

2018 ANALYSIS AND RECOMMENDATIONS

TENNESSEE

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

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

Legal Analysis¹:

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

Tennessee directly addresses human trafficking through Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act), which states,

- (a) A person commits the offense of trafficking a person for a commercial sex act who:
 - (1) Knowingly subjects, attempts to subject, benefits from or attempts to benefit from another person's provision of a commercial sex act; or
 - (2) Recruits, entices, harbors, transports, provides, purchases or obtains by any means another person for the purpose of providing a commercial sex act.
- (b) For purposes of subdivision (a)(2), such means may include, but are not limited to:
 - (1) Causing or threatening to cause physical harm to the person;
 - (2) Physically restraining or threatening to physically restrain the person;
 - (3) Abusing or threatening to abuse the law or legal process;
 - (4) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;

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

- (5) Using blackmail or using or threatening to cause financial harm for the purpose of exercising financial control over the person; or
- (6) Facilitating or controlling a person's access to a controlled substance.

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(d) It is not a defense to a violation of this section that:

- (1) The intended victim of the offense is a law enforcement officer; or
- (2) The victim of the offense is a minor who consented to the act or acts constituting the offense.

While the means enumerated under subsection (b) are a non-exhaustive list and not required to establish an offense under Tenn. Code Ann. § 39-13-309(a)(2) for either minors² or adults, the definition of “commercial sex act” under Tenn. Code Ann. § 39-13-301 (Definitions) further establishes that force, fraud or coercion are not required in the commission of Tenn. Code Ann. § 39-13-309 against a minor. Tenn. Code Ann. § 39-13-301(15) defines “commercial sex act” as

(A) Any sexually explicit conduct³ for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age; or

(B) Any sexually explicit conduct that is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.

Tenn. Code Ann. § 39-13-309 is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000.⁴ Tenn. Code Ann. §§ 40-35-111(b)(2), 39-13-309(b). A violation of Tenn. Code Ann § 39-13-309 is a Class A felony where:

[T]he victim of the offense is a child under (15) years of age or where the offense occurs on the grounds or facilities within 1,000 feet of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park.

A Class A felony is punishable by imprisonment for 15–60 years and a possible fine not to exceed \$50,000. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1).

² Under Tenn. Code Ann. 39-13-301(11), “‘Minor’ means an individual who is less than eighteen years old.”

³ Tenn. Code Ann. § 39-13-301(14) defines “sexually explicit conduct” as actual or simulated:

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) Bestiality;
- (C) Masturbation;
- (D) Lewd exhibition of the genitals or pubic area of any person;
- (E) Flagellation or torture by or upon a person who is nude;
- (F) Condition of being fettered, bound or otherwise physically restrained on the part of a person who is nude;
- (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area or buttocks or with a female's nude breasts;
- (H) Defecation or urination for the purpose of sexual stimulation of the viewer; or
- (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

⁴ Tenn. Code Ann. § 40-35-111 (Authorized terms of imprisonment and fines for felonies and misdemeanors) lists the “authorized . . . fines for felonies” “unless otherwise provided by statute.”

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.*

Tennessee has several statutes specifically criminalizing CSEC, including the following:

1. Tenn. Code Ann. § 39-13-514(b)(4)(A) (Patronizing prostitution) provides “[p]atronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is punishable as trafficking for commercial sex acts under § 39-13-309 [Trafficking for commercial sex act].” “Patronizing prostitution” is defined as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.” Tenn. Code Ann. § 39-13-512(3) (Prostitution—Definitions). A person who commits an offense against a minor under Tenn. Code Ann. § 39-13-514(b)(4)(A) faces a Class A or Class B felony under Tenn. Code Ann. § 39-13-309. A Class A felony is punishable by imprisonment for 15–60 years and a possible fine not to exceed \$50,000 and a Class B felony is punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000.
2. Tenn. Code Ann. § 39-13-515⁵ (Promoting prostitution) states,
 - (a) A person commits an offense under this section who promotes prostitution.
 - (b) Except as provided in subsection (c), promoting prostitution is a Class E felony.
 - (c) Promoting prostitution is punishable as:
 - (1) Trafficking for a commercial sex act under § 39-13-309⁶ if the person being promoted is less than eighteen (18) years of age . . .
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Pursuant to Tenn. Code Ann. § 39-13-512(5), “Promoting prostitution of a minor” is defined as “engaging in any of the activities described in subdivision (4) when one (1) or more of the persons engaged in prostitution is less than eighteen (18) years of age or has an intellectual disability.” Tenn. Code Ann. § 39-13-512(4) provides,

- (A) “Promoting prostitution” means:
 - (i) Owning, controlling, managing, supervising, or in any way keeping, alone or in association with others, a business for the purpose of engaging in prostitution, or a house of prostitution;
 - (ii) Procuring an inmate for a house of prostitution;
 - (iii) Encouraging, inducing, or otherwise purposely causing another to become a prostitute;
 - (iv) Soliciting a person to patronize a prostitute;
 - (v) Procuring a prostitute for a patron; or
 - (vi) Soliciting, receiving, or agreeing to receive any benefit for engaging in any of the activities defined in subdivisions (4)(A)(i)–(v); and
- (B) “Promoting prostitution” does not include a person who solicits, procures, induces, encourages, or attempts to cause another to patronize a prostitute if:
 - (i) The person promoting the prostitute and the prostitute being promoted are the same person; and
 - (ii) The intent of the promotion is the solicitation of business for only the prostitute engaging in the promotion.

⁵ The text of Tenn. Code Ann. § 39-13-515 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 1930 and Senate Bill 2517 during the 110th General Assembly of the Tennessee Legislature (effective July 1, 2018).

⁶ See *supra* Component 1.1 for penalties provided under Tenn. Code Ann. § 39-13-309.

3. Tenn. Code Ann. § 39-17-1005(a), (d) (Offense of especially aggravated sexual exploitation of a minor) makes it a Class B felony “for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive.” The crime is punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. § 40-35-111(b)(2). A person may be separately charged “for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.” Tenn. Code Ann. § 39-17-1005(b).
4. Tenn. Code Ann. § 39-13-528(a) (Offense of solicitation of a minor) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;
- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
- (9) Sexual activity involving a minor, pursuant to § 39-13-529
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- (11) Patronizing prostitution, pursuant to § 39-13-514;
- (12) Promoting prostitution, pursuant to § 39-13-515;
- (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-100.

Pursuant to subsection (c), “A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.”

5. Tenn. Code Ann. § 39-13-529(a) (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) makes it a crime for a person “eighteen (18) years or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in sexual activity⁷ or simulated sexual activity that is patently offensive,⁸ as defined in

⁷ “Sexual activity” is defined in Tenn. Code Ann. § 39-17-1002(8) as any of the following acts:

- (A) Vaginal, anal or oral intercourse, whether done with another person or an animal;
- (B) Masturbation, whether done alone or with another human or an animal;
- (C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person’s clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;
- (D) Sadoomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

§ 39-17-1002 [Part definitions], where such sexual activity or simulated sexual activity is observed by that person or by another.” This crime is punishable as a Class B felony by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2).

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

1. Tenn. Code. Ann. § 39-13-504(a) (Aggravated sexual battery) states,

Aggravated sexual battery is unlawful sexual contact⁹ with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

- (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;
- (2) The defendant causes bodily injury to the victim;
- (3) The defendant is aided or abetted by one (1) or more other persons; and
 - (A) Force or coercion is used to accomplish the act; or
 - (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
- (4) The victim is less than thirteen (13) years of age.

This offense is punishable as a Class B felony by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 40-35-111(b)(2), 39-13-504(b).

2. Tenn. Code. Ann. § 39-13-505(a) (Sexual battery) states,

Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

- (1) Force or coercion¹⁰ is used to accomplish the act;
- (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
- (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
- (4) The sexual contact is accomplished by fraud.

This offense is punishable as a Class E felony by imprisonment for 1–6 years and a possible fine not to exceed \$3,000. Tenn. Code Ann. §§ 39-13-505(c), 40-35-111(b)(5).

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- (E) The insertion of any part of a person’s body or of any object into another person’s anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;
 - (F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or
 - (G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.

⁸“Patently offensive” is defined as “that which goes substantially beyond customary limits of candor in describing or representing such matters.” Tenn. Code Ann. § 39-17-1002(4).

⁹ Tenn. Code. Ann. § 39-13-501(6) defines “sexual contact” as “the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s, the defendant’s, or any other person’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.”

¹⁰ “As used in this section, ‘coercion’ means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.” Tenn. Code. Ann. § 39-13-505(b).

3. Tenn. Code Ann. § 39-13-506 (Statutory rape) criminalizes “unlawful sexual penetration” of minors when the defendant and minor are of certain ages. If the victim is 13 or 14, and the defendant is 4–9 years older than the victim, the crime is a Class E felony. Tenn. Code Ann. § 39-13-506(b)(1), (d)(2). If the victim is 15–17 and the defendant is 5–9 years older than the victim, the crime is a Class E felony. Tenn. Code Ann. § 39-13-506(b)(2), (d)(2). The crime is “mitigated statutory rape” and a Class E felony when the victim is 15-17 years old and the defendant is 4–5 years older than the victim. Tenn. Code Ann. § 39-13-506(a), (d)(1). As Class E felonies, the categories of statutory rape above are punishable by imprisonment for 1–6 years and a possible fine not to exceed \$3,000. Tenn. Code Ann. § 40-35-111(b)(5). However, if the victim is 13–17 and the defendant is at least 10 years older, the crime becomes aggravated statutory rape, a Class D felony punishable by imprisonment for 2–12 years and a possible fine not to exceed \$5,000. Tenn. Code Ann. §§ 39-13-506(c), (d)(3), 40-35-111(b)(4).
4. Tenn. Code Ann. § 39-13-522(a) (Rape of a child) states, “Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.” The crime is a Class A felony and under Tenn. Code Ann. § 39-13-522(b)(2)(A) “a person convicted of a violation of this section shall be punished as a Range II offender; however, the sentence imposed upon such person may, if appropriate, be within Range III but in no case shall it be lower than Range II.” Therefore, in accordance to Range II and III penalties, this crime is punishable by imprisonment for 25–60 years and a possible fine not to exceed \$50,000. Tenn. Code Ann. §§ 39-13-522(b)(2)(A), 40-35-111(b)(1), 40-35-112(b), (c).

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

Tennessee’s prostitution-related statutes refer to the sex trafficking law, thereby acknowledging the intersection of prostitution with trafficking victimization. Tenn. Code Ann. § 39-13-515 (Promoting prostitution) and § 39-13-514(b)(4)(A) (Patronizing prostitution) refer to Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act) to ensure that human trafficking penalties apply when the offense is committed against a minor. Tenn. Code Ann. § 39-13-515(c)(1)¹¹ states, “Promoting prostitution is punishable as: (1) Trafficking for a commercial sex act under § 39-13-309 if the person being promoted is less than eighteen (18) years of age.” Tenn. Code Ann. § 39-13-514(b)(4)(A) establishes that “[p]atronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is punishable as trafficking for commercial sex acts under § 39-13-309.”

Additionally, Tenn. Code Ann. § 39-13-513(e) (Prostitution)¹² refers to the human trafficking law and requires law enforcement to identify commercially sexually exploited minors as victims of sex trafficking. Tenn. Code Ann. § 39-13-513(d) states,

Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the

¹¹ See *supra* note 5.

¹² Victim is defined under 22 U.S.C. § 7102 as a person subjected to either “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age” or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. § 7102 (8)(A), (B).

person is a minor, provide the minor with the telephone number for the Tennessee human trafficking resource center hotline and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.

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.*

Tennessee’s racketeering statute includes the CSEC offense of especially aggravated sexual exploitation of a minor as racketeering activity, but does not include human trafficking or the state’s other CSEC offenses. Tenn. Code Ann. § 39-12-204 (Unlawful activities) states,

(a) It is unlawful for any person who has, with criminal intent, received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of the proceeds or the proceeds derived from the use or investment thereof, in the acquisition of any title to or any right, interest, or equity in, real or personal property or in the establishment or operation of any enterprise.

(b) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, an interest in or control of any enterprise of real or personal property.

(c) It is unlawful for any person employed by, or associated with, any enterprise¹³ to knowingly conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity or the collection of any unlawful debt.

A “pattern of racketeering activity” is defined as “engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided that at least one (1) of such incidents occurred after July 1, 1986, that the last of the incidents occurred within two (2) years after a prior incident of racketeering conduct.” Tenn. Code Ann. § 39-12-203(6) (Part definitions). It is “racketeering activity” “to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit an act for financial gain that is a criminal offense involving . . . aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor under §§ 39-17-1004(b)(1)(A) and 39-17-1005(a)(1), or to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit a criminal gang offense, as defined in § 40-35-121(a) [Criminal gang offenses].” Tenn. Code Ann. § 39-12-203(9). Pursuant to Tenn. Code Ann. § 40-35-121(a)(3)(B) (Criminal gang offenses), a “criminal gang offense” occurs when a “criminal gang”¹⁴ is involved in “[t]he commission or attempted commission, facilitation of, solicitation of, or conspiracy to commit . . . trafficking for commercial sex acts, as defined in § 39-13-309.”

¹³ “Enterprise” is defined as “any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact, although not a legal entity, and it includes illicit as well as licit enterprises and governmental, as well as other entities, including criminal gangs, as defined in Section 40-35-121(a).”

¹⁴ Pursuant to Tenn. Code Ann. § 40-35-121(a)(1),

“Criminal gang” means a formal or informal ongoing organization, association or group consisting of three (3) or more persons that has:

(A) As one (1) of its primary activities, the commission of criminal gang offense;

(B) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity.

Conviction for racketeering is punishable as a Class B felony by imprisonment under the sentencing range within Range II or higher (imprisonment for 12–30 years), a fine up to \$250,000, or both. Tenn. Code Ann. §§ 39-12-205(a), 40-35-112(b)(2), (c)(2). Instead of a fine, a conviction for conduct “through which pecuniary value¹⁵ is derived, or by which personal injury or property damage or other loss is caused, may be sentenced to pay a fine that does not exceed three (3) times the gross value gained or three (3) times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.” Tenn. Code Ann. § 39-12-205(b)(1). Additionally, asset forfeiture is permitted. An offender may have to forfeit to the state, “[a]ll property, real or personal, 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 this part” Tenn. Code Ann. § 39-12-206(b) (Civil proceedings—Injunctions—Forfeiture of property—Future criminal actions—Statute of limitations).

¹⁵ Tenn. Code Ann. § 39-12-205(b)(2) (Penalties) provides,

For the purposes of subdivision (b)(1) “pecuniary value” means:

- (A) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else, the primary significance of which is economic advantage; or
- (B) Any other property or service that has a value in excess of five hundred dollars (\$500).

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.*

Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) applies to a buyer of commercial sex acts with a minor through use of the term “purchase.” Tenn. Code Ann. § 39-13-309(a)(2) makes it a crime when a person “recruits, entices, harbors, transports, provides, purchases or obtains by any means another person for the purpose of providing a commercial sex act.” Pursuant to Tenn. Code Ann. § 39-13-301(15) (Part definitions), “‘Commercial sex act’ means any sexually explicit conduct¹⁶ for which anything of value is directly or indirectly given, promised to or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under eighteen (18) years of age.”

Additionally, while buyers can be offenders of Tenn. Code Ann. § 39-13-309(a) through the term “obtains”¹⁷ following federal precedent, the scope of applicability is narrowed by the definition of “obtains” under Tenn.

¹⁶ See *supra* note 3.

¹⁷ Pursuant to Tenn. Code Ann. § 39-13-301(9), (10) “[o]btain’ means, in relation to labor or services, to secure performance of labor or services,” and “services” is defined as “between a person and the defendant in which the person performs activities under the supervision of or for the defendant.” However, the terms “labor or services” in the definition of “obtain” make the definition seemingly more applicable to Tenn. Code Ann. § 39-13-308 (Trafficking for labor or services). Accordingly, the term “obtain” could be used differently for Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act). 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 terms ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law

Code Ann. § 39-13-301(12) (Part definitions). Under Tenn. Code Ann. § 39-13-309(12), “obtains” means “in relation to labor or services, to secure performance of labor or services.” Tenn. Code Ann. § 39-13-309(13) defines “services” as, “an ongoing relationship between a person and the defendant in which the person performs activities under the supervision of or for the defendant.” Therefore, for a buyer to be held liable for committing the offense of Tenn. Code Ann. § 39-13-309(a), the buyer and child victim must be in an ongoing relationship and a controlling third party or trafficker must be identified.

A conviction under Tenn. Code Ann. § 39-13-309 is punishable as a Class B felony by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. § 40-35-111(b)(2) (Authorized terms of imprisonment and fines for felonies and misdemeanors). However, Tenn. Code Ann. § 39-13-309 is a Class A felony where:

[T]he victim of the offense is a child under fifteen (15) years of age, or where the offense occurs on the grounds or facilities or within one thousand feet (1,000’) of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park.

A Class A felony is punishable by imprisonment for 15–60 years and a possible fine not to exceed \$50,000. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1).

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

Tenn. Code Ann. § 39-13-514(b)(4)(A) (Patronizing prostitution) makes patronizing prostitution of a minor punishable as sex trafficking under Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act), stating that “[p]atronizing prostitution from a person who is younger than eighteen (18) years of age or has an intellectual disability is punishable as trafficking for commercial sex acts under § 39-13-309.” “Patronizing prostitution” is defined as “soliciting or hiring another person with the intent that the other person engage in prostitution, or entering or remaining in a house of prostitution for the purpose of engaging in sexual activity.” Tenn. Code Ann. § 39-13-512(3) (Prostitution—Definitions).

Additionally, pursuant to Tenn. Code Ann. § 39-13-529(a), (e)(1) (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) a Class B felony occurs when an individual

eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in sexual activity¹⁸ or simulated sexual activity that is patently offensive,¹⁹ as defined in § 39-17-1002 [Part definitions], where such sexual activity or simulated sexual activity is observed by that person or by another.

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

Tennessee law differentiates between soliciting sex acts with a minor and soliciting sex acts with an adult. Tenn. Code Ann. § 39-13-514(b)(4)(A) (Patronizing prostitution) criminalizes patronizing a minor for

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.

¹⁸ See *supra* note 3.

¹⁹ See *supra* note 8.

prostitution and refers to Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act) for prosecution and penalties. “Patronizing prostitution” is specifically defined to include “soliciting . . . another person with the intent that the other person engage in prostitution” Tenn. Code Ann. § 39-13-512(3) (Prostitution—Definitions). A conviction under Tenn. Code Ann. § 39-13-514(b)(4)(A) (Patronizing prostitution of a minor) is a Class A felony where:

[T]he victim of the offense is a child under fifteen (15) years of age, or where the offense occurs on the grounds or facilities or within one thousand feet (1,000’) of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park.

A Class A felony is punishable by imprisonment for 15–60 years and a possible fine not to exceed \$50,000. An offense against a minor over 15 years of age is a B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1), (2). In contrast, patronizing a prostitute over 18 is a Class A misdemeanor punishable by imprisonment for not more than 11 months, 29 days, a possible fine not to exceed \$2,500, or both imprisonment and a fine. Tenn. Code Ann. §§ 39-13-514(b)(1), 40-35-111(e)(1).

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

A buyer charged under Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act) faces a Class B felony conviction punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. A buyer of commercial sex will be subject to a Class A felony “if the victim of the offense is a child under (15) years of age, or where the offense occurs on the grounds or facilities or within 1,000 feet of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park.” A Class A felony is punishable by imprisonment for 15–60 years and a possible fine not to exceed \$50,000. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1). Tenn. Code Ann. §§ 39-13-309(b), 40-35-111(b)(2). When the victim is under 18, Tenn. Code Ann. § 39-13-514(b)(4)(A) (Patronizing prostitution) refers to Tenn. Code Ann. (Trafficking a person for a commercial sex act) for prosecution and penalties. A violation of Tenn. Code Ann. § 39-13-529 (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means), is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2).

Several sexual offenses could be used to prosecute a buyer of commercial sex acts with a minor but do not specifically criminalize the commercial sexual exploitation of a child, and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of human trafficking under Tenn. Code Ann. § 39-13-309.²⁰

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 offense²¹ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can

²⁰See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

²¹ 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)

be prosecuted under other federal CSEC laws,²² a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²³

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.*

Tenn. Code Ann. § 39-13-528 (Offense of solicitation of a minor) criminalizes using the Internet or electronic communications to “to intentionally command, request, hire, persuade, invite or attempt to induce” a minor to engage in sexual activity. Tenn. Code Ann. § 39-13-528(a) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;
- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
- (9) Sexual activity involving a minor, pursuant to § 39-13-529.
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- (11) Patronizing prostitution, pursuant to § 39-13-514;
- (12) Promoting prostitution, pursuant to § 39-13-515;
- (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

Pursuant to subsection (c), “A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.” Tenn. Code Ann. § 39-13-528(c).

In addition, Tenn. Code Ann. § 39-13-529(a) (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) includes using

[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).

²² 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).

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

electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where such sexual activity or simulated sexual activity is observed by that person or by another.

Although the crime is not applicable solely to commercial sexual exploitation, the inclusion of the term “hire” brings commercial sexual activity within its range. This crime is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2).

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

Tenn. Code Ann. § 39-13-514 (Patronizing prostitution) and § 39-13-529 (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) expressly prohibit a mistake of age defense. Pursuant to Tenn. Code Ann. § 39-11-502(c) (Ignorance or mistake of fact), “It shall not be a defense to prosecution for a violation of § 39-13-514 or § 39-13-529 that the person charged was ignorant or mistaken as to the age of the minor.”

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

Tennessee’s trafficking law staggers penalties based on a minor’s age, but penalties are sufficiently high even when the victim is an older minor. If the victim is under 15, Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act) is a Class A felony punishable by imprisonment for 15–60 years. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1). If the victim is 15 or older, a conviction under Tenn. Code Ann. § 39-13-309 is a Class B felony punishable by imprisonment for 8–30 years. Tenn. Code Ann. §§ 39-13-309(b), 40-35-111(b)(2). Convictions under Tenn. Code Ann. § 39-13-514(b)(4)(A) (Patronizing prostitution), one of Tennessee’s buyer-applicable CSEC offenses, are punishable as trafficking for commercial sex acts under § 39-13-309, so the same staggered penalties apply.

Tenn. Code Ann. § 39-13-529 (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means), another of Tennessee’s buyer-applicable CSEC offenses, does not stagger penalties based on a minor’s age and provides sufficiently high penalties. Tenn. Code Ann. § 39-13-529 is as a Class B felony punishable by imprisonment for 8–30 years. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2).

In contrast, Tenn. Code Ann. § 39-13-528 (Offense of solicitation of a minor) staggers penalties based on the crime solicited, and some of the crimes listed in § 39-13-528 vary based on the age of the minor and age of the buyer. Pursuant to Tenn. Code Ann. § 39-13-528(c), “A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.” Therefore, when a buyer solicits a victim between 3–13 years of age to engage in conduct that, if it were to occur, would be rape under Tenn. Code Ann. § 39-13-522(a) (Rape of a child), a Class A felony, the crime is punishable as a class B felony with imprisonment between 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-522(a), (b)(1), 40-35-111(b)(2). If the defendant is at least 10 years older than the victim and solicits a victim between 13–17 to engage in conduct that, if it were to occur, would be aggravated statutory rape under Tenn. Code Ann. § 39-13-506(c) (Mitigated statutory rape—Statutory rape—Aggravated statutory rape), a Class D felony, the crime is a Class E felony punishable by imprisonment of 1–6 years and a possible fine not to exceed \$3,000. Tenn. Code Ann. §§ 39-13-506(c), (d)(3), 40-35-111(b)(5). Soliciting is a Class A misdemeanor if the solicited act, if it were to occur, would be mitigated statutory rape under Tenn. Code Ann. § 39-13-506(a), which is typically a Class E felony and occurs when the defendant is 4 or 5 years older than a victim between 15–18. Tenn. Code Ann. §§ 39-13-506(a), (d)(1). Soliciting would also be a Class A misdemeanor if the solicited conduct, if it were to occur, would be statutory rape under Tenn. Code Ann. §§ 39-13-506(b), which is typically a Class E felony, which occurs when the victim is 13 or 14 and the defendant is between 4–10 years older than the victim,

or when the victim is between 15–18 and the defendant is between 5–10 years older than the victim. Tenn. Code Ann. §§ 39-13-506(a), (b)(1), (b)(2), (d)(1), (d)(2). Class A misdemeanors are punishable by up to 11 months, 29 days imprisonment, a fine not to exceed \$2,500, or both. Tenn. Code Ann. § 40-35-111(e)(1).

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

Buyers of commercial sex with minors face fines, restitution, and asset forfeiture. Buyers convicted under Tenn. Code Ann. § 39-13-309(a) (Trafficking for commercial sex act) face a possible fine not to exceed \$25,000, unless “the victim of the offense is a child under (15) years of age, or where the offense occurs on the grounds or facilities or within 1,000 feet of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park,” in which case a possible fine not to exceed \$50,000 may be imposed. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1). The patronizing prostitution of a minor statute references the human trafficking statute for purposes of prosecutions and penalties, so the same fines and sentencing ranges apply for patronizing prostitution of a minor as they do for a human trafficking offense. Hiring a minor online for sexual activity in violation of Tenn. Code Ann. § 39-13-529(a) (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) is a Class B felony with a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2). A conviction under Tenn. Code Ann. § 39-13-528(a) (Offense of solicitation of a minor) can result in a fine ranging between \$2,500 and \$25,000 based on the crime classification determined by the victim’s age and the defendant’s age. Tenn. Code Ann. § 40-25-111(b).

Buyers are subject to mandatory restitution to be paid to a minor who has been sexually victimized through any of the trafficking, CSEC, or sexual offenses applicable to buyers of commercial sex acts with minors. While Tennessee law allows a court, at its discretion, to order restitution to victims of any crime, Tennessee specifically requires restitution to be paid to the victim as part of the punishment under Tenn. Code Ann. §§ 39-13-309 [Trafficking for commercial sex act], 39-13-514 [Patronizing prostitution], 39-17-1005(a) [Offense of especially sexually aggravated sexual exploitation of a minor], 39-13-528(a) [Offense of solicitation of a minor], and 39-13-529(a) [Offense of soliciting sexual exploitation of a minor – exploitation of a minor by electronic means]. Tenn. Code Ann. §§ 39-11-118(a), (b), 40-35-104(c)(2), 40-35-304. Tenn. Code Ann. § 40-33-101 (Conveyances subject to forfeiture) provides for discretionary, criminal asset forfeiture. Upon conviction of sexual offenses pursuant to title 39, chapter 13, section 5 [Sexual offenses], which includes patronizing prostitution of adults or minors, a buyer may be ordered to forfeit “[a]ny conveyance, including a vehicle, aircraft or vessel used in the commission of,” among other offenses, a sexual “offense under title 39, chapter 13, part 5 [Sexual offenses].”²⁴ Property subject to forfeiture under this section may be seized upon process issued by any circuit or criminal court with jurisdiction over the property. Seizure is permitted without process where it is incident to arrest or search, pursuant to a search warrant. Tenn. Code Ann. § 40-33-102 (Seizure authorized). Disposition of the forfeited property is governed by Tenn. Code Ann. § 40-33-110 (Disposition of forfeited conveyance or proceeds of sale of forfeited conveyance), which provides that the property “shall inure to the benefit of the county in which the goods were seized . . . provided, that the forfeited conveyance or the funds derived from the confiscated goods shall go to the law enforcement agency that seized the conveyance and shall be used exclusively for law enforcement purposes . . . In all other cases, the proceeds shall be transmitted to the state treasurer and deposited in the state treasury.”

This discretionary, criminal forfeiture provision is reiterated, with a special focus on minor victims, in Tenn. Code Ann. § 39-13-530(a) (Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors—Child abuse fund) which provides for the forfeiture of “[a]ny conveyance or real or

²⁴ Tenn. Code Ann. § 40-33-101(b)(1) does contain some exceptions, including that “No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture . . . unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to any of the offenses listed in subdivisions (a)(2)–(4).”

personal property used in the commission of an offense under this part [Sexual offenses],” which is committed “against a person under eighteen (18) years of age and was committed on or after July 1, 2006.” This forfeiture is subject to the provisions of title 40, chapter 33, part 2. However, “the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund.” Tenn. Code Ann. § 39-13-530(b).

Vehicle forfeiture specifically for sexual exploitation of children crimes is found in Tenn. Code Ann. § 39-17-1008(a) (Forfeiture of any conveyance or real or personal property used in commission of an offense under this part), which provides that “[a]ny conveyance or real or personal property used in the commission of an offense under this part [Sexual exploitation of children] is subject to forfeiture under the provisions of title 40, chapter 33, part 2 [Forfeiture procedures generally].” This forfeiture is subject to the provision of title 40, chapter 33, part 2. However, “the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund.” Tenn. Code Ann. § 39-17-1008(b).

Additionally, Tenn. Code Ann. § 29-3-101(e) (Definitions—Maintenance and abatement of nuisance—Forfeiture of property—Payment of moneys from forfeiture into general funds) states,

(1) Upon a person’s second or subsequent conviction for promoting prostitution or patronizing prostitution, any vehicle in which such offense was committed is subject to seizure and forfeiture in accordance with the procedure established in title 39, chapter 11, part 7 [Disposition of forfeited property]; provided, however, that nothing contained within the provisions of this subsection (e) shall be construed to authorize seizure of such vehicle at any time prior to such conviction.

(2) The provisions of subdivision (e)(1) apply only if the violations making the vehicle subject to seizure and forfeiture occur in Tennessee and at least one (1) of the previous violations occurs on or after July 1, 2002, and the second or subsequent offense after July 1, 2002, occurs within five (5) years of the most recent prior offense occurring after July 1, 2002.

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

Pursuant to Tenn. Code Ann. § 39-17-1004(a)(1) (Offense of aggravated sexual exploitation of a minor), “It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.”²⁵ Under subsection (b)(1), “It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901 [Part definitions],²⁶ or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.”

A person violating either subsection commits a Class C felony, and the person can be charged on individual counts for each image. Tenn. Code Ann. §§ 39-17-1004(a)(2), (4), (b)(2), (4). Class C felonies are punishable by imprisonment for 3–15 years and a possible fine not to exceed \$10,000. Tenn. Code Ann. § 40-35-111(b)(3) (Authorized terms of imprisonment and fines for felonies and misdemeanors). However, if the number of

²⁵ See *supra* note 8.

²⁶ “Obscene” is defined as follows: “(A) The average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (B) The average person applying contemporary community standards would find that the work depicts or describes, in a patently offensive way, sexual conduct; and (C) The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.” Tenn. Code Ann. § 39-17-901(10).

individual images is greater than 25, the crime is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-17-1004(a)(4), (b)(4), 40-35-111(b)(2).

Under Tenn. Code Ann. § 39-17-1003(a) (Offense of sexual exploitation of a minor), “[i]t is unlawful for any person to knowingly possess material that includes a minor engaged in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive.” The crime is a Class D felony punishable by imprisonment for 2–12 years and a possible fine not to exceed \$5,000 for each individual image possessed. Tenn. Code Ann. §§ 39-17-1003(b), (d), 40-35-111(b)(4). If the number of images and materials exceeds 50, then the crime is a Class C felony punishable by imprisonment for 3–15 year and a possible fine not to exceed \$10,000. Tenn. Code Ann. §§ 39-17-1003(d), 40-35-111(b)(3). If the number of images and materials exceeds 100, then the crime is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-17-1003(d), 40-35-111(b)(2).

In comparison, a federal conviction for possession of images of child sexual exploitation (ICSE)²⁷ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.²⁸ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.²⁹

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

Persons in Tennessee convicted of a violent sexual offense or a sexual offense are required to register as sex offenders. Tenn. Code Ann. § 40-39-212(a) (Registration requirement). A “violent sexual offense” includes “[a]ggravated sexual exploitation of a minor, under § 39-17-1004,” “[s]olicitation of a minor, under § 39-13-528 [Offense of solicitation of a minor] when the offense is classified as a Class B or Class C felony,” and Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act). Tenn. Code Ann. § 40-39-202(31)(F), (K), (Y) (Part definitions). “Sexual offense” includes “[s]exual exploitation of a minor, under § 39-17-1003,” “[s]olicitation of a minor under § 39-13-528 when the offense is classified as a Class D felony, Class E felony or a misdemeanor,” “[s]tatutory rape under § 39-13-506(b), (d)(2)(B)³⁰, or aggravated statutory rape under § 39-13-506(c), patronizing prostitution of a minor under § 39-13-514,” and “[s]oliciting sexual exploitation of a minor—Exploitation of a minor by electronic means, under § 39-13-529.” Tenn. Code Ann. § 40-39-202(20)(A)(iv), (viii), (xvii), (xix).

²⁷ 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).

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

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

³⁰ “In addition to the punishment provided for a person who commits statutory rape for the first time, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to title 40, chapter 39, part 2.”

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.³¹

Tenn. Code Ann. § 39-13-309(c) (Trafficking for commercial sex act) is:

a Class B felony, except where the victim of the offense is a child under fifteen (15) years of age, or where the offense occurs on the grounds or facilities or within one thousand feet (1,000') of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park, a violation of subsection (a) is a Class A felony.

A Class A felony is punishable by imprisonment for 15–60 years and a possible fine not to exceed \$50,000 and a class B felony is punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000.³² Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1), (2).

³¹See discussion of relevant provisions *supra* Components 1.1 and 1.2.

³²Traffickers who are members of criminal gangs could receive enhanced penalties pursuant to Tenn. Code Ann. § 40-35-121(b) (Criminal gang offenses—Enhanced punishment—Procedure):

A criminal gang offense committed by a defendant shall be punished one (1) classification higher than the classification established by the specific statute creating the offense committed if:

- (1) The defendant was a criminal gang member at the time of the offense; and
- (2) The criminal gang offense was committed at the direction of, in association with, or for the benefit of the defendant’s criminal gang or a member of the defendant’s criminal gang.”

Furthermore, pursuant to subsection (e),

A criminal gang offense committed by a defendant shall be punished two (2) classifications higher than the classification established by the specific statute creating the offense committed if, at the time the offense was committed:

- (1) The defendant was a criminal gang member;
- (2) The defendant was also a leader or organizer of the criminal gang; and
- (3) The offense was at the direction of, in association with, or for the benefit of the defendant’s criminal gang or a member of the defendant’s criminal gang. at the time the offense was committed.”

A “criminal gang offense” is defined in Tenn. Code Ann. § 40-35-121(a)(3) as

[A]ny violation of Tennessee law: (A) During the perpetration of which the defendant knowingly causes, or threatens to cause, death or bodily injury to another person or persons and specifically includes rape of a

When a violation of Tenn. Code Ann. § 39-13-515 (Promoting prostitution) involves a minor victim, Tenn. Code Ann. § 39-13-515(c)(1)³³ provides that traffickers face the penalties provided under Tenn. Code Ann. § 39-13-309.

Tenn. Code Ann. § 39-13-529(a) (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) prohibits a person “eighteen (18) years or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in sexual activity or simulated sexual activity that is patently offensive,³⁴ . . . where such sexual activity or simulated sexual activity is observed by that person or by another.” This crime is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2). Lastly, pursuant to Tenn. Code Ann. § 39-13-528(c) (Offense of solicitation of a minor), “A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.”

In addition to the above offenses, a trafficker could be found guilty of money laundering pursuant to Tenn. Code Ann. § 39-14-903 (Criminal penalties). Tenn. Code Ann. § 39-14-903(b)(1) states, “It is an offense to knowingly use proceeds³⁵ derived directly or indirectly from a specified unlawful activity³⁶ with the intent to

child, aggravated rape and rape; or (B) That results, or was intended to result, in the defendant’s receiving income, benefit, property, money or anything of value from the commission of any aggravated burglary, or from the illegal sale, delivery or manufacture of a controlled substance or firearm.

A “criminal gang member” is defined in Tenn. Code Ann. § 40-35-121(a)(2) as the following:

[A] person who is a member of a criminal gang, as defined in subdivision (a)(1), who meets two (2) or more of the following criteria:

- (A) Admits to criminal gang involvement;
- (B) Is identified as a criminal gang member by a parent or guardian;
- (C) Is identified as a criminal gang member by a documented reliable informant;
- (D) Resides in or frequents a particular criminal gang’s area, adopts their style or dress, their use of hand signs or their tattoos and associates with known criminal gang members;
- (E) Is identified as a criminal gang member by an informant of previously untested reliability and the identification is corroborated by independent information;
- (F) Has been arrested more than once in the company of identified criminal gang members for offenses that are consistent with usual criminal gang activity; or
- (G) Is identified as a criminal gang member by physical evidence such as photographs or other documentation.

“Criminal gang” is defined as “a formal or informal ongoing organization, association or group consisting of three (3) or more persons that has: (A) As one (1) of its primary activities, the commission of criminal gang offenses; (B) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity.” Tenn. Code Ann. § 40-35-121(a)(1).

³³ See *supra* note 5.

³⁴ See *supra* note 8.

³⁵ “‘Proceeds’ includes gross profits from the commission of any specified unlawful activity, including property, real, personal or intangible of any kind, acquired or derived, directly or indirectly, from, produced through, realized through or caused by an act or omission.” Tenn. Code Ann. § 39-14-902(4).

³⁶ “‘Knowingly uses or attempts to use proceeds derived directly or indirectly from a specified unlawful activity’ means that any person or party to the transaction or act knew that the property or proceeds involved in the transaction or act represented or constituted, either in whole or in part, proceeds from some form, though not necessarily which form, of any criminal offense under the laws of this state, or any other jurisdiction. A person, corporation or financial institution receiving funds or property in the ordinary course of business shall not have ‘knowledge’ that the funds or property so received represented proceeds of any specified unlawful activity solely because of: (A) The identity or reputation of the transferor of the funds or property; or (B) The identity or reputation

promote, in whole or in part, the carrying on of a specified unlawful activity.” A violation of the money laundering statute constitutes a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-14-903(a)(2), (b)(2), 40-35-111(b)(2).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³⁷ 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 offense³⁸ 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.*

Pursuant to Tenn. Code Ann. § 39-17-1004(a)(1) (Offense of aggravated sexual exploitation of a minor), “It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.”³⁹ Under subsection (b)(1), “It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901 [Part definitions],⁴⁰ or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.”

A violation of Tenn. Code Ann. § 39-17-1004(a), (b) is generally a Class C felony, and the individual can be charged on individual counts for each image. Tenn. Code Ann. § 39-17-1004(a)(2), (4), (b)(2), (4). Class C felonies are punishable by imprisonment for 3–15 year and a possible fine not to exceed \$10,000. Tenn. Code Ann. §40-35-111(b)(3) (Authorized terms of imprisonment and fines for felonies and misdemeanors). However, if the number of individual images is greater than 25, the crime is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-17-1004(a)(4), (b)(4), 40-35-111(b)(2).

Under Tenn. Code Ann. § 39-17-1005(a) (Offense of especially aggravated sexual exploitation of a minor), “It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive.” A violation of Tenn. Code Ann. § 39-17-1005(a) is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 40-35-111(b)(2), 39-17-1005(d). A person may be separately charged “for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.” Tenn. Code Ann. § 39-17-1005(b).

of an associate of the transferor.” Tenn. Code Ann. § 39-14-902(3). Additionally, ““Specified unlawful activity” means any act, including any preparatory or completed offense, committed for financial gain that is punishable as a felony under the laws of this state, or if the act occurred outside this state, would be punishable by confinement for more than one (1) year under the laws of the state in which it occurred.” Tenn. Code Ann. § 39-14-902(6)(A). It “does not mean an act, including any preparatory or completed offense, committed for financial gain that is punishable under chapter 17, part 5 of this title, or similar provisions of law in another state.” Tenn. Code Ann. § 39-14-902(6)(B).

³⁷ Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

³⁸ See *supra* note 20.

³⁹ See *supra* note 8.

⁴⁰ See *supra* note 26.

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 offense⁴¹ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of images of child sexual exploitation (ICSE)⁴² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁴

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.*

Tenn. Code Ann. § 39-13-528 (Offense of solicitation of a minor) criminalizes using the Internet or other electronic communication to “to intentionally command, request, hire, persuade, invite or attempt to induce” a minor to engage in sexual activity. Tenn. Code Ann. § 39-13-528(a) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;
- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
- (9) Sexual activity involving a minor, pursuant to § 39-13-529.
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;

⁴¹See *supra* note 21 for the definition of “federal sex offense.”

⁴² 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).

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

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

- (11) Patronizing prostitution, pursuant to § 39-13-514;
- (12) Promoting prostitution, pursuant to § 39-13-515;
- (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17—1004.

Pursuant to subsection (c), “A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.” Tenn. Code Ann. § 39-13-528(c).

In addition, Tenn. Code Ann. § 39-13-529(a) (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) includes soliciting by electronic means, including “electronic communication, electronic mail or Internet service, including webcam communications” Although the crime is not applicable solely to commercial sexual exploitation, the inclusion of the term “hire” brings commercial sexual activity within its range. This crime is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2).

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

Traffickers are subject to various criminal fines. Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act) is a Class B felony subject to a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 40-35-111(b)(2), 39-13-309(b). However, a violation of Tenn. Code Ann § 39-13-309 is a Class A felony “where the victim of the offense is a child under (15) years of age, or where the offense occurs on the grounds or facilities or within 1,000 feet of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park.” A Class A felony is punishable a possible fine not to exceed \$50,000. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1).

A trafficker faces these same penalties for promoting prostitution of a minor. Tenn. Code Ann. § 39-13-515(c)(1)⁴⁵ (Promoting prostitution) states, “Promoting prostitution is punishable as: (1) Trafficking for a commercial sex act under § 39-13-309 if the person being promoted is less than eighteen (18) years of age.”

Hiring a minor online for sexual activity in violation of Tenn. Code Ann. § 39-13-529 (Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) is a Class B felony with a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-13-529(e)(1), 40-35-111(b)(2). An offense under Tenn. Code Ann. § 39-13-528(a) (Offense of solicitation of a minor) can result in a fine ranging between \$2,500 and \$25,000 based on the crime classification determined by the age of the victim and the defendant. Tenn. Code Ann. § 40-35-111(b)(2). A money laundering violation under Tenn. Code Ann. § 39-14-903(b)(1) is a Class B felony subject to a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-14-903(b)(2), 40-35-111(b)(2).

Traffickers are subject to mandatory restitution. Pursuant to Tenn. Code Ann. § 39-11-118(b), a trafficker shall be sentenced to pay restitution to a minor if the trafficker was convicted under Tenn. Code Ann. §§ 39–13–309 (Trafficking a person for a commercial sex act), . . . 39–17–1005(a) (Especially aggravated sexual exploitation), 39–13–528(a) (Solicitation of person under 18 years of age), or 39–13–529(a) (Solicitation of minor to observe sexual conduct). Tenn. Code Ann. §§ 39-11-118, 40-35-104(c)(2), 40-35-304.

Pursuant to Tenn. Code Ann. § 39-11-703(c) (Criminal proceeds subject to forfeiture), a trafficker will be subject to mandatory, criminal asset forfeiture for violating Tenn. Code Ann. § 39-13-309. Tenn. Code Ann. § 39-11-703(a), (b) (Criminal proceeds subject to forfeiture) states in relevant part,

- (a) Any property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate any statute, or any property traceable to the proceeds from the violation, is subject to judicial forfeiture, and all right, title, and interest in any such property shall vest

⁴⁵ See *supra* note 5.

in the state upon commission of the act giving rise to forfeiture.

(b) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of the following laws shall be subject to judicial forfeiture:

.....

(2) The commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a conviction for promoting prostitution under chapter 13, part 5 of this title.

In particular, Tenn. Code Ann. § 39-11-703(c) identifies the following items as subject to judicial forfeiture:⁴⁶

- (1) Conveyances, including aircraft, motor vehicles, and other vessels when used or intended to be used in connection with a violation of Sections 39-13-307 [Involuntary labor servitude–Restitution], 39-13-308 [Trafficking for forced labor or services] and 39-13-309 [Trafficking for commercial sex act] committed on or after July 1, 2011;
- (2) Books, records, telecommunication equipment, or computers when used or intended to be used in connection with a violation of Sections 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011;
- (3) Money or weapons when used or intended to be used in connection with a violation of Sections 39-13-307, 39-13-308 39-13-309 committed on or after July 1, 2011;
- (4) Real property when used or intended to be used in connection with a violation of Sections 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011;
- (5) Everything of value furnished, or intended to be furnished, in exchange for an act in connection with a violation of Sections 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate the violation;
- (6) Any property, real or personal, directly or indirectly acquired by or received in violation of such violation or as an inducement to violate such statutes, or any property traceable to the proceeds from the violation; and
- (7) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a in connection with a violation of Sections 39-13-307, 39-13-308 and 39-13-309 committed on or after July 1, 2011.

Seizure of forfeitable property is governed by Tenn. Code Ann. § 39-11-707, which provides that the property “may be seized by the attorney general, the attorney general's agents, or any law enforcement officer, when acting pursuant to a lawful arrest or search, the execution of a search warrant, a petition to abate a nuisance, or a court order.” Disposition of forfeited property is governed by Tenn. Code Ann. § 39-11-713 (Disposition of forfeited property), which provides first for the sale of the property and the use of sale proceeds for expenses incurred. The court shall award the remainder of the funds to the state general fund. The funds shall be disbursed in other ways if the investigating agency is not a state agency.

A trafficker could also lose any conveyance used in the commission of other related crimes. Tenn. Code Ann. § 40-33-101 (Conveyances subject to forfeiture) provides for discretionary criminal asset forfeiture, upon

⁴⁶ Pursuant to Tenn. Code Ann. § 39-13-312(c) after using the proceeds to pay for the cost of the proceedings, 20% will be awarded “to the law enforcement agency conducting the investigation that resulted in the forfeiture for use in training and equipment for the enforcement of human trafficking laws,” 20% will be awarded to “the district attorneys general conference for education, expenses, expert services, training or the enhancement of resources for the prosecution of and asset forfeiture in human trafficking cases.” After an additional 5% is awarded to the clerk of the court where the proceedings occurred, the remainder will go into “the anti-human trafficking fund” for grants to non-profits for services to victims of human trafficking, prevention programs, and education programs. Tenn. Code Ann. § 39-13-312(d)–(f).

conviction, of “[a]ny conveyance, including a vehicle, aircraft or vessel used in the commission of,” among other things, a sexual “offense under title 39, chapter 13, part 5,” which includes promoting prostitution, solicitation of a minor and soliciting sexual exploitation of a minor. Property subject to forfeiture under this section may be seized upon process issued by any circuit or criminal court with jurisdiction over the property. Seizure is permitted without process where it is incident to arrest or search, pursuant to a search warrant. Tenn. Code Ann. § 40-33-102 (Seizure authorized). Disposition of the forfeited property is governed by Tenn. Code Ann. § 40-33-110 (Disposition of forfeited conveyance or proceeds of sale of forfeited conveyance), which provides that the property “shall inure to the benefit of the county in which the goods were seized . . . provided, that the forfeited conveyance or the funds derived from the confiscated goods shall go to the law enforcement agency that seized the conveyance and shall be used exclusively for law enforcement purposes . . . In all other cases, the proceeds shall be transmitted to the state treasurer and deposited in the state treasury.”

More specifically, this discretionary, criminal forfeiture provision is reiterated in Tenn. Code Ann. § 39-13-530(a) (Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors), with a particular emphasis in crimes involving minors. Tenn. Code Ann. § 39-13-530(a) provides for the forfeiture of “[a]ny conveyance or real or personal property used in the commission of an offense under this part [Sexual offenses],” which is committed “against a person under eighteen (18) years of age and was committed on or after July 1, 2006.” Forfeiture proceedings under this section are subject to the provisions of title 40, chapter 33, part 2. However, “the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund.” Tenn. Code Ann. § 39-13-530(b).

Finally, vehicle forfeiture specifically for sexual exploitation of children crimes is found in Tenn. Code Ann. § 39-17-1008(a) (Forfeiture of any conveyance or real or personal property used in commission of an offense under this part), which provides that “[a]ny conveyance or real or personal property used in the commission of an offense under this part [Sexual exploitation of children] is subject to forfeiture under the provisions of title 40, chapter 33, part 2 [Forfeiture procedures generally].” However, “the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund.” Tenn. Code Ann. § 39-17-1008(b).

Furthermore, Tenn. Code Ann. § 29-3-101(e) (Definitions—Maintenance and abatement of nuisance—Forfeiture of property—Payment of moneys from forfeiture into general funds) states,

(1) Upon a person’s second or subsequent conviction for promoting prostitution or patronizing prostitution, any vehicle in which such offense was committed is subject to seizure and forfeiture in accordance with the procedure established in title 39, chapter 11, part 7; provided, however, that nothing contained within the provisions of this subsection (e) shall be construed to authorize seizure of such vehicle at any time prior to such conviction.

(2) The provisions of subdivision (e)(1) apply only if the violations making the vehicle subject to seizure and forfeiture occur in Tennessee and at least one (1) of the previous violations occurs on or after July 1, 2002, and the second or subsequent offense after July 1, 2002, occurs within five (5) years of the most recent prior offense occurring after July 1, 2002.

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

Persons convicted of a violent sexual offense or a sexual offense are required to register as sex offenders. Tenn. Code Ann. § 40-39-212(a) (Registration requirement). A “sexual offense” under Tenn. Code Ann. § 40-39-202(20) (Part definitions) includes Tenn. Code Ann. § 39-13-529 (Soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means) and § 39-13-515 (Promotion of prostitution). Tenn. Code Ann. §

40-39-202(20)(A)(iv), (xvii). Pursuant to Tenn. Code Ann. § 40-39-202(31)⁴⁷ (Part definitions), a “violent sexual offense” includes: “(F) Aggravated sexual exploitation of a minor, under § 39-17-1004; (G) Especially aggravated sexual exploitation of a minor under § 39-17-1005; . . . (K) Solicitation of a minor, under § 39-13-528 when the offense is classified as a Class B or Class C felony; . . . (Y) Trafficking a person for a commercial sex act, under § 39-13-309; (Z) Promotion of prostitution, under § 39-13-515, where the person has a prior conviction for promotion of prostitution”

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.*

Pursuant to Tenn. Code Ann. § 37-1-147 (Termination of parental rights), the reasons and methods for terminating parental rights are governed by Tenn. Code Ann. title 36, chapter 1, part 1 (Domestic Relations; Adoption; General Provisions). Tenn. Code Ann. § 36-1-113(a) (Termination of parental rights) states, “The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 [General provisions] and title 37, chapter 2, part 4 [Foster care]. All pleadings and records filed in the chancery and circuit courts pursuant to this section shall be placed under seal and shall not be subject to public disclosure, in the same manner as those filed in juvenile court, unless otherwise provided by court order.”

Under Tenn. Code Ann. § 36-1-113(c), “Termination of parental or guardianship rights must be based upon: (1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and (2) That termination of the parent’s or guardian’s rights is in the best interests of the child.” Under Tenn. Code Ann. § 36-1-113(g),⁴⁸

Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and nonexclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

-
- (3) (A) The child has been removed from the home or the physical or legal custody of a parent or guardian for a period of six (6) months by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:
 - (i) The conditions that led to the child’s removal still persist, preventing the child’s safe return to the care of the parent or guardian, or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, preventing the child’s safe return to the care of the parent or guardian;
 - (ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or guardian in the near future; and
 - (iii) The continuation of the parent or guardian and child relationship greatly diminishes the child’s chances of early integration into a safe, stable, and permanent home;
 -
 - (4) The parent or guardian has been found to have committed severe child abuse,⁴⁹ as defined in § 37-1-102 [Chapter and part definitions], under any prior order of a court or is found by the court

⁴⁷ The text of Tenn. Code Ann. § 40-39-202 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2092 and Senate Bill 1944 during the 110th General Assembly of the Tennessee Legislature (effective July 1, 2018).

⁴⁸ The text of Tenn. Code Ann. § 36-1-113 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1608 and House Bill 1856 during the 110th General Assembly of the Tennessee Legislature (effective March 14, 2018 and July 1, 2018, respectively).

⁴⁹ See *infra* Component 5.5 for discussion of the definition of “severe child abuse.”

hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against any child;

(5) The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian;

(6) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court;

....
(11) (A) (i) The parent has been found to have committed severe child sexual abuse⁵⁰ under any prior order of a criminal court

....
(12) The parent or guardian has been convicted of trafficking for commercial sex act under § 39-13-309.

(13) The parent or guardian has been convicted on or after July 1, 2015, of sex trafficking of children or by force, fraud, or coercion under 18 U.S.C. § 1591, or a sex trafficking of children offense under the laws of another state that is substantially similar to § 39-13-309.

....

Additionally, parental rights may be terminated for specific crimes. Pursuant to Tenn. Code Ann. § 36-1-113(h)(1)(C) the Department of Human Services shall file a petition to terminate parental rights, among other reasons,

If a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, committed voluntary manslaughter of another such child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at § 37-1-102 to the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home. For the purposes of this subsection (h), such a determination shall be made by

⁵⁰ Tenn. Code Ann. § 36-1-113(g)(11)(a)(ii) states,

For the purposes of this section, "severe child sexual abuse" means the parent is convicted of any of the following offenses towards a child:

- (a) Aggravated rape, pursuant to § 39-13-502;
- (b) Aggravated sexual battery, pursuant to § 39-13-504;
- (c) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004;
- (d) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;
- (e) Incest, pursuant to § 39-15-302;
- (f) Rape, pursuant to § 39-13-503; or
- (g) Rape of a child, pursuant to § 39-13-522.

a jury or trial court judge designated by § 16-2-502 [Titles of judges] through an explicit finding, or by such equivalent courts of other states or of the United States

Legal Components:

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

Tenn. Code Ann. § 39-13-309(a)(1), (2) (Trafficking for commercial sex act) includes all facilitators as it applies to a person who “knowingly . . . benefits from or attempts to benefit from another person's provision of a commercial sex act . . . or [r]ecruits, entices, harbors, transports, provides, purchases or obtains by any means another person for the purpose of providing a commercial sex act.”

Corporate facilitators can also be prosecuted for a violation of Tenn. Code. Ann. § 39-13-309 subject to certain conditions according to Tenn. Code Ann. § 39-13-311 (Violations by corporations). Pursuant to Tenn. Code Ann. § 39-13-311,

A corporation may be prosecuted for a violation of §§ 39-13-308 [Trafficking for forced labor or services] and 39-13-309 for an act or omission constituting a crime under this part only if an agent of the corporation performs the conduct that is an element of the crime while acting within the scope of the agent’s office or employment and on behalf of the corporation and the commission of the crime was either authorized, requested, commanded, performed or within the scope of the agent’s employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

Facilitators who knowingly advertise the sale of minors for commercial sex acts are subject to criminal liability. Pursuant to Tenn. Code Ann. § 39-13-315 (Offense of advertising commercial sexual abuse of a minor), “A person commits the offense of advertising commercial sexual abuse of a minor if the person knowingly sells or offers to sell an advertisement that would appear to a reasonable person to be for the purpose of engaging in what would be a commercial sex act, as defined in § 39-13-309, with a minor.” Tenn. Code Ann. § 39-13-315(a). Advertising commercial sexual abuse of a minor is a Class C felony punishable by 3–15 years imprisonment. Tenn. Code Ann. §§ 39-13-315(b)(1), 40-35-111(b)(3).

A facilitator could be charged with violating certain CSEC statutes. Tenn. Code Ann. § 39-13-515 (Promoting prostitution) is penalized under Tenn. Code Ann. § 39-13-309 when the victim is a minor. Tenn. Code Ann. § 39-13-515(c)(1).⁵¹ “Promoting prostitution of a minor” is defined as “engaging in any of the activities described in subdivision (4) when one (1) or more of the persons engaged in prostitution is less than eighteen (18) years of age or has an intellectual disability.” Tenn. Code Ann. § 39-13-512(5) (Prostitution—Definitions). Pursuant to Tenn. Code Ann. § 39-13-512(4),

(A) “Promoting prostitution” means:

⁵¹ See *supra* note 5.

- (i) Owning, controlling, managing, supervising, or in any way keeping, alone or in association with others, a business for the purpose of engaging in prostitution, or a house of prostitution;
 - (ii) Procuring an inmate for a house of prostitution;
 - (iii) Encouraging, inducing, or otherwise purposely causing another to become a prostitute;
 - (iv) Soliciting a person to patronize a prostitute;
 - (v) Procuring a prostitute for a patron; or
 - (vi) Soliciting, receiving, or agreeing to receive any benefit for engaging in any of the activities defined in subdivisions (4)(A)(i)–(v); and
- (B) “Promoting prostitution” does not include a person who solicits, procures, induces, encourages, or attempts to cause another to patronize a prostitute if:
- (i) The person promoting the prostitute and the prostitute being promoted are the same person; and
 - (ii) The intent of the promotion is the solicitation of business for only the prostitute engaging in the promotion.

Additionally, a facilitator could be found guilty of money laundering pursuant to Tenn. Code Ann. § 39-14-903 (Criminal penalties). Tenn. Code Ann. § 39-14-903(b)(1) states, “It is an offense to knowingly use proceeds⁵² derived directly or indirectly from a specified unlawful activity⁵³ with the intent to promote, in whole or in part, the carrying on of a specified unlawful activity.” A violation of this statute constitutes a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-14-903 (b)(2), 40-35-111(b)(2).

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.*

For those facilitators charged with Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act), the facilitator would be subject to fines, restitution orders, and asset forfeiture. Tenn. Code Ann. § 39-13-309(b) is a Class B felony punishable by a possible fine not to exceed \$25,000. Tenn. Code Ann. § 40-35-111(b)(2) (Authorized terms of imprisonment and fines for felonies and misdemeanors). Facilitators charged with Tenn. Code Ann. § 39-13-309 "where the victim of the offense is a child under (15) years of age, or where the offense occurs on the grounds or facilities or within 1,000 feet of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park" are subject to a Class A felony punishable by a possible fine not to exceed \$50,000. Tenn. Code Ann. §§ 39-13-309(c), 40-35-111(b)(1). Tenn. Code Ann. § 39-13-515 (Promoting prostitution) is punishable under Tenn. Code Ann. § 39-13-309 when the victim is a minor. Tenn. Code Ann. § 39-13-515(c)(1).⁵⁴

Violations of Tenn. Code Ann. § 39-13-309 and § 39-13-515 also subject the offender to mandatory criminal asset forfeiture under Tenn. Code Ann. § 39-11-703(a), (b) (Criminal proceeds subject to forfeiture), which states,

- (a) Any property, real or personal, directly or indirectly acquired by or received in violation of any statute or as an inducement to violate any statute, or any property traceable to the proceeds from the violation, is subject to judicial forfeiture, and all right, title, and interest in any such property shall vest in the state upon commission of the act giving rise to forfeiture.
- (b) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land and any property used as an instrumentality in or used in furtherance of a violation of the following laws shall be subject to judicial forfeiture:

....

⁵² See *supra* note 35.

⁵³ See *supra* note 36.

⁵⁴ See *supra* note 5.

(2) The commission of three (3) or more acts occurring on three (3) or more separate days within a sixty-day period, and each act results in a conviction for promoting prostitution under chapter 13, part 5 of this title.

Seizure of forfeitable property is governed by Tenn. Code Ann. § 39-11-707 (Procedure for seizure of property), which provides that the property “may be seized by the attorney general, the attorney general's agents, or any law enforcement officer, when acting pursuant to a lawful arrest or search, the execution of a search warrant, a petition to abate a nuisance, or a court order.” Disposition of forfeited property is governed by Tenn. Code Ann. § 39-11-713 (Disposition of forfeited property), which provides first for the sale of the property and the use of sale proceeds for expenses incurred. The court shall award the remainder of the funds to the state general fund. The funds shall be disbursed in other ways if the investigating agency is not a state agency.

Additionally, a facilitator could lose any conveyance used in committing certain crimes. Pursuant to Tenn. Code Ann. § 40-33-101 (Conveyances subject to forfeiture), which provides for discretionary, criminal asset forfeiture, “Any conveyance, including a vehicle, aircraft or vessel used in the commission of an offense under title 39, chapter 13, part 5 [Sexual offenses including Tenn. Code Ann. § 39-13-515 (Promoting prostitution)] . . . where there is a final judgment of conviction is, in the discretion of the court, subject to forfeiture” subject to some exceptions. Property subject to forfeiture under this section may be seized upon process issued by any circuit or criminal court with jurisdiction over the property. Seizure is permitted without process where it is incident to arrest or search, pursuant to a search warrant. Tenn. Code Ann. § 40-33-102 (Seizure authorized). Disposition of the forfeited property is governed by Tenn. Code Ann. §40-33-110 (Disposition of forfeited conveyance or proceeds of sale of forfeited conveyance), which provides that the property “shall inure to the benefit of the county in which the goods were seized . . . provided, that the forfeited conveyance or the funds derived from the confiscated goods shall go to the law enforcement agency that seized the conveyance and shall be used exclusively for law enforcement purposes In all other cases, the proceeds shall be transmitted to the state treasurer and deposited in the state treasury.”

This discretionary, criminal forfeiture provision is reiterated, with special emphasis on minor victims, in Tenn. Code Ann. § 39-13-530(a) (Forfeiture of any conveyance or real or personal property used in a sexual offense committed against minors—Child abuse fund) which provides for the forfeiture of “[a]ny conveyance or real or personal property used in the commission of an offense under this part [Sexual offenses including Tenn. Code Ann. § 39-13-515 (Promoting prostitution)],” which is committed “against a person under eighteen (18) years of age and was committed on or after July 1, 2006.” This forfeiture is subject to the provisions of title 40, chapter 33, part 2. However, “the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund.” Tenn. Code Ann. § 39-13-530(b).

Pursuant to Tenn. Code Ann. § 29-3-101(b), (c) (Definitions—maintenance and abatement of nuisance— forfeiture of property—payment of moneys from forfeiture into general funds),

(b) Any person who uses, occupies, establishes or conducts a nuisance,⁵⁵ or aids or abets therein, and the owner, agent or lessee of any interest in any such nuisance, together with the persons employed in or in control of any such nuisance by any such owner, agent or lessee, is guilty of maintaining a nuisance and such nuisance shall be abated as provided hereinafter.

(c) All motor vehicles, furnishings, fixtures, equipment, moneys and stock, used in or in connection with the maintaining or conducting of a nuisance, are subject to seizure, immediately upon detection by any law enforcement officer and are subject to forfeiture to the state

⁵⁵The definition of “nuisance” includes “[a]ny place in or upon which lewdness, prostitution, promotion of prostitution, patronizing prostitution, . . . any sale, exhibition or possession of any material determined to be obscene or pornographic with intent to exhibit, sell, deliver or distribute . . . are carried on or permitted” Tenn. Code Ann. § 29-3-101(a)(2)(A).

Tenn. Code Ann. § 29-3-101(e) further states,

(1) Upon a person's second or subsequent conviction for promoting prostitution or patronizing prostitution, any vehicle in which such offense was committed is subject to seizure and forfeiture in accordance with the procedure established in title 39, chapter 11, part 7; provided, however, that nothing contained within the provisions of this subsection (e) shall be construed to authorize seizure of such vehicle at any time prior to such conviction.

(2) The provisions of subdivision (e)(1) apply only if the violations making the vehicle subject to seizure and forfeiture occur in Tennessee and at least one (1) of the previous violations occurs on or after July 1, 2002, and the second or subsequent offense after July 1, 2002, occurs within five (5) years of the most recent prior offense occurring after July 1, 2002.

Victims of human trafficking and CSEC offenses are entitled to mandatory restitution. Tenn. Code Ann. §§ 39-11-118, 40-35-104(c)(2), 40-35-304. Tenn. Code Ann. § 39-11-118 (Restitution to victims of crime) states,

(a) it is a part of the punishment for any offense committed in this state that the person committing the offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with the provisions of §§ 40-35-104(c)(2) [Sentencing alternatives] and 40-35-304 [Restitution as condition for probation—Petition to modify—Civil judgment for non-payment—Procedure].

(b) In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for the offenses named in this subsection that the defendant be sentenced by the court to pay restitution to the victim or victims of §§ 39-13-309 [Trafficking a person for a commercial sex act], 39-13-514 [Patronizing prostitution], 39-17-1005(a) [Especially aggravated sexual exploitation], 39-13-528(a) [Solicitation of person under 18 years of age], and 39-13-529(a) [Solicitation of minor to observe sexual conduct] in accordance with the provisions of §§ 40-35-104(c)(2) [Alternative sentences] and 40-35-304 [Restitution; amount; definition; waiver; procedure].

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

Pursuant to Tenn. Code Ann. § 39-13-533(a) (Promoting travel services for prostitution), Tennessee criminalizes the sale of travel services for prostitution; however, the statute does not specifically address the promotion or sale of sex tourism as it relates to minor victims. Tenn. Code Ann. § 39-13-533(a) states,

A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services⁵⁶ that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the states.

Promoting travel for prostitution is a Class D felony punishable by imprisonment for 2–12 years and a possible fine not to exceed \$5,000. Tenn. Code Ann. §§ 39-13-533(c), 40-35-111(b)(4).

- 4.3.1. Recommendation: Amend Tenn. Code Ann. § 39-13-533(a) (Promoting travel services for prostitution) to address and enhance criminal penalties when a child is a victim of sex tourism.

⁵⁶ “Travel services” includes, but is not limited to, “transportation by air, sea, road or rail, related ground transportation, hotel accommodations, or package tours, whether offered on a wholesale or retail basis.” Tenn. Code Ann. § 39-13-533(b).

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

Pursuant to Tenn. Code Ann. § 39-17-1004(a)(1), (Offense of aggravated sexual exploitation of a minor), “It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.”⁵⁷ Under subsection (b)(1), “It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901 [Part definitions],⁵⁸ or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in: (A) Sexual activity; or (B) Simulated sexual activity that is patently offensive.”

Violating either subsection is a Class C felony and the individual can be charged on individual counts for each image. Tenn. Code Ann. § 39-17-1004(a)(2), (4), (b)(2), (4). Class C felonies are punishable by imprisonment for 3–15 years and a possible fine not to exceed \$10,000. Tenn. Code Ann. § 40-35-111(b)(3) (Authorized terms of imprisonment and fines for felonies and misdemeanors). However, if the number of individual images is greater than 25, the crime is a Class B felony punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. §§ 39-17-1004(a)(4), (b)(4), 40-35-111(b)(2).

Additionally, Tenn. Code Ann. § 39-17-1005(a), (d) (Offense of especially aggravated sexual exploitation of a minor) makes it a Class B felony “for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive.” The crime is punishable by imprisonment for 8–30 years and a possible fine not to exceed \$25,000. Tenn. Code Ann. § 40-35-111(b)(2). A person may be separately charged “for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.” Tenn. Code Ann. § 39-17-1005(b).

⁵⁷ See *supra* note 8.

⁵⁸ See *supra* note 26.

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 to engage in the commercial sex act.*
- 5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*
- 5.4 *State law provides a non-punitive avenue to specialized services through one or more points of entry.*
- 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*
- 5.6 *The definition of “caregiver” or another related term in the child welfare statutes is not a barrier to a sex trafficked child accessing the protection of child welfare.*
- 5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or commercial sexual exploitation of children (CSEC).*
- 5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*
- 5.9 *Child sex trafficking victims may vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.*
- 5.10 *Victim restitution and civil remedies for victims of domestic minor sex trafficking or commercial sexual exploitation of children (CSEC) are authorized by law.*
- 5.11 *Statutes of limitations for civil and criminal actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated or lengthened to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.*

Legal Analysis:

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.⁵⁹*

Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act) includes all commercial sexual exploitation of minors. Under Tenn. Code Ann. § 39-13-309(a)(2), means of force, fraud or coercion are not required.⁶⁰ In addition, Tenn. Code Ann. § 39-13-309(a) applies to a buyer of commercial sex acts with a minor through use of the term “purchase,” regardless of third party control.⁶¹ Finally, the offense of human trafficking does not require that a trafficker or controlling third party be identified. Consequently, Tennessee’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Tenn. Code Ann. § 39-13-309(a)(2).

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

Tennessee’s sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of the minor to engage in the minor to the commercial sex act. Pursuant to Tenn. Code Ann. § 39-13-309(d)(2) (Trafficking for commercial sex act), “It is not a defense to a violation of this section that . . . the victim of the offense is a minor who consented to the act or acts constituting the offense.” Tenn. Code. Ann. § 39-13-309(d)(2).

⁵⁹ See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

⁶⁰ See *supra* discussion in Component 1.1.

⁶¹ See *supra* discussion of buyer applicability in Component 2.1.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁶²

Minors under 18 are immune from prosecution under Tenn. Code Ann. § 39-13-513 (Prostitution). Pursuant to Tenn. Code Ann. § 39-13-513(d),

Notwithstanding any provision of this section to the contrary, if it is determined after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this section is under eighteen (18) years of age, that person shall be immune from prosecution for prostitution as a juvenile or adult. A law enforcement officer who takes a person under eighteen (18) years of age into custody for a suspected violation of this section shall, upon determination that the person is a minor, provide the minor with the telephone number for the Tennessee human trafficking resource center hotline and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.

Additionally, a defense is available for a victim charged with prostitution for conduct that occurred because the person was a victim of sex trafficking or involuntary labor servitude. Although an offender convicted of prostitution is subject to a Class B misdemeanor, or a Class A misdemeanor if the offense was committed within proscribed distances from a school or church, Tenn. Code Ann. § 39-16-513(e) provides the following defense for trafficking victims:

It is a defense to prosecution under this section that a person charged with a violation of this section was so charged for conduct that occurred because the person was a victim of an act committed in violation of § 39-13-307 or § 39-13-309, or because the person was a victim as defined under the Trafficking Victims Protection Act, 22 U.S.C. § 7102.⁶³

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

A juvenile sex trafficking victim is immune from prosecution for prostitution.⁶⁴ Further, if a law enforcement officer determines that a person in their custody is a minor, the officer shall “provide the minor with the telephone number for the Tennessee human trafficking resource center hotline and release the minor to the custody of a parent or legal guardian or transport the minor to a shelter care facility designated by the juvenile court judge to facilitate the release of the minor to the custody of a parent or legal guardian.” Tenn. Code Ann. § 39-13-513(d) (Prostitution). However, juvenile sex trafficking victims may be charged with other delinquent acts⁶⁵ related to their victimization.

⁶² For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁶³ Victim is defined under 22 U.S.C. § 7102 as a person subjected to either “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age” or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. § 7102 (8)(A), (B).

⁶⁴ See *supra* Component 5.3 for provisions concerning the non-criminalization of minors for prostitution offenses.

⁶⁵ A “delinquent act” is defined in part as “an act designated a crime under the law, including local ordinances of this state, or of another state if the act occurred in that state, or under federal law, and the crime is not a status offense under subdivision (b)(24)(C) [definition of severe child abuse]” Tenn. Code Ann. § 37-1-102(b)(10).

Regardless of how the child is identified,⁶⁶ Tennessee law does not provide a statutory avenue to specialized services.⁶⁷

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

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*⁶⁸

Child sex trafficking and commercial sexual exploitation are identified as types of abuse within Tennessee’s child protection statutes. Tenn. Code Ann. § 37-1-102(b)(27)(C)⁶⁹ (Chapter and part definitions) defines “severe child abuse” in part as

The commission of any act towards the child prohibited by § 39-13-309 [Trafficking for commercial sex act], §§ 39-13-502 – 39-13-504 [Aggravated rape – Aggravated sexual battery], § 39-13-515 [Promoting prostitution], § 39-13-522 [Rape of a child], § 39-15-302 [Incest], § 39-15-402 [Haley’s Law—Aggravated child abuse and aggravated child neglect or endangerment—Definitions], or § 39-17-1005 [Offense of especially aggravated sexual exploitation of a minor] or the knowing failure to protect the child from the commission of any such act towards the child

Additionally, Tenn. Code Ann. § 37-1-602(a)(3)(C) (Part definitions—Harm to child’s health or welfare) defines “child sexual abuse” in part as

⁶⁶ See *infra* Components 5.5 and 5.6 for provisions concerning identification as an abused or dependent and neglected child.

⁶⁷ In response to the absence of procedures and services specific to child sex trafficking victims, Tennessee is developing a multi-agency plan to identify victims and provide community-based services and benefits. Tenn. Code Ann. § 71-1-135 (Victims of human trafficking; plan for delivery of services) states,

- (a) the commissioner of the department of human services shall establish a plan for the delivery of services to victims of human trafficking after consultation with the following departments:
 - (1) Department of children's services;
 - (2) Department of health;
 - (3) Department of intellectual and developmental disabilities;
 - (4) Department of mental health; and
 - (5) Tennessee bureau of investigation.
- (b) The plan developed under subsection (a) shall include, but not be limited to, provisions to:
 - (1) Identify victims of human trafficking in this state;
 - (2) Identify community-based services for victims of human trafficking
 - (3) Assist victims of human trafficking through the provision of information regarding access to benefits and services to which those victims may be entitled
 - (4) Coordinate delivery of services and information concerning health care, mental health care, legal services, housing, job training, education and victim’s compensation funds;
 - (5) Prepare and disseminate educational materials and provide training programs to increase awareness of human trafficking and the services available to victims; and
 - (6) Assist victims of human trafficking with family reunification.
- (c) In addition to the requirements of subsection (b), the plan shall include a timeline for which the department anticipates the state would be capable of implementing the plan, along with anticipated rates of assistance to victims of human trafficking, cost of implementation, an itemized rationale for both, and any other factor that the department opines will significantly contribute to or detract from the success of implementing the plan.

⁶⁸ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁶⁹ The text of Tenn. Code Ann. § 37-1-102 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2271 during the 110th General Assembly of the Tennessee Legislature (effective July 1, 2018).

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- (vi) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:
 - (a) Solicit for or engage in prostitution; or
 - (b) Engage in an act prohibited by § 39-17-1003; and
- (vii) The commission of any act towards the child prohibited by § 39-13-309

Further, Tenn. Code Ann. § 37-1-102(b)(13) defines a “dependent and neglected child” as a child who is subject to any of the following situations:

-
- (B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child;
-
- (E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;
- (F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;
- (G) Who is suffering from abuse or neglect;
- (H) Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;
- (I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity
-

Pursuant to Tenn. Code Ann. § 37-1-102(b)(1), “‘Abuse’ exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker.” The definition of caretaker expressly includes traffickers.⁷⁰ Tenn. Code Ann. § 37-1-102(b)(4).

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 “caregiver” is not a barrier to a sex trafficked child accessing the protection of child welfare. Pursuant to Tenn. Code Ann. § 37-1-102(b)(4) (Chapter and part definitions),

“Caregiver” means any relative or other person living, visiting, or working in the child’s home who supervises or otherwise provides care or assistance for the child “Caregiver” may also include a person who has allegedly used the child for the purpose of commercial sexual exploitation of a minor or trafficking a minor for a commercial sex act, including, but not limited to, as a trafficker. For the purposes of this chapter, “caregiver” and “caretaker” shall have the same meaning[.]

⁷⁰ See *infra* Component 5.6 for discussion of the definition of “caretaker.”

Accordingly, child welfare can respond to the child regardless of the child's relationship to the perpetrator of the abuse when the abuse constitutes commercial sexual exploitation or child sex trafficking.⁷¹

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

Pursuant to Tenn. Code Ann. § 29-13-102(12) (Definitions), a “victim” is defined as “a person who suffers personal injury or death as a direct and proximate result of any act of a person which is within the description of any of the offenses specified in § 29-13-104 [Offenses to which compensation applies].” Domestic minor sex trafficking victims are considered to be victims of offenses for which compensation applies, because offenses allowing for claims include, with some exceptions, “[a]n act committed in this state, which, if committed by a mentally competent, criminally responsible adult, would constitute a crime under state or federal law” Tenn. Code Ann. § 29-13-104(1).

Compensation is not allowed for “any personal injury or loss alleged to have been incurred as a result of pain and suffering, except for victims of the crime of rape and victims of crime involving sexual deviancy, including minors who are victims of the crimes contained in the provisions of §§ 39-13-502–39-13-505 [Aggravated rape; Rape; Aggravated sexual battery; Sexual battery], 39-12-101 [Criminal attempt], 39-13-522 [Rape of a child], 39-15-302 [Incest], 39-17-902 [Producing, importing, preparing, distributing, processing or appearing in obscene material or exhibition], 39-17-1003–39-17-1005 [Offense of sexual exploitation of a minor; Offense of aggravated sexual exploitation of a minor; Offense of especially aggravated sexual exploitation of a minor], and/or any attempt, conspiracy or solicitation to commit such offenses.” Tenn. Code Ann. § 29-13-106(c). This statute could be a barrier to compensation for victims of crimes stated in Tenn. Code Ann. § 39-13-309 (Trafficking for commercial sex act), § 39-13-515 (Promoting prostitution), or § 39-13-514 (Patronizing prostitution) from recovering for pain and suffering.

Nonetheless, eligible compensation includes “[i]n the case of a sexually-oriented crime committed against a victim who is under eighteen (18) years of age, where the compensation is for unreimbursed or unreimbursable mental health counseling or treatment made necessary by the sexually-oriented crime, any sibling or non-offending custodial parent of the victim, or both.” Tenn. Code Ann. § 29-13-105(a)(6) (Persons eligible for compensation).

Pursuant to Tenn. Code Ann. § 29-13-108(a) (Claims for compensation—Procedure),

A claim for compensation shall be filed not later than one (1) year after the occurrence of the crime upon which the claim is based or one (1) year after the death of the victim or one (1) year after any mental or physical manifestation or injury is diagnosed as a result of an act committed against a minor that would constitute a criminal offense under the provisions of §§ 39-12-101 [Criminal attempt], 39-13-502–39-13-505 [Aggravated rape; Rape; Aggravated sexual battery; Sexual battery], 39-13-522 [Rape of a child], 39-15-302 [Incest], . . . 39-17-1003–39-17-1005 [Offense of sexual exploitation of a minor; Offense of aggravated sexual exploitation of a minor; Offense of especially aggravated sexual exploitation of a minor], and/or any attempt, conspiracy or solicitation to commit such offenses; provided, that upon good cause shown, the time period for filing such claim may be extended either before or after the expiration of the filing period. No claim shall be filed until the crime upon which the claim is based shall have been reported by the victim, or a member of the victim's family, to the proper authorities; and in no case may an award be made where the law enforcement records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless, for good cause shown, it is found that the delay was justified. Failure of the victim to report a crime because:

- (1) The victim is physically unable;

⁷¹ While the statute provides broad authority, the Department of Children's Services limits access to services to trafficking cases involving third party control.

- (2) The victim is a victim of sexual assault; or
 - (3) The victim is a victim of domestic abuse;
- may all constitute good cause.

Lastly, for a victim to receive compensation, it must be proven that the victim “fully cooperated with the police and the district attorney general in the investigation and prosecution of the offender.” Tenn. Code Ann. § 29-13-103(a)(4).

- 5.7.1 Recommendation: Amend Tenn. Code Ann. § 29-13-108 (Claims for compensation—Procedure) and § 29-13-105(b) (Persons eligible for compensation) to stipulate an exception to the listed ineligibility criteria for child sex trafficking victims.

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

The court may order a child’s testimony to be taken by closed circuit television if the judge makes the necessary findings, the child is 13 or younger at the time of the offense, and the child is a victim of any of the enumerated offenses. Tenn. Code Ann. § 24-7-120(a), (e) (Child’s testimony—Closed circuit television). Pursuant to Tenn. Code Ann. § 24-7-120(e),

The offenses to which the provisions of this section apply are:

- (1) Aggravated sexual battery, as defined in § 39-13-504;
- (2) Rape of a child, as defined in § 39-13-522;
- (3) Incest, as defined in § 39-15-302;
- (4) Aggravated child abuse, as defined in § 39-15-402;
- (5) Kidnapping, as defined in § 39-13-303;
- (6) Aggravated kidnapping, as defined in § 39-13-304;
- (7) Especially aggravated kidnapping, as defined in § 39-13-305; and
- (8) Criminal attempt, as defined in § 39-12-101, to commit any of the offenses enumerated within this section;
- (9) Trafficking for commercial sex act as defined in § 39-13-309;
- (10) Patronizing prostitution as defined in § 39-13-514.

However, pursuant to Tenn. Code Ann. § 24-7-123(a) (Admission of video recording of interview of child describing sexual conduct), “[A] video recording of an interview of a child by a forensic interviewer containing a statement made by the child under thirteen (13) years of age describing any act of sexual contact performed with or on the child by another is admissible and may be considered for its bearing on any matter to which it is relevant in evidence at the trial of the person for any offense arising from the sexual contact if the requirements of this section are met.” One of the requirements is that the child will have to “testif[y], under oath, that the offered video recording is a true and correct recording of the events contained in the video recording and the child is available for cross examination.” Tenn. Code Ann. § 24-7-123(b)(1).

Tenn. R. Evid. Rule 412 (Sex offense cases; relevance of victim’s sexual behavior) prevents the admission into evidence of reputation or opinion evidence of the victim’s sexual behavior, unless certain procedures are followed. Tenn. R. Evid. 412(a), (b). Rule 412 also excludes evidence of specific instances of a victim’s sexual behavior unless it relates to certain issues, such as consent or to show a person other than the defendant committed the crime. Tenn. R. Evid. 412 (a), (c). Rule 412, however, does not apply to domestic minor sex trafficking cases. Tenn. R. Evid. Rule 412 only applies at

a criminal trial, preliminary hearing, deposition, or other proceeding in which a person is accused of an offense under Tenn. Code Ann. §§ 39-13-502 [aggravated rape], 39-13-503 [rape], 39-13-504

[aggravated sexual battery], 39-13-505 [sexual battery], 39-13-507 [spousal sexual offenses]⁷², 39-13-522 [rape of a child], 39-15-302 [incest], 39-13-506 [statutory rape], 39-13-527 [sexual battery by an authority figure], 39-13-528 [solicitation of minors for sexual acts], or the attempt to commit any such offense

Further, Tenn. Code Ann. § 36-3-623(a)⁷³ (Confidentiality of records of shelters, centers, providers) provides for the confidentiality of human trafficking service provider records, stating,

The records of domestic violence shelters, rape crisis centers, and human trafficking service providers shall be treated as confidential by the records custodian of such shelters, centers, or providers unless:

- (1) The individual to whom the records pertain authorizes their release; or
- (2) A court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.

In addition, human trafficking victims are afforded protections under Tennessee’s address confidentiality program. Pursuant to Tenn. Code Ann. § 40-38-602(a), (b)⁷⁴ (Crime victim address confidentiality program),

- (a) The secretary of state shall establish a crime victim address confidentiality program, which shall be open to a victim of domestic abuse, stalking, human trafficking, rape, sexual battery, or any other sexual offense who satisfies the requirements of this part, at no cost to the program participant.
- (b) This program shall provide the participant with the use of a substitute address for the participant and the participant’s minor children and shall not disclose the participant’s name, confidential address, phone number, or any other information contained within the program participant’s file except as otherwise provided by this part.

“Child sexual abuse” victims are entitled to a guardian ad litem who will “represent the child in any child sexual abuse civil or juvenile judicial proceeding and in general sessions or criminal court at the discretion of the court.” Tenn. Code Ann. § 37-1-610(a) (Guardian ad litem—Parental reimbursement of costs and expenses). Child sex trafficking victims are entitled to this guardian ad litem since the definition of “child sexual abuse” includes “[t]he sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to: (a) Solicit for or engage in prostitution; or (b) Engage in an act prohibited by § 39-17-1003 [Offense of sexual exploitation of a minor],” and child sex trafficking. Tenn. Code Ann. § 37-1-602(a)(3)(C)(vi), (vii) (Part definitions—Harm to child’s health or welfare).

One victim-friendly criminal justice procedure that extends to all victims is the availability of a crime victim advocate. Tenn. Code Ann. § 40-38-115 (Crime victim advocate). Pursuant to Tenn. Code Ann. § 40-38-115(a), “Any victim of crime may have a crime victim advocate from a crime assistance program or a victim-witness coordinator as provided for in § 8-7-206 present at any defense interviews with the victim The role of the crime victim advocate or victim-witness coordinator is to provide emotional support to the victim.”

⁷² Tenn. Code. Ann. § 39-13-507 (Spousal sexual offenses) was repealed during the 2005 Tennessee Legislature, 2005 Tenn. Laws ch. 456 (effective June 18, 2005).

⁷³ The text of Tenn. Code Ann. § 36-3-623 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 1849 and Senate Bill 1656 during the 110th General Assembly of the Tennessee Legislature (effective July 1, 2018).

⁷⁴ The text of Tenn. Code Ann. § 40-38-602 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2025 and Senate Bill 1935 during the 110th General Assembly of the Tennessee Legislature (effective March 1, 2019).

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.*

Tennessee does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization; however, state law allows a court to expunge juvenile records for prostitution offenses immediately after adjudication. Juvenile records related to other offenses may only be expunged after a waiting period except at the court's discretion.

Pursuant to Tenn. Code Ann. § 37-1-153(f)(12)⁷⁵ (Court files and records—inspection limited—exceptions for certain violent offenders—confidentiality),

The court may order all or any portion of a juvenile's court files and juvenile records expunged if:

- (A) The juvenile is tried and adjudicated delinquent or unruly by a juvenile court for conduct that would constitute the offense of prostitution under § 39-13-513 or aggravated prostitution under § 39-13-516 if committed by an adult;
- (B) The court finds that . . . the conduct upon which the adjudication is based was found to have occurred as a result of the person being a victim of human trafficking under § 39-13-314; and
- (C) The juvenile has filed a motion for expunction of all court files and juvenile records.

For juvenile records related to non-prostitution offenses, Tenn. Code Ann. § 37-1-153(f) states,

(1) Notwithstanding the provisions of any law to the contrary, any person who is tried and adjudicated delinquent or unruly by a juvenile court may subsequently petition the juvenile court for expunction of all court files and records. The court may order all or any portion of the requested expunction if, by clear and convincing evidence, the court finds that the petitioner:

- (A) (i) Is currently seventeen (17) years of age or older;
- (ii) Is at least one (1) year removed from the person's most recent delinquency or unruly adjudication; and
- (iii) Has never been convicted of a criminal offense as an adult, has never been convicted of a criminal offense following transfer from juvenile court pursuant to § 37-1-134 [Transfer from juvenile court], and has never been convicted of a sexual offense as defined in § 40-39-202 [Part definitions], whether in juvenile court, following transfer from juvenile court pursuant to § 37-1-134, or as an adult;
- (iv) Does not have an adjudication of delinquency for a violent juvenile sexual offense as defined in Section 40-39-202.
- (B) Has maintained a consistent and exemplary pattern of responsible, productive and civic-minded conduct for one (1) or more years immediately preceding the filing of the expunction motion; or
- (C) Has made such an adjustment of circumstances that the court, in its discretion, believes that expunction serves the best interest of the child and the community.

.....
(4) Any person whose records are expunged under subdivisions (f)(1)–(3) shall be restored to the status that the person occupied before arrest, citation, the filing of a juvenile petition, or referral.

Because Tenn. Code Ann. § 37-1-153(f)(1) mandates a minimum 1 year waiting period, child sex trafficking victims may face collateral consequences associated with having juvenile records during that time.

⁷⁵ The text of Tenn. Code Ann. § 37-1-153 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 2032 and Senate Bill 2505 during the 110th General Assembly of the Tennessee Legislature (effective July 1, 2018).

- 5.9.1 Recommendation: Amend Tenn. Code Ann. § 37-1-153(f)(12) (Court files and records—inspection limited—exceptions for certain violent offenders—confidentiality) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and 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.*

Restitution is mandatory for victims of human trafficking and CSEC offenses in Tennessee. Tenn. Code Ann. §§ 39-11-118, 40-35-104(c)(2), 40-35-304. Tenn. Code Ann. § 39-11-118 (Restitution to victims of crime) states,

(a) it is a part of the punishment for any offense committed in this state that the person committing the offense may be sentenced by the court to pay restitution to the victim or victims of the offense in accordance with the provisions of §§ 40-35-104(c)(2) [Sentencing alternatives] and 40-35-304 [Restitution as condition for probation—Petition to modify—Civil judgment for non-payment—Procedure].

(b) In addition to the punishment authorized by the specific statute prohibiting the conduct, it is a part of the punishment for the offenses named in this subsection that the defendant be sentenced by the court to pay restitution to the victim or victims of §§ 39-13-309 [Trafficking for commercial sex act], 39-13-514 [Patronizing prostitution], 39-17-1005(a) [Especially aggravated sexual exploitation], 39-13-528(a) [Solicitation of person under 18 years of age], and 39-13-529(a) [Solicitation of minor to observe sexual conduct] in accordance with the provisions of §§ 40-35-104(c)(2) [Alternative sentences] and 40-35-304 [Restitution; amount; definition; waiver; procedure].

Additionally, when a victim “not an accomplice of the defendant . . . suffers a specific physical, mental, or pecuniary injury as a direct result of a crime,” the victim may bring a civil action for compensation. Tenn. Code Ann. § 29-13-402(4)(A) (Part definitions). Pursuant to Tenn. Code Ann. § 29-13-403(a)(1) (Defendant’s income—Collection—Deposit), “The attorney general and reporter shall collect all income, from whatever source derived, which is owing to the defendant, or representative or assignee of the defendant, after the date of the crime.” Then, this money is to be placed in an interest-bearing account payable to crime victims. Tenn. Code Ann. § 29-13-403(b). However, a crime victim may only receive money from this account if the victim “brings a civil action in a court of competent jurisdiction for money damages against the defendant within three (3) years from the date of the crime, subject to § 29-13-404 [Limitations period].” Tenn. Code Ann. § 29-13-403(b).

Buyers, facilitators, and traffickers may be liable to pay damages under a civil cause of action for trafficking victims. Tenn. Code Ann. § 39-13-314 (Offense of human trafficking) states:

- (a) (1) ‘Human trafficking offense’ means the commission of any act that constitutes the criminal offense of:
- (A) Involuntary labor servitude, under § 39-13-307;
 - (B) Trafficking persons for forced labor or services, under § 39-13-308;
 - (C) Trafficking a person for sexual servitude, under § 39-13-309; or
 - (D) Promoting the prostitution of a minor, under § 39-13-512.
- (b) (1) A trafficked person may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those or any other appropriate relief.
(2) A prevailing plaintiff is entitled to an award of attorney's fees and costs.

Pursuant to Tenn. Code Ann. § 39-13-314 subsection (c) provides,

Restitution under this section shall include items covered by the criminal injuries compensation fund under § 40-24-107 and any of the following, if not already covered by the court's restitution order:

- (1) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;
- (2) Costs of necessary transportation, temporary housing, and child care, at the court's discretion;
- (3) Attorney's fees and other court-related costs such as victim advocate fees;
- (4) The greater of:
 - (A) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or state equivalent; or
 - (B) The gross income or value to the defendant of the victim's labor or services or of any commercial sex acts engaged in by the victim while in the human trafficking situation;
- (5) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
- (6) Compensation for emotional distress, pain, and suffering;
- (7) (A) Expenses incurred by a 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;
(B) Expenses incurred pursuant to subdivision (c) (7)(A) shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
- (8) Repatriation of the victim to their home country, if applicable; and
- (9) Any and all other losses suffered by the victim as a result of human trafficking offenses.

Pursuant to Tenn. Code Ann. § 40-24-107(e) (Criminal injuries compensation fund—Country criminal injuries compensation reserve), “A person named in this section may not receive any funds from restitution if such person engaged in violations of a human trafficking offense.”

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.

The criminal statute of limitations for the commission of certain sexual offenses against a child is extended but it is not eliminated for any trafficking or CSEC offenses. Pursuant to Tenn. Code Ann. § 40-2-101 (Felonies),

....

(h) A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, that constitutes a criminal offense under the provisions of §§ 39-13-502–39-13-505 [Aggravated rape; Rape; Aggravated sexual battery; Sexual battery], § 39-13-522 [Rape of a child], § 39-13-527 [Sexual battery by authority figure] or § 39-15-302 [Incest], no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

(i) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, that constitutes a criminal offense under the provisions of § 39-13-531 [Aggravated rape of a child] or § 39-13-532 [Statutory rape by an authority figure], no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

....

(k) (1) A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-309 [Trafficking for commercial sex act] or § 39-13-529 [Offense of soliciting sexual exploitation of a minor—Exploitation of a minor by electronic means], no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.

(2) A person may be prosecuted, tried, and punished for any offense committed

against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-514 [Patronizing prostitution] no later than ten (10) years from the date the child becomes eighteen (18) years of age.

(3) (A) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013 but prior to July 1, 2015, that constitutes a criminal offense under § 39-13-515 [Promoting prostitution] no later than ten (10) years from the date the child becomes eighteen (18) years of age.

(B) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2015, that constitutes a criminal offense under § 39-13-515 [Promoting prostitution] no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.

.....
(m) A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2016, that constitutes the offense of aggravated statutory rape under § 39-13-506(c), no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.

(n) Notwithstanding subsection (b), prosecutions for any offense committed on or after July 1, 2016, that constitutes the offense of aggravated child abuse, or aggravated child neglect or endangerment, under § 39-15-402, shall commence by the later of:

(1) Ten (10) years after the child reaches eighteen (18) years of age; or

(2) The time within which prosecution must be commenced pursuant to subsection (b).

For civil actions under Tenn. Code Ann. § 29-13-403 (Defendant's income—Collection—Deposit), a three-year statute of limitation exists, but it is tolled until “[a]n escrow account has been established for the benefit of the defendant's victims.” Tenn. Code Ann. § 29-13-404(2). Additionally, the right to bring a civil action by an individual under 18 is tolled until the minor reaches 18. Tenn. Code Ann. § 28-1-106(a) (Persons under disability on accrual of right). Then, pursuant to Tenn. Code Ann. § 28-1-106(a), the individual may bring the action “after legal rights are restored [of minority], within the time of limitation for the particular cause of action, unless it exceeds three (3) years, and in that case within three (3) years from the restoration of legal rights.” The statute of limitations for civil causes of action commenced under Tenn. Code Ann. § 39-13-314 (Offense of human trafficking) is not specifically extended beyond the general statute of limitations provided under Tenn. Code Ann. § 28-1-106 (Accrual of right).

5.11.1 Recommendation: Eliminate the statute of limitations for commencing prosecutions of sex trafficking and CSEC offenses and eliminate or lengthen the statute of limitations for commencing civil claims under Tenn. Code Ann. § 39-13-314 (Offense of human trafficking).

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 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.*

Tennessee mandates training for law enforcement on human trafficking under Tenn. Code Ann. § 38-6-114 (Course of instruction concerning human trafficking).⁷⁶ Pursuant to Tenn. Code Ann. § 38-6-114(c)(1), “a law enforcement officer who is assigned field or investigative duties shall complete a minimum of two (2) hours of training in a course or courses of instruction pertaining to the handling of human trafficking complaints” Tenn. Code Ann. § 38-6-114(c)(2) further requires that an officer “complete the training hours required by subdivision (c)(1) by July 1, 2017, or within six months from the officer’s date of employment as a full-time law enforcement officer, whichever is later.”

Tenn. Code Ann. § 38-6-114(b) sets out the topics to be covered in the human trafficking training courses,

- (1) The course or courses of instruction and the guidelines shall emphasize:
 - (A) The dynamics and manifestations of human trafficking;
 - (B) Identifying and communicating with victims;
 - (C) Providing documentation that satisfies the peace officers standards and training (POST) commission requirements;
 - (D) Collaboration with federal law enforcement officials;
 - (E) Appropriate investigative techniques for the particular victim or victim type;
 - (F) The availability of civil and immigration remedies and community resources; and
 - (G) Protection of the victim.
- (2) Where appropriate, the trainers shall include presentations by human trafficking experts with experience in the delivery of direct services to victims of human trafficking.

In addition to the training mandated for law enforcement officers in Tenn. Code Ann. § 38-6-101(c)(1) (Bureau created—Director—Divisions of bureau), Tenn. Code Ann. § 38-6-101(e)(1) states that the Tennessee Bureau of Investigation will also “develop and deliver a course of instruction designed for various agencies and

⁷⁶ Tenn. Code Ann § 38-6-114(a) states that “[t]he Tennessee bureau of investigation shall, by January 1, 2016: (1) Implement a course or courses of instruction . . . for the training of law enforcement officers and other government officials who are directly involved with human trafficking, including the investigation of and the intake of human trafficking complaints; and (2) Develop recommended best practice uniform protocols and procedures for law enforcement response to human trafficking.”

departments likely to come into contact with human trafficking and human trafficking victims during the course of delivering services.”⁷⁷

Tennessee also requires training on child sexual abuse pursuant to Tenn. Code Ann. § 37-1-603(b)(4)(A)(ii) (Comprehensive state plan), which states that “[t]he course of training leading to the basic certificate issued by the Tennessee peace officer standards and training commission shall include adequate instruction in the procedures described in subdivision (b)(4)(A)⁷⁸ and shall be included as a part of the in-service training requirement to be eligible for the salary supplement authorized in § 38-8-111 [In-service Training—Cash supplements].” Tenn. Code Ann. § 37-1-602(3)(C)(vi), (vii) (Part definitions—Harm to child’s health or welfare), defines “child sexual abuse” as including “[t]he sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to: (a) Solicit for or engage in prostitution; or (b) Engage in an act prohibited by § 39-17-1003 [Offense of sexual exploitation of a minor],” and child sex trafficking. Therefore, it is possible that the childhood sexual abuse training required by Tenn. Code Ann. § 37-1-603(b)(4)(A)(ii) could include training on child sex trafficking.

Additionally, some proceeds obtained from asset forfeiture related to human trafficking will be allotted for training on human trafficking. Tenn. Code Ann. § 39-13-312(c) (Manner in which proceeds from forfeitures are distributed and used). Specifically, after using the proceeds to pay for the cost of the proceedings, 20% of the proceeds from forfeiture will be awarded “to the law enforcement agency conducting the investigation that resulted in the forfeiture for use in training and equipment for the enforcement of human trafficking laws.” Tenn. Code Ann. § 39-13-312(c)(1).

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

Tennessee allows for single-party consent to audio-taping. Pursuant to Tenn. Code Ann. § 39-13-601(b)(5) (Wiretapping and electronic surveillance—Prohibited acts—Exceptions), which regulates the interception of “wire, oral, or electronic communication,”

It is lawful under §§ 39-13-601–39-13-603 [Wiretapping and electronic surveillance—Prohibited acts—Exceptions, Penalty for violations, Civil actions—Injunctive relief—Damages—Defenses—Limitation of actions] and title 40, chapter 6, part 3 [Wiretapping and electronic surveillance] for a person not

⁷⁷ Pursuant to Tenn. Code Ann. § 38-6-114(e)(1),

Departments, agencies, or associations included in this course of instruction are: (A) Council of juvenile and family court judges, including juvenile court administrators, juvenile court youth service officers, and juvenile court probation officers; (B) Department of children’s services; (C) Department of education; (D) Department of health; (E) Department of human services; (F) Department of mental health and substance abuse services; (G) Department of safety; (H) Department of labor and workforce development; (I) District attorneys general conference; (J) District public defenders conference; (K) Office of the attorney general and reporter; (L) Tennessee association of chiefs of police; (M) Tennessee economic council on women; (N) Tennessee sheriffs’ association; (O) Tennessee judicial conference; (P) Tennessee general sessions judges conference; and (Q) Clerks of court conference.

⁷⁸ Tenn. Code Ann. § 37-1-603(b)(4)(A) states in part,

The Jerry F. Agee Tennessee Law Enforcement Academy, the Tennessee peace officer standards and training commission, and the department of children’s services shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child sexual abuse and in the proper action that should be taken in a suspected case of child sexual abuse: (i) Guidelines shall be prepared establishing a standard procedure that may be followed by police agencies in the investigation of cases involving sexual abuse of children, including police response to, and treatment of, victims of such crimes

acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the state of Tennessee.

Similarly, pursuant to Tenn. Code Ann. § 39-13-604(b)(1) (Interception of cellular or cordless telephone transmissions), single party consent for audio recording is allowed. The statute states that “[a] person commits an offense who, without the consent of at least one (1) party to a communication transmitted between two (2) cellular radio telephones, a cellular radio telephone and a landline telephone, or a cordless telephone and a cellular radio telephone.”

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

Wiretapping is permitted in sex trafficking investigations. Under Tenn. Code Ann. § 40-6-305(5) (Interception of communications for evidence of certain crimes),

A district attorney general may apply to a judge of competent jurisdiction for, and the judge may grant, in conformity with § 40-6-304 [Order for electronic surveillance—Application—Required findings—Expiration order—Recordings—Evidence—Motions to suppress], an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made when interception may provide evidence of The commission of trafficking a person for a commercial sex act, as defined in Tenn. Code Ann. § 39-13-309 [Trafficking for commercial sex act].

6.3.1 Recommendation: Amend Tenn. Code Ann. § 40-6-305(5) (Interception of communications for evidence of certain crimes) to include Tennessee’s CSEC laws.

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.*

Tennessee’s sex trafficking statute expressly prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor. Pursuant to Tenn. Code Ann. § 39-13-309(d)(1) (Trafficking for commercial sex act), “It is not a defense to a violation of this section that . . . the intended victim of the offense is a law enforcement officer.”

Several of Tennessee’s CSEC statutes also prohibit the defense. Pursuant to Tenn. Code Ann. § 39-13-515(d)(1) (Promoting prostitution) and § 39-13-514(d)(1) (Patronizing prostitution), “It is not a defense to a violation of this section that . . . [t]he subject of the offense is a law enforcement officer.” Additionally, Tenn. Code Ann. § 39-13-528(a) (Offense of solicitation of a minor) states,

It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;

- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
- (9) Sexual activity involving a minor, pursuant to § 39-13-529.
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- (11) Patronizing prostitution, pursuant to § 39-13-514;
- (12) Promoting prostitution, pursuant to § 39-13-515;
- (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

Subsection (b) explains that “[i]t is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense.” Subsection (d) expands the reach of this statute by providing,

A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

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

As discussed above in 6.4, pursuant to Tenn. Code Ann. § 39-13-528(a) (Offense of solicitation of a minor), law enforcement may investigate certain cases of CSEC through the Internet or other electronic communication. Tenn. Code Ann. § 39-13-528(a) states,

It is an offense for a person eighteen (18) years of age or older by means of . . . electronic communication . . . [to] solicit[] a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that if completed would constitute a violation by the soliciting adult of one of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
- (2) Aggravated rape, pursuant to § 39-13-502;
- (3) Rape, pursuant to § 39-13-503;
- (4) Aggravated sexual battery, pursuant to § 39-13-504;
- (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
- (6) Sexual battery, pursuant to § 39-13-505;
- (7) Statutory rape, pursuant to § 39-13-506;
- (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
- (9) Sexual activity involving a minor, pursuant to § 39-13-529.
- (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
- (11) Patronizing prostitution, pursuant to § 39-13-514;
- (12) Promoting prostitution, pursuant to § 39-13-515;
- (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

Subsection (b) provides, “It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense.”

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

Law enforcement agencies are required to report missing children.⁷⁹ Pursuant to Tenn. Code Ann. § 37-10-203 (Formal missing child report—Reports to law enforcement agencies),

Every law enforcement officer receiving information from a parent or any source that it deems creditable shall prepare a formal missing child report. A law enforcement agency reporting a missing child is further required to enter or cause to be entered the report of the missing child into the National Crime Information Center (NCIC) within two (2) hours of the receipt of the initial missing child report.

Additionally, upon taking a report of a missing child, a law enforcement agency must submit the report to a juvenile court for review. Tenn. Code Ann. § 37-10-204 (Reports to juvenile court judge—Missing child order). If the judge determines that the child classifies as a “missing child,” then “a ‘missing child’ order shall be issued and delivered to any lawful officer or the Tennessee bureau of investigation authorizing the bureau or any officer holding the order, a true copy thereof or possessing knowledge of the existence thereof, to investigate the circumstances relating to the missing child in compliance with existing constitutional, statutory and case law and upon identification or location of the missing child to take custody of the child, using legal process when necessary, for immediate delivery to a judge of any juvenile or other court of record for appropriate orders and disposition pursuant to law.” Tenn. Code Ann. § 37-10-204(c)(1). If the court finds that the child is not a “missing child” then “the missing child report should be cancelled by the bureau, which shall give notice of the cancellation to all appropriate law enforcement agencies.” Tenn. Code Ann. § 37-10-204(c)(2). “Missing child” is defined as “a child who is believed to have been removed by force, persuasion, trick, enticement, false pretense, has voluntarily left the custody of such child’s parent without permission or is absent for unexplained or unknown reasons.” Tenn. Code Ann. § 37-10-201(b)(2) (Part definitions).

Pursuant to Tenn. Code Ann. § 37-10-205 (Forms—file of missing children—monthly reports of missing children—dissemination of information),

The Tennessee Bureau of Investigation (“TBI”) shall specify a uniform form for the missing child report and data, so that the same may be transmitted by computer or mail. TBI shall also establish, maintain and manage a file of ‘missing children’ and collect any available relevant data concerning the missing child and disseminate the same by computer, mail or any other reliable communication device to any law enforcement agency. The bureau shall publish a monthly report of all missing children and recovery of children and distribute the same to all full-time law enforcement agencies in the state, the general assembly, and executive branches of government, to the news media, and to every director of schools in the state, who shall then distribute the report to the principal of every school within such director’s school system

Information on located missing children could appear in the missing children registry. Pursuant to Tenn. Code Ann. § 38-6-117(a) (Missing children registry) “The Tennessee Bureau of Investigation is authorized to create within the bureau a missing children registry. The registry shall contain pertinent information about, a picture of, and the current status of certain children in this state who have been reported missing.” Upon recovery of a child, the Tennessee Bureau of Investigation “shall update the missing children’s web page to reflect that a missing child has been recovered.” Tenn. Code Ann. § 38-6-117(e).

Additionally, pursuant to Tenn. Code Ann. § 37-1-403(c)(3)(A) (Reporting of brutality, abuse, neglect or child sexual abuse—Notification to parents of abuse on school grounds or under supervision—confidentiality of

⁷⁹ For the purposes of these statutes, “child” is defined as “any person under twenty-one (21) years of age.” Tenn. Code Ann. § 37-10-201(b)(1).

records), “if the department⁸⁰ receives information containing references to alleged human trafficking or child pornography which does or does not result in an investigation by the department, the department shall notify the appropriate law enforcement agency immediately upon receipt of such information.”

⁸⁰ Pursuant to Tenn. Code Ann. § 37-1-401(2) (Part definitions) “department” is defined as “the department of children’s services.”

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