

## 2019 ANALYSIS AND RECOMMENDATIONS

### ALASKA

#### 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.*

Alaska has both human and sex trafficking laws that apply when the victim is a minor. Alaska specifically criminalizes sex trafficking of minors under Alaska Stat. § 11.66.110(a) (Sex trafficking in the first degree), which states,

- A person commits the crime of sex trafficking in the first degree if the person
- (1) induces or causes another person to engage in prostitution<sup>2</sup> through the use of force;
  - (2) as other than a patron of the prostitute, induces or causes another person who is under 20 years of age to engage in prostitution; or
  - (3) induces or causes a person in that person's legal custody to engage in prostitution.

<sup>1</sup> This report includes legislation enacted as of August 1, 2019.

<sup>2</sup> Under Alaska Stat. § 11.66.100(a) (Prostitution), "A person commits the crime of prostitution if the person (1) engages in or agrees or offers to engage in sexual conduct in return for a fee; or (2) offers a fee in return for sexual conduct." "Sexual conduct" refers to Alaska Stat. § 11.66.150, which defines the term as "genital or anal intercourse, cunnilingus, fellatio, or masturbation of one person by another person." Alaska Stat. § 11.66.150(3).

The crime is a Class A felony punishable by imprisonment for 4–7 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.66.110(c), 12.55.125(c)(1),<sup>3</sup> 12.55.035(b)(2). If subsection (a)(2) is violated, the crime becomes an unclassified felony punishable by imprisonment for 20–35 years,<sup>4</sup> depending on the victim’s age, and a possible fine not to exceed \$500,000.<sup>5</sup> Alaska Stat. §§ 11.66.110(d), 12.55.125(i)(1)(A), 12.55.035(b)(1). It is not a defense that a trafficker “reasonably believed that the person induced or caused to engage in prostitution was 20 years of age or older.” Alaska Stat. § 11.66.110(b).

Alaska also criminalizes sex trafficking in the second, third, and fourth degrees. Alaska Stat. § 11.66.120(a) (Sex trafficking in the second degree) states that a person commits the crime if the person

- (1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution;
- (2) procures or solicits a patron for a prostitute; or
- (3) offers, sells, advertises, promotes, or facilitates travel that includes commercial sexual conduct<sup>6</sup> as enticement for the travel.”

Violations are Class B felonies punishable by imprisonment for 1–3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.66.120(b), 12.55.125(d)(1), 12.55.035(b)(3).

Under Alaska Stat. § 11.66.130(a) (Sex trafficking in the third degree),

- A person commits the crime of sex trafficking in the third degree if the person
- (1) receives compensation for prostitution services rendered by another; and
  - (2) with intent to promote prostitution,
    - (A) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;
- ....

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<sup>3</sup> The text of under Alaska Stat. § 12.55.125 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 49 during the 2019 Regular Session of the Alaska Legislature (effective July 1, 2019).

<sup>4</sup> When a person’s second felony conviction is a sexual felony they will automatically receive a mandatory imprisonment term of up to 45 years. If the sexual felony is a third felony conviction they will automatically receive an imprisonment term of 99 years. Alaska Stat. § 12.55.125. Sexual felony is defined in Alaska Stat. § 12.55.185(16) as “sexual assault in the first degree, sexual abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault in the second degree, sexual abuse of a minor in the second degree, sexual abuse of a minor in the third degree under AS 11.41.438(c), unlawful exploitation of a minor, indecent viewing or production of a picture under AS 11.61.123(f)(1) or (2), distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, enticement of a minor, and felony attempt, conspiracy, or solicitation to commit those crimes.” The text of under Alaska Stat. § 12.55.185 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 49 during the 2019 Regular Session of the Alaska Legislature (effective July 1, 2019).

<sup>5</sup> Unless otherwise specified, the sentences of imprisonment for all felonies provided throughout this report are based on the assumption that the defendant has no prior felony convictions, and that none of the aggravating or mitigating factors listed in Alaska Stat. §§ 12.55.155–12.55.175 or in the sentencing provisions themselves are present. A defendant with prior felony convictions will be subject to a greater minimum sentence of imprisonment. Alaska Stat. § 12.55.125. The presence of aggravating factors, such as where “the defendant was the leader of a group of three or more persons who participated in the offense” or “the offense was [certain sexual offenses or distribution of indecent material to minors] and the defendant was 10 or more years older than the victim” “may allow imposition of a sentence above the presumptive range,” while the presence of mitigating factors “may allow imposition of a sentence below the presumptive range . . . .” Alaska Stat. § 12.55.155(c)(3), (18)(E), (d).

<sup>6</sup> Pursuant to Alaska Stat. § 11.66.120(a)(3) (Sex trafficking in the second degree), “in this paragraph, ‘commercial sexual conduct’ means sexual conduct for which anything of value is given or received by any person.”

- (C) receives or agrees to receive money or other property under an agreement or understanding that money or other property is derived from prostitution; or
- (D) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

Violations are a Class C felony punishable by 0–2 years imprisonment and a possible fine of not more than \$50,000. Alaska Stat. §§ 11.66.130(c), 12.55.125(e)(1), 12.55.035(b)(4).

Alaska Stat. § 11.66.135(a) (Sex trafficking in the fourth degree) states that a person commits the crime if the person “(1) receives compensation for prostitution services rendered by another; and (2) engages in conduct that institutes, aids, or facilitates prostitution under circumstances not proscribed under AS 11.66.130(a)2)(D).” Violations of this provision are a Class A misdemeanor punishable by up to 1 year imprisonment and a possible fine not to exceed \$25,000. Alaska Stat. §§ 11.66.135(c), 12.55.135(a), 12.55.035(b)(5).

Since Alaska’s sex trafficking laws only apply to the use of minors for prostitution and do not specifically include using minors for the creation of child sexual abuse material (CSAM), such offenses would fall under Alaska’s human trafficking laws, which require force, threat of force, or deception. Alaska Stat. § 11.41.360 (Human trafficking in the first degree) states that it is a Class A felony when a “person compels or induces another person to engage in sexual conduct,<sup>7</sup> adult entertainment,<sup>8</sup> or labor in the state by force or threat of force against any person, or by deception.”<sup>9</sup> A Class A felony is punishable by imprisonment for 4–7 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 12.55.125(c)(1), 12.55.035(b)(2).

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<sup>7</sup> See *supra* note 2.

<sup>8</sup> “Adult entertainment” is defined in Alaska Stat. § 11.41.360(b)(1) by referring to Alaska Stat. § 23.10.350(f)(1)–(3), which states,

A minor under the age of 18 may not be employed or allowed to work in any capacity on the premises of a business that offers adult entertainment. In this subsection, “business that offers adult entertainment” means a business in which one or more individuals are employed or contracted to, wholly or in part, or permitted to entertain others by

- (1) removing clothes or other items that clothe or hide the person’s body;
- (2) dancing or in any other manner exhibiting the individual’s body in a completely or almost completely unclothed state;
- (3) participating in an actual or simulated illegal, indecent, or lewd exhibition, act, or practice including
  - (A) sexual penetration;
  - (B) the lewd exhibition or touching of a person’s genitals, anus, or breast; or
  - (C) bestiality.

<sup>9</sup> “Deception” is defined in Alaska Stat. § 11.41.360(b)(2) by referring to Alaska Stat. § 11.46.180, which states in subsection (c), “As used in this section, ‘deception’ has the meaning ascribed to it in AS 11.81.900 but does not include falsity as to matters having no pecuniary significance or ‘puffing’ by statements unlikely to deceive reasonable persons in the group addressed.” Alaska Stat. § 11.81.900(18) states,

“deception” means to knowingly

- (A) create or confirm another’s false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;
- (B) fail to correct another’s false impression that the defendant previously has created or confirmed;
- (C) prevent another from acquiring information pertinent to the disposition of the property or service involved;
- (D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not that impediment is a matter of official record; or

Alaska Stat. § 11.41.365(a) (Human trafficking in the second degree) states “[a] person commits the crime of human trafficking in the second degree if the person obtains a benefit from the commission of human trafficking under AS 11.41.360 (Human trafficking in the first degree), with reckless disregard that the benefit is a result of the trafficking.” This crime is a Class B felony punishable by imprisonment for 1–3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.365(b), 12.55.125(d)(1), 12.55.035(b)(3).

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

The following laws criminalize CSEC in Alaska:

1. Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor) states in part,

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording,<sup>10</sup> photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1)–(7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person’s genitals, anus, or breast;
- (3) the lewd touching by another person of the child’s genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child’s genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

....

This crime is a Class A felony punishable by imprisonment for up to 30<sup>11</sup> years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.41.455(c)(1),<sup>12</sup> 12.55.125(i)(2)(A),<sup>13</sup> 12.55.035(b)(2). Pursuant to Alaska Stat. § 11.41.455(c)(2), the crime is “an unclassified felony if the (A) person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction; or (B) minor who is exploited is under 13 years of age at the time the exploitation occurs.” A first conviction under Alaska Stat. § 11.41.455(c)(2) is punishable by

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(E) promise performance that the defendant does not intend to perform or knows will not be performed;

<sup>10</sup> Under Alaska Stat. § 11.41.455(d), “audio recording” is defined as “a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.”

<sup>11</sup> See *supra* note 4.

<sup>12</sup> The text of under Alaska Stat. § 11.41.455 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 49 during the 2019 Regular Session of the Alaska Legislature (effective July 1, 2019).

<sup>13</sup> See *supra* note 3.

imprisonment for 25–35 years if the victim was under 13, or by imprisonment for 20–30 years if the victim was 13 years of age or older, and a possible fine. Alaska Stat. § 12.55.125(i)(1)(A), 12.55.035(a). If this is the defendant’s “second felony conviction and the defendant has a prior conviction for a sexual felony,” it is punishable by imprisonment between 35 to 45 years and a possible fine. Alaska Stat. §§ 12.55.125(i)(1)(D), 12.55.035(a).

2. Under Alaska Stat. § 11.66.100 (Prostitution),

(a) A Person commits the crime of prostitution if the person

.....

(2) offers a fee in return for sexual conduct.

.....

(e) Prostitution is a class C felony if

(1) the defendant violates (a) of this section as a patron of a prostitute;

(2) the prostitute is under 18 years of age; and

(3) the defendant is over 18 years of age and at least three years older than the prostitute.

A Class C felony is punishable by 0–2 years in prison with a possible fine not to exceed \$50,000. Alaska Stat. §§ 12.55.125(e)(1), 12.55.035(b)(4).

3. Alaska Stat. § 11.41.452<sup>14</sup> (Enticement of a minor) states,

(a) A person commits the crime of enticement of a minor if the person, being 18 years of age or older, knowingly communicates with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1) - (7) (Unlawful exploitation of a minor) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

.....

(d) Except as provided in (e) of this section, enticement of a minor is a class B felony.

(e) Enticement of a minor is a class A felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

Other sexual exploitation laws that may apply in cases of commercial sexual exploitation of a child, although they do not specify commercial exchanges, include the following:

1. Alaska Stat. § 11.41.434(a)(1) (Sexual abuse of a minor in the first degree) states, “(a) An offender commits the crime of sexual abuse of a minor in the first degree if (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person.” Sexual abuse of a minor in the first degree is an unclassified felony and is punishable by imprisonment for 20–35 years,<sup>15</sup> depending on the age of the victim, and a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.125(i)(1)(A), 12.55.035(b)(1).

2. Alaska Stat. § 11.41.436(a) (Sexual abuse of a minor in the second degree) is a Class B felony if

(1) being 17 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least four years younger than the offender, or aids, induces, causes, or

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<sup>14</sup> The text of under Alaska Stat. § 11.41.452 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 49 during the 2019 Regular Session of the Alaska Legislature (effective July 1, 2019).

<sup>15</sup> See *supra* note 4.

- encourages a person who is 13, 14, or 15 years of age and at least four years younger than the offender to engage in sexual penetration with another person;
- (2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;
- ....
- (4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2)–(6);<sup>16</sup>
- ....
- (7) being under 16 years of age, the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.

An offense is punishable by imprisonment for 5–15 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.436(b), 12.55.125(i)(3)(A), 12.55.035(b)(3).

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

Alaska’s prostitution statute, Alaska Stat. § 11.66.100 (Prostitution), refers to Alaska Stat. § 11.66.110 (Sex trafficking in the first degree). Alaska Stat. § 11.66.100 states,

- (a) A person commits the crime of prostitution if the person
  - (1) engages in or agrees or offers to engage in sexual conduct in return for a fee . . .
  - ....
- ....
- (c) A person may not be prosecuted under (a)(1) of this section if the
  - (1) person witnessed or was a victim of, and reported to law enforcement in good faith, one or more of the following crimes:
    - ....
    - (W) sex trafficking in the first degree under AS 11.66.110;
    - ....
    - (2) evidence supporting the prosecution under (a)(1) of this section was obtained or discovered as a result of the person reporting the crime to law enforcement; and
    - (3) person cooperated with law enforcement personnel.
- ....

Because Alaska Stat. § 11.66.100(c) only protects victims who file a report and cooperate with law enforcement personnel, however, some commercially exploited minors may be prosecuted under Alaska Stat. § 11.66.100.

*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.*

Alaska has not enacted a racketeering statute. However, the law provides a limited penalty enhancement for crimes committed in furtherance of gang activity and other laws make it a crime to recruit a gang member or induce a person to commit a crime on behalf of a gang.

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<sup>16</sup> Alaska Stat. § 11.41.455 (a)(2)–(6) states, “(2) the lewd touching of another person’s genitals, anus, or breast; (3) the lewd touching by another person of the child’s genitals, anus, or breast; (4) masturbation; (5) bestiality; (6) the lewd exhibition of the child’s genitals.”

Pursuant to Alaska Stat. § 11.61.160 (Recruiting a gang member in the first degree),

- (a) A person commits the crime of recruiting a gang member in the first degree if the person uses or threatens the use of force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.
- (b) Recruiting a gang member in the first degree is a class C felony.

Pursuant to Alaska Stat. § 11.61.165 (Recruiting a gang member in the second degree),

- (a) A person commits the crime of recruiting a gang member in the second degree if the person is 18 years of age or older and, without force or the threat of force, encourages or recruits a person who is under 18 years of age and at least three years younger than the offender to participate in a criminal street gang.
- (b) Recruiting a gang member in the second degree is a class A misdemeanor.

Pursuant to Alaska Stat. § 12.55.137 (Penalties for gang activities punishable as misdemeanors),

- (a) If a person commits an offense that would be a class B misdemeanor and the person committed the offense for the benefit of, at the direction of, or in association with a criminal street gang,<sup>17</sup> the offense is a class A misdemeanor.
- (b) If a person commits an offense that would be a class A misdemeanor and the person committed the offense for the benefit of, at the direction of, or in association with a criminal street gang, the offense is a class C felony.

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

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<sup>17</sup> Alaska Stat. § 11.81.900(13) (Definitions) defines “criminal street gang” as “a group of three or more persons (A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and (B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following: (i) AS 11.41 (Offenses against the person) . . . or (iii) a felony offense.”

**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 child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*
  - 2.10 *Convicted buyers of commercial sex acts with minors are required to register as sex offenders.*
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**Legal Analysis:**

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

Alaska Stat. § 11.66.110(a)(2) (Sex trafficking in the first degree) specifically exempts buyers from criminal liability under the sex trafficking of a minor law by stating, “[a] person commits the crime of sex trafficking...if the person...other than a patron of a prostitute, induces or causes another person who is under 20 years of age, to engage in prostitution . . . .”

- 2.1.1 Recommendation: Amend Alaska Stat. § 11.66.110 (Sex trafficking in the first degree) to make the statute applicable to the actions of buyers of commercial sex with minors.

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

Alaska Stat. § 11.66.100 (Prostitution) makes it a crime to purchase sex acts with a minor. It states,

- (a) A Person commits the crime of prostitution if the person
  - . . . .
  - (2) offers a fee in return for sexual conduct.
  - . . . .
- (e) Prostitution is a class C felony if
  - (1) the defendant violates (a) of this section as a patron of a prostitute;
  - (2) the prostitute is under 18 years of age; and
  - (3) the defendant is over 18 years of age and at least three years older than the prostitute.

A Class C felony is punishable by 0–2 years in prison with a possible fine not to exceed \$50,000. Alaska Stat. §§ 12.55.125(e)(1), 12.55.035(b)(4).

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

Under Alaska Stat. § 11.66.100 (Prostitution),

- (a) A person commits the crime of prostitution if the person
  - (1) engages in or agrees or offers to engage in sexual conduct in return for a fee; or
  - (2) offers a fee in return for sexual conduct.
- ....
- (d) Except as provided in (e) of this section, prostitution is a class B misdemeanor.
- (e) Prostitution is a class C felony if
  - (1) the defendant violates (a) of this section as a patron of a prostitute;
  - (2) the prostitute is under 18 years of age; and
  - (3) the defendant is over 18 years of age and at least three years older than the prostitute.

A Class B misdemeanor is punishable by imprisonment for up to 90 days and a possible fine not to exceed \$2,000. Alaska Stat. §§ 12.55.135(b)(1),<sup>18</sup> 12.55.035(b)(6). In contrast, a Class C felony is punishable by up to 2 years in prison with a possible fine not to exceed \$50,000. Alaska Stat. §§ 12.55.125(e)(1), 12.55.035(b)(4).

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

A buyer convicted under Alaska Stat. § 11.66.100 (Prostitution) would be guilty of a Class C felony, which is punishable by 0–2 years in prison with a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.66.100(e), 12.55.125(e)(1), 12.55.035(b)(4).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>19</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 buyer has a prior conviction for a federal sex offense<sup>20</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>21</sup> a

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<sup>18</sup> The text of under Alaska Stat. § 12.55.135 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 49 during the 2019 Regular Session of the Alaska Legislature (effective July 1, 2019).

<sup>19</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>20</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>21</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).

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>22</sup>

2.4.1 Recommendation: Increase the penalty for Alaska Stat. § 11.66.100 (Prostitution) for the solicitation or purchase of commercial sex with a minor to reflect the seriousness of the offense.

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.*

Although not specific to Internet offenses, Alaska Stat. § 11.41.452<sup>23</sup> (Enticement of a minor) broadly applies when a person who is “18 years of age or older, knowingly communicates with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1)–(7)<sup>24</sup> (Unlawful exploitation of a minor) and (1) the other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.” Alaska Stat. § 11.41.452(a). Notably, this offense does not protect all minors under the age of 18.

Enticement of a minor is a Class B felony punishable by imprisonment for 5–15 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.452(d), 12.55.125(i)(3)(A), 12.55.035(b)(3). It is a Class A felony punishable by imprisonment for 15–30 years, depending on the age of the victim, and a \$250,000 fine, “if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.” Alaska Stat. §§ 11.41.452(e), 12.55.125(i)(2)(A), 12.55.035(b)(2).

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

Under Alaska Stat. § 11.66.100(b) (Prostitution), an affirmative defense is permitted where a buyer “(1) reasonably believed the prostitute to be 18 years of age or older; and (2) undertook reasonable measures to verify that the prostitute was 18 years of age or older.” The human trafficking statute does not apply to buyers.

2.6.1 Recommendation: Amend Alaska Stat. § 11.66.100 (Prostitution) to expressly prohibit a defense based on mistake of age.

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<sup>22</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>23</sup> *See supra* note 14.

<sup>24</sup> Alaska Stat. § 11.41.455(a)(1)–(7) includes:

- (1) sexual penetration;
- (2) the lewd touching of another person’s genitals, anus, or breast;
- (3) the lewd touching by another person of the child’s genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child’s genitals; or
- (7) sexual masochism or sadism.

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

Alaska’s buyer-applicable CSEC law does not stagger penalties based on a minor’s age, but penalties are not sufficiently high. A conviction for soliciting a minor under Alaska Stat. § 11.66.100 (Prostitution) is punishable as a Class C felony by 0–2 years in prison with a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.66.100(e), 12.55.125(e)(1), 12.55.035(b)(4).

2.7.1 Recommendation: Amend Alaska Stat. § 11.66.100 (Prostitution) to provide adequately high penalties for all minors under 18 to reflect the seriousness of the offense.

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 convicted under Alaska Stat. § 11.66.100 (Prostitution) face a Class C felony punishable by a fine of not more than \$50,000. Alaska Stat. §§ 11.66.100(e), 12.55.035(b)(4). They are also subject to Alaska Stat. § 11.66.145 (Forfeiture), which states, “Property used to institute, aid, or facilitate, or received or derived from, a violation of AS 11.66.100(e) [Prostitution] or 11.66.110 - 11.66.135 [Promoting prostitution in the first degree, Sex trafficking in the second degree, Sex trafficking in the third degree, Sex trafficking in the fourth degree] may be forfeited at sentencing.” No specific seizure procedure is authorized.

If the act of commercially purchasing sex is prosecuted as a sexual offense, a violation of Alaska Stat. § 11.41.434 (Sexual abuse of a minor in the first degree) is an unclassified felony that is punishable by a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.035(b)(1). A violation of Alaska Stat. § 11.41.436 (Sexual abuse of a minor in the second degree) is a Class B felony and punishable by a maximum fine of \$100,000. Alaska Stat. §§ 11.41.436(b), 12.55.035(b)(3).

Alaska Stat. § 11.41.468(a) (Forfeiture of property used in sexual offense) provides that

[p]roperty<sup>25</sup> used to aid a violation of AS 11.41.410 - 11.41.458 [Sexual assault in the first through fourth degrees; sexual abuse of a minor in the first through fourth degrees; incest; enticement of a minor; unlawful exploitation of a minor; and indecent exposure in the first degree] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.41.410 - 11.41.458 may be forfeited to the state upon the conviction of the offender.

The forfeiture is discretionary, and forfeiture is ordered in the context of a criminal trial.

Likewise, Alaska Stat. § 11.61.129(a) (Forfeiture of property used in indecent viewing or photography or child pornography) provides that “[p]roperty<sup>26</sup> used to aid a violation of AS 11.61.123 - 11.61.128<sup>27</sup> (Indecent

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<sup>25</sup> “Property” is defined in Alaska Stat. § 11.41.468(b) as

computer equipment, telecommunications equipment, photography equipment, video or audio equipment, books, magazines, photographs, videotapes, audiotapes, and any equipment or device, regardless of format or technology employed, that can be used to store, create, modify, receive, transmit, or distribute digital or analog information, including images, motion pictures, and sounds.

<sup>26</sup> In Alaska Stat. § 11.61.129, “property” is given the same meaning as in Alaska Stat. § 11.41.468(b) (Forfeiture of property used in a sexual offense). Alaska Stat. § 11.61.129(b).

<sup>27</sup> Alaska Stat. § 11.61.128 was found unconstitutional in *Am. Booksellers Foundation for Free Expression v. Sullivan*, No. 3:10-cv-0193-RRB, 2011 U.S. Dist. LEXIS 70414 (D. Alaska June 30, 2011), on First Amendment

viewing or production of a picture; distribution of child pornography; possession of child pornography; and distribution of indecent material to minors) or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123 - 11.61.128 may be forfeited to the state upon the conviction of the offender.” The forfeiture is discretionary, and forfeiture is ordered in the context of a criminal trial.

In addition, a court shall order a buyer to pay restitution. Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides in part,

[t]he court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law.

The court considers the following two factors in determining the restitution amount and payment method: “(1) public policy that favors requiring criminals to compensate for damages and injury, including loss of income, to their victims; and (2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.” Alaska Stat. § 12.55.045(a).

2.9 *Buying and possessing child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*

Alaska Stat. § 11.61.127(a) (Possession of child pornography) states,

A person commits the crime of possession of child pornography if the person knowingly possesses or knowingly accesses on a computer with intent to view any material that visually depicts conduct described in AS 11.41.455(a) (Unlawful exploitation of a minor) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct.

The statute provides in subsection (c) that “[e]ach film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in AS 11.41.455(a) that is possessed or accessed in violation of (a) of this section is a separate violation of this section.” Possessing CSAM is a Class C felony that is punishable by imprisonment for 2–12 years<sup>28</sup> and a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.61.127(g), 12.55.125(i)(4)(A), 12.55.035(b)(3).

Alaska Stat. § 11.61.123(a), (b)<sup>29</sup> (Indecent viewing or production of a picture) states,

(a) A person commits the crime of indecent viewing or production of a picture if the person knowingly

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grounds because, “[T]here could be a chilling effect on protected speech under the . . . statute . . . . Individuals who fear the possibility of a minor receiving speech intended for an adult may refrain from exercising their right to free speech at all—an unacceptable result. The Government may not reduce the adult population to only what is fit for children.” *Id.* at 12 (citing *Reno v. ACLU*, 521 U.S. 844, 875 (1997)).

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

<sup>29</sup> The text of under Alaska Stat. § 11.61.123 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 49 during the 2019 Regular Session of the Alaska Legislature (effective July 1, 2019).

- (1) views, or views a picture of, the private exposure of the genitals, anus, or female breast of another person; or
  - (2) produces a picture of the private exposure of the genitals, anus, or female breast of another person.
- (b) Each viewing of a person, and each production of a picture of a person, whose genitals, anus, or female breast are viewed or are shown in a picture constitutes a separate violation of this section.<sup>30</sup>

If the victim is a minor, viewing CSAM under Alaska Stat. § 11.61.123(a)(1) is a Class C felony that is punishable by 2–12 years imprisonment and a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.61.123(f)(2)(A), 12.55.125(i)(4),<sup>31</sup> 12.55.035(b)(4).

In comparison, a federal conviction for possession of CSAM<sup>32</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>33</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>34</sup>

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

Under Alaska Stat. § 12.63.010(a) (Registration of sex offenders and related requirements), “A sex offender or child kidnapper who is physically present in the state shall register as provided in this section.” Alaska Stat. § 12.63.100(6)<sup>35</sup> (Definitions) defines “sex offender” as “(A) a person convicted of a sex offense . . . in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999; or (B)

<sup>30</sup> Alaska Stat. § 11.61.123(e) states in part,

- (1) “picture” means a film, photograph, negative, slide, book, newspaper, or magazine, whether in print, electronic, magnetic, or digital format; and
- (2) “private exposure” means that a person has exposed the person’s body or part of the body in a place, and under circumstances, that the person reasonably believed would not result in the person’s body or body parts being (A) viewed by the defendant; or (B) produced in a picture; “private exposure” does not include the exposure of a person’s body or body parts in a law enforcement facility, correctional facility, designated treatment facility, or a juvenile detention facility . . . .

<sup>31</sup> *See supra* note 3.

<sup>32</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>33</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>34</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>35</sup> The text of under Alaska Stat. § 12.63.100 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 307 and 49 during the 2018 Regular Session of the Alaska Legislature (effective January 1, 2019 and July 1, 2019, respectively).

a person charged and convicted as an adult of an offense that requires registration as a sex offender . . . in another jurisdiction.”

Alaska Stat. § 12.63.100(7)(C) defines “sex offense” to include:

a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

- (i) AS 11.41.410 - 11.41.438 [Sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through third degrees];
- (ii) AS 11.41.440(a)(2) [Sexual abuse of a minor in the fourth degree];
- (iii) AS 11.41.450 - 11.41.458 [Incest; enticement of a minor; unlawful exploitation of a minor; and indecent exposure in the first degree];
- (iv) AS 11.41.460 [Indecent exposure in the second degree] . . . if the indecent exposure is before a person under 16 years of age and the offender has previously been convicted under AS 11.41.460 . . . ;
- (v) AS 11.61.125 - 11.61.128 [Distribution of child pornography; possession of child pornography; and distribution of indecent material to minors];
- (vi) AS 11.66.110 [Sex trafficking in the first degree], 11.66.130(a)(2)(B) [Sex trafficking in the third degree], . . . if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense;  
. . . .
- (ix) AS 11.66.100(a)(2) [Prostitution: offers a fee in return for sexual conduct] if the offender is subject to punishment under AS 11.66.100(e) [Prostitution];  
. . . .
- (xv) AS 11.61.123 [Indecent viewing or production of a picture ] if the offender is subject to punishment under AS 11.61.123(f)(1) or (f)(2);

“Aggravated sex offense” is defined in Alaska Stat. § 12.63.100(1)(C) (Definitions) as including “a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410 [Sexual assault in the first degree], 11.41.434 [Sexual abuse of a minor in the first degree], or a similar law of another jurisdiction or a similar provision under a former law of this state . . . .”

***Legal Components:***

- 3.1 *Penalties for trafficking a child for sexual exploitation are as high as federal penalties.*
- 3.2 *Creating and distributing child sexual abuse material (CSAM) 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.*

A violation of Alaska Stat. § 11.41.360 (Human trafficking in the first degree) is a Class A felony, which is punishable by imprisonment for 4–7 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.41.360(c), 12.55.125(c)(1),<sup>36</sup> 12.55.035(b)(2).

A violation of Alaska Stat. § 11.66.110(a)(1), (3) (Sex trafficking in the first degree) is a Class A felony that occurs when a person “(1) induces or causes another person to engage in prostitution through the use of force; . . . or (3) induces or causes a person in that person’s legal custody to engage in prostitution.” Class A felonies are punishable by imprisonment for 4–7 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 12.55.125(c)(1), 12.55.035(b)(2). A person who “as other than a patron of a prostitute, induces or causes another person under 20 years of age to engage in prostitution” is guilty of an unclassified felony, which is punishable by imprisonment for 20–35 years, depending on the victim’s age, and a maximum possible fine of \$500,000. Alaska Stat. §§ 11.66.110(a)(2), (d), 12.55.125(i)(1)(A), 12.55.035(b)(1).

A first conviction of Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor) is a Class A felony punishable by imprisonment for up to 30 years and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.41.455(c)(1),<sup>37</sup> 12.55.125(i)(2)(A), 12.55.035(b)(2). Under subsection (c)(2), “Unlawful exploitation of a minor is . . . an unclassified felony if the (A) person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction; or (B) minor who is exploited is under 13 years of age at the time the exploitation occurs.”

Alaska Stat. § 11.41.434(a)(1) (Sexual abuse of a minor in the first degree) states, “(a) An offender commits the crime of sexual abuse of a minor in the first degree if (1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person.” Sexual abuse of a minor in the first degree is an unclassified felony and is punishable by imprisonment for 20–35 years, depending on the victim’s age, and a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.41.434(b), 12.55.125(i)(1)(A), 12.55.035(b)(1).

<sup>36</sup> See *supra* note 3.

<sup>37</sup> See *supra* note 12.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>38</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>39</sup> against a minor. 18 U.S.C. § 3559(e)(1).

### 3.2 *Creating and distributing child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*

Creating and distributing child sexual abuse material (CSAM) carries substantial penalties under Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor) and § 11.61.123<sup>40</sup> (Indecent viewing or production of a picture).<sup>41</sup> Alaska Stat. § 11.41.455(a), (b) states,

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording,<sup>42</sup> photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1)–(7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person’s genitals, anus, or breast;
- (3) the lewd touching by another person of the child’s genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child’s genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

This crime is a Class A felony punishable by up to 30 years imprisonment and a possible fine not to exceed \$250,000. Alaska Stat. §§ 11.41.455(c)(1),<sup>43</sup> 12.55.125(i)(2)(A), 12.55.035(b)(2). Pursuant to Alaska Stat. § 11.41.455(c)(2), the crime is “an unclassified felony if the (A) person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction; or (B) minor who is exploited is under 13 years of age at the time the exploitation occurs.”

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<sup>38</sup> See *supra* note 19.

<sup>39</sup> See *supra* note 20.

<sup>40</sup> See *supra* note 29.

<sup>41</sup> Alaska Stat. § 11.61.124 (Solicitation or production of an indecent picture of a minor) further prohibits an offender from soliciting or producing CSAM “under circumstances not proscribed under AS 11.41.455 or AS 11.61.123.” The text of under Alaska Stat. § 11.61.124 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 49 during the 2019 Regular Session of the Alaska Legislature (effective July 1, 2019).

<sup>42</sup> Under Alaska Stat. § 11.41.455(d), “audio recording” is defined as “a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.”

<sup>43</sup> See *supra* note 12.

Alaska Stat. § 11.61.123(a), (b)<sup>44</sup> states,

- (a) A person commits the crime of indecent viewing or production of a picture if the person knowingly
  - (1) views, or views a picture of, the private exposure of the genitals, anus, or female breast of another person; or
  - (2) produces a picture of the private exposure of the genitals, anus, or female breast of another person.
- (b) Each viewing of a person, and each production of a picture of a person, whose genitals, anus, or female breast are viewed or are shown in a picture constitutes a separate violation of this section.<sup>45</sup>

If the victim is a minor, producing CSAM under Alaska Stat. § 11.61.123(a)(2) is a Class B felony that is punishable by 2–12 years imprisonment and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.61.123(f)(1), 12.55.125(i)(4), 12.55.035(b)(3).

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>46</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM<sup>47</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>48</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>49</sup>

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

Although not specific to Internet offenses, Alaska Stat. § 11.41.452(a)<sup>50</sup> (Enticement of a minor) broadly applies when a person “18 years of age or older, knowingly communicates with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1)–(7)<sup>51</sup> [Unlawful exploitation of a

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<sup>44</sup> See *supra* note 29.

<sup>45</sup> See *supra* note 30.

<sup>46</sup> See *supra* note 20.

<sup>47</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>48</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>49</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); see also 18 U.S.C §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

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

<sup>51</sup> Alaska Stat. § 11.41.455(a)(1)–(7) includes:

minor] and (1) the other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.” Notably, this offense does not protect all minors under the age of 18.

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

A convicted trafficker under Alaska Stat. § 11.41.360 (Human trafficking in the first degree) commits a Class A felony and is subject to a possible fine not exceeding \$250,000. Alaska Stat. §§ 11.41.360(c), 12.55.035(b)(2). Unlawful exploitation of a minor under Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor), also a Class A felony, is generally punishable by a maximum fine of \$250,000. Alaska Stat. §§ 11.41.455(c)(1),<sup>52</sup> 12.55.035(b)(2).

A violation of Alaska Stat. § 11.66.110(a)(2) (Sex trafficking in the first degree) is an unclassified felony and carries a possible fine not to exceed \$500,000. Alaska Stat. §§ 11.66.110(d), 12.55.035(b)(1). A trafficker convicted under Alaska Stat. § 11.66.120 (Sex trafficking in the second degree) may be assessed a Class B felony with a possible maximum fine of \$100,000. Alaska Stat. §§ 11.66.120(b), 12.55.035(b)(3).

Asset forfeiture is mandatory in sex trafficking cases. Alaska Stat. § 11.66.145 (Forfeiture) requires mandatory asset forfeiture of “[p]roperty used to institute, aid, or facilitate, or received or derived from, a violation of AS . . . 11.66.110 - 11.66.135 [Sex trafficking in the first through fourth degrees] . . . .”

In addition, Alaska Stat. § 11.41.468 (Forfeiture of property used in sexual offense) provides for discretionary asset forfeiture at the conclusion of a criminal trial, stating “[p]roperty<sup>53</sup> used to aid a violation of AS 11.41.410 - 11.41.458 [Sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through fourth degrees; Incest; Enticement of a minor; Unlawful exploitation of a minor; and Indecent exposure in the first degree] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.41.410 - 11.41.458 may be forfeited to the state upon the conviction of the offender.”

Traffickers convicted of distributing child sexual abuse material (CSAM) are also subject to discretionary asset forfeiture at the conclusion of their criminal trials. Alaska Stat. § 11.61.129 (Forfeiture of property used in indecent viewing or photography or child pornography) states, “Property<sup>54</sup> used to aid a violation of AS 11.61.123 - 11.61.128 [Indecent viewing or production of a picture; Distribution of child pornography; Possession of child pornography; and Distribution of indecent material to minors] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123 - 11.61.128 may be forfeited to the state upon the conviction of the offender.”

In addition, a court will order a trafficker to pay restitution. Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides in part that:

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- (1) sexual penetration;
  - (2) the lewd touching of another person’s genitals, anus, or breast;
  - (3) the lewd touching by another person of the child’s genitals, anus, or breast;
  - (4) masturbation;
  - (5) bestiality;
  - (6) the lewd exhibition of the child’s genitals; or
  - (7) sexual masochism or sadism.

<sup>52</sup> See *supra* note 12.

<sup>53</sup> See *supra* note 25.

<sup>54</sup> See *supra* note 26.

[t]he court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law.

The court considers the following two factors in determining the restitution amount and payment method: “(1) public policy that favors requiring criminals to compensate for damages and injury, including loss of income, to their victims; and (2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.” Alaska Stat. § 12.55.045(a)(1), (2).

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

Under Alaska Stat. § 12.63.010(a) (Registration of sex offenders and related requirements), “A sex offender or child kidnapper who is physically present in the state shall register as provided in this section.” Alaska Stat. § 12.63.100(6)<sup>55</sup> (Definitions) defines “sex offender” as “(A) a person convicted of a sex offense . . . in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999; or (B) a person charged and convicted as an adult of an offense that requires registration as a sex offender . . . in another jurisdiction.”

Alaska Stat. § 12.63.100(7)(C) defines “sex offense” to include:

a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

- (i) AS 11.41.410 - 11.41.438 [Sexual assault in the first through fourth degree; sexual abuse of a minor in the first through third degree];
- (ii) AS 11.41.440(a)(2) [Sexual abuse of a minor in the fourth degree];
- (iii) AS 11.41.450 - 11.41.458 [Incest; enticement of a minor; unlawful exploitation of a minor; and indecent exposure in the first degree];
- (iv) AS 11.41.460 [Indecent exposure in the second degree] . . . if the indecent exposure is before a person under 16 years of age and the offender has previously been convicted under AS 11.41.460 . . . ;
- (v) AS 11.61.125 - 11.61.128 [Distribution of child pornography; possession of child pornography; and distribution of indecent material to minors];
- (vi) AS 11.66.110 [Sex trafficking in the first degree], 11.66.130(a)(2)(B) [Sex trafficking in the third degree], . . . if the person who was induced or caused to engage in prostitution was 20 years of age at the time of the offense;
- . . . .
- (ix) AS 11.66.100(a)(2) [Prostitution: offers a fee in return for sexual conduct] if the offender is subject to punishment under AS 11.66.100(e) [Prostitution];
- . . . .
- (xv) AS 11.61.123 [Indecent viewing or production of a picture] if the offender is subject to punishment under AS 11.61.123(f)(1) or (2);

“Aggravated sex offense” is defined in Alaska Stat. § 12.63.100(1)(C) (Definitions) as including “a crime, or an attempt, solicitation, or conspiracy to commit a crime, under AS 11.41.410 [Sexual assault in the first degree], 11.41.434 [Sexual abuse of a minor in the first degree], or a similar law of another

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<sup>55</sup> See *supra* note 35.

jurisdiction or a similar provision under a former law of this state . . . .”

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.*

Alaska Stat. § 47.10.088(a) (Involuntary termination of parental rights and responsibilities) states,

Except as provided in AS 47.10.080(o) [Concerning incarcerated parent], the rights and responsibilities of the parent regarding the child may be terminated for purposes of freeing a child for adoption or other permanent placement if the court finds by clear and convincing evidence that

- (1) the child has been subjected to conduct or conditions described in AS 47.10.011 [Children in need of aid];
- (2) the parent
  - (A) has not remedied the conduct or conditions in the home that place the child at substantial risk of harm; or
  - (B) has failed, within a reasonable time, to remedy the conduct or conditions in the home that place the child in substantial risk so that returning the child to the parent would place the child at substantial risk of physical or mental injury; and
- (3) the department has complied with the provisions of AS 47.10.086 concerning reasonable efforts.

Alaska Stat. § 47.10.011 (Children in need of aid) provides, subject to certain limitations, that:

[T]he court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: . . . (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; . . . (7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child; . . .

Alaska Stat. § 47.10.990(31) defines “sexual abuse” as “the conduct described in AS 11.41.410 - 11.41.460 [Sexual assault in the first through fourth degrees; sexual abuse of a minor in the first through fourth degrees; incest; enticement of a minor; unlawful exploitation of a minor; indecent exposure]; conduct constituting ‘sexual exploitation’ as defined in AS 47.17.290, and conduct prohibited by AS 11.66.100 - 11.66.150 [Prostitution, Sex trafficking in the first through fourth degrees].” “Sexual exploitation” is defined in Alaska Stat. § 47.17.290(16) as including “(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 - 11.66.150 [Prostitution, Sex trafficking in the first through fourth degrees], by a person responsible for the child’s welfare; (B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child’s welfare.”

However, the grounds for termination of parental rights provided under Alaska Stat. § 47.10.011 (Children in need of aid) would not extend to children of a convicted trafficker unless those children had also been subjected to sexual abuse or sexual exploitation by the trafficker.

*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 child sexual abuse material (CSAM) 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 state human trafficking law establishes the offense of benefiting from the crime of sex trafficking. Alaska Stat. § 11.41.365(a) (Human trafficking in the second degree) states, “A person commits the crime of human trafficking in the second degree if the person obtains a benefit from the commission of human trafficking under AS 11.41.360 [Human trafficking in the first degree], with reckless disregard that the benefit is a result of the trafficking.” A violation of Alaska Stat. § 11.41.365 is a Class B felony, which is punishable by imprisonment for 1–3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.41.365(b), 12.55.125(d)(1),<sup>56</sup> 12.55.035(b)(3).

Facilitators of sex trafficking may also be prosecuted under Alaska Stat. § 11.66.120(a) (Sex trafficking in the second degree), which makes it a crime when a person “(1) manages, supervises, controls, or owns, either alone or in association with others, a prostitution enterprise other than a place of prostitution; (2) procures or solicits a patron for a prostitute; or (3) offers, sells, advertises, promotes, or facilitates travel that includes commercial sexual conduct as enticement for the travel . . . .” Sex trafficking in the second degree is a Class B felony and is punishable by imprisonment for 1–3 years and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.66.120(b), 12.55.125(d)(1), 12.55.035(b)(3).

Also, a facilitator could be charged under Alaska Stat. § 11.66.130(a) (Sex trafficking in the third degree), which states,

- A person commits the crime of sex trafficking in the third degree if the person
  - (1) receives compensation for prostitution services rendered by another; and
  - (2) with the intent to promote prostitution,
    - (A) manages, supervises, controls, or owns, either alone or in association with others, a place of prostitution;
    - (B) as other than a patron of a prostitute, induces or causes another person who is 20 years of age or older to engage in prostitution;
    - (C) receives or agrees to receive money or other property under an agreement or understanding that the money or other property is derived from prostitution; or
    - (D) engages in conduct that institutes, aids, or facilitates a prostitution enterprise.

<sup>56</sup> See *supra* note 3.

A facilitator convicted under Alaska Stat. § 11.66.130 will be guilty of a Class C felony, which is punishable by 0–2 years imprisonment and a possible fine not to exceed \$50,000. Alaska Stat. §§ 11.66.130(c), 12.55.125(e)(1), 12.55.035(b)(4).

Furthermore, a facilitator of prostitution may also be found guilty under Alaska Stat. § 11.66.135(a) (Sex trafficking in the fourth degree) if he “(1) receives compensation for prostitution services rendered by another; and (2) engages in conduct that institutes, aids, or facilitates prostitution under circumstances not proscribed under AS 11.66.130(a)(2)(D).” This crime is a Class A misdemeanor, which is punishable by up to 1 year imprisonment and a possible fine not to exceed \$25,000. Alaska Stat. §§ 11.66.135(c), 12.55.135(a), 12.55.035(b)(5).

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.*

A facilitator convicted under Alaska Stat. § 11.41.365 (Human trafficking in the second degree) may be assessed a maximum fine of \$100,000. Alaska Stat. §§ 11.41.365(b), 12.55.035(b)(3). In addition, a facilitator convicted under Alaska Stat. § 11.66.110 (Sex trafficking in the first degree) may face a possible maximum fine of \$500,000, and a conviction under Alaska Stat. § 11.66.120 (Sex trafficking in the second degree) may result in a maximum fine of \$100,000. Alaska Stat. §§ 11.66.110(d), 11.66.120(b), 12.55.035(b)(1), (3).

A court will also order a facilitator to pay restitution. Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides that “[t]he court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law.”

The court considers the following two factors in determining the restitution amount and payment method: “(1) public policy that favors requiring criminals to compensate for damages and injury, including loss of income, to their victims; and (2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.” Alaska Stat. § 12.55.045(a).

In addition, facilitators may be subject to mandatory forfeiture under Alaska Stat. § 11.66.145 (Forfeiture). The statute provides that “[p]roperty<sup>57</sup> used to institute, aid, or facilitate, or received or derived from, a violation of AS 11.66.100(e) or 11.66.110 - 11.66.135 [Sex trafficking in the first through fourth degrees] may be forfeited at sentencing.”

Likewise, facilitators convicted under Alaska Stat. § 11.61.125 (Distribution of child pornography) may also be subject to discretionary asset forfeiture at the conclusion of their criminal trials. Alaska Stat. § 11.61.129(a) (Forfeiture of property used in indecent viewing or photography or child pornography) states, “Property<sup>58</sup> used to aid a violation of AS 11.61.123 - 11.61.128 [Indecent viewing or production of a picture; distribution of child pornography; possession of child pornography; and distribution of indecent material to minors] or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.61.123 - 11.61.128 may be forfeited to the state upon the conviction of the offender.”

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<sup>57</sup> See *supra* note 25.

<sup>58</sup> See *supra* note 26.

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

Alaska Stat. § 11.66.120(a)(3) (Sex trafficking in the second degree) makes it a Class B felony when a person “offers, sells, advertises, promotes, or facilitates travel that includes commercial sexual conduct as enticement for the travel,” and the provision defines “commercial sexual conduct” to mean “sexual conduct for which anything of value is given or received by any person.” Alaska Stat. § 11.66.120(b). However, Alaska Stat. § 11.66.120(a)(3) is not specific to minors nor does it include a heightened penalty for minors. In addition, Alaska Stat. § 11.66.120(a)(3) does not eliminate the requirement of force, fraud, or coercion for sex trafficking when the victim is a minor.

- 4.3.1 Recommendation: Enact a law that prohibits selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in commercial sexual exploitation of a minor or prostitution of a minor, if the travel is sold or occurs in Alaska.

#### 4.4 *Promoting and selling child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*

Under Alaska Stat. § 11.61.125 (Distribution of child pornography), “A person commits the crime of distribution of child pornography if the person distributes in this state or advertises, promotes, solicits, or offers to distribute in this state any material that is proscribed under AS 11.61.127 [Possession of child pornography].”<sup>59</sup> Subsection (c) explains, “The possession of 100 or more films, audio, video, electronic, or electromagnetic recordings, photographs, negatives, slides, books, newspapers, magazines, or other materials, including a combination of these items totaling 100 or more, is prima facie evidence of distribution and intent to distribute under (a) of this section.” A violation of Alaska Stat. § 11.61.125 is a Class B felony generally punishable by imprisonment for 4–12 years<sup>60</sup> and a possible fine not to exceed \$100,000. Alaska Stat. §§ 11.61.125(e)(1), 12.55.125(i)(4)(B), 12.55.035(b)(3).

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<sup>59</sup> “Distribution” is defined in Alaska Stat. § 11.61.125(d) as including “whether or not for monetary or other consideration: delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, exchanging, placing on a computer network or computer system, and providing billing collection, or other ancillary services for or otherwise supporting these activities.”

<sup>60</sup> See *supra* note 4.

***Legal Components:***

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

***Legal Analysis:***

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*<sup>61</sup>

Alaska does not define all commercially sexually exploited children as victims of child sex trafficking; only commercially sexually exploited children who are under the control of a third party will be recognized as child sex trafficking victims. While Alaska Stat. § 11.66.110 (Sex trafficking in the first degree) does not require proof of force, fraud, or coercion when the victim is a minor,<sup>62</sup> it does not provide criminal liability for buyers of sex with a minor.<sup>63</sup> Consequently, third party control is required to establish the crime of child sex trafficking, excluding commercially sexually exploited children who are not under the control of a trafficker from the definition of a child sex trafficking victim and related protections and services.

- 5.1.1 **Recommendation:** Amend the definition of Alaska Stat. § 11.66.110(a) (Sex trafficking in the first degree) so that all commercially sexually exploited children are identifiable as victims and eligible for protections pursuant to their victim status.

<sup>61</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>62</sup> See *supra* discussion in Component 1.1.

<sup>63</sup> See *supra* discussion of buyer applicability in Component 2.1.

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

Alaska Stat. § 11.41.360 (Human trafficking in the first degree), § 11.41.365 (Human trafficking in the second degree), and § 11.66.110 (Sex trafficking in the first degree) do not prohibit a defendant from raising a defense based on the willingness of the minor to engage in the commercial sex act.

5.2.1 Recommendation: Enact a provision specifically prohibiting a defendant from asserting a defense to human trafficking and sex trafficking based on the minor's willingness to engage in the sex act.<sup>64</sup>

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>65</sup>

Alaska Stat. § 11.66.100(a) (Prostitution) applies to both minors and adults. Pursuant to Alaska Stat. § 11.66.100(a), "A person commits the crime of prostitution if the person (1) engages in or agrees or offers to engage in sexual conduct in return for a fee; or (2) offers a fee in return for sexual conduct." Alaska Stat. § 11.66.100(c) only protects child sex trafficking victims from prosecution under limited circumstances,<sup>66</sup> stating,

A person may not be prosecuted under (a)(1) of this section if the  
(1) person witnessed or was a victim of, and reported to law enforcement in good faith, one or more of the following crimes<sup>67</sup>:

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<sup>64</sup> The recommendation in this component is predicated on the recommendation in 5.1 being simultaneously or previously enacted.

<sup>65</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>66</sup> The analysis in this component is predicated on the recommendation in 5.1 being simultaneously or previously enacted.

<sup>67</sup> Alaska Stat. § 11.66.100(c)(1) also provides protection from criminalization to witnesses and victims of the following offenses:

- (A) murder in the first degree under AS 11.41.100;
- (B) murder in the second degree under AS 11.41.110;
- (C) manslaughter under AS 11.41.120;
- (D) criminally negligent homicide under AS 11.41.130;
- (E) assault in the first degree under AS 11.41.200;
- (F) assault in the second degree under AS 11.41.210;
- (G) assault in the third degree under AS 11.41.220;
- (H) assault in the fourth degree under AS 11.41.230;
- (I) sexual assault in the first degree under AS 11.41.410;
- (J) sexual assault in the second degree under AS 11.41.420;
- (K) sexual assault in the third degree under AS 11.41.425;
- (L) sexual assault in the fourth degree under AS 11.41.427;
- (M) sexual abuse of a minor in the first degree under AS 11.41.434;
- (N) sexual abuse of a minor in the second degree under AS 11.41.436;
- (O) sexual abuse of a minor in the third degree under AS 11.41.438;
- (P) sexual abuse of a minor in the fourth degree under AS 11.41.440;
- (Q) robbery in the first degree under AS 11.41.500;
- (R) robbery in the second degree under AS 11.41.510;
- (S) extortion under AS 11.41.520;
- (T) coercion under AS 11.41.530;
- (U) distribution of child pornography under AS 11.61.125;
- (V) possession of child pornography under AS 11.61.127;

- ....
- (W) sex trafficking in the first degree under AS 11.66.110;
  - (X) sex trafficking in the second degree under AS 11.66.120;
  - (Y) sex trafficking in the third degree under AS 11.66.130; or
  - (Z) sex trafficking in the fourth degree under AS 11.66.135;
- (2) evidence supporting the prosecution under (a)(1) of this section was obtained or discovered as a result of the person reporting the crime to law enforcement; and
  - (3) person cooperated with law enforcement personnel.

While Alaska Stat. § 11.66.100(c) is an incentive for victims of trafficking to pursue help from the police, it does not protect all minors under 18 from criminalization for prostitution offenses.

- 5.3.1 Recommendation: Amend state law to ensure that all minors are protected from criminalization for prostitution offenses, regardless of whether the victim files a report or cooperates with law enforcement personnel.<sup>68</sup>

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

Alaska law does not provide juvenile sex trafficking victims with a statutory avenue to services that are responsive to the unique trauma and harms associated with trafficking victimization. Further, state law does not prevent commercially sexually exploited youth from facing a juvenile justice response for commercial sex acts committed as a result of their victimization.

- 5.4.1 Recommendation: Enact a protective response that directs child sex trafficking victims away from the juvenile justice system and to specialized services.<sup>69</sup>

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>70</sup>

Under Alaska Stat. § 11.41.455<sup>71</sup> (Unlawful exploitation of a minor), the definition of abuse includes sex trafficking and CSEC based on the definition of sexual exploitation. For purposes of the chapter on “children in need of aid,” Alaska Stat. § 47.10.011(a) (Children in need of aid) provides, subject to certain limitations, that “the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: . . . (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; . . . (7) the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a

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<sup>68</sup> See generally SHARED HOPE INTERNATIONAL, “Seeking Justice: Legal approaches to eliminate criminal liability for child sex trafficking victims” (2018), [https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES\\_ver7.pdf](https://sharedhope.org/wp-content/uploads/2018/08/ANALYSIS-OF-STATUTORY-APPROACHES_ver7.pdf) (discussing need to eliminate a minor’s criminal liability for prostitution and other offenses committed pursuant to trafficking victimization and to establish a statutory avenue to specialized services).

<sup>69</sup> The recommendation in this component is predicated on the recommendation in 5.1 being simultaneously or previously enacted.

<sup>70</sup> For more information regarding recent federal legislation impacting this component see:

<http://go.sharedhope.org/stateimpactmemo>.

<sup>71</sup> Alaska Stat. § 47.17.290(16) defines sexual exploitation as including “(A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 [Prostitution] - 11.66.150 [Sex trafficking in the first through fourth degrees], by a person responsible for the child’s welfare; (B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455(a), by a person responsible for the child’s welfare.”

result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child . . . .”

Alaska Stat. § 47.10.014 allows “neglect” of a child to be found by a court, for purposes of chapter 10 (Children in need of aid), “if the parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child’s physical and mental health and development, though financially able to do so or offered financial or other reasonable means to do so.”

Under Alaska Stat. § 47.17.290(2), “child abuse or neglect” is defined as “the physical injury or neglect, mental injury,<sup>72</sup> sexual abuse, sexual exploitation,<sup>73</sup> or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child’s health or welfare is harmed or threatened thereby.” Alaska Stat. § 47.17.290(10) defines “neglect” as “the failure by a person responsible for the child’s welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.”<sup>74</sup>

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

For the chapter on “child protection,” which contains statutes on mandatory child abuse reporters, Alaska Stat. § 47.17.290(12) defines “person responsible for the child’s welfare” as the “the child’s parent, guardian, foster parent, a person responsible for the child’s care at the time of the alleged child abuse or neglect, or a person responsible for the child’s welfare in a public or private residential agency or institution.”

For purposes of the chapter on “children in need of aid,” Alaska Stat. § 47.10.011(a) (Children in need of aid) provides, subject to certain limitations, that:

the court may find a child to be a child in need of aid if it finds by a preponderance of the evidence that the child has been subjected to any of the following: . . . (5) the child is habitually absent from home or refuses to accept available care and the child’s conduct places the child at substantial risk of physical or mental injury; . . . (7) the child has suffered sexual abuse,<sup>75</sup> or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child . . . .

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<sup>72</sup> “Mental injury” is defined as “injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child’s ability to function.” Alaska Stat. § 47.17.290(2).

<sup>73</sup> Pursuant to Alaska Stat. § 47.17.290(16) (Definitions),

“[S]exual exploitation” includes

- (A) allowing, permitting, or encouraging a child to engage in prostitution prohibited by AS 11.66.100 - 11.66.150 [includes prostitution and sex trafficking], by a person responsible for the child’s welfare;
- (B) allowing, permitting, encouraging, or engaging in activity prohibited by AS 11.41.455 [Unlawful exploitation of a minor] (a), by a person responsible for the child’s welfare.

<sup>74</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>75</sup> “Sexual abuse” is defined in Alaska Stat. § 09.55.650(c) as “an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant’s conduct would have violated a provision of AS 11.41.410 - 11.41.440 [sexual assault in the first through fourth degrees; Sexual abuse of a minor in the first through fourth degrees] or 11.41.450 - 11.41.458 [Incest; Enticement of a minor; Unlawful exploitation of a minor; and Indecent exposure in the first degree] . . . at the time it was committed.”

“Custodian” is defined in Alaska Stat. § 47.10.990(7), as “a natural person 18 years of age or older to whom a parent or guardian has transferred temporary physical care, custody, and control of the child for a period of time.”

5.6.1 Recommendation: Amend Alaska Stat. § 47.10.990(7) (Definitions) to allow child welfare protection for juvenile sex trafficking victims irrespective of the perpetrator of the abuse.

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

Pursuant to Alaska Stat. § 18.67.101 (Incidents and offenses to which this chapter applies), the Alaska Violent Crimes Compensation Board:

may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from (1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or (2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: . . . (F) sexual assault in any degree; (G) sexual abuse of a minor; . . . (I) threats to do bodily harm; . . . (L) sex trafficking in violation of AS 11.66.110 or 11.66.130(a)(2)(B); (M) human trafficking in any degree; or (N) unlawful exploitation of a minor.

The Violent Crimes Compensation program contains ineligibility criteria that could operate to bar a domestic minor sex trafficking victim’s claim for compensation. Alaska Stat. § 18.67.080(c) (Awarding compensation) provides,

In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including provocation, consent, or any other behavior of the victim that directly or indirectly contributed to the victim’s injury or death, the prior case or social history, if any, of the victim, the victim’s need for financial aid, and any other relevant matters. In applying this subsection,

- (1) the board may not deny an order based on the factors in this subsection, unless those factors relate significantly to the occurrence that caused the victimization and are of such a nature and quality that a reasonable or prudent person would know that the factors or actions could lead to the crime and the victimization;
- (2) with regard to circumstances in which the victim consented to, provoked, or incited the criminal act, the board may consider those circumstances only if the board finds that it is more probable than not that those circumstances occurred and were the cause of the crime and the victimization;
- . . . .
- (4) if a claim is based on a crime involving domestic violence or on a crime of sexual abuse of a minor or sexual assault and the offender is
  - (A) convicted of one of those crimes, notwithstanding (1)–(3) of this subsection, the board may not deny an order based on considerations of provocation, the use of alcohol or drugs by the victim, or the prior social history of the victim; or
  - (B) not convicted of one of those crimes, the board may not deny an order based on the involvement or behavior of the victim.

In addition, Alaska Stat. § 18.67.130 (Limitations on awarding compensation) sets limits on the victim’s ability to receive compensation. Under subsection (a)(1), an application must be made within two years of the injury. Alaska Stat. § 18.67.130(a)(1). Pursuant to subsection (a)(2), the victim cannot receive compensation under Alaska Stat. § 18.67.080 unless, “the personal injury or death was the result of an incident or offense listed in AS 18.67.101 that had been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within five days of the time when a report could

reasonably have been made.” Alaska Stat. § 18.67.130(a)(2). Subsection (a)(3) states that victim compensation will not be granted unless “in the discretion of the board, the applicant has cooperated with law enforcement and prosecution officials to further prosecution of the offender if appropriate and to avoid further injury by the offender to the applicant and injury to persons in the care of the applicant who are exposed to possible injury by the offender.” The provision goes on to say that compensation will not be awarded in the event that the victim “violated a penal law of the state, which violation caused or contributed to the victim’s injuries or death.” Alaska Stat. § 18.67.130(b)(3).

5.7.1 Recommendation: Amend Alaska Stat. § 18.67.080 (Awarding compensation) and § 18.67.130(a)(1)–(2), (b) (Limitations on awarding compensation) to include an exception to ineligibility factors for child victims of human trafficking, prostitution offenses, and commercial sexual exploitation of children in recognition of the challenges these victims face through trauma-bonding, denial, and delayed disclosure.<sup>76</sup>

## 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 in Alaska. Alaska Stat. § 11.66.140 (Corroboration of certain testimony not required) provides that in cases of sex trafficking in the first through fourth degrees, “it is not necessary that the testimony of the person whose prostitution is alleged to have been compelled or promoted be corroborated by the testimony of any other witness or by documentary or other types of evidence.”

In criminal proceedings, Alaska Stat. § 12.45.046(a) (Testimony of children in criminal proceedings) provides victim-sensitive protections for victims and witnesses under 16. The court may appoint a guardian ad litem and “may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child’s inability to effectively communicate.”<sup>77</sup> If the court determines that one-way mirrors should be used, “[t]he attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.” Alaska Stat. § 12.45.046(e). Further, pursuant to Alaska Stat. § 12.45.046(f), if the court determines that the child victim should proceed under relatively normal courtroom procedures, the court may still do the following:

- (1) allow the child to testify while sitting on the floor or on an appropriately sized chair;
- (2) schedule the procedure in a room that provides adequate privacy, freedom from distraction, informality, and comfort appropriate to the child’s developmental age; and
- (3) order a recess when the energy, comfort, or attention span of the child warrants

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<sup>76</sup> The recommendation in this component is predicated on the recommendation in 5.1 being simultaneously or previously enacted.

<sup>77</sup> Alaska Stat. § 12.45.046(b) states that in determining whether the child’s testimony will be taken by closed circuit television or one-way mirrors, the court is to consider factors it determines to be relevant, including,

- (1) the child’s chronological age;
- (2) the child’s level of development;
- (3) the child’s general physical health;
- (4) any physical, emotional, or psychological injury experienced by the child; and
- (5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

Additionally, under Alaska R. Crim. P. 38.3 (Video conference testimony), the testimony of a witness can be made by contemporaneous two-way video conference during the trial if, “the requesting party establishes that testimony by two-way video conference is necessary to further an important public policy.”

Alaska Stat. § 12.45.045 (Evidence of past sexual conduct in trials of certain sexual offenses) states in part,

(a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor, or an attempt to commit any of these crimes, evidence of the previous sexual conduct of the complaining witness,<sup>78</sup> occurring either before or after the offense charged, may not be admitted nor may reference be made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit the evidence for any purpose, the defendant shall apply for an order of the court not later than 5 days before the trial or at a later time as the court may, for good reasons, permit. The defendant may, for good cause shown, apply for an order during trial if the request is based on information learned after the deadline or during the trial. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, the court shall make an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

(b) In the absence of a persuasive showing to the contrary, evidence of the complaining witness’ sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

This provision does not apply to the state human trafficking statutes, Alaska Stat. § 11.41.360 and § 11.41.365, nor to the sex trafficking statutes, Alaska Stat. §§ 11.66.110–11.66.135. Therefore, victims of these crimes may be subjected to traumatic cross-examinations in the trials of their traffickers, buyer-exploiters, or both.

When a court finds that a child is a “child-in-need-of-aid,” additional victim-friendly provisions may apply, including the appointment of a guardian ad litem or attorney in proceedings under the “children in need of aid” chapter.<sup>79</sup> Alaska Stat. § 47.10.050(a). Further, Alaska Stat. § 47.10.070(c) (Hearings) provides that in “child-in-need-of-aid” cases, the following hearings are closed to the public:

- (1) the initial court hearing after the filing of a petition to commence the child-in-need-of-aid case;
- (2) a hearing following the initial hearing in which a parent, child, or other party to the case is present but has not had an opportunity to obtain legal representation;
- (3) a hearing, or a part of a hearing, for which the court issues a written order finding that allowing the hearing, or part of the hearing, to be open to the public would reasonably be expected to

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<sup>78</sup> “Complaining witness” is defined as “the alleged victim of the crime charged, the prosecution of which is subject to this section.” Alaska Stat. § 12.45.045(c).

<sup>79</sup> A court may determine that a child is a “child-in-need-of-aid” if it makes a finding by a preponderance of the evidence that the child has been subjected to one of several situations, including the following: “the child has suffered sexual abuse, or there is a substantial risk that the child will suffer sexual abuse, as a result of conduct by or conditions created by the child’s parent, guardian, or custodian or by the failure of the parent, guardian, or custodian to adequately supervise the child . . . .” Alaska Stat. § 47.10.011.

- (A) stigmatize or be emotionally damaging to a child;
- (B) inhibit a child’s testimony in that hearing;
- (C) disclose matters otherwise required to be kept confidential by state or federal statute or regulation, court order, or court rule; or
- (D) interfere with a criminal investigation or proceeding or a criminal defendant’s right to a fair trial in a criminal proceeding . . . .

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.*

Alaska law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, but juvenile records may be sealed after a minor turns 18. Specifically, Alaska Stat. § 47.12.300(d) (Court records) provides that the court shall order a minor’s records sealed “within 30 days of the date of a minor’s 18th birthday or, if the court retains jurisdiction of a minor past the minor’s 18th birthday, within 30 days of the date on which the court releases jurisdiction over the minor.” This extends to all “records pertaining to that minor in a proceeding under this chapter [Delinquent minors] sealed, as well as records of all . . . criminal proceedings against the minor, and punishments assessed against the minor.” Alaska Stat. § 47.12.300(d). This provision does not apply if the minor was tried as an adult or if the records were made public. Alaska Stat. § 47.12.300(d), (f).

However, sealed records may be still used pursuant to Alaska Stat. § 47.12.300(d), which states, “the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.” Accordingly, child sex trafficking victims may face collateral consequences associated with having accessible delinquency records.

- 5.9.1 Recommendation: Enact a law that allows child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.<sup>80</sup>

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.*

Alaska Stat. § 12.55.045(a) (Restitution and compensation) provides that a court shall order a convicted defendant to make restitution to the victim of the offense, including “to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim.” Furthermore, the statute states that restitution does not limit the defendant’s civil liability and that it may be ordered by means other than a monetary payment. Alaska Stat. § 12.55.045(b), (h).

If a civil claim is based on the sexual abuse of a minor who is under the age of 16 at the time of the offense, Alaska Stat. § 09.55.650(a) (Claim based on sexual abuse to a minor under 16 years of age) states that the victim “may maintain an action for recovery of damages against the perpetrator of the act or acts of sexual abuse based on the perpetrator’s intentional conduct for an injury or condition suffered as a result of the sexual abuse.”<sup>81</sup>

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<sup>80</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>81</sup> See *supra* note 75.

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.*

Alaska Stat. § 12.10.010 outlines the statutes of limitations for criminal procedures. Prosecutions for “felony sexual abuse of a minor” and for violations of Alaska Stat. §§ 11.66.110–11.66.130 (Sex trafficking in the first through third degrees), § 11.41.360 (Human trafficking in the first degree), § 11.41.365 (Human trafficking in the second degree), or § 11.61.125 (Distribution of child pornography) may be brought at any time if the victim was younger than 18 when the offense was committed. Alaska Stat. § 12.10.010(a)(5), (7), (9).

In the Code of Civil Procedure, Alaska Stat. § 09.10.065(a) (Commencement of actions for acts constituting sexual offenses) provides, “(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses: (1) felony sexual abuse of a minor; (2) felony sexual assault; (3) unlawful exploitation of a minor; (4) felony sex trafficking; or (5) felony human trafficking.” Under Alaska Stat. § 09.10.065(b), “Unless the action is commenced within three years of the accrual of the claim for relief, a person may not bring an action for conduct that would have, at the time the conduct occurred, violated the provisions of any of the following offenses: (1) misdemeanor sexual abuse of a minor; (2) misdemeanor sexual assault; (3) incest; or (4) felony indecent exposure.”

Pursuant to Alaska Stat. § 09.10.140(a)<sup>82</sup> (Disabilities of minority and incompetency):

Except as provided under (c) of this section, if a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b)<sup>83</sup> of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

Under Alaska Stat. § 09.10.070:

Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a

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<sup>82</sup> Alaska Stat. § 09.10.140(c) was found unconstitutional by the Supreme Court of Alaska in *Sands v. Green*, 156 P.3d 1130, 1136 (Alas. 2007) because it “violates the due process rights of minors to access the court.” *Id.*

<sup>83</sup> Alaska Stat. § 09.10.140(b) states,

An action based on a claim of sexual abuse under AS 09.55.650 that is subject to AS 09.10.065(b) may be brought more than three years after the plaintiff reaches the age of majority if it is brought under the following circumstances:

- (1) if the claim asserts that the defendant committed one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition;
- (2) if the claim asserts that the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered the effect of the injury or condition attributable to the series of acts; a claim based on an assertion of more than one act of sexual abuse is not limited to plaintiff’s first discovery of the relationship between any one of those acts and the injury or condition, but may be based on plaintiff’s discovery of the effect of the series of acts.

forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

All other actions that do not fall under any of the categories above must be commenced within 10 years after the cause of action pursuant to Alaska Stat. § 09.10.100.

***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.*

Law enforcement training on child sex trafficking is not mandated or authorized, but such training could fall under the required training for child abuse and neglect, which is defined to include child sex trafficking.<sup>84</sup> Alaska Stat. § 47.17.020(a)(3) provides that “peace officers and officers of the Department of Corrections” are required to report immediately if, in the course of their employment duties, they “have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect . . . .” Alaska Stat. § 47.17.022(a) states, “A person employed by the state or by a school district who is required under this chapter to report abuse or neglect of children shall receive training on the recognition and reporting of child abuse and neglect.” Additionally, each department of the state that employs people who are required to report abuse must “file a current copy of its training curriculum and materials with the Council on Domestic Violence and Sexual Assault. A department or school district may seek the technical assistance of the council or the Department of Health and Social Services in the development of its training program.” Alaska Stat. § 47.17.022(d).

Alaska also directs the creation and implementation of training for peace officers and law enforcement agencies in the use of protocols and sexual assault examination kits. Alaska Stat. § 18.68.030.

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

Alaska Stat. § 42.20.310(a)(1) (Eavesdropping) prohibits the use of an eavesdropping device “to hear or record all or any part of an oral conversation without the consent of a party to the conversation.”<sup>85</sup> The requirement for consent “of a party” indicates that audiotaping with a single party’s consent is legal.

Alaska Stat. § 12.37.400 (Police use of body wire) states,

<sup>84</sup> See *supra* component 5.5 for definition of “child abuse or neglect.”

<sup>85</sup> Alaska Stat. § 42.20.310(b) defines “eavesdropping device” as “any device capable of being used to hear or record oral conversation whether the conversation is conducted in person, by telephone, or by any other means; provided that this definition does not include devices used for the restoration of the deaf or hard-of-hearing to normal or partial hearing.”

(a) A peace officer may intercept an oral communication by use of an electronic, mechanical, or other eavesdropping device that is concealed on or carried on the person of the peace officer and that transmits that oral communication by means of radio to a receiving unit that is monitored by other peace officers, if

(1) the interception and monitoring occurs

(A) during the investigation of a crime or the arrest of a person for a crime; and

(B) for the purpose of ensuring the safety of the peace officer conducting the investigation or making the arrest;

(2) the peace officer intercepting the conversation is a party to the oral communication and has consented to the interception; and

(3) the communication intercepted is not recorded.

(b) A peace officer monitoring a receiving unit under (a) of this section, or any other person intercepting an oral communication transmitted under (a) of this section, is not competent to testify in a criminal proceeding involving a party to the oral communication about the contents of the oral communication that was intercepted or the fact that the communication occurred.

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

Wiretapping is an available tool to investigate domestic minor sex trafficking, but not CSEC. Alaska Stat. § 12.37.010 (Authorization to intercept communications) states,

The attorney general, or a person designated in writing or by law to act for the attorney general, may authorize, in writing, an ex parte application to a court of competent jurisdiction for an order authorizing the interception of a private communication if the interception may provide evidence of, or may assist in the apprehension of persons who have committed, are committing, or are planning to commit, the following offenses:

(1) murder in the first or second degree under AS 11.41.100 - 11.41.110;

(2) kidnapping under AS 11.41.300;

(3) a class A or unclassified felony drug offense under AS 11.71.

(4) sex trafficking in the first or second degree under AS 11.66.110 and 11.66.120; or

(5) human trafficking in the first degree under AS 11.41.360.

Under Alaska Stat. § 12.37.030(b) (Requirements for an order authorizing a communications interception),

In addition to exercising authority under (a)<sup>86</sup> of this section, on consideration of an application relating to a private communication of a minor, the court may enter an ex parte order authorizing the

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<sup>86</sup> Pursuant to Alaska Stat. § 12.37.030(a) (Requirements for an order authorizing a communications interception),

Upon consideration of an application, the court may enter an ex parte order authorizing the interception of a private communication if the court determines, on the basis of the application, that

(1) there is probable cause to believe that the person whose communication is to be intercepted is committing, has committed, or is planning to commit an offense listed in AS 12.37.010;

(2) there is probable cause to believe that a communication concerning the offense may be obtained through the interception;

(3) there is probable cause to believe that the facility from which, or the place where, the communication is to be intercepted, is, has been, or is about to be used in connection with the commission of the offense, or is leased to, listed in the name of, or commonly used by, the person whose communication is to be intercepted;

(4) normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or too dangerous to employ; and

interception of the private communication. The court may enter the order only if the court determines, after making appropriate findings of fact and on the basis of the application, that there is probable cause to believe that

- (1) a party to the private communication
  - (A) has committed, is committing, or is about to commit a felony or misdemeanor;
  - (B) has been, is, or is about to be a victim of a felony or misdemeanor; or
  - (C) has been, is, or is about to be a witness to a felony or misdemeanor;
- (2) the health or safety of a minor is in danger; or
- (3) a parent of a minor has consented in good faith to the interception of a communication of the minor based on the parent's objectively reasonable belief that it is necessary for the welfare of the minor and is in the best interest of the minor.<sup>87</sup>

6.3.1 Recommendation: Amend Alaska Stat. § 12.37.010 (Authorization to intercept communications) to allow wiretapping in investigations for the offenses of Alaska Stat. § 11.41.455 (Unlawful exploitation of a minor).

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.*

Alaska Stat. § 11.41.452(b)<sup>88</sup> (Enticement of a minor), a CSEC offense, prohibits a defense based on the use of a law enforcement decoy posing as a minor, stating, "In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age."

Nevertheless, a defendant may still be able to assert a defense based on a law enforcement decoy posing as a minor to investigate other buyer-applicable offenses through reverse sting operations, which are the most likely situations in which a defendant would try to use such a defense.

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

Although not specific to Internet offenses, Alaska Stat. § 11.41.452(a)<sup>89</sup> (Enticement of a minor) allows law enforcement to use the Internet to investigate buyers and traffickers since the offender need only believe the intended victim to be under 16 years of age. Specifically, Alaska Stat. § 11.41.452(a) applies when a person "18 years of age or older, knowingly communicates with another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1)–(7)<sup>90</sup> [Unlawful exploitation of a minor] and (1) the

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(5) if the application, other than an application for an extension, is for an order to intercept a communication of a person, or involving a communications facility, that was the subject of a previous application, the current application is based upon new evidence or information different from and in addition to the evidence or information offered to support the previous application.

<sup>87</sup> Alaska Stat. § 42.20.390(8) (Definitions) defines "minor" as "a child under 18 years of age who has not had the disabilities of a minor removed as described in AS 09.55.590 [Removal of disabilities of minority]."

<sup>88</sup> See *supra* note 14.

<sup>89</sup> See *supra* note 14.

<sup>90</sup> Alaska Stat. § 11.41.455(a)(1)–(7) includes:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;

other person is a child under 16 years of age; or (2) the person believes that the other person is a child under 16 years of age.” Further, subsection (b) expressly prohibits a defense based on the fact “that the person enticed, solicited, or encouraged was not actually under 16 years of age.” Notably, however, this offense does not protect all minors under the age of 18.

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

Law enforcement must promptly report both missing children and located missing children. Alaska Stat. § 47.10.141(a) (Runaway and missing minors) provides that upon receiving a request to locate a missing child:

[A] law enforcement agency shall make reasonable efforts to locate the minor and shall immediately complete a missing person’s report containing information necessary for the identification of the minor. As soon as practicable, but not later than 24 hours after completing the report, the agency shall transmit the report for entry into the Alaska Public Safety Information Network and the National Crime Information Center computer system. The report shall also be submitted to the missing persons information clearinghouse under AS 18.65.620.

Once the minor has been located, Alaska Stat. § 47.10.141(a) also provides that “[a]s soon as practicable, but not later than 24 hours after the agency learns that the minor has been located, it shall request that the Department of Public Safety and the Federal Bureau of Investigation remove the information from the computer systems.”

Alaska Stat. § 18.65.610 lists the duties of the missing persons information clearinghouse, which is “established as a central repository of information regarding missing persons.” Alaska Stat. § 18.65.640 states, “A person who has filed a missing person report with the clearinghouse or a law enforcement agency shall immediately notify the clearinghouse or the law enforcement agency when the location of the missing person is determined.”

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- (6) the lewd exhibition of the child’s genitals; or
  - (7) sexual masochism or sadism.

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