

## 2018 ANALYSIS AND RECOMMENDATIONS

### WASHINGTON

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

##### *Legal Components:*

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

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

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

Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) states,

(1) A person is guilty of trafficking in the first degree when:

(a) Such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact,

(A) that force, fraud, or coercion<sup>2</sup> as defined in RCW 9A.36.070 will be used to cause the person to engage in

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

<sup>2</sup> Wash. Rev. Code Ann. § 9A.36.070(1), (2) (Coercion) states,

(1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

- (I) forced labor;
- (II) involuntary servitude;
- (III) a sexually explicit act<sup>3</sup>; or
- (IV) a commercial sex act<sup>4</sup>, or
- (B) that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or
- (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection; and
- (b) The acts or venture set forth in (a) of this subsection:
  - (i) Involve committing or attempting to commit kidnapping;
  - (ii) Involve a finding of sexual motivation under RCW 9.94A.835 [Special allegation—sexual motivation—procedures];<sup>5</sup>
  - (iii) Involve the illegal harvesting or sale of human organs; or
  - (iv) Result in a death.
- (2) Trafficking in the first degree is a class A felony.

While trafficking in the first degree under Wash. Rev. Code Ann. § 9A.40.100(1) requires that “the acts or venture” are sexually motivated or involve kidnapping, the illegal sale of organs, or death, this requirement does not apply to human trafficking in the second degree under Wash. Rev. Code Ann. § 9A.40.100(3), which states,

- (a) A person is guilty of trafficking in the second degree when such person:
  - (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act,<sup>6</sup> or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or
  - (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

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(b) Threats as defined in RCW 9A.04.110(27) (a), (b), or (c) [Definitions].

<sup>3</sup> Wash. Rev. Code Ann. § 9A.40.100(6)(b) defines a “sexually explicit act” as “a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons for which something of value is given or received.”

<sup>4</sup> Wash. Rev. Code Ann. § 9A.40.100(6)(a) defines “Commercial sex act” as “any act of sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, for which something of value is given or received by any person . . . .”

<sup>5</sup> Wash. Rev. Code Ann. § 9.94A.835 (Special allegation—sexual motivation—procedures) states,

- (1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.
- (2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030.
- (3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

<sup>6</sup> See *supra* note 3.

(b) Trafficking in the second degree is a class A felony.

In regards to both trafficking offenses, if the victim is a minor, “force, fraud, or coercion are not necessary elements of an offense . . .” Wash. Rev. Code Ann. § 9A.40.100(5).

A conviction under Wash. Rev. Code Ann. § 9A.40.100(1) (Trafficking, first degree) is punishable as a Class A felony, seriousness level XIV, by imprisonment for 123–397<sup>7</sup> months and a possible fine up to \$50,000, while a conviction under Wash. Rev. Code Ann. § 9A.40.100(3) (Trafficking, second degree) is punishable as a Class A felony, seriousness level XII, by imprisonment for 93–318 months, a possible fine up to \$50,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9A.40.100(2), (3)(b), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021.<sup>8</sup>

Wash. Rev. Code Ann. § 9A.40.100(4)(b) (Trafficking) also provides that “A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a ten thousand dollar fee.”

Additionally, Wash. Rev. Code Ann. § 19.320.010(1)(5) (Human Trafficking – Forced Labor – Definitions) defines “‘Human trafficking’ and ‘trafficking’ [to] mean an act conducted for the purpose of exploitation . . . by particular means, for example threat of use of force, or other forms of coercion, abduction, fraud or deception, abuse of power, or abuse of position of vulnerability.”

While Wash. Rev. Code Ann. § 19.320.010(1)(5) requires force, fraud or coercion, it does not require force, fraud or coercion when a minor under the age of 18 is used in a commercial sex act.

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

The following laws make CSEC a distinct crime in Washington:

1. Wash. Rev. Code Ann. § 9.68A.100(1) (Commercial sexual abuse of a minor) states,

A person is guilty of commercial sexual abuse of a minor if:

(a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct<sup>9</sup> with him or her;

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<sup>7</sup> Wash. Rev. Code Ann. § 9.94A.510 lists a range of imprisonment terms. Each prison term is dependent on a specific offender score rated from 0–9. Several factors, including prior convictions, are considered in determining each defendant’s offender score. Wash. Rev. Code Ann. § 9.94A.525. The sentencing range used throughout this report encompasses the entire offender score range of 0–9.

<sup>8</sup> Wash. Rev. Code Ann. § 10.64.025(1) states, “A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released.” The offenses of human trafficking in the first or second degree are two of the felonies for which a defendant “shall be detailed pending sentencing.” Wash. Rev. Code Ann. § 10.64.025(2).

<sup>9</sup> Wash. Rev. Code Ann. § 9.68A.100(5) defines “sexual conduct” as “sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW [Sex offenses].” Wash. Rev. Code Ann. § 9A.44.010(1) (Definitions) explains that “sexual intercourse”

(a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.

A conviction under Wash. Rev. Code Ann. § 9.68A.100(1) is punishable as a Class B felony, seriousness level VIII, by imprisonment for 21 months to 10 years, a possible fine up to \$20,000, or both imprisonment and a fine.<sup>10</sup> Wash. Rev. Code Ann. §§ 9.68A.100(2), 9.94A.515, 9.94A.510, 9A.20.021.<sup>11</sup>

2. Wash. Rev. Code Ann. § 9.68A.101(1) (Promoting commercial sexual abuse of a minor) makes it a crime when a person “knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits

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(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

Wash. Rev. Code Ann. § 9A.44.010(2) defines “sexual contact” as “any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.”

<sup>10</sup> Wash. Rev. Code Ann. § 9A.88.130 (Additional requirements) states,

(1) When sentencing or imposing conditions on a person convicted of, or receiving a deferred sentence or deferred prosecution for, violating RCW 9A.88.110 [Patronizing a prostitute] or 9.68A.100, the court must impose a requirement that the offender:

- (a) Not be subsequently arrested for patronizing a prostitute or commercial sexual abuse of a minor;
- (b) Remain outside the geographical area, prescribed by the court, in which the person was arrested for violating RCW 9A.88.110 or 9.68A.100, unless such a requirement would interfere with the person’s legitimate employment or residence or otherwise be infeasible; and
- (c) Fulfill the terms of the program, if a first-time offender, designated by the sentencing court, designed to educate offenders about the negative costs of prostitution.

(2) This requirement is in addition to the penalties set forth in RCW 9A.88.110, 9A.88.120 [Additional fee assessment], and 9.68A.100.

Additionally, Wash. Rev. Code Ann. § 9A.88.140 (Vehicle impoundment—fees and fine) states,

(1) (a) Upon an arrest for a suspected violation of patronizing a prostitute, promoting prostitution in the first degree, promoting prostitution in the second degree, promoting travel for prostitution, the arresting law enforcement officer may impound the person’s vehicle if (i) the motor vehicle was used in the commission of the crime; (ii) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465; and (iii) either (A) the person arrested has previously been convicted of one of the offenses listed in this subsection or (B) the offense was committed within an area designated under (b) of this subsection.

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(2) Upon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person’s vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465.

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<sup>11</sup> Sexual offenses and human trafficking under Wash. Rev. Code Ann. ch. 9A.44 (Sex offenses) and ch. 9.68A (Sexual exploitation of children) are punishable under Wash. Rev. Code Ann. ch. 9A.20 (Classification of crimes), which lays out the maximum penalties for these crimes. The sentencing guidelines outlined in Wash. Rev. Code Ann. § 9.94A.510 (Table 1—sentencing grid), as informed by seriousness levels outlined in Wash. Rev. Code Ann. § 9.94A.515 (Table 2—crimes included within each seriousness level), provide the minimum sentence and the range depending on the offender score.

from a minor engaged in sexual conduct or a sexually explicit act.”<sup>12</sup> Wash. Rev. Code Ann. § 9.68A.101(3) states,

(a) A person “advances commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person “profits from commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person “advances a sexually explicit act of a minor” if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A “sexually explicit act” is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which anything of value is given or received.

(e) A “patron” is a person who provides or agrees to provide anything of value to another person as compensation for a sexually explicit act of a minor of who solicits or requests a sexually explicit act of a minor in return for a fee.

A conviction under Wash. Rev. Code Ann. § 9.68A.101(1) is punishable as a Class A felony, seriousness level XII, by imprisonment for 93–318 months, a possible fine up to \$50,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.101(2), 9.94A.515, 9.94A.510, 9.94A.550.<sup>13</sup>

3. Wash. Rev. Code Ann. § 9.68A.102(1) (Promoting travel for commercial sexual abuse of a minor) states,

A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services<sup>14</sup> that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

A conviction under Wash. Rev. Code Ann. § 9.68A.102(1) is punishable as a Class C felony by imprisonment for up to 5 years, a possible fine up to \$10,000, or both imprisonment and a fine.<sup>15</sup> Wash. Rev. Code Ann. §§ 9.68A.102(2), 9A.20.021(1)(c), 9.94A.505(2)(b), 9.94A.550.

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<sup>12</sup> Wash. Rev. Code Ann. § 9.68A.101(5) defines “sexual conduct” as “sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.” See *supra* note 9 for the definition of “sexual contact” and “sexual intercourse.”

<sup>13</sup> Wash. Rev. Code Ann. § 10.64.025(1) states, “A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released.” The offense of promoting commercial sexual abuse of a minor is one of the felonies covered by this statute. Wash. Rev. Code Ann. § 10.64.025(2).

<sup>14</sup> Wash. Rev. Code Ann. § 9.68A.102(4) states, “‘travel services’ has ‘the same meaning as defined in RCW 19.138.021 [Definitions].’” Wash. Rev. Code Ann. § 19.138.021(7) defines “travel services” as “transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.”

<sup>15</sup> Wash. Rev. Code Ann. § 9.94A.505(2)(b) (Sentences) explains,

4. Wash. Rev. Code Ann. § 9.68A.103(1) (Permitting commercial sexual abuse of a minor) states,

A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

A conviction under Wash. Rev. Code Ann. § 9.68A.103(1) is punishable as a gross misdemeanor by imprisonment for up to 364 days, a possible fine up to \$5,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.103(2), 9.92.020.

5. Wash. Rev. Code Ann. § 9.68A.040(1) (Sexual exploitation of a minor) states,

A person is guilty of sexual exploitation of a minor if the person:

- (a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;
- (b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or
- (c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.<sup>16</sup>

A conviction under Wash. Rev. Code Ann. § 9.68A.040(1) is punishable as a Class B felony, seriousness level IX, by imprisonment of 31 months to 10 years, a fine up to \$20,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.040(2), 9A.20.021(1)(b), 9.94A.515, 9.94A.510.

6. Wash. Rev. Code Ann. § 9.68A.090(2) (Communication with minor for immoral purposes) states,

A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A [Sexual exploitation of children], 9A.44 [Sex offenses], or 9A.64 [Family offenses] RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.<sup>17</sup>

A Class C felony is punishable by up to 5 years imprisonment and possible fine up to \$10,000. Wash. Rev. Code Ann. §§ 9.68A.090(2), 9A.20.021(1)(c).

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If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 [Community custody—offenders sentenced for one year or less] not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 [Community custody—offenders sentenced to the custody of the department] if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

<sup>16</sup> Wash. Rev. Code Ann. § 9.68A.011(6) defines a "live performance" as "any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration."

<sup>17</sup> Wash. Rev. Code Ann. § 9.68A.090(3) further provides, "For the purposes of this section, 'electronic communication' has the same meaning as defined in RCW 9.61.260." Pursuant to Wash. Rev. Code Ann. § 9.61.260(5) (Cyberstalking), "'electronic communication' means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. 'Electronic communication' includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging."

Other crimes against children that are not specifically commercial in nature but may be used in a case of domestic minor sex trafficking include the following:

1. Wash. Rev. Code Ann. § 9A.44.073 (Rape of a child in the first degree) states,

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony.

Wash. Rev. Code Ann. § 9A.44.073 is a Class A felony offense, seriousness level XII, punishable by imprisonment for 93–318 months, a possible fine up to \$50,000, or both. Wash. Rev. Code Ann. §§ 9A.44.073(2), 9.94A.510, 9.94A.515, 9.94A.550.

2. Wash. Rev. Code Ann. § 9A.44.076 (Rape of a child in the second degree) states,

(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Rape of a child in the second degree is a class A felony.

Wash. Rev. Code Ann. § 9A.44.076 is a Class A felony offense, seriousness level XI, punishable by imprisonment for 78–280 months, a possible fine up to \$50,000, or both. Wash. Rev. Code Ann. §§ 9A.44.076(2), 9.94A.510, 9.94A.515, 9.94A.550.

3. Wash. Rev. Code Ann. § 9A.44.079 (Rape of a child in the third degree) states,

(1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Rape of a child in the third degree is a class C felony.

Wash. Rev. Code Ann. § 9A.44.079 is a Class C felony offense, seriousness level VI, punishable by imprisonment for up to 5 years, a possible fine up to \$10,000, or both. Wash. Rev. Code Ann. §§ 9A.44.079(2), 9.94A.510, 9.94A.515, 9.94A.550, 9A.20.021.

4. Wash. Rev. Code Ann. § 9A.44.083 (Child molestation in the first degree) states,

(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class A felony.

Wash. Rev. Code Ann. § 9A.44.083 is a Class A felony offense, seriousness level X, punishable by imprisonment for 51–198 months, a possible fine up to \$50,000, or both. Wash. Rev. Code Ann. §§ 9A.44.083(2), 9.94A.510, 9.94A.515, 9.94A.550.

5. Wash. Rev. Code Ann. § 9A.44.086 (Child molestation in the second degree) states,

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least

twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a class B felony.

Wash. Rev. Code Ann. § 9A.44.086 is a Class B felony offense, seriousness level VII, punishable by imprisonment for 15–116 months, a possible fine up to \$20,000, or both. Wash. Rev. Code Ann. §§ 9A.44.086(2), 9.94A.510, 9.94A.515, 9.94A.550.

6. Wash. Rev. Code Ann. § 9A.44.089 (Child molestation in the third degree) states,

(1) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Child molestation in the third degree is a class C felony.

Wash. Rev. Code Ann. § 9A.44.089 is a Class C felony offense, seriousness level V, punishable by imprisonment for 6–96 months, a possible fine up to \$10,000, or both. Wash. Rev. Code Ann. §§ 9A.44.089(2), 9.94A.510, 9.94A.515, 9.94A.550.

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

Wash. Rev. Code Ann. § 9A.88.030 (Prostitution) does not refer to Wash. Rev. Code Ann. § 9A.40.100 (Trafficking). However, pursuant to Wash. Rev. Code Ann. § 9A.88.040 (Prosecution for prostitution under RCW 9A.88.030 — Affirmative defense),

In any prosecution for prostitution under RCW 9A.88.030, it is an affirmative defense that the actor committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. Documentation that the actor is named as a current victim in an information or the investigative records upon which a conviction is obtained for trafficking, promoting prostitution in the first degree, or trafficking in persons shall create a presumption that the person’s participation in prostitution was a result of having been a victim of trafficking, promoting prostitution in the first degree or trafficking in persons.

Additionally, Wash. Rev. Code Ann. § 13.40.219 (Arrest for prostitution or prostitution loitering), within the Juvenile Justice Act of 1977, states,

In any proceeding under this chapter related to an arrest for prostitution or prostitution loitering, there is a presumption that the alleged offender meets the criteria for a certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States code [the federal Trafficking Victims Protection Act of 2000 (TVPA), as amended], and that the alleged offender is also a victim of commercial sex abuse of a minor.<sup>18</sup>

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<sup>18</sup> However, reference to the federal definition of “severe forms of trafficking” in 22 U.S.C. § 7105, combined with the term “certification” in Wash. Rev. Code Ann. § 13.40.219, could prove problematic in application of this presumption. 22 U.S.C § 7105(b)(1)(C), which applies to victims in the United States, provides a definition of “victim of a severe form of trafficking in persons” to include a person “subjected to an act or practice” defined in 22 U.S.C. § 7102(8) who is a minor under 18 or subject to certification under subsection (E). Subsection (E) requires the person to be willing to assist in the investigation and prosecution of the trafficker and to have made an application for a T visa that has not been denied or be “a person whose continued presence in the United States the Attorney General the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in



Also, Wash. Rev. Code Ann. § 9.68A.001 (Legislative findings, intent) expresses the legislative finding that the prevention of child sexual exploitation and abuse is a key concern of the government.<sup>19</sup>

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

The racketeering statute, Wash. Rev. Code Ann. § 9A.82.080 (Use of proceeds of criminal profiteering), states,

- (1) (a) It is unlawful for a person who has knowingly received any of the proceeds derived, directly or indirectly, from a pattern of criminal profiteering activity<sup>20</sup> to use or invest, whether directly or indirectly, any part of the proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.  
(b) A violation of this subsection is a class B felony.
- (2) (a) It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.  
(b) A violation of this subsection is a class B felony.

The law specifically includes sex trafficking and commercial sexual exploitation of children (CSEC) offenses as predicate acts to the crime. Wash. Rev. Code Ann. § 9A.82.010(4) states,

“Criminal profiteering” means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

- . . . .
- (s) Leading organized crime, as defined in RCW 9A.82.060;
- (t) Money laundering, as defined in RCW 9A.83.020;
- . . . .
- (x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
- . . . .
- (rr) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;

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persons.” Clarification is needed that the use of the word “certification” in Wash. Rev. Code Ann. § 13.40.219 does not mean that the victim must have the certification in 22 U.S.C. § 7105(b)(1)(E).

<sup>19</sup> Wash. Rev. Code Ann. § 9.68A.001 (Legislative findings, intent) states in part that

The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children . . . . It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

<sup>20</sup> Wash. Rev. Code Ann. § 9A.82.010(12) states, “‘Pattern of criminal profiteering activity’ means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events.”

- (ss) Promoting commercial sex abuse of a minor, as defined in RCW 9.68A.101; or
- (tt) Trafficking, as defined in RCW 9A.40.100, promoting travel for commercial sexual abuse of a minor, as defined in RCW 9.68A.102, and permitting commercial sexual abuse of a minor, as defined in RCW 13 9.68A.103.

Based on this definition of racketeering, acts of commercial sexual exploitation of children constitute predicate crimes under the racketeering law, making it available for combatting criminal enterprises that engage in domestic minor sex trafficking. A conviction for use of profiteering proceeds is punishable as a Class B felony, seriousness level IV, by imprisonment for 3–84 months, a fine of \$20,000, or both. Wash. Rev. Code Ann. §§ 9A.82.080(1), (2), 9.94A.515, 9.94A.510, 9.94A.550

An offender may also face penalties under Wash. Rev. Code Ann. § 9A.82.060 (Leading organized crime) which includes “[i]ntentionally organizing, managing, directing, supervising, or financing any three or more persons with the intent to engage in a pattern of criminal profiteering activity.” This is punishable as a Class A felony, seriousness level X, by imprisonment for 51–198 months, a fine of \$50,000, or both. Wash. Rev. Code Ann. §§ 9A.82.060(1)(a), (2)(a), 9.94A.515, 9.94A.510, 9.94A.550. An offender could also be guilty of “[i]ntentionally inciting or inducing others to engage in violence or intimidation with the intent to further or promote the accomplishment of a pattern of criminal profiteering activity,” which is punishable as a Class B felony by imprisonment up to 10 years, a fine of \$20,000, or both. Wash. Rev. Code Ann. §§ 9A.82.060(1)(b), (2)(b), 9A.20.021(1)(b).<sup>21</sup>

Asset forfeiture is available for these offenses. Pursuant to Wash. Rev. Code Ann. § 9A.82.100(4)(f) (Remedies and procedures), following a determination of liability, an order may include,

- [o]rdering forfeiture first as restitution to any person damaged . . . by an offense defined in RCW 9A.40.100 [Trafficking], then to the state general fund or antiprofitteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:
  - (i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 [Leading organized crime] or 9A.82.080 [Use of proceeds of criminal profiteering—controlling enterprise or realty—conspiracy or attempt].
  - (ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.
  - (iii) All proceeds traceable to or derived from . . . an offense defined in RCW 9A.40.100, 9.68A.100 [Commercial abuse of a minor—penalties], 9.68A.101 [Promoting commercial sexual abuse of a minor—penalty], or 9A.88.070 [Promoting prostitution in the first degree], and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense

Finally, where the enterprise alleged is a criminal street gang, gang enhancements may apply. Wash. Rev. Code Ann. § 9.94A.030(14) defines a “criminal street gang-related offense” as:

any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

- . . . .
- (f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to . . . promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

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<sup>21</sup> See *supra* note 8.

Wash. Rev. Code Ann. § 9.94A.030(12) defines a “[c]riminal street gang” as:

any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associated individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their member or agents.

Under Wash. Rev. Code Ann. § 9.94A.533(10) (Adjustments to standard sentences),

(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

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**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.*

Washington’s human trafficking law, Wash. Rev. Code Ann. § 9A.40.100(1) (Trafficking) makes it a crime when a person “obtains, buys, purchases . . . by any means another person knowing, or in reckless disregard of the fact . . . that the person has not attained the age of eighteen years and is caused to engage in a . . . commercial sex act.” The language of Washington’s human trafficking law applies to buyers directly through use of the terms “buys” and “purchases,” as well as through the term “obtains” based on federal precedent.<sup>22</sup>

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

Wash. Rev. Code Ann. § 9.68A.100(1) (Commercial sexual abuse of a minor) includes the crime of buying sex with a minor.<sup>23</sup> A conviction under Wash. Rev. Code Ann. § 9.68A.100(1) is punishable as a Class B felony,

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

<sup>23</sup> See *supra* Component 1.2 for the relevant provisions.

seriousness level VIII, by imprisonment for 21 months to 10 years, a possible fine up to \$20,000, or both imprisonment and a fine.<sup>24</sup> Wash. Rev. Code Ann. §§ 9.68A.100(2), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021.

Several sexual offenses could be used to prosecute certain buyers 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 Wash. Rev. Code Ann. § 9A.40.100 (Trafficking).<sup>25</sup>

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

Wash. Rev. Code Ann. § 9.68A.100(1) (Commercial sexual abuse of a minor) prohibits an individual from “agree[ing] to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her” or from “solicit[ing], offer[ing], or request[ing] to engage in sexual conduct with a minor in return for anything of value.” A conviction under Wash. Rev. Code Ann. § 9.68A.100(1) is punishable as a Class B felony, seriousness level VIII, by imprisonment for 21 months to 10 years and a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9.68A.100(2), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021. However, Washington’s general solicitation law, Wash. Rev. Code Ann. § 9A.88.110 (Patronizing a prostitute), is age neutral and does not distinguish between paying for sex with adults and paying for sex with minors. The penalty is a misdemeanor regardless of the victim’s age.

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

Penalties for buyers prosecuted under Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) and § 9.68A.100 (Commercial sexual abuse of a minor) are comparable to federal penalties. Under Wash. Rev. Code Ann. § 9A.40.100(1), trafficking in the first degree is punishable as a Class A felony, seriousness level XIV, by imprisonment for 123–397 months and a possible fine up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(2), 9.94A.515, 9.94A.510, 9.94A.550. A conviction for human trafficking in the second degree, under Wash. Rev. Code Ann. § 9A.40.100(3) is punishable as a Class A felony, with a seriousness level of XII, by imprisonment for 93–318 months and a possible fine up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(3)(b), 9.94A.515, 9.94A.510, 9.94A.550. A conviction under Wash. Rev. Code Ann. § 9.68A.100(1) is punishable as a Class B felony, seriousness level VIII, by imprisonment for 21 months to 10 years, a possible fine up to up to \$20,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.100(3), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021.<sup>26</sup>

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>27</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the

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

<sup>25</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

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

<sup>27</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

an offense under section 1591 [18 USCS § 1591] (relating to sex trafficking of children), 2241 [18 USCS § 2241] (relating to aggravated sexual abuse), 2242 [18 USCS § 2242] (relating to sexual abuse), 2244(a)(1) [18 USCS § 2244(a)(1)] (relating to abusive sexual contact), 2245 [18 USCS § 2245] (relating to sexual abuse resulting in death), 2251 [18 USCS § 2251] (relating to sexual exploitation of children),

extent buyers can be prosecuted under other federal CSEC laws,<sup>28</sup> a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.<sup>29</sup>

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

Using electronic communications to purchase sex acts with a minor results in an enhanced penalty for buyers. Wash. Rev. Code Ann. § 9.68A.090(2) (Communication with minor for immoral purposes) states,

A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person . . . communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.<sup>30</sup>

Otherwise, communicating with a minor for immoral purposes is generally punishable as a gross misdemeanor.

Additionally, pursuant to Wash. Rev. Code Ann. § 9.68A.106 (Additional fee assessment—Internet advertisement), buyers convicted of an offense under Wash. Rev. Code Ann. § 9.68A.100 (Commercial sexual abuse of a minor) will receive an additional fine of \$5,000 “when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.”<sup>31</sup>

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

Wash. Rev. Code Ann. § 9A.40.100(4)(a) (Trafficking) prohibits a mistake of age defense in trafficking prosecutions, stating,

In any prosecution under this chapter in which the offense or degree of the offense depends on the victim’s age, it is not a defense that the perpetrator did not know the victim’s age, or that the perpetrator believed the victim to be older, as the case may be.

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2251A [18 USCS § 2251A] (relating to selling or buying of children), 2422(b) [18 USCS § 2422(b)] (relating to coercion and enticement of a minor into prostitution), or 2423(a) [18 USCS § 2423(a)] (relating to transportation of minors).

<sup>28</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>29</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>30</sup> Pursuant to Wash. Rev. Code Ann. § 9.68A.090(3), “For the purposes of this section, ‘electronic communication’ has the same meaning as defined in RCW 9.61.260.” Wash. Rev. Code Ann. § 9.61.260(5) defines “electronic communication” as “the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. ‘Electronic communication’ includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.”

<sup>31</sup> Wash. Rev. Code Ann. § 9.68A.106 defines an “internet advertisement” as, “[A] statement in electronic media that would be understood by a reasonable person to be an implicit or explicit offer for sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, in exchange for something of value.”

Further, Wash. Rev. Code Ann. § 9.68A.110(3) (Certain defenses barred, permitted) prohibits a mistake of age defense in a prosecution under Wash. Rev. Code Ann. § 9.68A.090 (Communication with minor for immoral purposes) and § 9.68A.100 (Commercial sexual abuse of a minor), stating in part,<sup>32</sup>

In a prosecution under RCW . . . 9.68A.090 [Communication with a minor for immoral purposes], 9.68A.100 [Commercial sexual abuse of a minor] . . . it is not a defense that the defendant did not know the alleged victim's age.

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

Washington's buyer-applicable trafficking and CSEC laws do not stagger penalties based on a minor's age and provide sufficiently high penalties. A conviction for human trafficking in the first degree under Wash. Rev. Code Ann. § 9A.40.100(1) (Trafficking) is punishable as a Class A felony, seriousness level XIV, by imprisonment for 123–397 months. Wash. Rev. Code Ann. §§ 9A.40.100(2), 9.94A.515, 9.94A.510. A conviction for human trafficking in the second degree under Wash. Rev. Code Ann. § 9A.40.100(3) is punishable as a Class A felony, with a seriousness level of XII, by imprisonment for 93–318 months. Wash. Rev. Code Ann. §§ 9A.40.100(3)(b), 9.94A.515, 9.94A.510. Finally, a conviction under Wash. Rev. Code Ann. § 9.68A.100(1) (Commercial sexual abuse of a minor) is punishable as a Class B felony, seriousness level VIII, by imprisonment for 21 months to 10 years. Wash. Rev. Code Ann. §§ 9.68A.100(3), 9.94A.515, 9.94A.510, 9A.20.021.

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 may be required to pay fines. A buyer convicted under Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) is subject to a possible fine up to \$50,000, while one convicted under Wash. Rev. Code Ann. § 9.68A.100(1) (Commercial sexual abuse of a minor) may be required to pay a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9A.40.100(2), (3)(b), 9.68A.100(2), 9.94A.550.

Additionally, Wash. Rev. Code Ann. § 9A.40.100(4)(b) (Trafficking) imposes a \$10,000 fee on “a person who is either convicted or given a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime . . . .”

Furthermore, Wash. Rev. Code Ann. § 9.68A.105(1)(a) (Additional fee assessment) mandates a fine of \$5,000 for

an adult offender who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100 [Commercial sexual abuse of a minor], 9.68A.101 [Promoting commercial sexual abuse of a minor], or 9.68A.102 [Promoting travel for commercial sexual abuse of a minor], or a comparable county or municipal ordinance . . . .

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<sup>32</sup> However, Wash. Rev. Code Ann. § 9.68A.110(3) further provides that a defense may be allowed for other offenses under Chapter 9.68A for which this defense is not specifically precluded under subsection (3). Wash. Rev. Code Ann. § 9.68A.110(3) states,

In a prosecution under RCW 9.68A.040 [Sexual exploitation of a minor], 9.68A.090 [Communication with a minor for immoral purposes], 9.68A.100 [Commercial sexual abuse of a minor], 9.68A.101 [Promoting commercial sexual abuse of a minor], or 9.68A.102 [Promoting travel for commercial sexual abuse of a minor], it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

Pursuant to Wash. Rev. Code Ann. § 9.68A.106 (Additional fee assessment – Internet advertisement), buyers who are convicted of an offense under Wash. Rev. Code Ann. § 9.68A.100 (Commercial sexual abuse of a minor—Penalties) will receive an additional fine of \$5,000 “when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.”<sup>33</sup>

In addition, when convicted of a violation under Wash. Rev. Code Ann. § 9.68A.070 (Possession of depictions of minor engaged in sexually explicit conduct), an offender is required to pay a \$1,000 fine for each image, depiction, or visual printed matter that constitutes a separate conviction. Wash. Rev. Code Ann. § 9.68A.107 (Additional fee assessment- Depiction or image of visual or printed matter).

Wash. Rev. Code Ann. § 9A.88.140(2) (Vehicle impoundment—fees and fines) provides for mandatory impoundment of vehicles and states,

Upon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person’s vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465 [Rental car].

Wash. Rev. Code Ann. § 9A.88.140(4) sets a \$2,500 fine to the impounding agency to redeem the vehicle.<sup>34</sup> Buyers are also subject to a number of discretionary criminal forfeiture proceedings. Assets related to violations of Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) and § 9.68A.100 (Commercial sexual abuse of a minor) are subject to criminal forfeiture. Wash. Rev. Code Ann. §§ 10.105.010(1), 10.105.900. Wash. Rev. Code Ann. § 10.105.010(1) (Seizure and forfeiture) states in part,

The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

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Wash. Rev. Code Ann. § 10.105.010(2) provides for seizure in the following manner:

Personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may be made if:

- (a) The seizure is incident to an arrest or a search under a search warrant;
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;
- (c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or
- (d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

<sup>33</sup> See *supra* note 31 for the definition of “internet advertisement.”

<sup>34</sup> This fine only applies to adult owners of impounded vehicles. See *supra* note 10.



Disposition of the forfeited property is governed by Wash. Rev. Code Ann. § 10.105.010(6), which provides in relevant part,

When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

- (a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the criminal law;
- (b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

Buyers may face additional forfeiture penalties under Wash. Rev. Code Ann. § 9A.88.150 relating to seizure and forfeiture of property rights. Pursuant to § 9A.88.150(1),

The following are subject to seizure and forfeiture and no property rights exist in them:

- (a) Any property or other interest acquired or maintained in violation of RCW 9.68A.100 [Commercial sexual abuse of a minor] . . . to the extent of the investment of funds, and any appreciation of income attributable to the investment, from a violation of RCW 9.68A.100 . . . .
- (b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:
  - (i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070.
- . . . .
- (c) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;
- (d) All proceeds traceable to or derived from an offense defined in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense;
- (d) All proceeds traceable to or derived from an offense defined in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense;
- (e) All books, record, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;
- (f) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, and securities used of intended to be used to facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1) (f), to the extent of the interest of an owner, by reason of any act or omission, which that owner established was committed or omitted without the owner's knowledge or consent; and
- (g) All real property, including any right title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have been acquired in whole or in part in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, if a substantial nexus exists between the violation and the real property. However:

- (i) No property may be forfeited pursuant to this subsection (1) (g), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;
- (ii) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created neither had knowledge or consented to the act or omission.

.....

Seizure of the aforementioned property is governed by subsection (2), which provides that real or personal property subject to forfeiture may be seized by any law enforcement officer upon process issued by any superior court having jurisdiction over the property. Seizure may be made without process if:

- (a) The seizure is incident to an arrest or a search under a search warrant;
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding; or
- (c) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070.

Pursuant to Wash. Rev. Code Ann. § 9A.88.150(7), “When property is forfeited under this chapter, the seizing law enforcement agency shall sell the property that is not required to be destroyed by law and that is not harmful to the public.” “By January 31<sup>st</sup> of each year, each seizing agency shall remit to the state treasurer the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the prostitution prevention and intervention account under RCW 43.63A.740.” Wash. Rev. Code Ann. § 9A.88.150(9).

Under Wash. Rev. Code Ann. § 9.68A.120 (Seizure and forfeiture of property), those who purchase images of child sexual exploitation (ICSE) may also be required to forfeit the following:

- (1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.
- (2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 [Dealing in depictions of minor engaged in sexually explicit conduct] or 9.68A.060 [Sending, bringing into state depictions of minor engaged in sexually explicit conduct] . . .
- .....
- (3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

.....

Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Pursuant to Wash. Rev. Code Ann. § 9.68A.120(4), seizure without process may be made if:

- (a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
- (c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

Disposition of the property under this section is governed by Wash. Rev. Code Ann. § 9.68A.120(9), which states that the seizing agency may retain the property for official use or sell that which is not required to be destroyed by law. Proceeds of the sale shall first be used to pay expenses arising from the investigation and forfeiture proceedings. Fifty percent of the money remaining after payment of expenses shall be deposited in the state general fund and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency. Wash. Rev. Code Ann. § 9.68A.120(9).

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

A conviction under Wash. Rev. Code Ann. § 9.68A.070(1) (Possession of depictions of minor engaged in sexually explicit conduct) in the first degree is punishable as a Class B felony, seriousness level VI, by imprisonment for 12–102 months and a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9.68A.070(1)(b), 9.94A.515, 9.94A.510, 9.94A.550. Under Wash. Rev. Code Ann. § 9.68A.070(1)(c), “For the purposes of determining the unit of prosecution . . . each depiction or image of visual or printed matter constitutes a separate offense.”

When committed in the second degree, a conviction under Wash. Rev. Code Ann. § 9.68A.070(2) is punishable as a Class B felony, seriousness level IV, by imprisonment for 3–84 months, a possible fine up to \$20,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.070(2)(b), 9.94A.515, 9.94A.510, 9.94A.550. Under Wash. Rev. Code Ann. § 9.68A.070(2)(c), “For the purposes of determining the unit of prosecution . . . each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.”

In addition to the above listed penalties, when convicted of a violation under Wash. Rev. Code Ann. § 9.68A.070, an offender is required to pay a \$1,000 fine for each image, depiction, or visual printed matter that constitutes a separate conviction. Wash. Rev. Code Ann. § 9.68A.107 (Additional fee assessment- Depiction or image of visual or printed matter).

A conviction under Wash. Rev. Code Ann. § 9.68A.075 (Viewing depictions of a minor engaged in sexually explicit conduct) in the first degree is punishable as a Class B felony, seriousness level IV, by imprisonment for 3–84 months, a possible fine up to \$20,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.94A.515, 9.94A.510, 9.94A.550. A conviction in the second degree is punishable as a Class C felony, currently unranked in seriousness level, by imprisonment up to 5 years and a possible fine up to \$10,000. Wash. Rev. Code Ann. §§ 9.94A.505(2)(b), 9A.20.021(1)(c), 9.94A.550. Under Wash. Rev. Code Ann. § 9.68A.075(4), “For the purposes of this section, each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.”<sup>35</sup>

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<sup>35</sup> Wash. Rev. Code Ann. § 9.68A.001 (Legislative findings, intent) expresses legislative intent by stating in part,

By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050 [Dealing in depictions of minor engaged in sexually explicit conduct], 9.68A.060 [Sending, bringing into state depictions of minor engaged in sexually explicit conduct], and 9.68A.070 [Possession of depictions of minor engaged in sexually explicit conduct] have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009). Furthermore, it is the intent of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each

Additionally, under Wash. Rev. Code. Ann. § 9.68A.075(3) (Viewing depictions of a minor engaged in sexually explicit conduct),

For the purposes of determining whether a person intentionally viewed over the internet a visual or printed matter depicting a minor engaged in sexually explicit conduct in subsection (1) or (2) of this section, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed matter depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon which the visual or printed matter was found, or any other relevant evidence. The state must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

In comparison, a federal conviction for possession of images of child sexual exploitation (ICSE)<sup>36</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>37</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>38</sup>

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separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

The decisions of the Washington Supreme court in *State v. Boyd*, 260 W.2d 424, 158 P.3d 54 (2007), and *State v. Grenning*, 169 Wn.2d 47, 234 P.3d 169 (2010), require prosecutors to duplicate and distribute depictions of a minor engaged in sexually explicit conduct (“child pornography”) as part of the discovery process in criminal prosecution.

Wash. Rev. Code Ann. § 9.68A.001 further states in part,

The legislature finds that the importance of protecting children from repeat exploitation in child pornography is not being given sufficient weight under these decisions. The importance of protecting children from repeat exploitation in child pornography is based upon the following findings:

- (1) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited;
- (2) The state has a compelling interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain;
- (3) Every instance of viewing images of child pornography represents a renewed violation of the victims and a repetition of their abuse;
- (4) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys;
- (5) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violations and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense. The legislature is also aware that the Adam Walsh child protection and safety act, P.L. 109-248, 120 Stat. 587 (2006), codified at 18 U.S.C. Sec. 3509(m), prohibits the duplication and distribution of child pornography as part of the discovery process in federal prosecutions. This federal law has been in effect since 2006, and upheld repeatedly as constitutional. Courts interpreting the Walsh act have found that such limitations can be employed while still providing the defendant due process. The legislature joins congress, and the legislatures of other states that have passed similar provisions, in protecting these child victims so that our justice system does not cause repeat exploitation, while still providing due process to criminal defendants.

<sup>36</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>37</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section

- 2.9.1 Recommendation: Increase the penalties under Wash. Rev. Code Ann. § 9.68A.070 (Possession of depictions of minor engaged in sexually explicit conduct) to reflect the seriousness of the offense.

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

Wash. Rev. Code Ann. § 9A.44.130(1)(a) (Registration of sex offenders and kidnapping offenders) requires adults residing in Washington, among others, who have been “convicted of any sex offense or kidnapping offense” to register for the sex offender registry. Wash. Rev. Code Ann. § 9A.44.128(10)(a) (Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330), with its cross reference to the definition of “sex offense” in Wash. Rev. Code Ann. § 9.94A.030(47) (Definitions), defines “sex offense” to include, felony violations of chapter 9.68A (Sexual exploitation of children) (with the exception of Wash. Rev. Code Ann. § 9.68A.080 (Reporting of depictions of minor engaged in sexually explicit conduct — Civil immunity)). Wash. Rev. Code Ann. § 9A.44.128(10)(c) also defines sex offense to include trafficking in the first degree, when the crime involves “a finding of sexual motivation under RCW 9.94A.835.”<sup>39</sup> As a result, buyers convicted of Wash. Rev. Code Ann. § 9A.40.100(1)(b)(ii) or § 9.68A.100 (Commercial sexual abuse of a minor) are required to register as sex offenders. In addition, those convicted for possessing and viewing images of child sexual exploitation (ICSE) under Wash. Rev. Code Ann. § 9.68A.070 and § 9.68A.075 are required to register as sex offenders.

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2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>38</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>39</sup> Under Wash. Rev. Code Ann. § 9.94A.835(1) (Special allegation--Sexual motivation—Procedures),

The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

**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.

Wash. Rev. Code Ann. § 9A.40.100(1) (Trafficking)<sup>40</sup> in the first degree is punishable as a Class A felony, seriousness level XIV, by imprisonment for 123–397 months and a possible fine up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(2), 9.94A.515, 9.94A.510, 9.94A.550. Convictions for human trafficking in the second degree under Wash. Rev. Code Ann. § 9A.40.100(3)(a) and for Wash. Rev. Code Ann. § 9.68A.101 (Promoting commercial sexual abuse of a minor) are also punishable as Class A felonies, with a seriousness level of XII, by imprisonment for 93–318 months and a possible fine up to \$50,000.<sup>41</sup> Wash. Rev. Code Ann. §§ 9A.40.100(3)(b), 9.68A.101(2), 9.94A.515, 9.94A.510, 9.94A.550. Wash. Rev. Code Ann. § 9.68A.102 (Promoting travel for commercial sexual abuse) is punishable as a Class C felony, unranked on the sentencing grid, by imprisonment up to 5 years and a possible fine up to \$10,000.<sup>42</sup> Wash. Rev. Code Ann. §§ 9.68A.102(2), 9A.20.021(1)(c), 9.94A.505(2)(b), 9.94A.550.

A trafficker could also be convicted under Wash. Rev. Code Ann. § 9A.83.020(1) (Money laundering), which states,

A person is guilty of money laundering when that person conducts or attempts to conduct a financial transaction involving the proceeds<sup>43</sup> of specified unlawful activity<sup>44</sup> and:

- (a) Knows the property is proceeds of specified unlawful activity; or
- (b) Knows that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of specified unlawful activity; or
- (c) Knows that the transaction is designed in whole or in part to avoid a transaction reporting requirement under federal law.

<sup>40</sup> See *supra* Component 1.1 for the relevant provisions.

<sup>41</sup> See *supra* Components 1.1 and 1.2 for the relevant provisions.

<sup>42</sup> See *supra* Component 1.2 for the relevant provisions.

<sup>43</sup> Pursuant to Wash. Rev. Code Ann. § 9A.83.010(5), “‘Proceeds’ means any interest in property directly or indirectly acquired through or derived from an act or omission, and any fruits of this interest, in whatever form.”

<sup>44</sup> Wash. Rev. Code Ann. § 9A.83.010(7) states, “‘Specified unlawful activity’ means an offense committed in this state that is a class A or B felony under Washington law or that is listed as ‘criminal profiteering’ in RCW 9A.82.010, or an offense committed in any other state that is punishable under the laws of that state by more than one year in prison, or an offense that is punishable under federal law by more than one year in prison.”

A conviction for money laundering is punishable as a Class B felony by imprisonment up to 10 years, a fine of \$20,000, or both. Wash. Rev. Code Ann. §§ 9A.83.020(4), 9A.20.021(1)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>45</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>46</sup> against a minor. 18 U.S.C. § 3559(e)(1).

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

Creating images of child sexual exploitation (ICSE) is prohibited under Wash. Rev. Code Ann. § 9.68A.040 (Sexual exploitation of a minor),<sup>47</sup> a Class B felony, seriousness level IX, which is by imprisonment for 31 months to 10 years, a possible fine up to \$20,000, or both. Wash. Rev. Code Ann. §§ 9.68A.040(2), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021. Acts related to the distribution of ICSE are criminalized under Wash. Rev. Code Ann. § 9.68A.050 (Dealing in depictions of minor engaged in sexually explicit conduct) and § 9.68A.060 (Sending, bringing into state depictions of minor engaged in sexually explicit conduct). Wash. Rev. Code Ann. § 9.68A.050(1)(a), (2)(a) states,

- (1) (a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:
  - (i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (e) [Definitions]; or
  - (ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (e).
- .....
- (2) (a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:
  - (i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g); or
  - (ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g).

.....

Wash. Rev. Code Ann. § 9.68A.060(1)(a), (2)(a) states,

- (1) (a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)(a) through (e).
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<sup>45</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>46</sup> See *supra* note 27.

<sup>47</sup> See *supra* Component 1.2 for the relevant provisions.

- (2) (a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g).

.....

Wash. Rev. Code Ann. § 9.68A.050(1)(a) and § 9.68A.060(1)(a) are punishable as Class B felonies, seriousness level VII, by imprisonment for 15–116 months and a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9.68A.050(1)(b), 9.68A.060(1)(b), 9.94A.515, 9.94A.510, 9.94A.550. Wash. Rev. Code Ann. § 9.68A.050(2)(a) and § 9.68A.060(2)(a) are punishable as Class B felonies, seriousness level of V, by imprisonment for 6–96 months, a fine up to \$20,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.050(2)(b), 9.68A.060(2)(b), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021.

Additionally, a person found to be creating or distributing ICSE could also be charged with offenses under Wash. Rev. Code Ann. § 9.68A.070 (Possession of depictions of minor engaged in sexually explicit conduct). Wash. Rev. Code Ann. § 9.68A.070(1) is punishable as a class B felony, seriousness level VI, by imprisonment for 12–102 months, and a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9.68A.070(1)(b), 9.94A.515, 9.94A.510, 9.94A.550. When committed in the second degree, a conviction under Wash. Rev. Code Ann. § 9.68A.070(2) is punishable as a Class B felony, seriousness level IV, by imprisonment for 3–84 months, a possible fine up to \$20,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.070(2)(b), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021.

In addition to the above listed penalties, when convicted of a violation under Wash. Rev. Code Ann. § 9.68A.070, an offender is required to pay a \$1,000 fine for each image, depiction, or visual printed matter that constitutes a separate conviction. Wash. Rev. Code Ann. § 9.68A.107 (Additional fee assessment- Depiction or image of visual or printed matter).

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>48</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of ICSE<sup>49</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>50</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>51</sup>

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<sup>48</sup> See *supra* note 27.

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

<sup>50</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>51</sup> 18 U.S.C. § 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).



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.*

Wash. Rev. Code Ann. § 9.68A.090 (Communication with minor for immoral purposes)<sup>52</sup> prohibits communication with a minor or someone one believed to be a minor for immoral purposes. While this is a gross misdemeanor, it is increased to a Class C felony under Wash. Rev. Code Ann. § 9.68A.090(2) “if the person communicates . . . for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.”<sup>53</sup> Additionally, pursuant to Wash. Rev. Code Ann. § 9.68A.106 (Additional fee assessment—Internet advertisement), traffickers convicted of an offense under Wash. Rev. Code Ann. § 9.68A.101 (Promoting commercial sexual abuse of a minor—Penalty) will receive an additional fine of \$5,000 “when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.”<sup>54</sup>

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

Traffickers convicted under Wash. Rev. Code Ann. § 9A.40.100(1), (3)(a) (Trafficking) or § 9.68A.101 (Promoting commercial sexual abuse of a minor) may be required to pay possible fines up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(2), (3)(b), 9.68A.101(2), 9.94A.550. Those convicted of Wash. Rev. Code Ann. § 9.68A.040 (Sexual exploitation of a minor) may be required to pay a possible fine up to \$20,000, while traffickers convicted under Wash. Rev. Code Ann. § 9.68A.102 (Promoting travel for commercial sexual abuse) may be required to pay a possible fine up to \$10,000. Wash. Rev. Code Ann. §§ 9.68A.040(2), 9.68A.102(2), 9.94A.550.

Furthermore, Wash. Rev. Code Ann. § 9A.40.100(4)(b) mandates a \$10,000 fee for “a person who is either convicted or given a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime . . . .” Pursuant to Wash. Rev. Code Ann. § 9.68A.106 (Additional fee assessment – Internet advertisement), traffickers convicted of an offense under Wash. Rev. Code Ann. § 9.68A.101 (Promoting commercial sexual abuse of a minor—Penalty) will also be assessed a fine of \$5,000 “when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.”

A conviction for money laundering could also result in a fine of \$20,000. Wash. Rev. Code Ann. §§ 9A.83.020(4), 9A.20.021(1)(b).<sup>55</sup> Mandatory fines are assessed pursuant to Wash. Rev. Code Ann. § 9A.88.140(2) (Vehicle impoundment—fees and fine), which provides for mandatory impoundment of vehicles, stating, “Upon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person’s vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465.” Wash. Rev. Code Ann. § 9A.88.140(4) sets a \$2,500 fine to be paid to the impounding agency in order to redeem the vehicle. In addition, Wash. Rev. Code Ann. § 9.68A.105 (Additional fee assessment) imposes a non-discretionary \$5,000 penalty for any conviction under Wash. Rev. Code Ann. § 9.68A.101 (Promoting commercial sexual abuse of a minor).

Traffickers may also be required to pay restitution at the discretion of the court. Pursuant to Wash. Rev. Code Ann. § 9.94A.750 (Restitution),

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<sup>52</sup> See *supra* Component 2.5 for the relevant provisions.

<sup>53</sup> Pursuant to Wash. Rev. Code Ann. § 9.68A.090(3), “For the purposes of this section, ‘electronic communication’ has the same meaning as defined in RCW 9.61.260.” Wash. Rev. Code Ann. § 9.61.260(5) defines “electronic communication” as “the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. ‘Electronic communication’ includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.”

<sup>54</sup> See *supra* note 31 for the definition of “internet advertisement.”

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

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days . . . .

...  
(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

...  
(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include:

(a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and

(b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child . . . .

...  
...

Traffickers also face asset forfeiture under several statutes. Wash. Rev. Code Ann. § 9A.88.140(2) (Vehicle impoundment—fees and fines) provides for mandatory impoundment of vehicles and states,

Upon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person's vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465 [Rental car].

Wash. Rev. Code Ann. § 9A.88.140(4) sets a \$2,500 fine to the impounding agency to redeem the vehicle. Traffickers are also subject to a number of discretionary criminal forfeiture proceedings. Assets related to violations of Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) and § 9.68A.100 (Commercial sexual abuse of a minor) are subject to criminal forfeiture. Wash. Rev. Code Ann. §§ 10.105.010(1), 10.105.900. Wash. Rev. Code Ann. § 10.105.010(1) (Seizure and forfeiture) states in part,

The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

. . . .

Wash. Rev. Code Ann. § 10.105.010(2) provides for seizure in the following manner:

Personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may be made if:

- (a) The seizure is incident to an arrest or a search under a search warrant;
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;
- (c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or
- (d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

Disposition of the forfeited property is governed by Wash. Rev. Code Ann. § 10.105.010(6), which provides in relevant part,

When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

- (a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the criminal law;
- (b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

Traffickers may face additional forfeiture penalties under Wash. Rev. Code Ann. § 9A.88.150 relating to seizure and forfeiture of property rights. Pursuant to § 9A.88.150(1),

The following are subject to seizure and forfeiture and no property rights exist in them:

- (a) Any property or other interest acquired or maintained in violation of RCW 9.68A.100 [Commercial sexual abuse of a minor] . . . to the extent of the investment of funds, and any appreciation of income attributable to the investment, from a violation of RCW 9.68A.100 . . . .
- (b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:
  - (i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070.
- . . . .
- (c) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;(d) All proceeds traceable to or derived from an offense defined in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense;
- . . . .
- (e) All books, record, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;
- (f) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, and securities used of intended to be used to facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070.

A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1) (f), to the extent of the interest of an owner, by reason of any act or omission, which that owner established was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have been acquired in whole or in part in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, if a substantial nexus exists between the violation and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1) (g), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created neither had knowledge or consented to the act or omission.

....

Pursuant to Wash. Rev. Code Ann. § 9A.88.150(7), "When property is forfeited under this chapter, the seizing law enforcement agency shall sell the property that is not required to be destroyed by law and that is not harmful to the public." "By January 31<sup>st</sup> of each year, each seizing agency shall remit to the state treasurer the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the prostitution prevention and intervention account under RCW 43.63A.740." Wash. Rev. Code Ann. § 9A.88.150(9).

Under Wash. Rev. Code Ann. § 9.68A.120 (Seizure and forfeiture of property), traffickers who distribute images of child sexual exploitation (ICSE) may also be required to forfeit the following:

- (1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.
- (2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 [Dealing in depictions of minor engaged in sexually explicit conduct] or 9.68A.060 [Sending, bringing into state depictions of minor engaged in sexually explicit conduct] . . .

....

- (3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

....

Disposition of the property under this section is governed by Wash. Rev. Code Ann. § 9.68A.120(9), which states that the seizing agency may retain the property for official use or sell that which is not required to be destroyed by law. Proceeds of the sale shall first be used to pay expenses arising from the investigation and forfeiture proceedings. Fifty percent of the money remaining after payment of expenses shall be deposited in the state general fund and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency. Wash. Rev. Code Ann. § 9.68A.120(9).

For further discussion of provisions of the asset forfeiture laws, and seizure in particular, see Section 2.8.

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

Wash. Rev. Code Ann. § 9A.44.130(1)(a) (Registration of sex offenders and kidnapping offenders) requires adults residing in Washington, among others, who have been “convicted of any sex offense or kidnapping offense” to register for the sex offender registry. Wash. Rev. Code Ann. § 9A.44.128(10) (Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330), with its cross reference to the definition of “sex offense” in Wash. Rev. Code Ann. § 9.94A.030(47) (Definitions), defines “sex offense” to include, felony violations under chapter 9.68A (Sexual exploitation of children), including Wash. Rev. Code Ann. § 9.68A.100 (Commercial sexual abuse of a minor), § 9.68A.102 (Promoting commercial sexual abuse of a minor), § 9.68A.103 (Permitting commercial sexual abuse of a minor), § 9.68A.040 (Sexual exploitation of a minor), § 9.68A.050 (Dealing in depictions of minor engaged in sexually explicit conduct), and § 9.68A.060 (Sending, bringing into state depictions of minor engaged in sexually explicit conduct). Traffickers convicted of Wash. Rev. Code Ann. § 9A.40.100(1)(b)(ii) are required to register as sex offenders. The definition of a sex offense under Wash. Rev. Code Ann. § 9A.44.128 also includes Wash. Rev. Code Ann. § 9A.40.100(1)(b)(ii) (Trafficking) and “[a] violation under RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) if the person has a prior conviction for one of these offenses.” Wash. Rev. Code Ann. § 9A.44.128(10)(c), (e).

### 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.*

Washington’s procedure for terminating parental rights specifically addresses human trafficking and CSEC crimes. Wash. Rev. Code Ann. § 13.34.132 (Petition seeking termination of parent-child relationship) and § 13.34.180 (Order terminating parent and child relationship) outline the grounds for terminating parental rights. Wash. Rev. Code Ann. § 13.34.132 sets out the requirements for termination of parental rights, and one prong states, “Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child . . . .” Wash. Rev. Code Ann. § 13.34.132(4). According to this provision, “In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more” items. The list includes “[a] finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020,”<sup>56</sup> a “[c]onviction of the parent of trafficking, or promoting commercial sexual abuse of a minor when the victim of the crime is the child, the child’s other parent, a sibling of the child, or another child . . . .” and a “[c]onviction of the parent, when a child has been born of: (A) A sex offense under chapter 9A.44 RCW.” Wash. Rev. Code Ann. § 13.34.132(4)(e)–(g), (j). However, Wash. Rev. Code Ann. § 13.34.180(4) sets out convictions that may be alleged as part of a petition seeking to terminate parental rights, but Wash. Rev. Code Ann. § 9A.40.100, § 9.68A.102, and § 9.68A.040 are not included in the list.

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<sup>56</sup> Pursuant to Wash. Rev. Code Ann. § 71.09.020(17) “‘Sexually violent offense’ means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

**Legal Components:**

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

**Legal Analysis:**

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

The provisions of Wash. Rev. Code Ann. § 9A.40.100(1)(a)(i), (3)(a)(ii) (Trafficking) specifically apply the human trafficking statute to facilitators. Wash. Rev. Code Ann. § 9A.40.100(1)(a)–(b) states,

- (1) A person is guilty of trafficking in the first degree when:
  - (a) Such person:
    - (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act,<sup>57</sup> or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or
    - (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection; and
  - (b) The acts or venture set forth in (a) of this subsection:
    - (i) Involve committing or attempting to commit kidnapping;
    - (ii) Involve a finding of sexual motivation under RCW 9.94A.835 [Special allegation—sexual motivation—procedures];
    - (iii) Involve the illegal harvesting or sale of human organs; or
    - (iv) Result in a death.

A conviction under Wash. Rev. Code Ann. § 9A.40.100(1) is punishable as a Class A felony, seriousness level XIV, by imprisonment for 123–397 months and a possible fine up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(2), 9.94A.510, 9.94A.515, 9.94A.550.

Wash. Rev. Code Ann. § 9A.40.100(3)(a) states,

- A person is guilty of trafficking in the second degree when such person:
  - (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act<sup>58</sup>, or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or

<sup>57</sup> See *supra* note 3.

<sup>58</sup> See *supra* note 3.

- (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

A conviction under Wash. Rev. Code Ann. § 9A.40.100(3) is punishable as a Class A felony, seriousness level XII, by imprisonment for 93–318 months and a possible fine up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(3)(b), 9.94A.510, 9.94A.515, 9.94A.550.

Under Wash. Rev. Code Ann. § 9.68A.101(1) (Promoting commercial sexual abuse of a minor --Penalty), “A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.”<sup>59</sup> A conviction under Wash. Rev. Code Ann. § 9.68A.101(1) is punishable as a Class A felony, seriousness level XII, by imprisonment for 93–318 months and a possible fine up to \$50,000. Wash. Rev. Code Ann. § 9.68A.101(2), 9.94A.510, 9.94A.515, 9.94A.550.

Wash. Rev. Code Ann. § 9.68A.102<sup>60</sup> (Promoting travel for commercial sexual abuse of a minor) may apply to facilitators, and a conviction is punishable as a Class C felony, unranked on the sentencing grid, by imprisonment up to 5 years and a possible fine up to \$10,000. Wash. Rev. Code Ann. § 9.68A.102(2), 9A.20.021(1)(c), 9.94A.505(2)(b), 9.94A.550. Wash. Rev. Code Ann. § 9.68A.103 (Permitting commercial sexual abuse of a minor) is also available for prosecution of certain facilitators.<sup>61</sup> A conviction under Wash. Rev. Code Ann. § 9.68A.103(1) is punishable as a gross misdemeanor by imprisonment for up to 364 days, a possible fine up to \$5,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.103(2), 9.92.020.

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<sup>59</sup> Wash. Rev. Code Ann. § 9.68A.101(3), (5) states,

(3) For the purposes of this section:

(a) A person “advances commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person “profits from commercial sexual abuse of a minor” if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person “advances a sexually explicit act of a minor” if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A “sexually explicit act” is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which anything of value is given or received.

(e) A “patron” is a person who provides or agrees to provide anything of value to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

....  
(5) For purposes of this section, “sexual conduct” means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

*See supra* note 12 (defining sexual intercourse and sexual conduct).

<sup>60</sup> *See supra* Component 1.2 for the relevant provisions.

<sup>61</sup> *See supra* Component 1.2 for the relevant provisions.

A facilitator could also be convicted under Wash. Rev. Code Ann. § 9A.83.020(1) (Money laundering), which states,

A person is guilty of money laundering when that person conducts or attempts to conduct a financial transaction involving the proceeds<sup>62</sup> of specified unlawful activity<sup>63</sup> and:

- (a) Knows the property is proceeds of specified unlawful activity; or
- (b) Knows that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of specified unlawful activity; or
- (c) Knows that the transaction is designed in whole or in part to avoid a transaction reporting requirement under federal law.

A conviction for money laundering is punishable as a Class B felony by imprisonment up to 10 years, a fine of \$20,000, or both. Wash. Rev. Code Ann. §§ 9A.83.020(4), 9A.20.021(1)(b).

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

Facilitators convicted under Wash. Rev. Code Ann. § 9A.40.100(1), (3)(a) (Trafficking) or § 9.68A.101 (Promoting commercial sexual abuse of a minor) may be required to pay possible fines up to \$50,000. Wash. Rev. Code Ann. §§ 9A.40.100(2), (3)(b), 9.68A.101(2), 9.94A.550. Those convicted under Wash. Rev. Code Ann. § 9.68A.102 (Promoting travel for commercial sexual abuse) may be required to pay a possible fine up to \$10,000. Wash. Rev. Code Ann. §§ 9.68A.040(2), 9.68A.102(2), 9.94A.550. A conviction for money laundering could also result in a fine of \$20,000. Wash. Rev. Code Ann. §§ 9A.83.020(4), 9A.20.021(1)(b). Wash. Rev. Code Ann. § 9A.40.100(4)(b) mandates a \$10,000 fee for “a person who is either convicted or given a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime . . . .”

Furthermore, pursuant to Wash. Rev. Code Ann. § 9.68A.106, facilitators who are convicted of an offense under Wash. Rev. Code Ann. § 9.68A.101 (Promoting commercial sexual abuse of a minor--Penalty) or § 9.68A.102 (Promoting travel for commercial sexual abuse of a minor—Penalty) will receive an additional fine of \$5,000 “per offense when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.”<sup>64</sup>

Facilitators may also be required to pay restitution at the discretion of the court. Pursuant to Wash. Rev. Code Ann. § 9.94A.750 (Restitution),

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days . . . .

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender’s gain or the victim’s loss from the commission of the offense.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In

<sup>62</sup> See *supra* note 43.

<sup>63</sup> See *supra* note 44.

<sup>64</sup> See *supra* note 33 for the definition of “internet advertisement.”



addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include:

(a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and

(b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child . . . .

. . . .

Facilitators also face asset forfeiture under several statutes since Wash. Rev. Code Ann. § 10.105.010 (Seizure and forfeiture) applies to most felonies, including Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) and § 9.68A.102 (Promoting travel for commercial sexual abuse).<sup>65</sup>

Facilitators may forfeit vehicles for suspected violations of promoting commercial sexual abuse of a minor or promoting travel for commercial sexual abuse of a minor. Wash. Rev. Code Ann. § 9A.88.140(2) (Vehicle impoundment—fees and fines). Personal property “used as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony,” is also subject to forfeiture. Wash. Rev. Code Ann. §§ 10.105.010(1), 10.105.900. Wash. Rev. Code Ann. § 10.105.010(1) (Seizure and forfeiture). See Section 2.8 for a full discussion of Washington's asset forfeiture laws as they apply to human trafficking.

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

Wash. Rev. Code Ann. § 9.68A.102(1) (Promoting travel for commercial sexual abuse of a minor) makes it a Class C felony if a person “knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in [Washington].” A conviction under Wash. Rev. Code Ann. § 9.68A.102(1) is punishable as a Class C felony, unranked on the sentencing grid, by imprisonment for up to 5 years and a possible fine up to \$10,000. Wash. Rev. Code Ann. §§ 9.68A.102(2), 9A.20.021(1)(c), 9.94A.505(2)(b), 9.94A.550.

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

Although promoting images of child sexual exploitation (ICSE) is not expressly criminalized, distribution of such images is prohibited under Wash. Rev. Code Ann. § 9.68A.050 (Dealing in depictions of minor engaged in sexually explicit conduct) and § 9.68A.060 (Sending, bringing into state depictions of minor engaged in sexually explicit conduct).<sup>66</sup> Wash. Rev. Code Ann. § 9.68A.050(1)(a) and § 9.68A.060(1)(a) are punishable as Class B felonies, seriousness level VII, by imprisonment for 15–116 months and a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9.68A.050(1)(b), 9.68A.060(1)(b), 9.94A.515, 9.94A.510, 9.94A.550. Wash. Rev. Code Ann. § 9.68A.050(2)(a) and § 9.68A.060(2)(a) are punishable as Class B felonies, seriousness level of V, by imprisonment for 6–96 months and a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9.68A.050(2)(b), 9.68A.060(2)(b), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021.

<sup>65</sup> See *supra* Component 2.8 for a full discussion of the forfeiture and seizure provisions.

<sup>66</sup> See *supra* Component 3.2 for the relevant provisions.

Additionally, a person found to be promoting or selling ICSE may be charged under Wash. Rev. Code Ann. § 9.68A.070 (Possession of depictions of minor engaged in sexually explicit conduct). Wash. Rev. Code Ann. § 9.68A.070(1) is punishable as a class B felony, seriousness level VI, by imprisonment for 12–102 months, and a possible fine up to \$20,000. Wash. Rev. Code Ann. §§ 9.68A.070(1)(b), 9.94A.515, 9.94A.510, 9.94A.550. When committed in the second degree, a conviction under Wash. Rev. Code Ann. § 9.68A.070(2) is punishable as a Class B felony, seriousness level IV, by imprisonment for 3–84 months, a possible fine up to \$20,000, or both imprisonment and a fine. Wash. Rev. Code Ann. §§ 9.68A.070(2)(b), 9.94A.515, 9.94A.510, 9.94A.550, 9A.20.021.

In addition to the above listed penalties, when convicted of a violation under Wash. Rev. Code Ann. § 9.68A.070, an offender is required to pay a \$1,000 fine for each image, depiction, or visual printed matter that constitutes a separate conviction. Wash. Rev. Code Ann. § 9.68A.107 (Additional fee assessment- Depiction or image of visual or printed matter).

- 4.4.1 Recommendation: Increase the penalties under Wash. Rev. Code Ann. § 9.68A.050 (Dealing in depictions of minor engaged in sexually explicit conduct) and § 9.68A.060 (Sending, bringing into state depictions of minor engaged in sexually explicit conduct) to reflect the seriousness of the offense.

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

**Legal Analysis:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.<sup>67</sup>*

All commercially sexually exploited children are identifiable as child sex trafficking victims under Wash. Rev. Code Ann. § 9A.40.100 (Trafficking). Under Wash. Rev. Code Ann. § 9A.40.100, if the victim is a minor, “force, fraud, or coercion are not necessary elements of an offense . . .” Wash. Rev. Code Ann. § 9A.40.100(5). Wash. Rev. Code Ann. § 9A.40.100(1) makes it a crime when a person “obtains, buys, purchases . . . by any means another person knowing, or in reckless disregard of the fact . . . that the person has not attained the age of eighteen years and is caused to engage in a . . . commercial sex act.” Wash. Rev. Code Ann. § 9A.40.100 applies to buyers through the use of the terms “buys” and “purchases,” as well as through the term “obtains” based on federal precedent.<sup>68</sup>

Under Wash. Rev. Code Ann. § 9A.40.100 all CSEC victims are identified as sex trafficking victims since no force, fraud, coercion is required, the buyer is culpable under sex trafficking law, and there is no additional third party control requirement.

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

Washington’s trafficking and CSEC laws prohibit the defendant from raising a defense based on the minor’s willingness to engage in the commercial sex act. Under Wash. Rev. Code Ann. § 9A.40.100(5) (Trafficking),

<sup>67</sup> See generally SHARED HOPE INTERNATIONAL, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>68</sup> See *supra* Component 2.1 for discussion regarding buyer applicability Wash. Rev. Code Ann. § 9A.40.100 (Trafficking).

“[i]f the victim of any offense identified in this section is a minor, . . . consent to the sexually explicit act or commercial sex act does not constitute a defense.”<sup>69</sup> Furthermore, “Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense” to promoting the commercial sexual abuse of a minor under Wash. Rev. Code Ann. § 9.68A.101(4)<sup>70</sup> and “[c]onsent of a minor to the sexual conduct does not constitute a defense . . .” under Wash. Rev. Code Ann. § 9.68A.100(4) (Commercial sexual abuse of a minor). Under Wash. Rev. Code Ann. § 9.68A.102(1) (Promoting travel for commercial sexual abuse of a minor), “Consent of a minor to the travel for commercial sexual abuse, or the sexually explicit act or sexual conduct itself, does not constitute a defense . . .” Wash. Rev. Code Ann. § 9.68A.102(3). Lastly, pursuant to Wash. Rev. Code Ann. § 9.68A.103(1) (Permitting commercial sexual abuse of a minor), “Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense . . .” Wash. Rev. Code Ann. § 9.68A.103(3).

### 5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>71</sup>

Wash. Rev. Code Ann. § 9A.88.030 (Prostitution) is age neutral and fails to specifically protect minors from criminalization for prostitution. However, an affirmative defense is available to victims of human trafficking under Wash. Rev. Code Ann. § 9A.88.040 (Prosecution for prostitution under RCW 9A.88.030 — Affirmative defense), which states,

In any prosecution for prostitution under RCW 9A.88.030, it is an affirmative defense that the actor committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. Documentation that the actor is named as a current victim in an information or the investigative records upon which a conviction is obtained for trafficking, promoting prostitution in the first degree, or trafficking in persons shall create a presumption that the person’s participation in prostitution was a result of having been a victim of trafficking, promoting prostitution in the first degree or trafficking in persons.

Pursuant to Wash. Rev. Code Ann. § 9A.88.120 (Additional fee assessments), only adult offenders are levied with additional fees for violating Wash. Rev. Code Ann. § 9A.88.010 (Indecent Exposure), § 9A.88.030 (Prostitution), or § 9A.88.090 (Permitting prostitution).<sup>72</sup>

#### 5.3.1 Recommendation: Amend Wash. Rev. Code Ann. § 9A.88.030 (Prostitution) to ensure that all minors are protected from criminalization for prostitution offenses.<sup>73</sup>

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<sup>69</sup> Wash. Rev. Code Ann. § 9A.40.100(6)(a) defines "Commercial sex act" as “any act of sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, for which something of value is given or received by any person . . .” Wash. Rev. Code Ann. § 9A.40.100(6)(b) defines "Sexually explicit act" as “a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons for which something of value is given or received.”

<sup>70</sup> See *supra* note 12.

<sup>71</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>72</sup> Additionally, municipalities may not leverage “any legal financial obligations, fees, fines, or costs associated with juvenile offenses” without “express statutory authority.”

<sup>73</sup> See *generally* SHARED HOPE INTERNATIONAL, “Seeking Justice: Legal approaches to eliminate criminal liability for child sex trafficking victims” (2018), [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (discussing need to eliminate a minor’s criminal liability for prostitution and other offenses committed pursuant to trafficking victimization and to establish a statutory avenue to specialized services).

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

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

Wash. Rev. Code Ann. § 13.32A.030(17) (Definitions—Regulating leave from semi secure facility) defines “sexually exploited child” as “any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.” Sexually exploited children may be taken into custody and ultimately transported to a crisis residential center. Wash. Rev. Code Ann. §§ 43.185C.260(1), 43.185C.265. Wash. Rev. Code Ann. § 74.15.255(2) (Licenses for secure or semi-secure crisis residential centers or HOPE centers—Requirement—Access to person trained to work with needs of sexually exploited children) requires each crisis residential center to have on staff, or otherwise provide “access to, a person who has been trained to work with the needs of sexually exploited children.”

Further, Washington law provides a juvenile sex trafficking victim with a mandatory avenue to specialized services in conjunction with diversion for a prostitution or prostitution loitering offense.<sup>74</sup>

Pursuant to Wash. Rev. Code Ann. § 13.40.070(7)(a) (Complaints—screening—filing information—diversion), “[w]here a case is legally sufficient to charge an alleged offender with: (a) [e]ither prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case . . . .”

Wash. Rev. Code Ann. § 13.40.087 (Youth who have been diverted—Alleged prostitution or prostitution loitering offenses—Services and treatment) states,

Within available funding, when a youth who has been diverted under RCW 13.40.070 for an alleged offense of prostitution or prostitution loitering is referred to the department, the department shall connect that youth with the services and treatment specified in RCW 74.14B.060 [Repealed]<sup>75</sup> and 74.14B.070.<sup>76</sup>

In turn, Wash. Rev. Code Ann. § 74.14B.070 (Child victims of sexual assault or sexual abuse—Early identification, treatment) provides,

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<sup>74</sup> House Bill 1505, § 1 passed in the 61st Regular Session in 2009 discusses the need for providing specialized services and diversion to commercially sexually exploited youth, stating,

The legislature finds that juveniles involved in the commercial sex trade are sexually exploited and that they face extreme threats to their physical and emotional well-being. In order to help them break out of the isolation, fear, and danger of the commercial sex trade and to assist them in their recovery from the resulting mental and physical harm and in the development of skills that will allow them to become independent and achieve long-term security, these juveniles are in critical need of comprehensive services, including housing, mental health counseling, education, employment, chemical dependency treatment, and skill building. The legislature further finds that a diversion program to provide these comprehensive services, working within existing resources in the counties which prosecute juveniles for prostitution and prostitution loitering, may be an appropriate alternative to the prosecution of juveniles involved in the commercial sex trade.

<sup>75</sup> Wash. Rev. Code Ann. § 74.14B.060 (Sexually abused children – treatment services) was repealed by Senate Bill 6100 passed during the 2012 Regular Session of the 62<sup>nd</sup> Washington legislature, 2012 Wa. Ch. 29, which became effective June 7, 2012. Pursuant to 2012 Wa. Ch. 29, some of the language used in Wash. Rev. Code Ann. 74.14B.060 was reincorporated into Wash. Rev. Code Ann. § 43.280.010 (Intent), § 43.280.011 (Intent, approval of committee, distribution of services), § 43.280.020 (Grant program – funding), § 43.280.080 (Office of crime victims advocacy), and § 70.125.020 (Legislative findings – program objectives).

<sup>76</sup> Wash. Rev. Code Ann. § 36.28A.435 (Sexual assault prevention and response account) creates a fund to be used, in part, for providing “support and services, including educational and vocational training, to victims of sexual assault and trafficking . . . .”

The department of [children, youth, and families] shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents. A mechanism shall be developed to identify communities that have experienced success in this area and share their expertise and methodology with other communities statewide.

For subsequent prostitution or prostitution loitering offenses, Wash. Rev. Code Ann. § 13.40.213(1) (Juveniles alleged to have committed offenses of prostitution or prostitution loitering—diversion) states,

When a juvenile is alleged to have committed the offense of prostitution or prostitution loitering, and the allegation, if proved, would not be the juvenile’s first offense, a prosecutor may divert the offense if the county in which the offense is alleged to have been committed has a comprehensive program that provides:

- (a) Safe and stable housing;
- (b) Comprehensive on-site case management;
- (c) Integrated mental health and chemical dependency services, including specialized trauma recovery services;
- (d) Education and employment training delivered on-site; and
- (e) Referrals to off-site specialized services, as appropriate.

## Summary

Washington law mandates diversion for a first prostitution or prostitution loitering offense and permits diversion for subsequent offenses. If diverted, a juvenile sex trafficking victim can access specialized services.

### 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>77</sup>

The definition of “abuse” under Wash Rev. Code Ann. § 26.44.020(1) (Definitions) does include acts amounting to child sex trafficking. However, Washington’s child welfare laws identify commercially sexually exploited minors as abused or neglected. For purposes of Washington’s child abuse reporting laws, Wash. Rev. Code Ann. § 26.44.020(1) defines “abuse or neglect” as

sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child’s health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100 [Use of force on children—policy—actions presumed unreasonable]; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

Wash. Rev. Code Ann. § 26.44.020(22) defines “sexual exploitation” as “(a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.”

- 5.5.1 Recommendation: Amend Wash. Rev. Code Ann. § 26.44.020 (Definitions) to expressly include violations of Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) as “sexual exploitation.”

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<sup>77</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

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.*

Pursuant to Wash. Rev. Code Ann. § 26.44.020(1) (Definitions), “[a]n abused child is a child who has been subjected to child abuse or neglect as defined in this section,” and “[a]buse or neglect’ means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child’s health, welfare, or safety.” This definition does not limit the scope of abuse based on the perpetrator and the definition of sexual exploitation under Wash. Rev. Code Ann. § 26.44.020(22) (Definitions) similarly includes sexual exploitation “by any person.”<sup>78</sup>

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

Washington’s crime victims’ compensation account is established by Wash. Rev. Code Ann. § 7.68.045 (Crime victims’ compensation account) and set forth in chapter 7.68 (Victims of crimes—compensation, assistance). Wash. Rev. Code Ann. § 7.68.060(6)(b) (Applications for benefits—accrual of rights) clarifies,

A person identified as the “minor” in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act<sup>79</sup> for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030.

This amendment is designed to prevent domestic minor sex trafficking victims from being found ineligible to receive compensation for injuries suffered as a result of being a victim of commercial sexual exploitation. Wash. Rev. Code Ann. § 7.68.060 also outlines the application procedures and time limits. The time limit to receive applications is no later than two years after the crime is reported to law enforcement “or the date the rights of beneficiaries accrued, unless the director has determined that ‘good cause’ exists to expand the time permitted to receive the application.” Wash. Rev. Code Ann. § 7.68.060(1)(a). Wash. Rev. Code Ann. § 7.68.060(1)(a) states, in part,

“Good cause” shall be determined by the department on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the criminal act was reported to a local police department or sheriff’s office or the date the rights of beneficiaries accrued.

However, Wash. Rev. Code Ann. § 7.68.060(5) states,

Because victims of childhood criminal acts may repress conscious memory of such criminal acts far beyond the age of eighteen, the rights of adult victims of childhood criminal acts shall accrue at the time the victim discovers or reasonably should have discovered the elements of the crime. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victim.

Wash. Rev. Code Ann. § 7.68.070(1) (Benefits—right to and amount—limitations) limits the total amount of compensation “granted as a result of a single injury” to \$40,000, excluding medical benefits otherwise authorized by law.

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<sup>78</sup> See *supra* Component 5.5 for statutory text of Wash. Rev. Code Ann. § 26.44.020(22) (Definitions).

<sup>79</sup> “Criminal act” is defined in Wash. Rev. Code Ann. § 7.68.020(6) (Definitions) to include Wash. Rev. Code Ann. § 9A.40.100 (Trafficking).

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

Several victim-friendly criminal justice procedures and protections are statutorily provided for certain minor victim-witnesses, including, when possible, secure waiting areas, the presence of “an advocate<sup>80</sup> or support person . . . prior to and during any court proceedings,” the appointment of CASA and guardians ad litem,<sup>81</sup> a prohibition (with some exceptions) on releasing names and addresses of the victim-witnesses without permission, and restrictions on reputation evidence (commonly called the “rape shield law”). Wash. Rev. Code Ann. §§ 7.69A.030(2)–(4), 13.34.100(1), 9A.44.020(3). Closed circuit television testimony is also available for a child under 14 years of age if “[t]he testimony will . . . [d]escribe a violation of RCW 9A.40.100 (trafficking) or any offense identified in chapter 9.68A RCW (sexual exploitation of children).” Wash. Rev. Code Ann. § 9A.44.150(1)(a)(iii).

Under Wash. Rev. Code Ann. § 9A.44.020(3) (Testimony—Evidence—Written motion—Admissibility),

In any prosecution for the crime of rape, trafficking pursuant to RCW 9A.40.100 [Trafficking], or any of the offenses in chapter 9.68A RCW [Sexual Exploitation of Children], or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent, except where prohibited in the underlying criminal offense . . . .

Pursuant to Wash. Rev. Code Ann. § 70.125.060 (Personal representative may accompany victim during treatment or proceedings), “If the victim of a sexual assault so desires, a personal representative<sup>82</sup> of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.” Wash. Rev. Code Ann. § 70.125.030(9) defines “[v]ictim” as “any person who suffers physical, emotional, financial, and psychological impact as a proximate result of a sexual assault,” and “[s]exual assault” is defined under Wash. Rev. Code Ann. § 70.125.030(7)(h), (i) to include, “sexual exploitation or commercial sex abuse of a minor.”

Further, Wash. Rev. Code Ann. § 9A.40.104 (Trafficking—Court may prohibit defendant’s contact with victim—No-contact orders—Issuance, termination, modification—Entry of order into computer-based criminal intelligence information system) provides for the issuance of no contact orders, stating,

Because of the likelihood of repeated harassment and intimidation directed at those who have been victims of trafficking as described in RCW 9A.40.100, before any defendant charged with or arrested, for a crime involving trafficking, is released from custody, or at any time the case remains unresolved, the court may prohibit that person from having any contact with the victim whether directly or through third parties . . . .

Wash. Rev. Code Ann. § 9A.88.170 (Promoting prostitution in the first degree, second degree—Court may prohibit defendant’s contact with victim—No-contact orders—Issuance, termination, modification—Entry of order into computer-based criminal intelligence information system) extends the issuance of no contact orders to cases of Wash. Rev. Code Ann. § 9A.88.070 (Promoting prostitution in the first degree) and § 9A.88.080 (Promoting prostitution in the second degree).

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<sup>80</sup> Wash. Rev. Code Ann. § 7.69A.020(6) defines “advocate” as “any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding.”

<sup>81</sup> Wash. Rev. Code Ann. § 13.34.100(1) (Appointment of guardian ad litem) provides for the appointment of guardians ad litem in actions under Wash. Rev. ch. 13.34 (Dependency and termination of parent-child relationship), “unless a court for good cause finds the appointment unnecessary.”

<sup>82</sup> Wash. Rev. Code Ann. § 70.125.030(5) defines “[p]ersonal representative” as “a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.”



Finally, Wash. Rev. Code Ann. § 70.125.065 (Records of community sexual assault program and underserved populations provider not available as part of discovery – Exceptions) provides additional protections for minor victim witnesses’ communications with service providers, stating,

Records maintained by a community sexual assault program and underserved populations provider shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

- (1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;
- (2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;
- (3) The court reviews the community sexual assault program or underserved populations provider records in camera to determine whether the community sexual assault program or underserved populations provider records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and
- (4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

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.*

Washington law allows child sex trafficking victims to immediately vacate delinquency adjudications for prostitution, but juvenile records may only be sealed after a waiting period.

Pursuant to Wash. Rev. Code Ann. § 9.96.060(3) (Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking; promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or trafficking in persons, or of violating a certain statute or rule regarding the regulation of fishing—Vacating records),

Subject to RCW 9.96.070 [Vacating record of conviction—Prostitution], every person convicted of prostitution under RCW 9A.88.030 who committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court for vacation of the applicant’s record of conviction for the prostitution offense . . . .<sup>83</sup>

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<sup>83</sup> However, Wash. Rev. Code Ann. § 9.96.060(3) also states that,

An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:

- (a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any crime other than prostitution; or
- (b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction. The limitation in this subsection (3)(b) does not apply to convictions where . . . he or she committed the crime as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., according to the requirements provided in RCW 9.96.070 for each respective conviction.

Although Wash. Rev. Code Ann. § 9.96.060(3) applies specifically to convictions, Wash. Rev. Code Ann. § 9.96.070 (Vacating records of conviction—Prostitution offenses) notes the statute’s applicability to child sex trafficking victims. Wash. Rev. Code Ann. § 9.96.070(1)(b) states,

In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking, RCW 9A.40.100, the applicant must prove each of the following elements by a preponderance of the evidence:

- .....
- (b) (i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;
- (ii) The person who committed any of the acts in (b)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that the applicant had not attained the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and
- (iii) The applicant’s record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from such act.

However, Wash. Rev. Code Ann. § 9.96.060(3) applies only to violations of Washington’s prostitution offense, foreclosing the law’s applicability to other offenses related to trafficking victimization. Further, record expungement is not automatic upon granting vacatur, making separate proceedings necessary to obtain both forms of relief.

Under Wash. Rev. Code Ann. § 13.50.270(1) (Destruction of records), only records related to diversion may be destroyed. However, juvenile records may be sealed after a waiting period. Under Wash. Rev. Code Ann. § 13.50.260(1) (Sealing hearings—Sealing of records),

- .....
- (b) At the disposition hearing of a juvenile offender, the court shall schedule an administrative sealing hearing to take place during the first regularly scheduled sealing hearing after the latest of the following events that apply:
  - (i) The respondent’s eighteenth birthday;
  - (ii) Anticipated completion of a respondent’s probation, if ordered;
  - (iii) Anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the respondent is transferred to the juvenile rehabilitation administration.<sup>84</sup>
- (c) A court shall enter a written order sealing an individual’s juvenile court record pursuant to this section if:
  - (i) One of the offenses for which the court has entered a disposition is not at the time of commission of the offense:
    - (A) A most serious offense, as defined in RCW 9.94A.030;<sup>85</sup>
    - (B) A sex offense under chapter 9A.44 RCW; or
    - (C) A drug offense, as defined in RCW 9.94A.030; and
  - (ii) The respondent has completed the terms and conditions of disposition . . . .

Wash. Rev. Code Ann. § 13.50.260(6), (7) goes on to say,

- (6) (a) If the court enters a written order sealing the juvenile court record pursuant to this section, it shall, subject to RCW 13.50.050(13) [Records relating to commission of juvenile offenses—

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<sup>84</sup> Under Wash. Rev. Code Ann. § 13.50.260(3), (4), “any case in which information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070” may be sealed after a minimum 2 or 5 year waiting period unless already sealed in accordance with subsection (1).

<sup>85</sup> Pursuant to Wash. Rev. Code Ann. § 9.94A.030(33) (Definitions), “most serious offense” includes any class A felony, any class B felony with a sexual motivation, promoting prostitution in the first degree, sexual exploitation, and other sexual offenses.

Maintenance of, access to, and destruction], order sealed the official juvenile court record, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed . . . .

(7) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(13).

However, Wash. Rev. Code Ann. § 13.50.260(8) also states,

(a) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying a sealing order; however, the court may order the juvenile court record resealed upon disposition of the subsequent matter . . . .

(b) Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order.

(c) The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(d) The Washington state patrol shall ensure that the Washington state identification system provides criminal justice agencies access to sealed juvenile records information.

Accordingly, a child sex trafficking victim may face collateral consequences associated with having an accessible delinquency record during the mandated waiting period or in accordance with Wash. Rev. Code Ann. § 13.50.260(8).

5.9.1 Recommendation: Amend Wash. Rev. Code Ann. § 9.96.060(3) (Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking; promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or trafficking in persons, or of violating a certain statute or rule regarding the regulation of fishing—Vacating records) to allow child sex trafficking victims to vacate delinquency adjudications for other offenses arising from trafficking victimization and to allow records for vacated offenses to be expunged automatically.

*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.*

Victims may receive restitution from the offenders at the discretion of the court. Pursuant to Wash. Rev. Code Ann. § 9.94A.750 (Restitution),

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days . . . .

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be

required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

Wash. Rev. Code Ann. § 9.94A.753(7) (Restitution—application dates) states,

Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter RCW 7.68 [Victims of crimes—compensation, assistance]. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order . . . .

Wash. Rev. Code Ann. § 9A.82.100 (Remedies and procedures) states,

(1) (a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity, or by an offense defined in RCW 9A.40.100 [Human trafficking], 9.68A.100 [Commercial sexual abuse of a minor—Penalties], 9.68A.101 [Promoting commercial sexual abuse of a minor—Penalty], or 9A.88.070 [Promoting prostitution in the first degree], or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

. . . .  
. . . .

(4) Following the determination of liability, orders may include, but are not limited to:

. . . .  
. . . .

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of . . . an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund . . . .

(f) Ordering forfeiture first as restitution to any person damaged by . . . an offense defined in RCW 9A.40.100, then to the state general fund . . . as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted or participated in the conduct of, in violation of RCW of 9A.82.060 or 9A.82.080.

(iii) All proceeds are traceable to or derived from an offense included in . . . an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

. . . .  
. . . .

Wash. Rev. Code Ann. § 9A.82.100(13) explains that “[p]rivate civil remedies provided under this section are supplemental and not mutually exclusive.”

Lastly, Wash. Rev. Code Ann. § 13.32A.085 provides a civil remedy for parents against an “unlicensed youth shelter or unlicensed runaway and homeless youth program” that fails to fulfill their duty to report missing children under Wash. Rev. Code Ann. § 13.32A.082(1)(a)–(c).<sup>86</sup>

<sup>86</sup> See *infra* Component 6.1 (quoting Wash. Rev. Code Ann. § 13.32A.082).

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.*

Washington’s statutes of limitations have not been eliminated for criminal or civil actions based on child sex trafficking or commercial sexual exploitation of children. However, Wash. Rev. Code Ann. § 9A.04.080(1)(b) (Limitation of action) does extend the time frame for prosecuting trafficking and CSEC offenses. Pursuant to Wash. Rev. Code Ann. § 9A.04.080(1)(b),

Except as provided in (c) of this subsection, the following offenses shall not be prosecuted more than ten years after their commission:

- .....
- (iii)(A) Violations of RCW 9A.44.040 [Rape in the first degree] or 9A.44.050 [Rape in the second degree] if the rape is reported to a law enforcement agency within one year of its commission.  
(B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted more than three years after its commission;
- (iv) Indecent liberties under RCW 9A.44.100(1)(b);
- (v) Trafficking under RCW 9A.40.100.

Wash. Rev. Code Ann. § 9A.04.080(1)(c) allows a prosecution for a violation of Wash. Rev. Code Ann. § 9.68A.040 (Sexual exploitation of a minor), § 9A.44.040 (Rape in the first degree), § 9A.44.050 (Rape in the second degree), § 9A.44.073 (Rape of a child in the first degree), § 9A.44.076 (Rape of a child in the second degree), § 9A.44.079 (Rape of a child in the third degree), § 9A.44.083 (Child molestation in the first degree), § 9A.44.086 (Child molestation in the second degree), ((9A.44.070, 9A.44.080)) § 9A.44.089 (Child molestation in the third degree), § 9A.44.100(1)(b) (Indecent liberties), or ((9A.44.079, 9A.44.089, or)) § 9A.64.020 (Incest) to be commenced “up to the victim’s thirtieth birthday”, when the crime was committed against a victim under the age of 18.

Further, Wash. Rev. Code Ann. § 9A.04.080(1)(d) extends the statutes of limitations for other CSEC offenses, stating,

A violation of any offense listed in this subsection (1)(d) may be prosecuted up to ten years after its commission or, if committed against a victim under the age of eighteen, up to the victim’s thirtieth birthday, whichever is later:

- (i) RCW 9.68A.100 (commercial sexual abuse of a minor);
- (ii) RCW 9.68A.101 (promoting commercial sexual abuse of a minor); or
- (iii) RCW 9.68A.102 (promoting travel for commercial sexual abuse of a minor).

Unless otherwise noted above or by statute, Wash. Rev. Code Ann. § 9A.04.080(1)(i) provides a 3-year statute of limitations for felony actions.

While not specifically applicable to claims based on child sex trafficking and commercial sexual exploitation of children, the time frame for victims to commence civil actions against their exploiters is extended for claims based on childhood sexual abuse under Wash. Rev. Code Ann. § 4.16.340(1) (Actions based on childhood sexual abuse), which states,

All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse<sup>87</sup> shall be commenced within the later of the following periods:

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<sup>87</sup> Wash. Rev. Code Ann. § 4.16.340(5) states,

- (a) Within three years of the act alleged to have caused the injury or condition;
- (b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or
- (c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:

PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.

Wash. Rev. Code Ann. § 9A.82.100(7) (Remedies and procedures) states,

The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered or, in the case of an offense that is defined in RCW 9A.40.100, within three years after the final disposition of any criminal charges relating to the offense, whichever is later.

- 5.11.1 Recommendation: Amend Wash. Rev. Code Ann. § 9A.04.080 (Limitation of action) to eliminate the statute of limitations for commencing prosecutions under Wash. Rev. Code Ann. § 9A.40.100 (Trafficking) and Washington’s CSEC laws.

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As used in this section, “childhood sexual abuse” means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

**Legal Components:**

- 6.1 *Training on human trafficking and domestic minor sex trafficking for law enforcement is statutorily mandated or authorized.*
- 6.2 *Single party consent to audiotaping is permitted in law enforcement investigations.*
- 6.3 *Wiretapping is an available tool to investigate domestic minor sex trafficking and commercial sexual exploitation of children (CSEC).*
- 6.4 *Using a law enforcement decoy to investigate buying or selling commercial sex is not a defense to soliciting, purchasing, or selling sex with a minor.*
- 6.5 *Using the Internet or electronic communications to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *State law requires reporting of missing children and located missing children.*

**Legal Analysis:**

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

Wash. Rev. Code Ann. § 43.280.095 (Statewide training on Washington’s human trafficking laws –Training entity –Report) mandates the creation of a statewide human trafficking training program for criminal justice personnel, including law enforcement officers. The required training includes a specific component on state specific human trafficking laws, in addition to “the investigation of sex trafficking cases, and the adjudication of sex trafficking cases.” Wash. Rev. Code Ann. § 43.280.095(3). Furthermore, under Wash. Rev. Code Ann. § 43.280.095(3), the training program operates to “encourage interdisciplinary coordination among criminal justice personnel, build cultural competency, and develop understanding of diverse victim populations, including children, youth, and adults.”

Additionally, pursuant to Wash. Rev. Code Ann. § 43.101.224 (Training for persons investigating child sex abuse), all law enforcement, prosecution, and child protection service agencies are required to receive training that is specific for investigating cases of child sex abuse. While the required training is not trafficking specific, finding that the sexual exploitation of minor is a form of child abuse under Wash. Rev. Code Ann. § 26.44.020(1) (Definitions), it is likely that law enforcement officers would receive training on appropriate responses for children who have been commercially sexually exploited.

The creation of the Washington Internet Crimes Against Children Task Force and subsequent account under Wash. Rev. Code Ann. § 43.101.435 (Washington internet crimes against children account) provides an additional avenue for the development of law enforcement trainings specific to effective responses for combatting online sexual exploitation of children and other internet crimes against children.

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

Single party audiotaping is a violation of Wash. Rev. Code Ann. § 9.73.030 (Intercepting, recording, or divulging private communication—consent required—exceptions) except in certain situations of an emergency nature set out in that section and chapter 9.73 (Privacy, violating right of).

However, Wash. Rev. Code Ann. § 9.73.090(2) (Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—standards—court authorizations—admissibility) states in part,

It shall not be unlawful for a law enforcement officer acting in the performance of the officer’s official duties to intercept, record, or disclose an oral communication or conversation where the officer is a

party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony . . . .

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

Wash. Rev. Code Ann. § 9.73.210(1) (Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor) states,

If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the consenting party, intercept, transmit, or record a private conversation or communication concerning:

. . . .

(b) Person(s) engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

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

Wash. Rev. Code Ann. § 9.73.050 (Admissibility of intercepted communication in evidence) restricts admissibility of evidence gained through illegal wiretapping; however, Wash. Rev. Code Ann. § 9.73.090(3) (Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080) states that “[c]ommunications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.” Absent a court order, intercepted communications are illegal and evidence obtained through them is inadmissible.

Pursuant to Wash. Rev. Code Ann. § 9.73.040(1) (Intercepting private communication),

An ex parte order for the interception of any communication or conversation listed in RCW 9.73.030 may be issued by any superior court judge in the state upon verified application of either the state attorney general or any county prosecuting attorney setting forth fully facts and circumstances upon which the application is based and stating that:

- (a) There are reasonable grounds to believe that national security is endangered, that a human life is in danger, that arson is about to be committed, or that a riot is about to be committed, and
- (b) There are reasonable grounds to believe that evidence will be obtained essential to the protection of national security, the preservation of human life, or the prevention of arson or a riot, and
- (c) There are no other means readily available for obtaining such information.

6.3.1 Recommendation: Amend Wash. Rev. Code Ann. § 9.73.040 (Intercepting private communication) to allow for wiretapping in investigations of sex trafficking and CSEC crimes.



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

Under Wash. Rev. Code Ann. § 9.68A.090(1) (Communication with minor for immoral purposes), a defense to the use of a law enforcement decoy is prohibited when “a person . . . communicates with a minor for immoral purposes, or . . . communicates with someone the person believes to be a minor for immoral purposes . . .” An enhanced penalty applies under Wash. Rev. Code Ann. § 9.68A.090(2) “if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.”

The language “believes to be a minor” permits the use of law enforcement officers posing as a minor in the investigation of this offense and does not permit a defendant to raise the use of a law enforcement decoy as a defense. Therefore, for charges brought against buyers through reverse sting operations, this defense would not be accessible, which are the most likely situations in which a defendant would try to raise such a defense.

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

Wash. Rev. Code Ann. § 9.68A.090(1) (Communication with minor for immoral purposes) states that “a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.” The penalty is heightened to a Class C felony “if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.” Wash. Rev. Code Ann. § 9.68A.090(2).<sup>88</sup> The use of the term “believes to be a minor” appears to indicate that law enforcement may use Internet decoys.

Further, Wash. Rev. Code Ann. 10.112.010 (Special inquiry judge process—Subpoena for records) allows for subpoenas of “provider[s] of electronic communication services or remote computing services” during criminal investigations involving sexual exploitation of children in order “to obtain records relevant to the investigation.”

Finally, Wash. Rev. Code Ann. § 43.101.435 (Washington internet crimes against children account) creates an account to fund task forces combatting internet-facilitated crimes against children.

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

Wash. Rev. Code Ann. § 13.60.020 (Entry of information on missing children into missing person computer network—access) requires local law enforcement agencies to “file an official missing person report and enter biographical information into the state missing person computerized network within six hours after notification of a missing child or endangered person is received under” certain provisions of Wash. Rev. Code Ann. § 43.185C.260 (Officer taking child into custody—when authorized—maximum time of custody—transporting to crisis residential center—report on suspected abuse or neglect), “or an endangered missing person received pursuant to the state endangered missing person advisory plan”.<sup>89</sup> Wash. Rev. Code Ann. § 13.60.020 further states,

The patrol shall collect such information as will enable it to retrieve immediately the following information about a missing child or endangered child: Name, date of birth, social security number, fingerprint classification, relevant physical descriptions, and known associates and locations. Access to

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<sup>88</sup> Pursuant to Wash. Rev. Code Ann. § 9.68A.090(3), “For the purposes of this section, ‘electronic communication’ has the same meaning as defined in RCW 9.61.260.” Wash. Rev. Code Ann. § 9.61.260(5) defines “electronic communication” as “the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. ‘Electronic communication’ includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.”

<sup>89</sup> See *infra* note 90 (defining child, children and missing endangered person).

the preceding information shall be available to appropriate law enforcement agencies, and to parents and legal guardians, when appropriate.

Wash. Rev. Code Ann. § 13.60.040 (Children receiving services from department of social and health services) directs DSHS to do the following:

[D]evelop a procedure for reporting missing children information to the missing children clearinghouse on children who are receiving departmental services in each of its administrative regions . . . . When the department has obtained information that a minor child has been located at a facility funded by the department, the department shall notify the clearinghouse and the child's legal custodian, advising the custodian of the child's whereabouts or that the child is subject to a dependency action. The department shall inform the clearinghouse when reunification occurs.

Wash. Rev. Code Ann. § 13.60.010(1) (Missing children clearinghouse—hot line—distribution of information—amber alert plan) states,

The Washington state patrol shall establish a missing children and endangered person clearinghouse which shall include the maintenance and operation of a toll-free telephone hotline.<sup>90</sup> The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of children, youth, and families, and the general public regarding missing children and endangered persons. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children and endangered persons. The state patrol shall also maintain a regularly updated computerized link with national and other statewide missing person systems or clearinghouses, and within existing resources, shall develop and implement a plan, commonly known as an “amber alert plan,” or an “endangered missing person advisory plan,” for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems, and social media pages and sites to enhance the public's ability to assist in recovering abducted children and missing endangered persons consistent with the state endangered missing person advisory plan.

In addition, Wash. Rev. Code Ann. § 13.60.050 (Endangered missing person advisory plan) states,

Within existing resources, the Washington state patrol shall develop and implement a plan, commonly known as an “endangered missing person advisory plan,” for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems to enhance the public's ability to assist in recovering endangered missing persons who do not qualify for inclusion in an amber alert.

A duty to report is also created for actors other than law enforcement and child welfare agencies that house a missing child under Wash. Rev. Code Ann. § 13.32A.082. Wash. Rev. Code Ann. § 13.32A.082(1), (3), (4) states,

- (1) (a) Except as provided in (b) of this subsection, any person, unlicensed youth shelter, or runaway and homeless youth program that, without legal authorization, provides shelter to a minor and that knows at the time of providing the shelter that the minor is away from a lawfully prescribed residence or home without parental permission, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department.
- (b) (i) If a licensed overnight youth shelter, or another licensed organization with a stated mission to provide services to homeless or runaway youth and their families, shelters a child and knows at the time of providing the shelter that the child is away from a lawfully prescribed residence or home without parental permission, it must contact the youth's parent within seventy-two hours, but preferably within twenty-four hours, following the time that the youth is admitted to the shelter or

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<sup>90</sup> Wash. Rev. Code Ann. § 13.60.010(2)(a) states, “(2) For the purposes of this chapter: (a) “Child” or “children,” as used in this chapter, means an individual under eighteen years of age.”

other licensed organization's program. The notification must include the whereabouts of the youth, a description of the youth's physical and emotional condition, and the circumstances surrounding the youth's contact with the shelter or organization. If there are compelling reasons not to notify the parent, the shelter or organization must instead notify the department.

(ii) At least once every eight hours after learning that a youth receiving services or shelter under this section is away from home without permission, the shelter or organization staff must consult the information that the Washington state patrol makes publicly available under RCW 43.43.510(2). If the youth is publicly listed as missing, the shelter or organization must immediately notify the department of its contact with the youth listed as missing. The notification must include a description of the minor's physical and emotional condition and the circumstances surrounding the youth's contact with the shelter or organization.

(c) Reports required under this section may be made by telephone or any other reasonable means.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

(4) Nothing in this section prohibits any person, unlicensed youth shelter, or runaway and homeless youth program from immediately reporting the identity and location of any minor who is away from a lawfully prescribed residence or home without parental permission more promptly than required under this section.<sup>91</sup>

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<sup>91</sup> Under Wash. Rev. Code Ann. § 13.32A.082(2),

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

(c) "Compelling reasons" include, but are not limited to, circumstances that indicate that notifying the parent or legal guardian will subject the minor to abuse or neglect as defined in RCW 26.44.020.

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