criminal offense shall not be required to report a sexually-oriented criminal offense to any law enforcement officer for purposes of a claimant filing a valid application for reparations pursuant to this Subsection.

.....

However, La. Rev. Stat. Ann. § 46:1809 (B)(3), (4) (Criteria for making awards; prohibitions; authority to deny or reduce awards) states,

(3) (a) No award of reparations shall be made if the board finds that:

(i) The crime was not reported within the time specified by R.S. 46:1806(A) [Application; requirements; confidentiality].

(ii) The claimant failed or refused to cooperate substantially with the reasonable requests of appropriate law enforcement officials.

.....

(iv) The claimant was the offender or an accessory, or that an award to the claimant would unjustly benefit any of them. However, such ineligibility shall not apply if the claimant is a victim of human trafficking or trafficking of children for sexual purposes.

(v) The claim was not filed timely, as provided by R.S. 46:1806(A) and (B).

.....

(b) The ineligibility provisions provided for in Items (a)(i) and (ii) of this Paragraph shall not apply if the claim for reparations results from a sexually-oriented criminal offense.

.....

(4) The board may deny or reduce an award:

(a) If it finds that the behavior of the victim at the time of the crime giving rise to the claim was such that the victim bears some measure of responsibility for the crime that caused the physical injury, death, or catastrophic property loss or for the physical injury, death, or catastrophic property loss. However, such ineligibility shall not apply if the claimant is a victim of a human trafficking-related offense as defined by R.S. 46:1805 or a sexually-oriented criminal offense as defined by R.S. 15:622.

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

Child victim witnesses are provided with certain protections through the trial process. La. Rev. Stat. Ann. § 14:46.3(F) (Trafficking of children for sexual purposes) specifically provides that “the multidisciplinary team approach” applies to child victims of trafficking.

La. Child. Code Ann. art. 507 (Purpose) explains that the purpose of the multidisciplinary team approach

is to protect children whose physical or mental health and welfare is substantially at risk of harm by sexual abuse, other physical abuse, neglect, or exploitation and who may be further threatened by the conduct of others, by providing a formal, comprehensive, integrated, multidisciplinary response to the investigation and disposition of cases of child abuse; by expediting and improving the validation or invalidation of such allegations for the benefit of the child, his family and any accused perpetrator; by encouraging the use of collaborative decision making and case management thereby reducing to a minimum the number of times a child victim is questioned and examined, thus preventing further trauma to the child; by coordinating a therapeutic services program thereby providing safety and treatment for a child victim and his family; by developing communication and case coordination among community professionals and agencies who are involved in child protection; by collecting data needed to continually improve cooperative interagency investigations; and, by maintaining the confidentiality of agency records, to ensure the protection of the privacy of the child, his family and any accused perpetrator.

La. Child. Code Ann. art. 510(A) (Contents of protocols; formal requirements) mandates certain protocols for the “multidisciplinary investigation of allegations of child abuse,” including,

....

(4) Procedures for ensuring that interviews of the child victim are conducted in a neutral, legally sound manner and by a qualified forensic interviewer, except when the circumstances of the particular case justify the assignment of another interviewer.

(5) Procedures for reducing the risk of harm to child victims, including ensuring that the child is in a safe surrounding, and when necessary the removal of the alleged perpetrator.

(6) Procedures for reducing the number of interviews of the child victim and the use, if available, of a child advocacy center.

(7) Procedures for developing a service and treatment plan for the child victim and his family.

(8) Procedures for respecting the confidentiality of agency records and information, and a policy identifying the conditions for the sharing of information.

....

(10) Any other procedures to avoid duplication of fact-finding efforts and interviews of the child.

Additionally, under La. Rev. Stat. Ann. § 15:283 (Protected person; testimony taken outside courtroom), victims of La. Rev. Stat. Ann. § 14:46.3 (Trafficking of children for sexual purposes) and Louisiana’s CSEC laws who are under 17 years of age, may give testimony via closed circuit television. Specifically, La. Rev. Stat. Ann. § 15:283 states in part,

A. On its own motion or on the motion of the attorney for any party, a court may order that the testimony of a protected person<sup>95</sup> who may have been a witness to or victim of a crime be taken in a room other than the courtroom and be simultaneously televised by closed circuit television to the court and jury, when the court makes a specific finding of necessity based upon both of the following:

(1) Expert testimony that the protected person would be likely to suffer serious emotional distress if forced to give testimony in open court.

(2) Expert testimony that, without such simultaneous televised testimony, the protected person cannot reasonably communicate his testimony to the court or jury.

B. The court shall ensure that the protected person cannot see or hear the accused unless such viewing or hearing is requested for purposes of identification. However, the court shall ensure that the accused is afforded the ability to consult with his attorney during the testimony of the protected person.

C. The only persons who may be present in the room with the protected person are the person or persons operating the audio-video equipment, the presiding judge, the attorneys for the state, the attorneys for the defendant, and any person, other than a relative of the protected person, whose presence is determined by the court to be necessary to the welfare and well-being of the protected person during his testimony . . . .

D. Only the attorneys, or the presiding judge as authorized by law, may question the protected person.

....

La. Rev. Stat. Ann. § 15:469.1 (Receipt of testimony from victims of certain crimes who are fifteen years of age or younger; closed session of court or in chambers; procedure) provides,

In cases of simple or third degree rape, attempted simple or third degree rape, aggravated or first degree rape, attempted aggravated or first degree rape, forcible or second degree rape, attempted forcible or second degree rape, or carnal knowledge of a juvenile in which the victim is a child of fifteen years of age or younger, the court, upon its own motion or that of the defendant or state, may

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<sup>95</sup> Pursuant to La. Rev. Stat. Ann. § 15:283(E)(1), “protected person” is defined as “a person who is the victim of a crime or a witness in a criminal prosecution who is . . . [u]nder the age of seventeen years.”

order that the testimony of such victim be heard either in closed session of court or in the judge's chambers, in the presence of the judge or jury, the defendant, counsel for the defendant, the family of the defendant, the parents or parent of the victim, the attorney for the state, a reasonable but limited number of members of the public which the court may allow in its discretion under these circumstances, and any other party which the court determines has a valid interest in the proceedings.

Victims and witness are provided additional protective measures throughout the course of court procedures. Pursuant to La. Rev. Stat. Ann. § 46:1844(G) (Basic rights for victim and witness),

The court shall provide, whenever possible, a secure waiting area during the court proceedings which does not require victims, witnesses, or victims' families to be in close proximity to the defendants, their families or friends, and shall provide a secure waiting area in cases involving violent crimes. Upon request of a victim, victim's family, or witness, the court shall also provide, whenever possible, designated seating in a courtroom for victim's, victims' families, and witnesses separate from defendants, defendants' families, or witnesses for defendants. The designated seating area should be positioned, whenever possible, in the courtroom in a way that does not require victims, victims' families, and witnesses to be in close proximity to defendants, defendants' families, or witnesses.

Additional protections apply to child sex trafficking victims for cases involving sexual assault and human trafficking. Specifically, La. Code Evid. Ann. art. 412(B)(1) (Victim's past sexual behavior in sexual assault cases; trafficking cases) states that "[w]hen an accused is charged with a crime involving human trafficking or trafficking of children for sexual purposes, reputation or opinion evidence of the past sexual behavior of the victim is not admissible." Furthermore, under La. Code Evid. Ann. art. 412(A), "[w]hen an accused is charged with a crime involving sexually assaultive behavior, reputation or opinion evidence of the past sexual behavior of the victim is not admissible." Additionally, La. Code Evid. Ann. art. 412(G) states, "the rules of admissibility of evidence provided by this article shall also apply to civil actions brought by victim for damages which are alleged to arise from sexually assaultive behavior, human trafficking or trafficking of children for sexual purposes by the defendant, whether or not convicted of such crimes." Several evidentiary exceptions fall under La. Code Evid. Ann. art. 412(B)(2), including precluding "evidence of specific instances of the victim's past sexual behavior . . . unless the evidence is offered by the prosecution in a criminal case to prove a pattern of trafficking activity by the defendant."

Courts specializing in human trafficking offenses as the subject matter of the court are established in the district courts of Louisiana. La. Child Code Ann. Art 13:587.4(C) states,

- (1) If a special division or section of court is designated as a human trafficking section, the presiding judge may be trained in issued of human trafficking and the support services available to victims.
- (2) All cases where a person is charged or indicted pursuant to R.S. 14:46.2 [Human trafficking], 46.3 [Trafficking of children for sexual purposes], 81.1 [Pornography involving juveniles], 81.2 [Molesting of a juvenile], 81.3 [Computer-aided solicitation of a minor], 82 [Operating a place of prostitution], 82.1 [Prostitution with a minor under 17 years of age], 83 [Soliciting for prostitutes], 83.1 [Inciting prostitution], 83.2 [Promoting prostitution], 83.3 [Prostitution by massage], 83.4 [Massage; sexual conduct prohibited], 84 [Pandering], 85 [Letting premises for prostitution], 86 [Enticing persons into prostitution], 89 [Crime against nature], 89.1 [Aggravated crime against nature], 89.2 [Crimes against nature by solicitation], 104 [Keeping a disorderly place], 105 [Letting a disorderly place], 281 [Maintaining disorderly place] or 282 [Operation of places of prostitution] shall be transferred to the human trafficking section of the court.

Statements made by a victim related to a prosecution for an unlawful act arising from the trafficking offense are eligible for specialized protections during criminal proceedings. La. Code Evid. Ann. art. 412.3 (Statements made by victims of trafficking during investigations) states,

If a victim of human trafficking or trafficking of children for sexual purposes is also a defendant in any case arising from unlawful acts committed as part of the same trafficking activity, any inculpatory statement made by the victim as a result of questioning by any person then known by the victim to be a law enforcement officer is inadmissible against the victim, except pursuant to Article 801 of this Code or in any prosecution of the victim for perjury, at a trial of the victim for the unlawful acts committed by the victim as part of the same trafficking activity if all of the following conditions exist:

- (1) The victim cooperates with the investigation and prosecution, including the giving of a use-immunity statement as directed by the prosecuting attorney.
- (2) The victim testifies truthfully at any hearing or trial related to the trafficking activity, or agrees, either in writing or on the record, to testify truthfully at any hearing or trial related to the trafficking activity in any prosecution of any other person charged with an offense arising from the same trafficking activity, regardless of whether the testimony is unnecessary due to entry of a plea by the other person.
- (3) The victim has agreed in writing to receive services or participate in a program that provides services to victims of human trafficking or trafficking of children for sexual purposes, if such services are available.

La. Rev. Stat. Ann. § 44:3(J)(1)<sup>96</sup> (Records of prosecutive, investigative, and law enforcement agencies and communications districts) provides for the confidentiality of identifying information, stating, “[n]othing in this Chapter [Public records] shall be construed to require the disclosure of information which would reveal the name, address, contact information, or identify of a victim of a sex offense or a human trafficking-related offense as those terms are defined in R.S. 46:1844.” Under La. Rev. Stat. Ann. § 46:1844(W)(2), which also protects the confidentiality of crime victims who are minors, victims of sex offenses, and victims of human trafficking-related offenses<sup>97</sup>, “sex offense” is defined to “include the perpetration or attempted perpetration of . . . any offense listed in R.S. 15:541(24) [Definitions].”

La. Code Crim. Proc. Ann. art. 718.1(A) (Evidence of obscenity, video voyeurism, or pornography involving juveniles) affords special protection for children used in images of child sexual exploitation (ICSE), video voyeurism, or obscenity. Pursuant to art. 718.1(A), “In any criminal proceeding, any property or material that is alleged to constitute evidence of obscenity as defined in R.S. 14:106(A)(2)<sup>98</sup> that is unlawfully possessed, video voyeurism as defined in R.S. 14:283,<sup>99</sup> or pornography involving juveniles as defined in R.S. 14:81.1 shall remain in the care, custody, and control of the investigating law enforcement agency, the court, or the district attorney.” Additionally, “the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that is alleged to constitute evidence of obscenity . . . that is unlawfully possessed, video voyeurism . . . or pornography involving juveniles . . . provided that the district attorney makes the property or material reasonably available<sup>100</sup> to the defendant.” La. Code Evid. Ann. art. 718.1(B).

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<sup>96</sup> The text of La. Rev. Stat. Ann. § 44:3 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 307 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

<sup>97</sup> For purposes of this Component “human trafficking-related offense” is defined to include the perpetration or attempted perpetration of R.S. 14:46.2 or 46.3 or any other crime involving commercial sexual exploitation including R.S. 14:81.1, 81.3, 82, 82.1, 82.2, 83, 83.1, 83.2, 83.3, 83.4, 84, 85, 86, 89.2, 104, 105, and 282.” La. Rev. Stat. Ann. § 46:1844(W)(2)(a).

<sup>98</sup> See *supra* Component 1.2 for the definition of “obscenity.”

<sup>99</sup> Video voyeurism is defined under La. Rev. Stat. Ann. § 14:283 as “The use of any camera, videotape, photo-optical, photo-electric, or any other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping a person where that person has not consented to the observing, viewing, photographing, filming, or videotaping and it is for a lewd or lascivious purpose; or the transfer of an image obtained by activity described in Paragraph (1) of this Subsection by live or recorded telephone message, electronic mail, the Internet, or a commercial online service.”

<sup>100</sup> Under La. Code Evid. Ann. art. 718.1(C), “the property or material shall be deemed reasonably available to the defendant if the district attorney provides ample opportunity for the inspection, viewing, and examination at the



For child victims who are involved in dependency cases, La. Child. Code Ann. art. 424.1(A) (CASA; appointment) authorizes the court in a child in need of care proceeding to appoint a special advocate.

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.*

Louisiana law allows child sex trafficking victims to petition for vacatur of adjudications without a waiting period and makes expungement automatic upon granting vacatur; however, relief extends only to adjudications for prostitution-related offenses. Specifically, La. Child. Code Ann. art. 923 (Expungement and sealing of adjudications involving human trafficking victims) provides,

A. A motion to set aside an adjudication pursuant to the provisions of this Article, may be filed and served upon the district attorney at any time following an adjudication of delinquency and completion of the disposition relating thereto involving the offenses of prostitution pursuant to R.S. 14:82, prostitution by massage pursuant to R.S. 14:83.3 or 83.4, or crime against nature by solicitation pursuant to R.S. 14:89.2 when the child's participation in the offense was a result of having been a victim of human trafficking under R.S. 14:46.2 or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. 7101 et seq.).

...  
D. The court shall grant the motion if the court finds by a preponderance of the evidence that the violation was a result of the child having been a victim of human trafficking. Documentation of a child's status as a victim of human trafficking provided by a federal, state, or local government agency shall create a presumption that the child's adjudication was obtained as a result of having been a victim of human trafficking. However, such documentation shall not be required to grant a motion under this Article.

E. If the motion is granted, the court shall order the expungement and sealing of the record and report of the juvenile proceedings including all records and files related to the child's arrest, citation, investigation, charge, delinquency proceedings, adjudication, and probation for the offense.

Accordingly, an adjudication may be set aside or vacated immediately and related records are expunged automatically. However, La. Child. Code Ann. art. 923 applies specifically to adjudications for prostitution-related offenses, foreclosing the law's applicability to other offenses related to trafficking victimization.

Records for other offenses related to trafficking victimization may be expunged and sealed in accordance with La. Child. Code Ann. art. 918 (Grounds), which states,

A. Records and reports of a delinquency matter that did not result in adjudication and records concerning delinquency adjudications for R.S. 14:82 [Prostitution; definition; penalties; enhancement], 83.3 [Prostitution by massage], 83.4 [Massage; sexual conduct prohibited], 89 [Crime against nature], 89.2 [Crime against nature by solicitation] may be expunged and sealed at any time.

B. Records and reports of a matter that resulted in a finding of Families in Need of Services or an adjudication for any charge other than murder, manslaughter, an offense requiring registration as a sex offender under R.S. 15:542, kidnapping, or armed robbery shall be expunged and sealed only if the court exercising juvenile jurisdiction has ceased to exercise jurisdiction in accordance with Article 313.

C. Records concerning conduct or conditions that resulted in a delinquency adjudication may be expunged and sealed only if all of the following circumstances exist:

- (1) The person seeking expungement and sealing has no criminal court felony convictions and no criminal court convictions for misdemeanors against a person involving a firearm.

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office of the district attorney of the property or material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.”

(2) The person seeking expungement and sealing has no pending indictment or bill of information.

D. If the adjudication was for murder, manslaughter, a sex offense requiring registration under R.S. 15:542, kidnapping, or armed robbery, the child may petition the court for an expungement of his juvenile record when the court has ceased to exercise jurisdiction in accordance with Article 313 and all of the following conditions are met:

(1) Five or more years have elapsed since the person seeking expungement and sealing satisfied the most recent judgment against him.

(2) The person seeking expungement and sealing has no criminal court felony convictions and no criminal court convictions for misdemeanors against a person involving a firearm.

(3) The person seeking expungement and sealing has no pending indictment or bill of information.

According to La. Child. Code Ann. art. 922(A) (Expungement and sealing order; effect),

Except for the limited purposes stated in Articles 920 [Order of expungement and sealing; court records]<sup>101</sup> and 921 [Order of expungement and sealing; agency records],<sup>102</sup> upon an order of expungement and sealing, the records and reports expunged and sealed and the underlying conduct and conditions are considered nonexistent and shall not be made available to any person. No person who juvenile records and reports have been expunged and sealed shall be required to disclose to any person that he was arrested or adjudicated or that the records and reports of arrest or adjudication have been expunged and sealed.

5.9.1 Recommendation: Amend La. Child. Code Ann. art. 923 (Expungement of adjudications involving human trafficking victims) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for other offenses arising from trafficking victimization.

*5.10 Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*

In Louisiana, trafficking victims have a civil cause of action. La. Rev. Stat. Ann. § 46:2163 (Civil cause of action for victims of human trafficking) provides that,

An individual who is a victim of human trafficking shall have a civil cause of action in district court for injunctive relief and to recover actual damages, compensatory damages, punitive damages, and for any

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<sup>101</sup> La. Child. Code Ann. art. 920 states,

A. An order for the expungement and sealing of juvenile court records and reports shall be in the form provided in Article 925 and, except as otherwise provided by law, shall require that the clerk of court expunge and seal all records and reports relating to the conduct or conditions referred to in the motion for expungement and sealing, including pleadings, exhibits, reports, minute entries, correspondence, and all other documents.

B. References, documents, recordings, or other materials shall be expunged and sealed. Under no circumstances may any expunged and sealed information be released.

C. The court may maintain a confidential record, such as a minute entry, of the fact of an adjudication. This information may be released only upon written motion of a court exercising criminal jurisdiction over the person whose record is sought and then only for the purposes authorized by the Code of Criminal Procedure.

<sup>102</sup> La. Child. Code Ann. art. 921(D) states, “A copy of the order of expungement and sealing may be maintained by the custodian of records and reports of the agency or office. However, the custodian shall not disclose to anyone the fact that such order is maintained or that the expunged and sealed records or reports previously existed except upon written order of the court.”

other appropriate relief. A prevailing plaintiff shall also be awarded court costs and attorney fees. Treble damages shall be awarded on proof of actual damages where the defendant's actions were willful and malicious.

Additionally, victims can pursue civil remedies against persons convicted under the Louisiana Racketeering Act.<sup>103</sup> Specifically, civil remedies are available pursuant to La. Rev. Stat. Ann. § 15:1356 (Civil remedies), which states in part,

A. (1) All property, immovable or movable, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of R.S. 15:1353 [Prohibited activities] is subject to civil forfeiture to the state. Any injured person shall have an in rem right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds . . . .

. . . .  
. . . .

E. Any person who is injured by reason of any violation of the provisions of R.S. 15:1353 [Prohibited activities] shall have a cause of action against any person engaged in racketeering activity who violates a provision of R.S. 15:1353. Such injured person shall be entitled to recover three times the actual damages sustained or ten thousand dollars, whichever is greater. Such person shall also recover attorney fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred.

La. Rev. Stat. Ann. § 15:1356(I) provides that this civil remedy will not preclude the application of other remedies.

Victims also have the right to seek restitution under La. Rev. Stat. Ann. § 46:1844(M)(1)–(3)<sup>104</sup> (Basic rights for victim and witness), which states,

(1) If the defendant is found guilty, the court or the committee on parole shall require the defendant to pay restitution to the appropriate party in an amount and manner determined by the court. In addition, the court or the committee on parole may require the defendant to perform community service work in an amount and according to a schedule determined by the court.

(2) One of the conditions of work release shall be a requirement that an inmate pay from his earnings all restitution ordered by the court or the committee on parole. Even if no restitution has been ordered, the sheriff or director of the program shall have the right to require payment of restitution as a condition of work release.

(3) A victim shall not be required to pay recording fees for the filing of a restitution order with the clerk of court. The defendant shall be responsible for all costs associated with this action.

Additionally, La. Code Crim. Proc. Ann. art. 883.2 (Restitution to victim) provides,

A. In all cases in which the court finds an actual pecuniary loss to a victim, or in any case where the court finds that costs have been incurred by the victim in connection with a criminal prosecution, the trial court shall order the defendant to provide restitution to the victim as a part of any sentence that the court shall impose.

B. Additionally, if the defendant agrees as a term of a plea agreement, the court shall order the defendant to provide restitution to other victims of the defendant's criminal conduct, although those persons are not the victim of the criminal charge to which the defendant pleads. Such restitution to other persons may be ordered pursuant to Article 895 [Conditions of probation] or 895.1 [Probation];

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<sup>103</sup> See *supra* Component 3.1 for the provisions of the Louisiana Racketeering Act.

<sup>104</sup> See *supra* note 35.

restitution; judgment for restitution; fees] or any other provision of law permitting or requiring restitution to victims.

C. The court shall order that all restitution payments be made by the defendant to the victim through the court's designated intermediary, and in no case shall the court order the defendant to deliver or send a restitution payment directly to a victim, unless the victim consents.

...

Finally, La. Rev. Stat. Ann. § 15:539.3(A) (Mandatory restitution) mandates that

A person convicted of a violation of R.S. 14:46.2 (human trafficking), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:82.1 (prostitution; persons under eighteen; additional offenses), R.S. 14:83 (soliciting for prostitutes), R.S. 14:83.1 (inciting prostitution), R.S. 14:83.2 (promoting prostitution), R.S. 14:84 (pandering), R.S. 14:86 (enticing persons into prostitution), R.S. 14:104 (keeping a disorderly place), R.S. 14:105 (letting a disorderly place), and R.S. 14:282 (operation of places of prostitution) shall be ordered to pay mandatory restitution to the victim . . . . Restitution under this Section shall include any of the following:

- (1) Costs of medical and psychological treatment.
- (2) Costs of necessary transportation and temporary housing.
- (3) . . . In the case of sex trafficking, the victim shall be entitled to restitution for the income he would have earned, had he not been victimized, as guaranteed under the minimum wage and overtime provisions of the federal Fair Labor Standards Act.
- (4) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair.
- (5) Expenses incurred by the victim and any household members or other family members in relocating away from the defendant or the defendant's associates, including but not limited to deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items . . . .

*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.*

Although the criminal statutes of limitations for prosecuting child sex trafficking and certain CSEC crimes are lengthened, the statutes of limitations for related civil actions are not.

Pursuant to La. Code Crim. Proc. Ann. art. 571.1 (Time limitation for certain sexual offenses), the criminal statutes of limitations for human trafficking and several CSEC offenses are extended to 30 years. For various sexual offenses, La. Code Crim. Proc. Ann. art. 571.1 (Time limitation for certain sex offenses) states,

Except as provided by Article 572 of this Chapter, the time within which to institute prosecution of the following sex offenses, regardless of whether the crime involves force, serious physical injury, death, or is punishable by imprisonment at hard labor shall be thirty years: attempted first degree rape, also formerly titled aggravated rape (R.S. 14:28, R.S. 14:42), attempted second degree rape, also formerly titled forcible rape (R.S. 14:27, R.S. 14:42.1, sexual battery (R.S. 14:43.1), second degree sexual battery (R.S. 14:43.2), oral sexual battery (R.S. 14:43.3), human trafficking (R.S. 14:46.2(B)(2) or (3)), trafficking of children for sexual purposes (R.S. 14:46.3), felony carnal knowledge of a juvenile (R.S. 14:80), indecent behavior with juveniles (R.S. 14:81), pornography involving juveniles (R.S. 14:81.1), molestation of a juvenile . . . (R.S. 14:81.2), prostitution of persons under eighteen (R.S. 14:82.1), enticing persons into prostitution (R.S. 14:86), crime against nature (R.S. 14:89), aggravated crime against nature (R.S. 14:89.1), crime against nature by solicitation (R.S. 14:89.2(B)(3)), incest (R.S.

14:78) [repealed], or aggravated incest (R.S. 14:78.1) [repealed] which involves a victim under seventeen years of age. This thirty-year period begins to run when the victim attains the age of eighteen.

For noncapital offenses, La. Code Crim. Proc. Ann. art. 572 (Limitation of prosecution of noncapital offenses) sets out the time frames for commencing criminal prosecutions. La. Code Crim. Proc. Ann. art. 572(A) states,

Except as provided in Articles 571 and 571.1, no person shall be prosecuted, tried, or punished for an offense not punishable by death or life imprisonment, unless the prosecution is instituted within the following periods of time after the offense has been committed:

- (1) Six years, for a felony necessarily punishable by imprisonment at hard labor.
- (2) Four years, for a felony not necessarily punishable by imprisonment at hard labor.
- (3) Two years, for a misdemeanor punishable by a fine, or imprisonment, or both.
- (4) Six months, for a misdemeanor punishable only by a fine or forfeiture.

No general tolling applies to offenses against minors; however, La. Code Crim. Proc. Ann. art. 573 (Running of time limitations; exception) specifies that the time limitations found in La. Code Crim. Proc. Ann. art. 572 will not start to run “until the relationship or status involved has ceased to exist when: . . . [t]he offense charged is aggravated battery (R.S. 14:34) and the victim is under seventeen years of age.”

The statute of limitations for commencing civil actions is provided for under La. Civ. Code Ann. art. 3499 (Personal actions), which states, “[u]nless otherwise provided by legislation, a personal action is subject to a liberative prescription<sup>105</sup> of ten years.”

- 5.11.1 Recommendation: Amend La. Civ. Code Ann. art. 3499 (Personal actions) to extend the time for victims of La. Rev. Stat. Ann. § 14:46.3(A), (B) (Trafficking of children for sexual purposes) and Louisiana’s CSEC laws to commence civil actions against their exploiters.
- 5.11.2 Recommendation: Amend La. Code Crim. Proc. Ann. art. 571.1 (Time limitation for certain sex offenses) to eliminate the statute of limitations for commencing prosecutions of La. Rev. Stat. Ann. § 14:46.3(A), (B) (Trafficking of children for sexual purposes) and Louisiana’s CSEC laws.

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<sup>105</sup> Pursuant to La. Civ. Code Ann. art. 3447, a “[l]iberative prescription is a mode of barring of actions as a result of inaction for a period of time.”



**Legal Components:**

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

Human trafficking training for law enforcement is statutorily mandated in Louisiana. La. Rev. Stat. Ann. § 2405.7 (Human trafficking training) states,

- A. The council shall provide training for law enforcement agencies in addressing human trafficking.
- B. Such training shall focus on all of the following:
  - (1) Investigating human trafficking under R.S. 14:46.2.
  - (2) Investigating trafficking of children for sexual purposes under R.S. 14:46.3 and the special needs of sexually exploited children.
  - (3) Methods used in identifying United States citizens and foreign national victims of human trafficking, including preliminary interview techniques and appropriate questioning methods.
  - (4) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case.
  - (5) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and the special needs of female and child victims.
  - (6) The necessity of treating victims of human trafficking as crime victim rather than criminals.
  - (7) Methods for promoting the safety of victims of human trafficking.
- C. The council shall seek input and participation of appropriate nongovernmental organizations and other relevant organizations in the preparation and presentation of training called for in this Section.

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

Louisiana allows single party consent to audiotaping. La. Rev. Stat. Ann. § 15:1303(C)(4) (Interception and disclosure of wire, electronic, or oral communications) states,

It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire, electronic, or oral communication where such person is a party to the communication or 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 or of the state 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).*

La. Rev. Stat. Ann. § 15:1303(A)(1) (Interception and disclosure of wire, electronic, or oral communications) makes it illegal to “[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, electronic or oral communication.” La. Rev. Stat. Ann. § 15:1308(A) (Authorization for interception of wire or oral communications) allows a judge to issue an order authorizing wiretapping for the investigation of specified crimes, including in part, aggravated kidnapping and money laundering, human trafficking when prosecuted under La. Rev. Stat. Ann. § 14:46.2(B)(3), trafficking of children for sexual purposes, and “(s) [c]ommercial sexual exploitation of children including R.S. 14:81.1 [Pornography involving juveniles], 81.3 [Computer-aided solicitation of a minor], 82 [Prostitution; definition; penalties; enhancement], 82.1 Prostitution; persons under eighteen; additional offenses], 82.2 [Purchase of commercial sexual activity; penalties], 83 [Soliciting for prostitutes], 83.1 [Inciting prostitution], 83.2 [Promoting prostitution], 83.3 [Prostitution by massage], 83.4 [Massage; sexual conduct prohibited], 84 [Pandering], 85 [Letting premises for prostitution], 86 [Enticing persons into prostitution], 89.2 [Crime against nature by solicitation], 104 [Keeping a disorderly place], 105 [Letting a disorderly place], and 282 [Operation of places of prostitution prohibited; penalty].” La. Rev. Stat. Ann. § 15:1308(A)(2)(b), (m), (q), (r), (s).

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.*

Under Louisiana’s core sex trafficking statutes, La. Rev. Stat. Ann. § 14:46.2 (Human trafficking) and § 14:46.3 (Trafficking of children for sexual purposes), a defense as to the use of a law enforcement decoy is expressly prohibited. Both La. Rev. Stat. Ann. § 14:46.2(D) and § 14:46.3(B)(3), state, “It shall not be a defense to prosecution for a violation of this Section that the person being recruited, harbored, provided, solicited, received, isolated, enticed, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.”

Furthermore, the defense is prohibited from being raised under Louisiana’s CSEC offense, which mirrors the language of the trafficking statutes. Pursuant to La. Rev. Stat. Ann. § 14:82.2(F)<sup>106</sup> (Purchase of commercial sexual activity; penalties), “It shall not be a defense to prosecution a violation of this Section that the person being recruited, harbored, transported, provided, sold, purchased, received, isolated, enticed, obtained, or maintained is actually a law enforcement officer or peace officer acting within the official scope of his duties.”

Additionally, pursuant to La. Rev. Stat. Ann. § 14:86 (Enticing persons into prostitution), “it shall not be a defense to prosecution . . . that the person being enticed is actually a law enforcement officer or peace officer acting in his official capacity” and similarly under La. Rev. Stat. Ann. § 14:89.2 (Crime against nature by solicitation) it shall not be a defense “that the person being solicited is actually a law enforcement officer or peace officer acting within the official scope of his duties.” La. Rev. Stat. Ann. § 14:86(C), 89.2 (D)(4).

Finally, under La. Rev. Stat. Ann. § 14:82.1 (Prostitution; persons under eighteen; additional offenses), “it shall not be a defense . . . that the person practicing prostitution who is believed to be under the age of eighteen is actually a law enforcement officer or peace officer acting within the official scope of his duties.” La. Rev. Stat. Ann. § 14:82.1(E).

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<sup>106</sup> See *supra* note 6.

Therefore, for charges brought against buyers through reverse sting operations under both Louisiana’s sex trafficking and CSEC offenses, this defense would not be accessible, which are the most likely situations in which a defendant would try to raise such a defense.

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

The use of the Internet to investigate buyers and traffickers appears to be permissible under La. Rev. Stat. Ann. § 14:81.3 (Computer-aided solicitation of a minor). The language in the statute specifically carves out an exception allowing law enforcement to use the Internet to investigate buyers and traffickers by disallowing a defense based on the fact that the “victim” was actually a law enforcement officer using the Internet as an investigative tool. La. Rev. Stat. Ann. § 14:81.3(C)(1).

La. Rev. Stat. Ann. § 14:81.3(C) expressly states, “It shall not constitute a defense to a prosecution brought pursuant to this Section that the person reasonably believed to be under the age of seventeen is actually a law enforcement officer or peace officer acting in his official capacity.” Additionally, because La. Rev. Stat. Ann. § 14:81.3 applies when a person “knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen . . . or a person reasonably believed to have not yet attained the age of seventeen . . . for the purpose of or with the intent to persuade, induce, entice or coerce the person to engage or participate in sexual conduct,” it appears to contemplate and permit the use of the Internet in investigations. La. Rev. Stat. Ann. § 14:81.3(A)(1).

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

La. Rev. Stat. Ann. § 46:1431(A), (B) (Missing and Exploited Children Information Clearinghouse; establishment; definitions) creates “a Missing and Exploited Children Information Clearinghouse within the Department of Public Safety and Corrections, office of state police” to serve “as a central repository of information regarding missing and/or exploited children.” La. Rev. Stat. Ann. § 46:1431(B) expressly requires that information regarding missing or exploited children “be collected and disseminated to assist in the location of missing children and the reporting of exploited children to the proper agency.”

La. Rev. Stat. Ann. § 46:1432(A) (Duties of the clearinghouse) requires the clearinghouse to

- (1) Establish a system of intrastate communication of information relating to children determined, by the parent, guardian, or legal custodian of the child, or by a law enforcement agency, to be missing and/or exploited.
- (2) Provide a centralized file for the exchange of information on missing children within the state.
- (3) Interface with the National Crime Information Center for the exchange of information on children suspected of interstate travel.

Furthermore, the clearinghouse also must “collect, process, maintain, and disseminate information on missing and/or exploited children and shall strive to maintain or disseminate only accurate and complete information.” La. Rev. Stat. Ann. § 46:1432(C).

La. Rev. Stat. Ann. § 40:2521 (Law enforcement agency receiving report of missing or recovered child; duty) requires the law enforcement agency that receives an initial report of a missing child or the recovery of a missing child to

immediately report the missing or recovered child to national law enforcement agencies and the state law enforcement agencies of neighboring states. This notification shall include entry of the name of the child into the National Crime Information Center registry. These reports shall be made for each

reported missing child without regard to whether the child is believed to be missing due to stranger abduction, parental abduction, or any other cause.

La. Rev. Stat. Ann. § 14:403.3(A) (Reports of missing children; procedures; false reports or communications; penalties) similarly requires,

(1) Any state or local law enforcement agency receiving a report of a missing child, or the recovery of a missing child, and having reasonable grounds to believe such report is accurate shall within forty-eight hours after the date of receipt of the report notify each of the following of the fact and contents of such report:

- (a) The Department of Health and Human Resources.
  - (b) The Department of Public Safety and Corrections, if it did not originally receive the report.
  - (c) The office of the sheriff for the parish in which such report was received, if it did not originally receive the report.
  - (d) The office of the sheriff for all parishes adjacent to the parish in which such report was received.
  - (e) The National Crime Information Computer System.
- (2) The law enforcement agency may also notify any other appropriate local, state, or federal agency of the fact and contents of such report.

Under the Missing Children Identification Act, La. Rev. Stat. Ann. Title 40 (Public health and safety), Chapter 25 (Missing children identification act), schools must maintain identification cards “to assist with the finding and identification of missing children and only with parental permission.” La. Rev. Stat. Ann. §§ 40:2512, 40:2515(3). In the event a child is suspected to be missing, the principal “may release the child identification card of any child to a law enforcement agency or other public agency or entity” with the written permission of the parents, or without the parents’ permission “for good cause shown,” after a hearing. La. Rev. Stat. Ann. § 40:2518(D).

La. Rev. Stat. Ann. § 46:1433(A)<sup>107</sup> (Notification of location of missing or exploited child) requires a “parent, guardian, or legal custodian responsible for notifying the clearinghouse or a law enforcement agency of a missing or exploited child” to “immediately notify such agency or the clearinghouse of any child whose location has been determined.” Additionally, law enforcement agencies are required to “transmit information of the recovery of a missing child to the clearinghouse, which shall maintain the information in the central repository . . . .” La. Rev. Stat. Ann. § 46:1433(B).

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<sup>107</sup> The text of La. Rev. Stat. Ann. § 46:1433 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 326 during the 2018 Regular Session of the Louisiana Legislature (effective August 1, 2018).

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