

2019 ANALYSIS AND RECOMMENDATIONS

COLORADO

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

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

Legal Analysis¹:

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

Colorado’s human trafficking law criminalizes child sex trafficking without requiring proof of force, fraud, or coercion. Colo. Rev. Stat. Ann. § 18-3-504(2)(a)² (Human trafficking of a minor for sexual servitude) states,

A person commits human trafficking of a minor for sexual servitude if the person:

- (I) Knowingly sells, recruits, harbors, transports, transfers, isolates, entices, provides, receives, obtains by any means, maintains, or makes available a minor³ for the purpose of commercial sexual activity⁴; or

¹ This report includes legislation enacted as of August 1, 2019.

² The text of Colo. Rev. Stat. Ann. § 18-3-504 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 19-185 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 6, 2019).

³ “Minor” is defined as “a person less than eighteen years of age.” Colo. Rev. Stat. Ann. § 18-3-502(8).

⁴ “Commercial sexual activity” is defined as “sexual activity for which anything of value is given to, promised to, or received by a person.” Colo. Rev. Stat. Ann. § 18-3-502(3) (Definitions). Pursuant to Colo. Rev. Stat. Ann. § 18-3-502(11),

“Sexual activity” means:

(II) Knowingly advertises, offers to sell, or sells travel services that facilitate an activity prohibited pursuant to subsection (2)(a)(I) of this section.

A conviction under Colo. Rev. Stat. Ann. § 18-3-504(2) is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000,⁵ or both. Colo. Rev. Stat. Ann. §§ 18-3-504(2)(b), 18-1.3-401(1)(a)(III)(A),⁶ (1)(a)(V)(A.1).⁷ Further, Colo. Rev. Stat. Ann. § 18-24-102(3) (Surcharge) provides for an additional \$3,000 surcharge upon conviction of Colo. Rev. Stat. Ann. § 18-3-504.

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

The following laws make CSEC a distinct crime in Colorado:⁸

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- (a) Sexual contact, as defined in section 18-3-401(4) [Definitions];
 - (b) Sexual intrusion, as defined in section 18-3-401(5) [Definitions];
 - (c) Sexual penetration, as defined in section 18-3-401(6) [Definitions];
 - (d) Sexual exploitation of a child, pursuant to section 18-6-403(3)(a) and (3)(d) [Sexual exploitation of a child]; or
 - (e) An obscene performance, as defined in section 18-7-101 [Definitions].

⁵ The fines cited in this report are applicable to felonies committed on or after July 1, 1985, while the sentences of imprisonment apply to felonies committed after July 1, 1993. Sentencing ranges for felonies committed before July 1, 1993 are laid out in Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(I), (II), and (IV).

⁶ 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 factors listed in Colo. Rev. Stat. Ann. § 18-1.3-401(8), (9), or (10) (Felonies classified—presumptive penalties) are present. “The court may consider aggravating circumstances such as serious bodily injury caused to the victim or the use of a weapon in the commission of a crime, notwithstanding the fact that such factors constitute elements of the offense.” Colo. Rev. Stat. Ann. § 18-1.3-401(8)(f). If a defendant has 2 prior felony convictions, the defendant “shall not be eligible to receive a fine in lieu of any sentence to imprisonment . . . but shall be sentenced to at least the minimum sentence specified.” Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(E).

⁷ Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude) is defined as an unlawful sexual offense pursuant to Colo. Rev. Stat. Ann. § 18-3-411(1) (Sex offenses against children). As such, Colo. Rev. Stat. Ann. 18-3-504(2) may be subject to a penalty enhancement as a crime of violence pursuant to Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I) (Mandatory sentences for violent crimes). A “crime of violence” is an aggravating factor pursuant to Colo. Rev. Stat. Ann. § 18-1.3-401(8)(a)(I) and includes all felony unlawful sex offenses as defined in Colo. Rev. Stat. Ann. § 18-3-411(1) (Sex offenses against children) “in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim.” Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I). A defendant convicted of a crime of violence must be sentenced “for a term of incarceration of at least the midpoint in, but not more than twice the maximum of, the presumptive range” for the offense. Colo. Rev. Stat. Ann. § 18-1.3-406(1)(a). However, where an “unlawful sex offense,” as defined in Colo. Rev. Stat. Ann. § 18-3-411(1) is also a “sex offense,” as defined in Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a), and “the defendant caused bodily injury to the victim or . . . used threat, intimidation, or force against the victim,” the offense becomes a sex offense constituting a crime of violence and the defendant “shall be sentenced to the department of corrections for an indeterminate term of incarceration of at least the midpoint in the presumptive range specified in section 18-1.3-401 (1)(a)(V)(A) or 18-1.3-401 (1)(a)(V)(A.1) up to a maximum of the person’s natural life, as provided in section 18-1.3-1004 (1).” Colo. Rev. Stat. Ann. §§ 18-1.3-406(1)(b), (2)(b)(I), 18-1.3-1004(1)(b). Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-401(1)(b)(III), a defendant convicted of a crime of violence may not be sentenced to pay a fine in lieu of imprisonment. Additionally, “a court shall sentence a person convicted of two or more separate crimes of violence arising out of the same incident so that his or her sentences are served consecutively rather than concurrently.” Colo. Rev. Stat. Ann. § 18-1.3-406(1)(a).

⁸ Aside from Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) (Cybercrime), all crimes set out in Component 1.2 are unlawful sexual offenses pursuant to Colo. Rev. Stat. Ann. § 18-3-411(1) (Sex offenses against children). An “unlawful sex offense,” as defined in Colo. Rev. Stat. Ann. § 18-3-411(1), includes the following offenses: Colo. Rev. Stat. Ann. § 18-3-305 (Enticement of a child), § 18-3-405 (Sexual assault on a child), § 18-6-403 (Sexual exploitation of a child), § 18-6-404 (Procurement of a child for sexual exploitation), § 18-7-402 (Soliciting for child

1. Colo. Rev. Stat. Ann. § 18-6-403(3) (Sexual exploitation of a child) states,

A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:

(a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct⁹ for the making of any sexually exploitative material;¹⁰ or

....
(d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(a), (d) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-403(5)(a), 18-1.3-401(1)(a)(III)(A)¹¹, (1)(a)(V)(A.1).

2. Colo. Rev. Stat. Ann. § 18-6-404 (Procurement of a child for sexual exploitation) provides, “Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of sexual exploitation of a child commits procurement of a child for sexual exploitation, which is a class 3 felony.” A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

3. Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution) makes it a crime when any person

prostitution), § 18-7-403 (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404 (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), § 18-7-405.5 (Inducement of child prostitution), § 18-7-406 (Patronizing a prostituted child), § 18-3-306(3) (Internet luring of a child) (when a Class 4 felony), § 18-3-405.4 (Internet sexual exploitation of a child), § 18-3-504(2) (Human trafficking of a minor for sexual servitude), or “criminal attempt, conspiracy, or solicitation to commit” any of these crimes. (*See supra* note 7). In addition to the penalty enhancements applicable to an unlawful sex offense, the crimes set out in Component 1.2 are also subject to penalty enhancements provided in the Colorado Sex Offender Lifetime Supervision Act of 1998, Colo. Rev. Stat. Ann. §§ 18-1.3-1001 to -1012. These penalty enhancements are either mandatory or discretionary, depending on the offense. Under Colo. Rev. Stat. Ann. § 18-1.3-1004(1)(a), “Except as otherwise provided in this subsection (1) and in subsection (2) of this section, the district court . . . shall sentence a sex offender . . . for an indeterminate term of at least the minimum of the presumptive range . . . for the level of offense committed and a maximum of the sex offender’s natural life.” Colo. Rev. Stat. Ann. § 18-1.3-1003(4) defines “sex offender” as “a person who is convicted of or pleads guilty or nolo contendere to a sex offense.” A “sex offense” is defined in Colo. Rev. Stat. Ann. § 18-1.3-1003(5) to include the following: Colo. Rev. Stat. Ann. § 18-3-405 (Sexual assault on a child), § 18-3-305 (Enticement of a child), § 18-7-406 (Patronizing a prostituted child), § 18-3-306(3) (Internet luring of a child), if it is a Class 4 felony, or § 18-3-405.4 (Internet sexual exploitation of a child). These offenses are subject to the mandatory penalty enhancement provided in Colo. Rev. Stat. Ann. § 18-1.3-1004(1)(a). *See People v. Harrison*, 165 P.3d 859, 860 (Colo. App. 2007) (stating that “indeterminate sentencing [under Colo. Rev. Stat. Ann. § 18-1.3-1004(1)(a)] is (1) mandatory for the fourteen types of inchoate or completed [sex] offenses enumerated in § 18-1.3-1003(5), and (2) also appropriate, but only under certain circumstances (including the need for a sexually violent predator assessment), for nine other types of offenses specified in § 18-1.3-1004(4)[Colo. Rev. Stat. Ann. § 18-1.3-1004(4) was repealed by the passage of House Bill 1310 during the 2nd regular session of the 68th Colorado Legislature, eff. June 7, 2012]”). In addition, Colo. Rev. Stat. Ann. § 18-1.3-401(1)(b)(II.5) provides that a defendant convicted of a sex offense, as defined in Colo. Rev. Stat. Ann. § 18-1.3-1003(5), may not be sentenced to pay a fine in lieu of imprisonment.

⁹ Colo. Rev. Stat. Ann. § 18-6-403(2)(e) defines “explicit sexual conduct” as “sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, or sexual excitement.”

¹⁰ Colo. Rev. Stat. Ann. § 18-6-403(2)(j) defines “sexually exploitative material” as “any photograph, motion picture, video, recording or broadcast of moving visual images, print, negative, slide, or other mechanically, electronically, chemically, or digitally reproduced visual material that depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct.”

¹¹ *See supra* note 5.

- (a) Solicits another for the purpose of prostitution of a child¹² or by a child;¹³
- (b) Arranges or offers to arrange a meeting of persons for the purpose of prostitution of a child or by a child; or
- (c) Directs another to a place knowing such direction is for the purpose of prostitution of a child or by a child

A conviction under Colo. Rev. Stat. Ann. § 18-7-402(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

4. Colo. Rev. Stat. Ann. § 18-7-403(1) (Pandering of a child) provides,

Any person who does any of the following for money or other thing of value commits pandering of a child:

- (a) Inducing a child by menacing or criminal intimidation to commit prostitution; or
- (b) Knowingly arranging or offering to arrange a situation in which a child may practice prostitution.

A conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(a) is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both, while a conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(b) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-403(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

5. Colo. Rev. Stat. Ann. § 18-7-403.5 (Procurement of a child) provides, “Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of prostitution of the child commits procurement of a child, which is a class 3 felony.”

A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

6. Colo. Rev. Stat. Ann. § 18-7-404(1) (Keeping a place of child prostitution) states,

¹² Colo. Rev. Stat. Ann. § 18-7-401(7) (Definitions) defines “prostitution of a child” as,

either inducing a child to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child’s spouse by coercion or by any threat or intimidation or inducing a child, by coercion or by any threat or intimidation or in exchange for money or other thing of value, to allow any person not the child’s spouse to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with or upon such child. Such coercion, threat, or intimidation need not constitute an independent criminal offense and shall be determined solely through its intended or its actual effect upon the child.

¹³ Colo. Rev. Stat. Ann. § 18-7-401(6) (Definitions) defines “prostitution by a child” as,

either a child performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child’s spouse in exchange for money or other thing of value or any person performing or offering or agreeing to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any child not the person’s spouse in exchange for money or other thing of value.

Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who performs any one or more of the following commits keeping a place of child prostitution if he:

- (a) Knowingly grants or permits the use of such place for the purpose of prostitution of a child or by a child; or
- (b) Permits the continued use of such place for the purpose of prostitution of a child or by a child after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for purposes of such prostitution.

A conviction under Colo. Rev. Stat. Ann. § 18-7-404(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-404(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

7. Colo. Rev. Stat. Ann. § 18-7-405 (Pimping of a child) states, “Any person who knowingly lives on or is supported or maintained in whole or in part by money or other thing of value earned, received, procured, or realized by a child through prostitution commits pimping of a child, which is a class 3 felony.” A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).
8. Colo. Rev. Stat. Ann. § 18-7-405.5(1) (Inducement of child prostitution) states, “Any person who by word or action, other than conduct specified in section 18-7-403 (1)(a) [Pandering of a child], induces a child to engage in an act which is prostitution by a child, as defined in section 18-7-401 (6) [Definitions], commits inducement of child prostitution.” A conviction under Colo. Rev. Stat. Ann. § 18-7-405.5(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-405.5(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).
9. Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child) provides,

Any person who performs any of the following with a child not his spouse commits patronizing a prostituted child:

- (a) Engages in an act which is prostitution of a child or by a child, as defined in section 18-7-401(6) or (7); or
- (b) Enters or remains in a place of prostitution with intent to engage in an act which is prostitution of a child or by a child

A conviction under Colo. Rev. Stat. Ann. § 18-7-406(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000, which may not be imposed in lieu of a prison sentence. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(X).¹⁴

10. Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) (Cybercrime) prohibits a person from “solicit[ing] or offer[ing] to arrange a situation in which a minor may engage in prostitution, by means of using a computer, computer network, computer system, or any part thereof” A conviction under Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both. Colo. Rev. Stat. Ann. §§ 18-5.5-102(3)(b.5), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

¹⁴ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-7-406.

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

1. Colo. Rev. Stat. Ann. § 18-3-305(1) (Enticement of a child) states,

A person commits the crime of enticement of a child if he or she invites or persuades, or attempts to invite or persuade, a child under the age of fifteen years to enter any vehicle, building, room, or secluded place with the intent to commit sexual assault or unlawful sexual contact upon said child. It is not necessary to a prosecution for attempt under this subsection (1) that the child have perceived the defendant's act of enticement.

A conviction under Colo. Rev. Stat. Ann. § 18-3-305(1) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-305(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). If the enticement results in bodily injury to the child or the defendant has a prior conviction for enticement of a child or Colo. Rev. Stat. Ann. § 18-3-405 (Sexual assault on a child), a conviction is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-305(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000, which may not be imposed in lieu of a prison sentence, and the Class 3 felony must be enhanced to 4 years to life and a possible fine of \$3,000–\$750,000, which may not be imposed in lieu of a prison sentence. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(VII).¹⁵

2. Colo. Rev. Stat. Ann. § 18-3-405(1) (Sexual assault on a child) states,

Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim.

A conviction under Colo. Rev. Stat. Ann. § 18-3-405(1) generally is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000, which may not be imposed in lieu of a prison sentence. Colo. Rev. Stat. Ann. §§ 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(IV), 18-3-405(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).¹⁶ A conviction under Colo. Rev. Stat. Ann. § 18-3-405(1) is punishable as a Class 3 felony under certain circumstances involving a pattern of sexual abuse or the use of force or threats against the victim.¹⁷ To the extent

¹⁵ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-305.

¹⁶ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.

¹⁷ Pursuant to Colo. Rev. Stat. Ann. § 18-3-405(2), a conviction under Colo. Rev. Stat. Ann. § 18-3-405(1) is a Class 3 felony when,

- (a) The actor applies force against the victim in order to accomplish or facilitate sexual contact; or
- (b) The actor, in order to accomplish or facilitate sexual contact, threatens imminent death, serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor has the present ability to execute the threat; or
- (c) The actor, in order to accomplish or facilitate sexual contact, threatens retaliation by causing in the future the death or serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor will execute the threat; or

that a defendant is convicted of a Class 3 felony violation of Colo. Rev. Stat. Ann. § 18-3-405, Colo. Rev. Stat. Ann. § 18-3-405(3) requires that the penalty be even further enhanced as a crime of violence pursuant to Colo. Rev. Stat. Ann. § 18-1.3-406(1)(b) (Mandatory sentences for violent crimes), under which the prison sentence is enhanced to an indeterminate sentence of at least 8 years to life imprisonment and a possible fine.¹⁸ Colo. Rev. Stat. Ann. §§ 18-1.3-406(1)(b), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

3. Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) provides,

An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication . . . describes explicit sexual conduct¹⁹ as defined in section 18-6-403(2)(e), and, in connection with that description, makes a statement persuading or inviting that person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

A conviction under Colo. Rev. Stat. Ann. § 18-3-306(1) generally is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). It is punishable as a Class 4 felony by imprisonment for 2–6 years, a possible fine of \$2,000–\$500,000, or both, where the actor intended to engage in sexual exploitation under Colo. Rev. Stat. Ann. § 18-6-403 or sexual contact²⁰ under Colo. Rev. Stat. Ann. § 18-3-401.²¹ Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to an indeterminate prison sentence of at least 2 years to life and possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XI).

4. Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) provides,

An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network,

(d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse, whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1) (a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

¹⁸ See *supra* note 7 for discussion of the “crime of violence” penalty enhancement potentially applicable to this offense.

¹⁹ See *supra* note 9 for the definition of “explicit sexual conduct.”

²⁰ Colo. Rev. Stat. Ann. § 18-3-401(4)(a) (Definitions) defines “sexual contact,” in part, as:

the knowing touching of the victim’s intimate parts by the actor, or of the actor’s intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.

²¹ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-306, when it is punishable as a Class 4 felony. Additionally, Colo. Rev. Stat. Ann. § 18-1.3-406 (Mandatory sentences for violent crimes) may impose enhanced penalties on defendants who violate Colo. Rev. Stat. Ann. § 18-7-406(1).

or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

- (a) Expose or touch the person’s own or another person’s intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message; or
- (b) Observe the actor’s intimate parts via a computer network or system, telephone network, or data network or by a text message or instant message.

A conviction under Colo. Rev. Stat. Ann. § 18-3-405.4(1) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405.4(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty is enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XII).²²

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

While Colo. Rev. Stat. Ann. § 18-7-201 (Prostitution) does not directly refer to Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) when a minor is involved, an affirmative defense provided in the prostitution chapter refers to the human trafficking law to provide a defense to prostitution charges resulting from trafficking victimization. Specifically, Colo. Rev. Stat. Ann. § 18-7-201.3(1) (Affirmative defense - human trafficking - expungement of record protective order – definitions) states,

A person charged with prostitution, as described in section 18-7-201 or any corresponding municipal code or ordinance, for an offense committed on or after July 1, 2015, which offense was committed as a direct result of being a victim of human trafficking, may assert as an affirmative defense that he or she is a victim of human trafficking as defined in subsection (4) of this section.²³ To assert the affirmative defense pursuant to this subsection (1), the person charged with the offense must demonstrate by a preponderance of the evidence that he or she was a victim of human trafficking at the time of the offense. An official determination or documentation is not required to assert an affirmative defense pursuant to this subsection (1), but official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that his or her participation in the offense was a direct result of being a victim.

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

The government may prosecute traffickers and facilitators under the Colorado Organized Crime Control Act.²⁴ Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities) which provides,

²² See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.4.

²³ Pursuant to Colo. Rev. Stat. Ann. § 18-7-201.3(4) (Affirmative defense - human trafficking - expungement of record protective order – definitions), “As used in this section, unless the context otherwise requires: (a) ‘Human trafficking’ means an offense described in part 5 of article 3 of this title or any conduct that, if it occurred prior to the enactment of such part 5, would constitute an offense of human trafficking pursuant to part 5 of article 3 of this title. (b) ‘Victim of human trafficking’ means a ‘victim’ as defined in section 18-3-502 (12).” Pursuant to Colo. Rev. Stat. Ann. § 18-3-502(12) (Definitions), “‘Victim’ means a person who is alleged to have been, or who has been, subjected to human trafficking, as described in section 18-3-503 [Human trafficking for involuntary servitude—human trafficking of a minor for involuntary servitude] or section 18-3-504 [Human trafficking for sexual servitude - human trafficking of a minor for sexual servitude].”

²⁴ Colo. Rev. Stat. Ann. § 18-17-101 et seq.

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

- (2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) It is unlawful for any person employed by, or associated with, any enterprise to knowingly conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- (4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), (2), or (3) of this section.

Colo. Rev. Stat. Ann. § 18-17-103(5) (Definitions) defines “racketeering activity” as

to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

- (a) Any conduct defined as “racketeering activity” under 18 U.S.C. § 1961 (1) (A), (1) (B), (1) (C), and (1) (D) [Racketeer Influenced and Corrupt Organizations Act]²⁵; or
- (b) Any violation of the following provisions of the Colorado statutes or any criminal act committed in any jurisdiction of the United States which, if committed in this state, would be a crime under the following provisions of the Colorado statutes:
 - (I) Offenses against the person, [including Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking for sexual servitude)];

 - (III) Offenses involving cybercrime, [including Colo. Rev. Stat. Ann. § 18-5.5-102 (Cybercrime)];

 - (V) Offenses involving the family relation, as defined in section 18-6-403 (sexual exploitation of children);
 - (VI) Offenses relating to morals, as defined in sections . . . 18-7-203 (pandering), 18-7-206 (pimping), 18-7-402 (soliciting for child prostitution), 18-7-403 (pandering of a child), 18-7-404 (keeping a place of child prostitution), and 18-7-405 (pimping of a child);

“Pattern of racketeering activity” is defined as “engaging in at least two acts of racketeering activity which are related to the conduct of the enterprise, if at least one of such acts occurred in this state after July 1, 1981, and if the last of such acts occurred within ten years (excluding any period of imprisonment) after a prior act of racketeering activity.” Colo. Rev. Stat. Ann. § 18-17-103(3).

A conviction under Colo. Rev. Stat. Ann. § 18-17-104 is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both, and an additional fine of up to \$25,000 or, where the trafficker “derived pecuniary value, or . . . caused personal injury or property damage or other loss, . . . a fine that does not exceed three times the gross value gained or three times the gross loss caused,

²⁵ 18 U.S.C. 1961(1)(B) defines “racketeering activity” in part as “any act which is indictable under any of the following provisions of title 18, United States Code: . . . sections 1581–1592 (relating to peonage, slavery, and trafficking in persons) . . . sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children)”

whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.” Colo. Rev. Stat. Ann. §§ 18-17-105(1)(a), (2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).²⁶

A defendant convicted of racketeering under Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities) is subject to mandatory criminal asset forfeiture. Colo. Rev. Stat. Ann. § 18-17-105(1)(b) (Criminal penalties) requires traffickers convicted under Colo. Rev. Stat. Ann. § 18-17-104 to

[f]orfeit to the state any interest, including proceeds, he has acquired or maintained in violation of section 18-17-104 and any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has established, operated, controlled, conducted, or participated in the conduct of in violation of in violation of section 18-17-104.

Additionally, where the offender is convicted of Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities), Colo. Rev. Stat. Ann. § 18-17-106 (Civil remedies) authorizes the victim to file a civil action. Under Colo. Rev. Stat. Ann. § 18-17-106(7), the victim may be able to receive triple damages, attorney fees and the costs of the investigation to a victim in a civil action.

²⁶ See *supra* notes 5.

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 other electronic communication 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.*

Legal Analysis:

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

Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) can apply to buyers of commercial sex with minors following federal precedent through the term “obtains.”²⁷ Pursuant to Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(I),²⁸ a person commits human trafficking of a minor for sexual servitude if he or she “knowingly . . . obtains by any means . . . a minor for the purpose of commercial sexual activity” Colo. Rev. Stat. Ann. § 18-3-504(3) states that “a person does not need to receive any of the proceeds of any commercial sexual activity to commit an offense described in this section,” indicating that the Colorado General Assembly intended to apply the statute to any person involved in a trafficking offense.

²⁷ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F.3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

²⁸ See *supra* note 2.

- 2.1.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) to clarify that buyer conduct is included as a violation of Colo. Rev. Stat. Ann. § 18-3-504.

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

Colorado’s CSEC laws include the crime of buying sex with a minor. Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child) applies to any person who “[e]ngages in an act which is prostitution of a child or by a child,”²⁹ or “[e]nters or remains in a place of prostitution with intent to engage in an act which is prostitution of a child or by a child.”³⁰ Under Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution), a buyer could be prosecuted for soliciting “another for the purpose of prostitution of a child or by a child.” Finally, a buyer may be prosecuted under Colo. Rev. Stat. Ann. § 18-7-405.5 (Inducement of child prostitution) if the buyer “by word or action, other than conduct specified in section 18-7-403 (1)(a) [Pandering of a child], induces a child to engage in an act which is prostitution by a child.”

A conviction under any of the above provisions is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-7-402(2), 18-7-405.5(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).³¹ However, for Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child), as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(X).³²

Several of Colorado’s sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.³³

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

Colorado law differentiates between soliciting sex acts with an adult and soliciting sex acts with a child by making the solicitation of a child a distinct offense under Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution).³⁴ A violation of this offense is a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).³⁵

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

A buyer convicted under Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(I) (Human trafficking of a minor for sexual servitude) faces a Class 2 felony punishable by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-504(2)(b), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).³⁶ Further, Colo. Rev. Stat. Ann. § 18-24-102(3) (Surcharge) provides for an additional \$3,000 surcharge upon conviction of Colo. Rev. Stat. Ann. § 18-3-504.

²⁹ See *supra* note 12 for the definition of “prostitution of a child” and note 13 for the definition of “prostitution by a child.”

³⁰ Colo. Rev. Stat. Ann. § 18-7-401(2) (Definitions) defines a “child” as “a person under the age of eighteen years.”

³¹ See *supra* notes 5.

³² See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-7-406.

³³ See *supra* Component 1.2 for a full discussion of applicable sexual offense laws.

³⁴ See *supra* Component 1.2 for the provisions of Colo. Rev. Stat. Ann. § 18-7-402.

³⁵ See *supra* notes 5.

³⁶ See *supra* notes 5.

Convictions under Colo. Rev. Stat. Ann. § 18-7-405.5 (Inducement of child prostitution) and § 18-7-402(1) (Soliciting for child prostitution) are punishable as Class 3 felonies by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both.³⁷ Colo. Rev. Stat. Ann. §§ 18-7-405.5(2), 18-7-402(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

Further, convictions under Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child) are also punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000.³⁸ Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(X).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)³⁹ 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 offense⁴⁰ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,⁴¹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.⁴²

2.5 *Using the Internet or other electronic communication 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.*

Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) (Cybercrime) prohibits a person from “solicit[ing] or offer[ing] to arrange a situation in which a minor may engage in prostitution, by means of using a computer, computer network, computer system, or any part thereof” A conviction under Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both. Colo. Rev. Stat. Ann. §§ 18-5.5-102(3)(b.5), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

³⁷ See *supra* note 7 for discussion of the “crime of violence” penalty enhancement potentially applicable to these offenses.

³⁸ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-7-406.

³⁹ 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.).

⁴⁰ 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).

⁴¹ 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).

⁴² 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).

Further, Colorado has enacted two laws, Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) and § 18-3-405.4(1) (Internet sexual exploitation of a child), which are not expressly commercial but directly address use of the Internet or other electronic communication to lure, entice, or purchase minors for the purpose of sexual conduct. However, these offenses apply only where the buyer knew or believed the victim to be under 15 years old, leaving minors who are 15–17 years old unprotected.⁴³ First, Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) provides,

An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

- (a) Expose or touch the person’s own or another person’s intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message; or
- (b) Observe the actor’s intimate parts via a computer network or system, telephone network, or data network or by a text message or instant message.

A conviction under Colo. Rev. Stat. Ann. § 18-3-405.4(1) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405.4(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).⁴⁴ However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 4 years to life and a possible fine of \$3,000–\$750,000.⁴⁵ Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XII).

⁴³ Colo. Rev. Stat. Ann. § 18-3-418(2) (Unlawful electronic sexual communication – person in a position of trust – definitions) protects older minors from related conduct, but the offender must be a prostitution of trust with respect to the minor. Pursuant to Colo. Rev. Stat. Ann. § 18-3-418(2),

An actor commits unlawful electronic sexual communication if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person the actor knows or believes to be fifteen years of age or older but less than eighteen years of age and at least four years younger than the actor and, in that communication or in any subsequent communication by computer or computer network, telephone network, or data network or by text message or instant message, describes explicit sexual conduct as defined in section 18-6-403(2)(e) and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor committing the offense is one in a position of trust with respect to that person.

Colo. Rev. Stat. Ann. § 18-3-418(3)(c) defines “position of trust” by referring to Colo. Rev. Stat. Ann. § 18-3-401(3.5) (Definitions), which states,

One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.

The text of Colo. Rev. Stat. Ann. § 18-3-418 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1030 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective July 1, 2019).

⁴⁴ See *supra* note 5.

⁴⁵ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.4.

Second, Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) states,

An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication by computer, computer network, telephone network, data network, text message, or instant message, describes explicit sexual conduct⁴⁶ as defined in section 18-6-403(2)(e), and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

A conviction under Colo. Rev. Stat. Ann. § 18-3-306(1) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both, unless the crime was “committed with the intent to meet for the purpose of engaging in sexual exploitation as defined in section 18-6-403 or sexual contact as defined in section 18-3-401,” in which case the violation will be a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for the Class 4 felony must be enhanced to 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XI).⁴⁷

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

Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) expressly eliminates a mistake of age defense. Colo. Rev. Stat. Ann. § 18-3-504(2)(c)(III), (IV) states that it is not a defense that “[t]he defendant did not know the minor’s age or reasonably believed the minor to be eighteen years of age or older” or “the minor or another person represented the minor to be eighteen years of age or older.”

Further, a buyer may not assert a mistake of age defense to charges based on a violation of Colo. Rev. Stat. Ann. § 18-7-402 (Soliciting for child prostitution), § 18-7-405.5 (Inducement of child prostitution), or § 18-7-406 (Patronizing a prostituted child). Colo. Rev. Stat. Ann. § 18-7-407 (Criminality of conduct) states, “In any criminal prosecution under sections 18-7-402 to 18-7-407 [Soliciting for child prostitution, Pandering of a child, Procurement of a child for, Keeping a place of child prostitution, Pimping of a child, Inducement of child prostitution, Patronizing a prostituted child], it shall be no defense that the defendant did not know the child’s age or that he reasonably believed the child to be eighteen years of age or older.”

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

Colorado’s buyer-applicable trafficking and CSEC laws do not stagger penalties based on a minor’s age and provide sufficiently high penalties. Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) is punishable as a Class 2 felony by imprisonment for 8–24 years. Colo. Rev. Stat. Ann. §§ 18-3-504(2)(b), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). Colo. Rev. Stat. Ann. § 18-7-406(1) (Patronizing a prostituted child), § 18-7-402(1) (Soliciting for child prostitution), and § 18-7-405.5 (Inducement of child prostitution) are punishable as Class 3 felonies by is punishable as a Class 3 felony by imprisonment for 4–12 years. Colo. Rev. Stat. Ann. §§ 18-7-406(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

⁴⁶ See *supra* note 9 for the definition of “explicit sexual conduct.”

⁴⁷ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-306, when it is punishable as a Class 4 felony.

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.*

Buyer convicted under Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(I) (Human trafficking of a minor for sexual servitude) face fines ranging from \$5,000–\$1,000,000. Colo. Rev. Stat. Ann. §§ 18-3-504(2)(b), 18-1.3-401(1)(a)(III)(A). Further, Colo. Rev. Stat. Ann. § 18-24-102(3) (Surcharge) provides for an additional \$3,000 surcharge upon conviction of Colo. Rev. Stat. Ann. § 18-3-504.

Buyers convicted of Colo. Rev. Stat. Ann. § 18-7-402(1)(a) (Soliciting for child prostitution), § 18-7-405.5(1) (Inducement of child prostitution), or § 18-7-406(1) (Patronizing a prostituted child), all Class 3 felonies, may be required to pay a fine of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-405.5(2), 18-7-406(2), 18-1.3-401(1)(a)(III)(A).

Restitution for victims of human trafficking is mandatory following a conviction for a trafficking offense in Colorado. Colo. Rev. Stat. Ann. § 18-1.3-603 (Assessment of restitution – corrective orders) establishes that

For a conviction for human trafficking for involuntary servitude, as described in section 18-3-503, or human trafficking for sexual servitude, as described in section 18-3-504, the court shall order restitution, if appropriate, pursuant to this section even if the victim is unavailable to accept payment of restitution.

Additionally, the court is mandated to consider orders of restitution in cases involving any felony or misdemeanor conviction. Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-603(1) (Assessment of restitution—corrective orders),

(1) Every order of conviction of a felony [or] misdemeanor . . . shall include consideration of restitution.”⁴⁸

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims.

. . . .

Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides in part that “[a]ny victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person’s own name.” Under Colo. Rev. Stat. Ann. § 16-18.5-109(1), (2) (Declined or unclaimed restitution), even if the victim initially declines restitution or cannot be located when an order for restitution is entered, defendant must pay the state and the victim can claim the restitution within 2 years of the final determination of the case.

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414 (Payment of treatment costs for the victim or victims of a sexual offense against a child), when a victim is under the age of 15, a court may order the person convicted of an unlawful sex offense,⁴⁹ including Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude), § 18-7-402(1)(a) (Soliciting for child prostitution), § 18-7-405.5(1) (Inducement of child prostitution), § 18-7-406(1) (Patronizing a prostituted child), or § 18-6-403(3)(b.5) (Sexual exploitation of a child), to pay for part or all of the victim’s treatment. Colo. Rev. Stat. Ann. §§ 18-3-414(1), 18-3-411(1).

Colo. Rev. Stat. Ann. § 16-13-303(1)(a) (Class 1 public nuisance) provides a basis for mandatory, civil forfeiture of a buyer’s property, stating,

⁴⁸ Colo. Rev. Stat. Ann. § 18-1.3-602(3)(a) defines “restitution” as “any pecuniary loss suffered by the victim and . . . does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.” See *infra* Component 5.10 for further discussion of restitution available to victims.

⁴⁹ See *supra* notes 7 and 8.

Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

- (a) Used as a public or private place of prostitution⁵⁰ or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S.; pandering, as defined in section 18-7-203, C.R.S.; keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; pimping, as defined in section 18-7-206, C.R.S.; or human trafficking, as described in section 18-3-503 or 18-3-504, C.R.S.; occurs

Further, Colo. Rev. Stat. Ann. § 16-13-303(3)(d) provides,

The following shall be deemed class 1 public nuisances . . . and no property rights shall exist in them:

. . . .

- (d) All equipment of any kind, including but not limited to computers and any type of computer hardware, software, or other equipment, used in committing sexual exploitation of a child, as described in section 18-6-403, or cybercrime, as described in section 18-5.5-102.

Seizure of this property is governed by Colo. Rev. Stat. Ann. § 16-13-315(1) (Seizure of personal property), which provides,

Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:

- (a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or
- (b) Under the authority of a search warrant; or
- (c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

Disposition of forfeited property is governed by Colo. Rev. Stat. Ann. § 16-13-311(3)(a) (Disposition of seized property), which provides in relevant part,

Property forfeited pursuant to this section or proceeds therefrom must be distributed or applied in the following order:

- (I) To payment of the balances due on any liens . . . the order of their priority;
- (II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;
- (III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;
- (IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;
- (V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;
- (VI) One percent of the value of the property to the clerk of the court for administrative costs associated with compliance with this section;
- (VII) The balance shall be delivered, upon order of the court, as follows:
 - (A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a

⁵⁰ “Place of prostitution” is not defined within Part 3 of Article 13, Title 16. However, under Colo. Rev. Stat. Ann. § 18-7-204(1) (Keeping a place of prostitution) a person “commits keeping a place of prostitution” if the person “exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution” and knowingly or negligently permits prostitution to occur in the place of prostitution.

multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement;

(B) Twenty-five percent to the managed service organization contracting with the office of behavioral health in the department of human services serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance use disorder treatment. Money appropriated to the managed service organization must be in addition to, and not be used to supplant, other funding appropriated to the office of behavioral health; and

(C) Twenty-five percent to the law enforcement community services grant program fund, created pursuant to section 24-32-124 (5).

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

Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) (Sexual exploitation of a child) criminalizes the possession of child sexual abuse material (CSAM). Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) provides that “[a] person commits sexual exploitation of a child if, for any purpose he or she knowingly: . . . [p]ossesses or controls any sexual exploitative material for any purpose” A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both, unless it is the defendant’s second offense or the material in possession is a video or motion picture or more than 20 sexually exploitative items, in which case it is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-403(5)(b), 18-1.3-401(1)(a)(III)(A),⁵¹ (1)(a)(V)(A.1).

In comparison, a federal conviction for possession of CSAM⁵² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁴

2.9.1 Recommendation: Increase the penalty for those who possess child sexual abuse material under Colo. Rev. Stat. Ann. § 18-6-403(3)(b.5) (Sexual exploitation of a child) to reflect the seriousness of this crime.

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

Under Colo. Rev. Stat. Ann. § 16-22-103(1)(a) (Sex offender registration),

⁵¹ See *supra* note 5.

⁵² 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).

⁵³ 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).

⁵⁴ 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).

Effective July 1, 1998, the following persons shall be required to register pursuant to the provisions of section 16-22-108 and shall be subject to the requirements and other provisions specified in this article:

- (a) Any person who was convicted on or after July 1, 1991, in the state of Colorado, of an unlawful sexual offense, as defined in section 18-3-411(1),⁵⁵ C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.

The definition of “unlawful sexual behavior” includes Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude), 18-7-402(1)(a) (Soliciting for child prostitution), § 18-7-405.5(1) (Inducement of child prostitution), § 18-7-406(1) (Patronizing a prostituted child), and § 18-6-403(3)(b.5) (Sexual exploitation of a child), which criminalizes the possession of child sexual abuse material (CSAM). Colo. Rev. Stat. Ann. § 16-22-102(9) (Definitions).

⁵⁵ See *supra* note 7 for the definition of “unlawful sexual offense.”

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 other electronic communication 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 conviction under Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) is a Class 2 felony punishable by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-504(2)(b), 18-3-503(2), 18-1.3-401(1)(a)(III)(A),⁵⁶ (1)(a)(V)(A.1). Further, Colo. Rev. Stat. Ann. § 18-24-102(3) (Surcharge) provides for an additional \$3,000 surcharge upon conviction of Colo. Rev. Stat. Ann. § 18-3-504.

Traffickers may also be prosecuted under several of Colorado’s CSEC laws.⁵⁷ A conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(a) (Pandering of a child) is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both, while a conviction under Colo. Rev. Stat. Ann. § 18-7-403(1)(b) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-403(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

A conviction under Colo. Rev. Stat. Ann. § 18-7-402(1) (Soliciting for child prostitution), § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), or § 18-7-405.5(1), (2) (Inducement of child prostitution) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-403.5, 18-7-404(2), 18-7-405, 18-7-405.5(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

A conviction under Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) (Cybercrime) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both. Colo. Rev. Stat. Ann. §§ 18-5.5-102(3)(b.5), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

A trafficker also could be prosecuted under Colo. Rev. Stat. Ann. § 18-5-309(1) (Money laundering), which provides,

A person commits money laundering if he or she:

- (a) Conducts or attempts to conduct a financial transaction that involves money or any other thing of value that he or she knows or believes to be the proceeds, in any form, of a criminal offense:
 - (I) With the intent to promote the commission of a criminal offense; or
 - (II) With knowledge or a belief that the transaction is designed in whole or in part to:

⁵⁶ See *supra* note 5.

⁵⁷ See *supra* Component 1.2 for the relevant substantive provisions of the Colorado statutes listed in this section.

- (A) Conceal or disguise the nature, location, source, ownership, or control of the proceeds of a criminal offense; or
- (B) Avoid a transaction reporting requirement under federal law;
- (b) Transports, transmits, or transfers a monetary instrument or moneys:
 - (I) With the intent to promote the commission of a criminal offense; or
 - (II) With knowledge or a belief that the monetary instrument or moneys represent the proceeds of a criminal offense and that the transportation, transmission, or transfer is designed, in whole or in part, to:
 - (A) Conceal or disguise the nature, location, source, ownership, or control of the proceeds of a criminal offense; or
 - (B) Avoid a transaction reporting requirement under federal law; or
- (c) Intentionally conducts a financial transaction involving property that is represented to be the proceeds of a criminal offense, or involving property that the person knows or believes to have been used to conduct or facilitate a criminal offense, to:
 - (I) Promote the commission of a criminal offense;
 - (II) Conceal or disguise the nature, location, source, ownership, or control of property that the person believes to be the proceeds of a criminal offense; or
 - (III) Avoid a transaction reporting requirement under federal law.

A conviction under Colo. Rev. Stat. Ann. § 18-5-309(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-5-309(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁵⁸ 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 offense⁵⁹ 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.*

Colo. Rev. Stat. Ann. § 18-6-403(3) (Sexual exploitation of a child) criminalizes the creation and distribution of child sexual abuse material (CSAM). Specifically, Colo. Rev. Stat. Ann. § 18-6-403(3) provides,

- A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:
- (a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct⁶⁰ for the making of any sexually exploitative material;⁶¹ or
 - (b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or
 - (b.5) Possesses or controls any sexually exploitative material for any purpose . . . ; or
 - (c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or
 - (d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.

⁵⁸ See *supra* note 39.

⁵⁹ See *supra* note 40 for the definition of “federal sex offense.”

⁶⁰ See *supra* note 9 for the definition of “explicit sexual conduct.”

⁶¹ See *supra* note 10 for the definition of “sexually exploitative material.”

A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(a), (b), (c), or (d) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-403(5)(a), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).⁶²

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 offense⁶³ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM⁶⁴ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁶⁵ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁶⁶

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

Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) (Cybercrime) prohibits a person from “solicit[ing] or offer[ing] to arrange a situation in which a minor may engage in prostitution, by means of using a computer, computer network, computer system, or any part thereof” A conviction under Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both. Colo. Rev. Stat. Ann. §§ 18-5.5-102(3)(b.5), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

Further, Colorado has enacted two additional laws that relate to using the Internet or other electronic communication to lure, entice, recruit, or purchase minors for the purpose of sexual conduct. However, Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) is not expressly commercial and is unlikely to apply to the conduct of traffickers. Section 18-3-405.4(1) provides,

An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:

(a) Expose or touch the person’s own or another person’s intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message

. . . .

⁶² See *supra* notes 5.

⁶³ See *supra* note 40 for the definition of “federal sex offense.”

⁶⁴ 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).

⁶⁵ 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).

⁶⁶ 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).

A conviction under Colo. Rev. Stat. Ann. § 18-3-405.4(1)(a) is punishable as a Class 4 felony by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-405.4(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).⁶⁷ However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XII).⁶⁸

Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) may apply to traffickers in certain circumstances. Section 18-3-306(1) states,

An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication by computer, computer network, telephone network, data network, text message, or instant message, describes explicit sexual conduct⁶⁹ as defined in section 18-6-403(2)(e), and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

A conviction under Colo. Rev. Stat. Ann. § 18-3-306(1) is punishable as a Class 5 felony by imprisonment for 1–3 years, a fine of \$1,000–\$100,000, or both, unless the crime was “committed with the intent to meet for the purpose of engaging in sexual exploitation as defined in section 18-6-403 or sexual contact as defined in section 18-3-401,” in which case a violation is a Class 4 felony punishable by imprisonment for 2–6 years, a fine of \$2,000–\$500,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-306(3), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1). However, as a sex offense under Colo. Rev. Stat. Ann. § 18-1.3-1003(5)(a) (Definitions), the penalty for Class 4 felony internet luring must be enhanced to an indeterminate prison sentence of at least 2 years to life and a possible fine of \$2,000–\$500,000. Colo. Rev. Stat. Ann. §§ 18-1.3-401(1)(a)(V)(C.5), (1)(b)(II.5), 18-1.3-1004(1)(a), 18-1.3-1003(4), (5)(a)(XI).⁷⁰

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

Convictions under Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) are a Class 2 felony punishable by fines ranging between \$5,000 and \$1,000,000. Colo. Rev. Stat. Ann. §§ 18-3-504(2)(b), 18-1.3-401(1)(a)(III)(A).⁷¹ Further, Colo. Rev. Stat. Ann. § 18-24-102(3) (Surcharge) provides for an additional \$3,000 surcharge upon conviction of Colo. Rev. Stat. Ann. § 18-3-504.

Traffickers convicted of Colo. Rev. Stat. Ann. § 18-7-402 (Soliciting for child prostitution), § 18-7-403(1)(b) (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), § 18-7-405.5 (Inducement of child prostitution), § 18-7-405 (Pimping a child), or § 18-5-309 (Money laundering), all Class 3 felonies, may be required to pay fines of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-403(2), 18-7-403.5, 18-7-404(2), 18-7-405.5(2), 18-7-405, 18-5-309(2), 18-1.3-401(1)(a)(III)(A). A conviction under Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h) (Cybercrime) carries a fine of \$1,000–\$100,000. Colo. Rev. Stat. Ann. §§ 18-5.5-102(3)(b.5), 18-1.3-401(1)(a)(III)(A).

⁶⁷ See *supra* note 5.

⁶⁸ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-405.4.

⁶⁹ See *supra* note 9 for the definition of “explicit sexual conduct.”

⁷⁰ See *supra* note 8 for sentencing provisions applicable to defendants convicted of a “sex offense,” which includes a violation of Colo. Rev. Stat. Ann. § 18-3-306, when it is punishable as a Class 4 felony.

⁷¹ See *supra* note 5.

Restitution for victims of human trafficking is mandatory following a conviction for a trafficking offense in Colorado. Colo. Rev. Stat. Ann. § 18-1.3-603 (Assessment of restitution – corrective orders) establishes that

For a conviction for human trafficking for involuntary servitude, as described in section 18-3-503, or human trafficking for sexual servitude, as described in section 18-3-504, the court shall order restitution, if appropriate, pursuant to this section even if the victim is unavailable to accept payment of restitution.

Pursuant to Colo. Rev. Stat. Ann. § 18-1.3-603(1) (Assessment of restitution—corrective orders), a court must consider ordering traffickers to pay restitution to their victims for any offense.⁷² It states,

(1) Every order of conviction of a felony [or] misdemeanor . . . shall include consideration of restitution.”⁷³

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims.

....

Colo. Rev. Stat. Ann. § 18-1.3-602(4)(e) expressly defines a “victim” as “a person less than eighteen years of age who has been trafficked by an offender, as described in section 18-3-504 [Human trafficking for sexual servitude.” Furthermore, Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides that “[a]ny victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person’s own name.”

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414(1) (Payment of treatment costs for the victim or victims of a sexual offense against a child) a court may order a person who is convicted of an unlawful sex offense,⁷⁴ which includes Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude), § 18-7-402(1)(a) (Soliciting for child prostitution), § 18-6-403(3)(b.5) (Sexual exploitation of a child), § 18-7-403(1)(b) (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), § 18-7-405.5 (Inducement of child prostitution), § 18-3-305 (Enticement of a child), or § 18-6-404 (Procurement of a child for sexual exploitations) to pay for part or all of the victim’s treatment.

Mandatory civil asset forfeiture is provided for under Colo. Rev. Stat. Ann. § 16-13-303(1)(a) (Class 1 public nuisance), which states,

Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

(a) Used as a public or private place of prostitution or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S., pandering, as defined in section 18-7-203, C.R.S., keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; pimping, as defined in section 18-7-206, C.R.S.; or human trafficking, as described in section 18-3-503 or 18-3-504, C.R.S., occurs

Further, Colo. Rev. Stat. Ann. § 16-13-303(3)(d) provides,

The following shall be deemed class 1 public nuisances . . . and no property rights shall exist in them:

....

⁷² See *supra* note 48.

⁷³ See *infra* Component 5.10 for further discussion of restitution available to victims.

⁷⁴ See *supra* notes 7 and 8.

(d) All equipment of any kind, including but not limited to computers and any type of computer hardware, software, or other equipment, used in committing sexual exploitation of a child, as described in section 18-6-403, or cybercrime, as described in section 18-5.5-102.

Similarly, asset forfeiture may be available as a financial penalty for domestic minor sex trafficking under Colo. Rev. Stat. Ann. § 16-13-304(1)(b) (Class 2 public nuisance), which defines a Class 2 public nuisance in part as “[a]ny public or private place or premises which encourages . . . solicitation for prostitution.”

Seizure of this property is governed by Colo. Rev. Stat. Ann. § 16-13-315(1) (Seizure of personal property), which provides,

Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:

- (a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or
- (b) Under the authority of a search warrant; or
- (c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

Disposition of forfeited property is governed by Colo. Rev. Stat. Ann. § 16-13-311(3)(a) (Disposition of seized personal property), which provides in relevant part,

Property forfeited pursuant to this section or proceeds therefrom must be distributed or applied in the following order:

- (I) To payment of the balances due on any liens . . . the order of their priority;
- (II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;
- (III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;
- (IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;
- (V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;
- (VI) One percent of the value of the property to the clerk of the court for administrative costs associated with compliance with this section;
- (VII) The balance shall be delivered, upon order of the court, as follows:
 - (A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement;
 - (B) Twenty-five percent to the managed service organization contracting with the office of behavioral health in the department of human services serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance use disorder treatment. Money appropriated to the managed service organization must be in addition to, and not be used to supplant, other funding appropriated to the office of behavioral health; and
 - (C) Twenty-five percent to the law enforcement community services grant program fund, created pursuant to section 24-32-124 (5).

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

Traffickers convicted under Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude) or any of the Colorado CSEC laws applicable to traffickers will be required to register as sex offenders.⁷⁵ Under Colo. Rev. Stat. Ann. § 16-22-103(1)(a),

Effective July 1, 1998, the following persons shall be required to register pursuant to the provisions of section 16-22-108 and shall be subject to the requirements and other provisions specified in this article:

(a) Any person who was convicted on or after July 1, 1991, in the state of Colorado, of an unlawful sexual offense, as defined in section 18-3-411 (1),⁷⁶ C.R.S., enticement of a child, as described in section 18-3-305, C.R.S., or internet luring of a child, as described in section 18-3-306, C.R.S.

The definition of “unlawful sexual offense” in Colo. Rev. Stat. Ann. § 18-3-411 includes Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking for sexual servitude), most state CSEC laws,⁷⁷ and Colo. Rev. Stat. Ann. § 18-6-403 (Sexual exploitation of a child), which criminalizes the creation and distribution of child sexual abuse material (CSAM).

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.*

Colorado’s laws relating to the termination of parental rights do not expressly include a violation of Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude) or any of Colorado’s CSEC laws as grounds for terminating parental rights. However, Colorado allows a parent to file an objection to parenting time with the court if the other parent is convicted of trafficking or CSEC offenses. Colo. Rev. Stat. Ann. § 14-10-129(3)(a) (Modification of parenting time) states,

If a parent has been convicted of any of the crimes listed in paragraph (b) of this subsection (3) or convicted in another state or jurisdiction, including but not limited to a military or federal jurisdiction, of an offense that . . . constitutes a potential threat or endangerment to the child, the other parent, or any other person who has been granted custody of a parental responsibility for the child pursuant to court order may file an objection to the parenting time with the court.

Colo. Rev. Stat. Ann. § 14-10-129(3)(b) specifies the offenses for which a parent may petition for termination of parenting time; eligible offenses include:

⁷⁵ Notably, Colo. Rev. Stat. Ann. § 16-22-113(1)(a.5) (Petition for removal from registry) allows an individual convicted of trafficking to petition for removal from the sex offender registry if the offense was committed pursuant to that individual’s own trafficking victimization. Colo. Rev. Stat. Ann. § 16-22-113(1)(a.5) states,

[A]ny person required to register pursuant to section 16-22-103 . . . may file a petition with the court . . . for an order to discontinue the requirement for such registration . . . as follows:

. . . .
(a.5) . . . if the offense that required the person to register constituted human trafficking for sexual servitude pursuant to section 18-3-504(1)(a), upon completion of the person’s sentence and his or her discharge . . . if the person has not subsequently been convicted of unlawful sexual behavior or of any other offense, the underlying factual basis of which involved unlawful sexual behavior, the person may file a petition with the court . . . [A] court shall not issue an order discontinuing the petitioner’s duty to register unless the petitioner has at least established by a preponderance of the evidence that at the time he or she committed the offense of human trafficking for sexual servitude, he or she had been trafficked by another person

⁷⁶ See *supra* notes 7 and 8 for the definition of “unlawful sexual offense.”

⁷⁷ See *supra* Component 3.1 for the CSEC offenses applicable to traffickers.

-
- XI. Human trafficking of a minor for sexual servitude, as described in section 18-3-504(2), C.R.S.;
- XII. Sexual exploitation of children, as defined in section 18-6-403, C.R.S.;
- XIII. Procurement of a child for sexual exploitation, as defined in section 18-6-404, C.R.S.;
- XIV. Soliciting for child prostitution, as defined in section 18-7-402, C.R.S.;
- XV. Pandering for a child, as defined in section 18-7-403, C.R.S.;
- XVI. Procurement of a child, as defined in section 18-7-403.5, C.R.S.;
- XVII. Keeping a place of child prostitution, as defined in section 18-7-404, C.R.S.;
- XVIII. Pimping of a child, as defined in section 18-7-405, C.R.S.;
- XIX. Inducement of child prostitution, as defined in section 18-7-405.5, C.R.S.;
- XX. Patronizing a prostituted child, as defined in section 18-7-406, C.R.S.

Additionally, Colo. Rev. Stat. Ann. § 19-3-604 (Criteria for termination) provides,

(1) The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following:

....

(b) That the child is adjudicated dependent or neglected and the court finds that no appropriate treatment plan can be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

....

(II) A single incident resulting in serious bodily injury or disfigurement of the child;

(III) Long-term confinement of the parent of such duration that the parent is not eligible for parole for at least six years after the date the child was adjudicated dependent or neglected or, in a county designated pursuant to section 19-1-123, if the child is under six years of age at the time a petition is filed in accordance with section 19-3-501 (2), the long-term confinement of the parent of such duration that the parent is not eligible for parole for at least thirty-six months after the date the child was adjudicated dependent or neglected and the court has found by clear and convincing evidence that no appropriate treatment plan can be devised to address the unfitness of the parent or parents;

....

(V) An identifiable pattern of habitual abuse to which the child or another child has been subjected and, as a result of which, a court has adjudicated another child as neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such abuse has caused the death of another child;

(VI) An identifiable pattern of sexual abuse of the child; or

(VII) The torture of or extreme cruelty to the child, a sibling of the child, or another child of either parent;

....

(2) In determining unfitness, conduct, or condition for purposes of paragraph (c) of subsection (1) of this section, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious bodily injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care to include, at a minimum, nurturing and safe parenting sufficiently adequate to meet the child's physical, emotional, and mental health needs and conditions. In making such determinations, the court shall consider, but not be limited to, the following:

....

(b) Conduct towards the child of a physically or sexually abusive nature;

....

....

Additionally, Colo. Rev. Stat. Ann. § 18-3-405(4) (Sexual assault on a child) terminates parental rights

for children conceived as a result of sexual assault on a child, stating,

A person who is convicted on or after July 1, 2013, of sexual assault on a child under this section, upon conviction, shall be advised by the court that the person has no right:

- (a) To notification of the termination of parental rights and no standing to object to the termination of parental rights for a child conceived as a result of the commission of that offense;
 - (b) To allocation of parental responsibilities, including parenting time and decision-making responsibilities for a child conceived as a result of the commission of that offense;
 - (c) Of inheritance from a child conceived as a result of the commission of that offense; and
 - (d) To notification of or the right to object to the adoption of a child conceived as a result of the commission of that offense.
- 3.6.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 19-3-604(1) (Criteria for termination) to include a violation of Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude) and Colorado's CSEC laws as grounds for terminating parental rights.

Legal Components:

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

Colo. Rev. Stat. Ann. § 18-3-504(2)(a) (Human trafficking of a minor for sexual servitude) does not apply to facilitators who assist, enable or financially benefit from domestic minor sex trafficking. However, Colo. Rev. Stat. Ann. § 18-7-403.5 (Procurement of a child) and § 18-7-404(1) (Keeping a place of child prostitution), both Class 3 felonies, may be used to prosecute facilitators. Colo. Rev. Stat. Ann. §§ 18-7-403.5, 18-7-404(2). A facilitator who “[d]irects another to a place knowing such direction is for the purpose of prostitution of a child or by a child,” could face prosecution under Colo. Rev. Stat. Ann. § 18-7-402(1)(c) (Soliciting for child prostitution), also a Class 3 felony. Colo. Rev. Stat. Ann. § 18-7-402(2). A Class 3 felony is punishable by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. § 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).⁷⁸

A facilitator also could be prosecuted under Colo. Rev. Stat. Ann. § 18-5-309(1) (Money laundering).⁷⁹ A conviction under Colo. Rev. Stat. Ann. § 18-5-309(1) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-5-309(2), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

- 4.1.1 **Recommendation:** Amend Colo. Rev. Stat. Ann. § 18-3-504(2)(a) (Trafficking a minor for sexual servitude) to include those who assist, enable, or financially benefit from domestic minor sex trafficking.
- 4.2 *Financial penalties, including asset forfeiture laws, are in place for those who benefit financially from or aid and assist in committing domestic minor sex trafficking.*

Facilitators convicted of Colo. Rev. Stat. Ann. § 18-7-402 (Soliciting for child prostitution), § 18-7-403.5 (Procurement of a child), § 18-7-404(1) (Keeping a place of child prostitution), or § 18-5-309(1) (Money laundering), all Class 3 felonies, may be required to pay fines of \$3,000–\$750,000. Colo. Rev. Stat. Ann. §§ 18-7-402(2), 18-7-403.5, 18-7-404(2), 18-5-309(2), 18-1.3-401(1)(a)(III)(A).⁸⁰ A facilitator convicted of violating Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities), a Class 2 felony, may be required to pay a fine of \$5,000–\$1,000,000 and an additional fine of up to \$25,000 or, where the facilitator “derived pecuniary value, or . . . caused personal injury or property damage or other loss” the greater of 3 times “the gross value gained” or “the gross loss caused.” Colo. Rev. Stat. Ann. §§ 18-17-105(1), (2), 18-1.3-401(1)(a)(III)(A).

⁷⁸ See *supra* notes 5.

⁷⁹ See *supra* Component 3.1 for the definition of “money laundering.”

⁸⁰ See *supra* note 5.

When a facilitator is convicted of any offense, the court must consider ordering restitution for the victims.⁸¹ Colo. Rev. Stat. Ann. § 18-1.3-603(1) (Assessment of restitution—corrective orders) requires the court in any conviction for a felony or misdemeanor to consider ordering restitution. Furthermore, Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides that “[a]ny victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person’s own name.”

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414(1) (Payment of treatment costs for the victim or victims of a sexual offense against a child),⁸² when a defendant is convicted of an unlawful sexual offense⁸³ and the victim is under the age of 15, a court may order the defendant to pay all or part of the victim’s treatment.

Facilitators who permit their property to be used for minor sex trafficking shall face mandatory, civil asset forfeiture under Colo. Rev. Stat. Ann. § 16-13-303(1)(a) (Class 1 public nuisance), which provides,

Every building or part of a building including the ground upon which it is situate and all fixtures and contents thereof, every vehicle, and any real property shall be deemed a class 1 public nuisance when:

- (a) Used as a public or private place of prostitution or used as a place where the commission of soliciting for prostitution, as defined in section 18-7-202, C.R.S., pandering, as defined in section 18-7-203, C.R.S., keeping a place of prostitution, as defined in section 18-7-204, C.R.S.; pimping, as defined in section 18-7-206, C.R.S.; or human trafficking, as described in section 18-3-503 or 18-3-504, C.R.S., occurs . . . ;

Further, Colo. Rev. Stat. Ann. § 16-13-303(3)(d) provides,

The following shall be deemed class 1 public nuisances . . . and no property rights shall exist in them:

-
- (d) All equipment of any kind, including but not limited to computers and any type of computer hardware, software, or other equipment, used in committing sexual exploitation of a child, as described in section 18-6-403, or cybercrime, as described in section 18-5.5-102.

Similarly, asset forfeiture may be available as a financial penalty for facilitators of domestic minor sex trafficking under Colo. Rev. Stat. Ann. § 16-13-304(1)(b), which defines a Class 2 public nuisance in part as “[a]ny public or private place or premises which encourages . . . solicitation for prostitution.”

Seizure of this property is governed by Colo. Rev. Stat. Ann. § 16-13-315(1) (Seizure of personal property), which provides,

Any personal property subject to seizure, confiscation, or forfeiture under the provisions of this part 3 may be seized:

- (a) Pursuant to any writ, order, or injunction issued under the provisions of this part 3; or
- (b) Under the authority of a search warrant; or
- (c) By any peace officer or agent of a seizing agency with probable cause to believe that such property is a public nuisance or otherwise subject to confiscation and forfeiture under this part 3 if the seizure is incident to a lawful search or arrest.

Disposition of forfeited property is governed by Colo. Rev. Stat. Ann. § 16-13-311(3)(a) (Disposition of seized personal property), which provides in relevant part,

⁸¹ See *supra* note 48.

⁸² See *supra* Component 2.8 for the provisions of Colo. Rev. Stat. Ann. § 18-3-414(1).

⁸³ See *supra* notes 7 and 8.

Property forfeited pursuant to this section or proceeds therefrom must be distributed or applied in the following order:

- (I) To payment of the balances due on any liens . . . the order of their priority;
- (II) To compensate an innocent partial owner for the fair market value of his or her interest in the property;
- (III) To any person who suffers bodily injury, property damage, or property loss as a result of the conduct constituting a public nuisance that resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds pursuant to this section and the court finds that such person suffered said damages as a result of the subject acts that resulted in the forfeiture;
- (IV) To the law enforcement agency in possession of the property for reasonable fees and costs of sale, maintenance, and storage of the property;
- (V) To the district attorney for actual and reasonable expenses related to the costs of prosecuting the forfeiture proceeding and title transfer not to exceed ten percent of the value of the property;
- (VI) One percent of the value of the property to the clerk of the court for administrative costs associated with compliance with this section;
- (VII) The balance shall be delivered, upon order of the court, as follows:
 - (A) Fifty percent to the general fund of the governmental body or bodies with budgetary authority over the seizing agency for public safety purposes or, if the seizing agency was a multijurisdictional task force, fifty percent to be distributed in accordance with the appropriate intergovernmental agreement;
 - (B) Twenty-five percent to the managed service organization contracting with the office of behavioral health in the department of human services serving the judicial district where the forfeiture proceeding was prosecuted to fund detoxification and substance use disorder treatment. Money appropriated to the managed service organization must be in addition to, and not be used to supplant, other funding appropriated to the office of behavioral health; and
 - (C) Twenty-five percent to the law enforcement community services grant program fund, created pursuant to section 24-32-124 (5).

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

Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(II)⁸⁴ (Human trafficking of a minor for sexual servitude) prohibits the advertisement and sale of child sex tourism. It states, “[a] person commits human trafficking of a minor for sexual servitude if the person . . . [k]nowingly advertises, offers to sell, or sells travel services⁸⁵ that facilitate an activity prohibited pursuant to subsection (2)(a)(I) of this section.” Subsection (2)(a)(I) includes “sell[ing], recruit[ing], harbor[ing], transport[ing], transfer[ing], isolat[ing], entic[ing], provid[ing], receiv[ing], obtain[ing] by any means, maintain[ing], or mak[ing] available a minor for the purpose of commercial sexual activity.”

A conviction under Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(II) is punishable as a Class 2 felony by imprisonment for 8–24 years, a fine of \$5,000–\$1,000,000, or both. Colo. Rev. Stat. Ann. §§ 18-3-504(2)(b), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).⁸⁶ Further, Colo. Rev. Stat. Ann. § 18-24-102(3) (Surcharge) provides for an additional \$3,000 surcharge upon conviction of Colo. Rev. Stat. Ann. § 18-3-504.

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

Colo. Rev. Stat. Ann. § 18-6-403(3)(b), (c) (Sexual exploitation of a child) criminalizes the promotion and sale of child sexual abuse material (CSAM). Specifically, Colo. Rev. Stat. Ann. § 18-6-403(3) provides,

A person commits sexual exploitation of a child if, for any purpose, he or she knowingly:

⁸⁴ See *supra* note 2.

⁸⁵ Colo. Rev. Stat. Ann. § 18-3-502(11.5) defines “travel services” to include “the following services, offered either on a wholesale or retail basis: (a) Transportation by air, sea, road, or rail; (b) Related ground transportation; (c) Hotel accommodations; or (d) Package tours.”

⁸⁶ See *supra* notes 5.

....

(b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material;⁸⁷ or

....

(c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material;

....

A conviction under Colo. Rev. Stat. Ann. § 18-6-403(3)(b), (c) is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both.⁸⁸ Colo. Rev. Stat. Ann. §§ 18-6-403(5)(a), 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

Colo. Rev. Stat. Ann. § 18-6-404 (Procurement of a child for sexual exploitation) also may apply to facilitators, including those who transport a child for the purpose of sexual exploitation of a child. Colo. Rev. Stat. Ann. § 18-6-404 criminalizes when a person “intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available, to another person a child for the purpose of sexual exploitation of a child.” A conviction under Colo. Rev. Stat. Ann. § 18-6-404 is punishable as a Class 3 felony by imprisonment for 4–12 years, a fine of \$3,000–\$750,000, or both. Colo. Rev. Stat. Ann. §§ 18-6-404, 18-1.3-401(1)(a)(III)(A), (1)(a)(V)(A.1).

⁸⁷ See *supra* note 10 for the definition of “sexually exploitative material.”

⁸⁸ If the defendant “caused bodily injury to the victim or . . . used threat, intimidation, or force against the victim,” enhanced penalties apply under Colo. Rev. Stat. Ann. § 18-1.3-406 (Mandatory sentences for violent crimes). Colo. Rev. Stat. Ann. § 18-1.3-406(2)(b)(I). See *supra* note 7 for the provisions of Colo. Rev. Stat. Ann. § 18-1.3-406.

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 of 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.⁸⁹*

Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) includes all commercial sexual exploitation of minors. Under Colo. Rev. Stat. Ann. § 18-3-504(2)(a), when the victim is a minor, means of force, fraud, or coercion are not required.⁹⁰ In addition, the human trafficking law applies to buyers through the term “obtains,” regardless of third party control; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking.⁹¹ Colo. Rev. Stat. Ann. § 18-3-504(2)(a)(I). Consequently, Colorado’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Colo. Rev. Stat. Ann. § 18-3-504(2)(a).

- 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.*

Colorado’s sex trafficking statute prohibits a defendant from asserting a defense based on the willingness of the minor to engage in the commercial sex act. Colo. Rev. Stat. Ann. § 18-3-504(2)(c)(I) (Human trafficking of a minor for sexual servitude) provides, it is not a defense that “[t]he minor consented to being sold, recruited, harbored, transported, transferred, isolated, enticed, provided, received, obtained, or maintained by the defendant for the purpose of engaging in commercial sexual activity.”

⁸⁹ See generally Shared Hope International, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

⁹⁰ See *supra* discussion in Component 1.1.

⁹¹ See *supra* discussion of buyer applicability in Component 2.1.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁹²

Colorado law prohibits the criminalization of child sex trafficking victims for prostitution offenses. Under Colo. Rev. Stat. Ann. § 18-7-209⁹³ (Immunity from prostitution-related offenses – victims of human trafficking of a minor for involuntary servitude – human trafficking of a minor for sexual servitude),

If probable cause exists to believe that a minor charged with prostitution-related activity pursuant to section 18-7-201 [Prostitution prohibited], 18-7-202 [Soliciting for prostitution], 18-7-204 [Keeping a place of prostitution], or 18-7-207 [Prostitute making display] or a prostitution-related offense pursuant to a county or municipal ordinance was a victim of human trafficking of a minor for involuntary servitude, pursuant to section 18-3-302 (2), or human trafficking of a minor for sexual servitude, pursuant to section 18-3-504 (2), at the time of the offense being charged, the minor is immune from criminal liability or juvenile delinquency proceedings for such charges.

Further, Colo. Rev. Stat. Ann. § 18-7-713(1)⁹⁴ (Victims of human trafficking of a minor for involuntary servitude or sexual servitude – affirmative defenses) provides minors with an affirmative defense to other charges related to their trafficking victimization. It states,

Except as provided in section 18-7-209, it is an affirmative defense to any charge, other than a class 1 felony, if the minor being charged proves, by a preponderance of the evidence, that he or she was, at the time of the offense:

- (a) A victim of human trafficking or a minor for involuntary servitude pursuant to section 18-3-503 or human trafficking of a minor for sexual servitude pursuant to section 18-3-504; and
- (b) Forced or coerced into engaging in the criminal act charged.

Finally, Colo. Rev. Stat. Ann. § 18-3-504(2.5) (Human trafficking of a minor for sexual servitude) provides trafficking victims with an affirmative defense to trafficking charges, stating,

It is an affirmative defense to a charge pursuant to subsection (2) of this section if the person being charged can demonstrate by a preponderance of the evidence that, at the time of the offense, he or she was a victim of human trafficking for sexual servitude who was forced or coerced into engaging in the human trafficking of minors for sexual servitude pursuant to subsection (2) of this section.

- 5.3.1 Recommendation: Clarify Colo. Rev. Stat. Ann. § 18-7-209 (Immunity from prostitution-related offenses – victims of human trafficking of a minor for involuntary servitude – human trafficking of a minor for sexual servitude) to specify that all minors shall be protected from criminal or delinquency charges for prostitution-related offenses.⁹⁵

⁹² For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁹³ The text of Colo. Rev. Stat. Ann. § 18-7-209 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 19-185 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 6, 2019).

⁹⁴ The text of Colo. Rev. Stat. Ann. § 18-7-713 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 19-185 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 6, 2019).

⁹⁵ 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 (discussing need to eliminate a minor’s criminal liability for prostitution and other offenses committed pursuant to trafficking victimization and to establish a statutory avenue to specialized services).

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

System response to child engaged in commercial sex act

Pursuant to Colo. Rev. Stat. Ann. § 18-7-201.4⁹⁶ (Victim of human trafficking of a minor for sexual servitude – provision of services – reporting),

If a law enforcement officer encounters a person who is under eighteen years of age and who is engaging in any conduct that would be a violation of section 18-7-201 [Prostitution prohibited], 18-7-202 [Soliciting for prostitution], 18-7-204 [Keeping a place of prostitution], or 18-7-207 [Prostitute making display] or a prostitution-related offense pursuant to a county or municipal ordinance and there is probable cause to believe that the minor is a victim of human trafficking of a minor for sexual servitude pursuant to section 18-3-504, the law enforcement officer or agency shall immediately report a suspected violation of human trafficking of a minor for sexual servitude to the appropriate county department of human or social services or the child abuse reporting hotline system created pursuant to section 26-5-111. The county department of human or social services shall subsequently follow the reporting requirements set forth in section 19-3-308 (4)(c).

Upon receiving a report, Colo. Rev. Stat. Ann. § 19-3-308(4)(c) (Action upon report of intrafamilial, institutional, or third-party abuse – investigations – child protection team – rules) requires child welfare to provide services to juvenile sex trafficking victims when necessary and appropriate. Colo. Rev. Stat. Ann. § 19-3-308(4)(c) states,

Upon the receipt of a report, if the county department assessment concludes that a child has been a victim of intrafamilial, institutional, or third-party⁹⁷ abuse or neglect in which he or she has been subjected to human trafficking of a minor for sexual servitude, as described in section 18-3-504, or commercial sexual exploitation of a child,⁹⁸ it shall, when necessary and appropriate, immediately offer social services to the child who is the subject of the report and to his or her family, and it may file a petition in the juvenile court or the district court with juvenile jurisdiction on behalf of such child

Foster care prevention services may also be available pursuant to Colo. Rev. Stat. Ann. § 19-3-308(13),⁹⁹ which states,

Upon the receipt of a report of intrafamilial abuse or neglect or human trafficking, or a report that a family may be eligible for foster care prevention services,¹⁰⁰ as defined in section 26-5.4-102(1)

⁹⁶ The text of Colo. Rev. Stat. Ann. § 18-7-201.4 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 19-185 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 6, 2019).

⁹⁷ Colo. Rev. Stat. Ann. § 19-1-103(108) defines “third-party abuse” as “a case in which a child is subjected to abuse, as defined in subsection (1) of this section, by any person who is not a parent, stepparent, guardian, legal custodian, spousal equivalent, as defined in subsection (101) of this section, or any other person not included in the definition of intrafamilial abuse, as defined in subsection (67) of this section.”

⁹⁸ Colo. Rev. Stat. Ann. § 19-1-103(23.5) defines “[c]ommercial sexual exploitation of a child” as “a crime of a sexual nature committed against a child for financial or other economic reasons.”

⁹⁹ The text of Colo. Rev. Stat. Ann. § 19-3-308 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1308 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective August 2, 2019).

¹⁰⁰ Colo. Rev. Stat. Ann. § 26-5.4-102(1) (Definitions) defines “foster care prevention services” as

mental health and substance prevention and treatment services, in-home parent skill-based programs, kinship navigator programs, and other programs eligible for reimbursement under the federal “Family First Prevention Services Act” that are trauma-informed, promising, supported or well-supported, and provided to prevent foster care placement.

[Definitions], the county department may provide foster care prevention services for a child and the parents or kin caregivers of the child when the needs of the child are directly related to the safety, permanent placement, or well-being of the child or to prevent the child from entering the foster care system.

Additionally, Colo. Rev. Stat. Ann. § 19-3-308(4)(c) allows juvenile sex trafficking victims to be taken into protective custody during an investigation:

If, at any time after the commencement of an investigation, the county department has reasonable cause to suspect that the child or any other child under the same care is a victim of human trafficking, the county department shall notify the local law enforcement agency as soon as it is reasonably practicable to do so. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with sections 19-3-401(1)(a) [Taking children into custody] and 19-3-405 [Temporary protective custody].

Finally, Colorado law prevents commercially sexually exploited youth from facing a juvenile justice response for commercial sex acts committed as a result of their victimization based on the state's non-criminalization law, Colo. Rev. Stat. Ann. § 18-7-209¹⁰¹ (Immunity from prostitution-related offenses – victims of human trafficking of a minor for involuntary servitude – human trafficking of a minor for sexual servitude).¹⁰²

Summary

Although Colorado law prohibits the criminalization of juvenile sex trafficking victims for prostitution offenses and provides a statutory avenue to services, services are not required to be specialized to the needs of commercially sexually exploited youth.

5.4.1 Recommendation: Amend Colorado's protective response for juvenile sex trafficking victims to provide for specialized services.

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*¹⁰³

Human trafficking of a minor for sexual servitude and crimes involving commercial sexual exploitation of children are identified as abuse and neglect under Colorado's child protection statutes. Colo. Rev. Stat. Ann. § 19-1-103(1)(a)¹⁰⁴ (Definitions) defines "abuse" and "child abuse or neglect" as "an act or omission in one of the following categories that threatens the health or welfare of a child," including "(II) [a]ny case in which a child is subjected to unlawful sexual behavior as defined in section 16-22-102(9), C.R.S. [Definitions]; . . . [and] (VIII) [a]ny case in which a child is subjected to . . . human trafficking of a minor for sexual servitude, as described in section 18-3-504(2) [Human trafficking of a minor for sexual servitude]."

Pursuant to Colo. Rev. Stat. Ann. § 16-22-102(9), the definition of "unlawful sexual behavior" includes violations of Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude), § 18-3-405 (Sexual assault on a child), § 18-3-305 (Enticement of a child), § 18-6-403 (Sexual exploitation of children), § 18-6-404 (Procurement of a child for sexual exploitation), § 18-7-402 (Soliciting for child

The text of Colo. Rev. Stat. Ann. § 26-54-102 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1308 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective August 2, 2019).

¹⁰¹ See *supra* note 93.

¹⁰² See *supra* Component 5.3 for discussion of protecting minors from prosecution for prostitution offenses.

¹⁰³ For more information regarding recent federal legislation impacting this component see:

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

¹⁰⁴ The text of Colo. Rev. Stat. Ann. § 19-1-103 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 19-185 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 6, 2019).

prostitution), § 18-7-403 (Pandering of a child), § 18-7-403.5 (Procurement of a child), § 18-7-404 (Keeping a place of child prostitution), § 18-7-405 (Pimping of a child), § 18-7-405.5 (Inducement of child prostitution), § 18-7-406 (Patronizing a prostituted child), § 18-3-306(3) (Internet luring of a child) (where a Class 4 felony), and § 18-3-405.4 (Internet sexual exploitation of a child).

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.*

A trafficked child may access the protection of child welfare regardless of the child's relationship to the perpetrator of the abuse. Pursuant to Colo. Rev. Stat. Ann. § 19-3-308(4)(c) (Action upon report of intrafamilial, institutional, or third-party abuse - investigations - child protection team - rules), if “a child has been a victim of intrafamilial, institutional, or third-party abuse or neglect in which he or she has been subjected to human trafficking of a minor for sexual servitude . . . or commercial sexual exploitation of a child, [the country department] shall . . . immediately offer social services to the child [And i]f immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody”

Additionally, Colo. Rev. Stat. Ann. § 19-1-103(35) (Definitions) defines a “custodian” as “a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court.” This definition is broad enough to involve child protective services in non-familial trafficking cases.

Finally, the definition of “neglected or dependent child,” as defined in Colo. Rev. Stat. Ann. § 19-3-102 (Neglected or dependent child) is broad enough to potentially encompass commercially sexually exploited youth who are not residing with their legal custodians. Colo. Rev. Stat. Ann. § 19-3-102(1) specifies that

[a] child is neglected or dependent if

....

(e) [t]he child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;

(f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;

....

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

Crime victims’ compensation may be available to domestic minor sex trafficking victims pursuant to Colo. Rev. Stat. Ann. § 24-4.1-102(10)(a) (Definitions) to the extent that the victim¹⁰⁵ suffers “property damage, economic loss, injury, or death as a result of a compensable crime.” A “compensable crime” is defined in part as “[a]n intentional, knowing, reckless or criminally negligent act . . . that results in residential property damage to or bodily injury or death of another person.” Colo. Rev. Stat. Ann. § 24-4.1-102(4)(a)(I).

Even where a domestic minor sex trafficking victim is eligible to be an applicant for compensation, certain criteria in Colo. Rev. Stat. Ann. § 24-4.1-108 (Awarding compensation) may limit the ability of a commercially exploited child to obtain compensation. Under Colo. Rev. Stat. Ann. § 24-4.1-108(1)(b), (f),¹⁰⁶ to receive an award, a victim must have reported the crime to law enforcement within 72 hours of the crime’s commission and file a claim for compensation within 1 year of the crime unless the board finds good cause for failure to do so. Colo. Rev. Stat. Ann. § 24-4.1-108(1)(c) further requires the victim to have “cooperated fully with law

¹⁰⁵ See *supra* Component 5.1 for the definition of “victim.”

¹⁰⁶ Colo. Rev. Stat. Ann. § 24-4.1-108(f) further states, “For purposes of this paragraph (f), ‘good cause’ may include but is not limited to circumstances in which a crime has remained unsolved for more than one year.”

enforcement officials in the apprehension and prosecution of the assailant [unless] the board has found good cause exists for the failure to cooperate.” Lastly, Colo. Rev. Stat. Ann. § 24-4.1-108(1)(e) requires that “[t]he death of or injury to the victim was not substantially attributable to [the victim’s] wrongful act or substantial provocation of his assailant.” Despite these limitations, Colo. Rev. Stat. Ann. § 24-4.1-108(2) authorizes the board to waive any of the requirements for compensation if justice so requires.

5.7.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 24-4.1-108 (Awarding compensation) to create exceptions for victims of domestic minor sex trafficking to the ineligibility criteria in Colo. Rev. Stat. Ann. § 24-4.1-108(1).

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

Colorado affords some protections to commercially exploited children who are victims of Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude) and Colorado’s CSEC crimes.

Colo. Rev. Stat. Ann. § 18-3-411(3)–(5)¹⁰⁷ (Sex offenses against children) provides certain protections to victims of an “unlawful sexual offense.”¹⁰⁸ Colo. Rev. Stat. Ann. § 18-3-411(3)–(5) provides,

(3) An out-of-court statement made by a child, as child is defined under the statutes that are the subject of the action, or a person under fifteen years of age if the child is undefined under the statutes that are the subject of the action, describing all or part of an offense of unlawful sexual behavior, as defined in section 16-22-102 (9) [Definitions], performed or attempted to be performed with, by, on, or in the presence of the child declarant, and that is not otherwise admissible by a statute or court rule that provides an exception to the hearsay objection, may be admissible pursuant to section 13-25-129 (2) [Statements of child victim of unlawful sexual offense against a child or of child abuse—hearsay exception].

(4) All cases involving the commission of an unlawful sexual offense shall take precedence before the court; the court shall hear these cases as soon as possible after they are filed.

(5) The statutory privilege between the husband and the wife shall not be available for excluding or refusing testimony in any prosecution of an unlawful sexual offense.

Additionally, Colo. Rev. Stat. Ann. § 18-3-413 (Video tape depositions—children—victims of sexual offenses) provides,

(1) When a defendant has been charged with an unlawful sexual offense . . . and when the victim at the time of the commission of the act is a child less than fifteen years of age, the prosecution may apply to the court for an order that a deposition be taken of the victim’s testimony and that the deposition be recorded and preserved on video tape.

. . . .

(3) Upon timely receipt of the application, the court shall make a preliminary finding regarding whether, at the time of trial, the victim is likely to be medically unavailable or otherwise unavailable within the meaning of rule 804(a) of the Colorado rules of evidence. Such finding shall be based on, but not be limited to, recommendations from the child’s therapist or any other person having direct contact with the child, whose recommendations are based on specific behavioral indicators exhibited by the child. If the court so finds, it shall order that the deposition be taken, pursuant to rule 15 (d) of the Colorado rules of criminal procedure, and preserved on video tape

(4) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of rule 804 (a)

¹⁰⁷ The text of Colo. Rev. Stat. Ann. § 18-3-411 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 19-071 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective July 1, 2019).

¹⁰⁸ See *supra* notes 7 and 8 for the definition of “unlawful sexual offense.”

of the Colorado rules of evidence, the court may admit the video tape of the victim’s deposition as former testimony under rule 804 (b) (1) of the Colorado rules of evidence.

(5) Nothing in this section shall prevent the admission into evidence of any videotaped statements of children which would qualify for admission pursuant to section 13-25-129, C.R.S., or any other statute or rule of evidence.

Colo. Rev. Stat. Ann. § 18-3-417 (Reports of sexual assault by applicants, registrants, or licensed professionals) makes victims’ advocates available to victims of Colo. Rev. Stat. Ann. § 18-3-405 (Sexual assault on a child), § 18-3-405.4 (Internet sexual exploitation of a child), or any unlawful sexual offense. Colo. Rev. Stat. Ann. § 18-3-417 requires a victim’s advocate to “make reasonable efforts to advise the victim of the right to pursue criminal action, the right to pursue civil action, the applicable statutes of limitations, and contact information for the police, sheriff, and community-based resources in the jurisdiction where the alleged offense occurred.” When a victim is under the age of 15, pursuant to Colo. Rev. Stat. Ann. § 18-3-414 (Payment of treatment costs for the victim or victims of a sexual offense against a child), a court may order an offender convicted of “an unlawful sexual offense”¹⁰⁹ to pay for the victim’s treatment.

Pursuant to Colo. Rev. Stat. Ann. § 18-3-407(1) (Victim’s and witness’s prior history—evidentiary hearing—victim’s identity—protective order),

Evidence of specific instances of the victim’s or a witness’s prior or subsequent sexual conduct, opinion evidence of the victim’s or a witness’s sexual conduct, and reputation evidence of the victim’s or a witness’s sexual conduct may be admissible only at trial and shall not be admitted in any other proceeding except at a proceeding pursuant to paragraph (c) of subsection (2) of this section. At trial, such evidence shall be presumed to be irrelevant except:

- (a) Evidence of the victim’s or witness’ prior or subsequent sexual conduct with the actor;
- (b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease, or any similar evidence of sexual intercourse offered for the purpose of showing that the act or acts charged were or were not committed by the defendant.

In prosecutions of “class 4 felony internet luring of a child, as described in section 18-3-306(3) . . . and 18-6-404 [Procurement of a child for sexual exploitation], and any offense described in Part 4 of Article 7 of this Title”¹¹⁰ among other sex offenses, Colo. Rev. Stat. Ann. § 18-3-407(2) provides that “evidence, that is not excepted under subsection (1) of this section, of specific instances of the victim’s or a witness’s prior or subsequent sexual conduct, or opinion evidence of the victim’s or a witness’s sexual conduct, or reputation evidence of the victim’s or a witness’s sexual conduct, or evidence that the victim or a witness has a history of false reporting of sexual assaults,” shall only be admitted upon the following of certain procedures set out in the statute.

Other rights are more generally afforded to all victims of crimes. Colo. Rev. Stat. Ann. § 24-4.1-302.5(1)¹¹¹ (Rights afforded to victims) provides certain enumerated rights for victims, including the following:

. . . .

- (b.7) For a victim of a sex offense, the right to be informed of the filing of a petition by the perpetrator of the offense to terminate sex offender registration
- (c) (I) Except as otherwise provided in subsection (1)(c)(II) of this section:
 - (A) The right to be informed when a person who is accused or convicted of a crime against the victim is released or discharged from county jail;

¹⁰⁹ See *supra* notes 7 and 8.

¹¹⁰ See *supra* Component 1.2 (Part 4 of Article 7 of Title 18 includes many of the CSEC offenses listed in Component 1.2.).

¹¹¹ The text of Colo. Rev. Stat. Ann. § 24-4.1-302.5 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1064 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 28, 2019).

(B) The right to be informed when a person who is accused or convicted of a crime against the victim is released or discharged from custody other than county jail, is paroled, escapes from a secure or nonsecure correctional facility or program, or absconds from probation or parole.

....
....

Lastly, Colo. Rev. Stat. Ann. § 24-72-304(4.5)(a) (Inspection of criminal justice records) protects the confidentiality of human trafficking and CSEC victims by requiring that a child victim’s¹¹² identifying information “be deleted from any criminal justice record prior to the release of such record . . . when such record bears the notation ‘child victim’ . . .” Additionally, human trafficking victims who assert an affirmative defense to prostitution charges pursuant to Colo. Rev. Stat. Ann. § 18-7-201.3 (Affirmative defense—human trafficking—expungement of record protective order—definitions) may also request a protective order to protect their confidentiality. Colo. Rev. Stat. Ann. § 18-7-201.3(3) states, “At the request of a person who asserted the affirmative defense pursuant to subsection (1) of this section,¹¹³ the court may at any time issue a protective order concerning protecting the confidentiality of the person asserting the affirmative defense.”

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.*

Colorado law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, but juvenile records may be expunged upon completion of any imposed sentence unless the adjudication involved unlawful sexual behavior or another specified offense. Pursuant to Colo. Rev. Stat. Ann. § 19-1-306(4), (5)¹¹⁴ (Expungement of juvenile delinquent records),

- (4) (a) The court shall order all records in a juvenile delinquency case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged within forty-two days after:

....

¹¹² Pursuant to Colo. Rev. Stat. Ann. § 24-72-304(4.5)(b)

A criminal justice agency or custodian of criminal justice records shall make the notion “child victim” on any record of official action . . . when the official action is related to the commission or the alleged commission of any of the offenses in the following statutes:

- (I) Part 4 of article 6 of title 18, C.R.S.;
- (II) Internet sexual exploitation of a child under section 18-3-405.4, C.R.S.;
- (III) Enticement of a child under section 18-3-305, C.R.S.;
- (IV) Internet luring of a child under section 18-3-306, C.R.S.;
- (V) Soliciting for child prostitution under section 18-7-402, C.R.S.;
- (VI) Pandering of a child under section 18-7-403, C.R.S.;
- (VII) Procurement of a child under section 18-7-403.5; (VIII) Keeping a place of child prostitution under section 18-7-404, C.R.S.;
- (IX) Pimping of a child under section 18-7-405, C.R.S.;
- (X) Inducement of child prostitution under section 18-7-405.5, C.R.S.;
- (XI) Patronizing a prostituted child under section 18-7-406, C.R.S.;
- (XII) Human trafficking of a minor for involuntary servitude under section 18-3-503, C.R.S.;
- (XIII) Human trafficking of a minor for sexual servitude under section 18-3-504(2), C.R.S.; and
- (XIV) An attempt to commit any of the offenses listed in subparagraphs (I) to (XIII) of this paragraph (b).

¹¹³ See *supra* Component 1.3 for text of Colo. Rev. Stat. Ann. § 18-7-201.3(1).

¹¹⁴ The text of Colo. Rev. Stat. Ann. § 19-1-306 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1335 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 28, 2019).

(III) The completion of a sentence or alternative to sentencing, including diversion, a deferred adjudication, or an informal adjustment, for a petty offense, drug petty offense, class 2 or class 3 misdemeanor offense, or level 1 or level 2 drug misdemeanor if the offense does not involve unlawful sexual behavior as defined in section 16-22-102 (9), is not an act of domestic violence as defined in section 18-6-800.3, or is not a crime listed under section 24-4.1-302 (1), and the defendant was under eighteen years of age at the time the offense was committed.

....

(5) (a) At the time that the court orders the following sentences or alternatives to sentencing, the court shall make a finding that the juvenile is eligible for expungement¹¹⁵ pursuant to this subsection (5) and include that finding on the written mittimus or other sentencing document:

(I) A juvenile diversion program, a deferred adjudication, or an informal adjustment, except for those described in subsection (4)(a)(III) of this section;

(II) A juvenile sentence for an adjudication for a class 1 misdemeanor or a petty or a misdemeanor offense that is not eligible for expungement pursuant to subsection (4) of this section; or

(III) Repealed.

(IV) A juvenile sentence for an adjudication for a felony offense or felony drug offense if:

(A) The felony offense did not constitute unlawful sexual behavior as defined in section 16-22-102 (9);

(B) The felony offense was not a crime of violence as described in section 18-1.3-406;

(C) The felony offense was not a class 1 or class 2 felony; and

(D) The juvenile had no prior felony adjudications.

(b) Repealed.

....

(d) If neither the prosecuting attorney nor a victim files an objection within thirty-five days after the filing of the report or notice pursuant to subsection (5)(c) of this section, the court shall order all records in the juvenile delinquency case in the custody of the court, and any records related to the case and charges in the custody of any other agency, person, company, or organization, expunged.

....

(e.5) If the offense for which the records are eligible for expungement requires the juvenile to register pursuant to section 16-22-103 and the court has not already issued a notice pursuant to section 16-22-113 (1.3)(b), upon receipt of the report from the supervising agency pursuant to subsection (5)(c) of this section, the court shall issue a notice pursuant to section 16-22-113 (1.3)(b) and this subsection (5)(e.5), and the victim and prosecution have sixty-three days from the issuance of that notice to file an objection to expungement or the discontinuation of registration. All other requirements of subsections (5)(d), (5)(e), (5)(f), and (5)(g) of this section apply to the expungement. The provisions of section 16-22-113 (1.3) apply to the issue of discontinuing registration. The court shall consider both issues at the same hearing. If the court has not already ordered that the juvenile may discontinue registration pursuant to section 16-22-113, the court shall enter an order granting expungement and discontinuing the registration requirement, denying

¹¹⁵ Colo. Rev. Stat. Ann. § 19-1-306(10) states in part,

The court may order expunged any records, but, at a minimum, the following records must be expunged pursuant to every expungement order:

(a) All court records;

(b) All records retained within the office of the prosecuting attorney;

(c) All probation and parole records;

(d) All law enforcement records;

(e) All department of human services records;

(f) All division of youth corrections records;

(g) All department of corrections records; and

(h) References to the criminal case or charge contained in the school records.

expungement and discontinuing the registration requirement, or denying expungement and continuing the registration requirement.

....

However, Colo. Rev. Stat. Ann. § 19-1-306(8) states,

Notwithstanding the provisions of subsections (4), (5), and (6) of this section, a court shall not expunge the record of a person who is:

....

(c) Adjudicated for a felony offense involving unlawful sexual behavior as described in section 16-22-102(9); or

(d) Charged, adjudicated, or convicted of any offense or infraction pursuant to title 42 [Vehicles and traffic].

The definition of “unlawful sexual behavior” includes violations of Colo. Rev. Stat. Ann. § 18-3-504(2) (Human trafficking of a minor for sexual servitude), § 18-7-402(1)(a) (Soliciting for child prostitution), § 18-7-405.5(1) (Inducement of child prostitution), § 18-3-305 (Enticement of a child), § 18-6-404 (Procurement of a child for sexual exploitation), § 18-7-403.5 (Procurement of a child), and § 18-6-403(3)(b.5) (Sexual exploitation of a child), which criminalizes the possession of child sexual abuse material (CSAM). Colo. Rev. Stat. Ann. § 16-22-102(9) (Definitions).

Accordingly, a minor would be unable to expunge juvenile records related to any of the offenses enumerated above even if the offense was committed pursuant to his or her own trafficking victimization.¹¹⁶

- 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.

¹¹⁶ Colo. Rev. Stat. Ann. § 13-10-115.5 (Expungement of juvenile delinquent records – definition) governs expungement of municipal court records. Further, to the extent that a trafficking victim is criminally convicted rather than adjudicated delinquent, Colo. Rev. Stat. Ann. § 24-72-707 (Sealing of criminal conviction records information for offenses committed by victims of human trafficking) states,

(1) At any time after conviction, a defendant may file a motion in the case in which any conviction records exist pertaining to the defendant’s conviction for any misdemeanor offense or municipal code or ordinance violation, excluding any offense of a crime as defined in section 24-4.1-302(1) [Definitions].

....

(3) The court shall order the records sealed after:

(a) The petition is filed; and

(b) The defendant establishes by a preponderance of the evidence that, at the time he or she committed the offense, he or she had been trafficked by another person, as described in 18-3-503 [Human trafficking for involuntary servitude – human trafficking of a minor for involuntary servitude] or 18-3-504 [Human trafficking for sexual servitude – human trafficking of a minor for sexual servitude], for the purpose of performing the offense.

The text of Colo. Rev. Stat. Ann. § 13-10-115.5 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1335 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective May 28, 2019).

The text of Colo. Rev. Stat. Ann. § 24-72-707 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1275 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective August 2, 2019).

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

Restitution for victims of human trafficking is mandatory following a conviction for a trafficking offense in Colorado. Colo. Rev. Stat. Ann. § 18-1.3-603(9) (Assessment of restitution – corrective orders) establishes that

For a conviction for human trafficking for involuntary servitude, as described in section 18-3-503, or human trafficking for sexual servitude, as described in section 18-3-504, the court shall order restitution, if appropriate, pursuant to this section even if the victim is unavailable to accept payment of restitution.¹¹⁷

Additionally, Colo. Rev. Stat. Ann. § 18-1.3-602(4)(e) expressly defines a “victim” as “a person less than eighteen years of age who has been trafficked by an offender, as described in section . . . 18-3-504 [Trafficking for sexual servitude].” Colo. Rev. Stat. Ann. § 18-1.3-603(1) (Assessment of restitution—corrective orders) states,

Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense, except any order of conviction for a state traffic misdemeanor offense issued by a municipal or county court in which the prosecuting attorney is acting as a special deputy district attorney pursuant to an agreement with the district attorney’s office, shall include consideration of restitution. Each such order shall include one or more of the following:

- (a) An order of a specific amount of restitution be paid by the defendant;
- (b) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety-one days immediately following the order of conviction, unless good cause is shown for extending the time period by which the restitution amount shall be determined;
- (c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or
- (d) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.

Colo. Rev. Stat. Ann. § 16-18.5-107(1) (Collection of restitution by the victim) provides that “[a]ny victim in whose name a restitution order has been entered shall have a right to pursue collection of the amount of restitution owed to such person in such person’s own name.” Under Colo. Rev. Stat. Ann. § 16-18.5-109(1), (2) (Declined or unclaimed restitution), even if the victim initially declines restitution or cannot be located when an order for restitution is entered, the victim can receive restitution within 2 years of the final determination of the case.

Additionally, under Colo. Rev. Stat. Ann. § 18-3-414 (Payment of treatment costs for the victim or victims of a sexual offense against a child), when the victim is under the age of 15 the offender may be required to pay for all or part of the victim’s treatment if the offender is convicted of an unlawful sexual offense.¹¹⁸

Additionally, where the offender is convicted of Colo. Rev. Stat. Ann. § 18-17-104 (Prohibited activities), Colo. Rev. Stat. Ann. § 18-17-106 (Civil remedies) authorizes the victim to file a civil action. Under Colo. Rev. Stat. Ann. § 18-17-106(7), the victim may be able to receive triple damages, attorney fees and the costs of the investigation to a victim in a civil action.

¹¹⁷ Colo. Rev. Stat. Ann. § 18-1.3-603(10)(a) (Assessment of restitution – corrective orders) provides, “If, as a result of the defendant’s conduct, a crime victim compensation board has provided assistance to or on behalf of a victim pursuant to article 4.1 of title 24, C.R.S., the amount of assistance provided and requested by the crime victim compensation board is presumed to be a direct result of the defendant’s criminal conduct and must be considered by the court in determining the amount of restitution ordered.”

¹¹⁸ See *supra* notes 7 and 8 for the definition of “unlawful sex offense.”

Colo. Rev. Stat. Ann § 13-21-127(1) states that a minor is “entitled to recover damages proximately caused by any person who commits . . . human trafficking for sexual servitude, as described in section 18-3-504, C.R.S.” The defendant in the civil action need not have been convicted for trafficking in order for the victim to sustain their cause of action. Colo. Rev. Stat. Ann. § 13-21-127(2).

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.

Colorado has no statute of limitations for criminal prosecutions of Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) or for most of Colorado’s CSEC laws.¹¹⁹ Colo. Rev. Stat. Ann. § 16-5-401(1)(a) (Limitation for commencing criminal proceedings and juvenile delinquency proceedings)¹²⁰ provides that no statute of limitations applies to “any sex offense against a child” or any “attempt, conspiracy, or solicitation to commit any sex offense against a child.”¹²¹

In regard to civil claims, Colo. Rev. Stat. Ann. § 13-80-103.7 (General limitation of actions—sexual assault or sexual offense against a child—six years) provides for a six year statute of limitation. The statute provides,

(1) Notwithstanding any other statute of limitations specified in this article, or any other provision of law that can be construed to reduce the statutory period set forth in this section, any civil action based on a sexual assault or a sexual offense against a child shall be commenced within six years after a disability has been removed for a person under disability, as such term is defined in subsection (3.5) of this section, or within six years after a cause of action accrues, whichever occurs later, and not thereafter

(3) For the purposes of this section, “sexual offense against a child” shall include all offenses listed in section 18-3-411, C.R.S.

(3.5) (a) For the purpose of this section, “person under disability” means any person who is a minor under eighteen years of age, a person who has been declared mentally incompetent, or a person under other legal disability and who does not have a legal guardian For the purpose of this section, where the plaintiff is a victim of a series of sexual assaults or sexual offenses against a child, the plaintiff need not establish which act of a series of acts caused the plaintiff’s injury, and the statute of limitations set forth in this section commences with the last in the series of acts, subject to the provisions of this section regarding disability. However, as elements of the cause of action, a person under disability who is psychologically or emotionally unable to acknowledge the assault or offense and the resulting harm has the burden of proving that the assault or offense occurred and that he or she was

¹¹⁹ Prosecutions of Colo. Rev. Stat. Ann. § 18-5.5-102(1)(h)¹¹⁹ (Cybercrime) must commence within 3 years of discovery. Colo. Rev. Stat. Ann. § 16-5-401(1)(a), (4.5). Further, amendments to Colo. Rev. Stat. Ann. § 16-5-401(6), (8) create ambiguity regarding the statute of limitations for charges brought under Colo. Rev. Stat. Ann. § 18-6-403 (Sexual exploitation of a child). Pursuant to Colo. Rev. Stat. Ann. § 16-5-401(6), “Except as otherwise provided in paragraph (a) of subsection (1) of this section pertaining to sex offenses against children . . . the period of time during which an adult person or juvenile may be prosecuted shall be extended . . . to any offense or delinquent act charged under Section 18-6-403,” implying that a statute of limitation exists. Colo. Rev. Stat. Ann. § 16-5-401(8) contains similar language. This language conflicts with Colo. Rev. Stat. Ann. § 16-5-401(1)(a), which expressly eliminates the statute of limitations for sex offenses against children, including Colo. Rev. Stat. Ann. § 18-6-403.

¹²⁰ “It is the intent of the general assembly in enacting the provisions of paragraph (a) of subsection (1) of this section concerning sex offenses against children to apply an unlimited statute of limitations to sex offenses against children committed on or after July 1, 1996, and to sex offenses against children committed before July 1, 1996, for which the applicable statute of limitations in effect prior to July 1, 2006, has not yet run on July 1, 2006.” Colo. Rev. Stat. Ann. § 16-5-401(1.5)(c).

¹²¹ Colo. Rev. Stat. Ann. § 16-5-401(1)(c)(IV) states that a “sex offense against a child” has the same meaning as an “unlawful sexual offense” in Colo. Rev. Stat. Ann. § 18-3-411(1). See *supra* notes 7 and 8 for crimes that constitute an “unlawful sexual offense.”

actually psychologically or emotionally unable to acknowledge the assault or offense and the resulting harm.

....

(c) If the plaintiff brings a civil action under this subsection (3.5) fifteen years or more after the plaintiff attains the age of eighteen, the plaintiff may only recover damages for medical and counseling treatment and expenses, plus costs and attorney fees.

....

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 communication 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.*

Colorado law authorizes training on human trafficking for law enforcement. Pursuant to Colo. Rev. Stat. Ann. § 24-33.5-523(1), (2)¹²² (Human trafficking prevention training – repeal),¹²³

- (1) The [Division of Criminal Justice] shall serve as an additional resource to provide training related to human trafficking. The training may include:
 - (a) Train-the trainer programs;
 - (b) Direct trainings; and
 - (c) Online training programs.
- (2) Upon request, the following entities may receive training from the division:
 - (a) Law enforcement agencies
 -

Further, Colorado’s human trafficking council is tasked with developing “training standards and curricula for . . . law enforcement agencies.” Colo. Rev. Stat. Ann. § 18-3-505(4)(e) (Human trafficking council created – duties – repeal). However, the establishment of law enforcement training requirements falls under the P.O.S.T. board’s (peace officers standards and training board) oversight. Colo. Rev. Stat. Ann. § 24-31-303(1) (Duties – powers of the P.O.S.T. board). Colo. Rev. Stat. Ann. § 24-31-303, which sets out the P.O.S.T. board’s duties, does not specifically require or authorize the P.O.S.T. board to establish law enforcement training on human trafficking or domestic minor sex trafficking.

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

Colorado permits single party consent to audio-taping. Colo. Rev. Stat. Ann. § 18-9-304(1)(a) (Eavesdropping prohibited—penalty) provides that “[a]ny person not visibly present during a conversation or discussion commits eavesdropping if he: (a) Knowingly overhears or records such conversation or discussion without the consent of at least one of the principal parties thereto, or attempts to do so.”

¹²² The text of Colo. Rev. Stat. Ann. § 24-33.5-523 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 19-1051 during the 2019 1st Regular Session of the 72nd General Assembly of the State of Colorado (effective August 2, 2019).

¹²³ Pursuant to Colo. Rev. Stat. Ann. § 24-33.5-523, this section is set for repeal on September 1, 2023.

Similarly, Colo. Rev. Stat. Ann. § 18-9-303(1)(a) (Wiretapping prohibited—penalty) states,

Any person not a sender or intended receiver of a telephone or telegraph communication commits wiretapping if he:

(a) Knowingly overhears, reads, takes, copies, or records a telephone, telegraph, or electronic communication without the consent of either a sender or a receiver thereof or attempts to do so

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

Colorado law includes Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking of a minor for sexual servitude) within the list of offenses for which a wiretapping order may be issued; however, Colorado’s CSEC offenses are not included. Colo. Rev. Stat. Ann. § 16-15-102(1)(a) (Ex parte order authorizing the interception of wire, oral, or electronic communications) states,

An ex parte order authorizing or approving the interception of any wire, oral, or electronic communication may be issued by any judge of competent jurisdiction of the state of Colorado upon application of the attorney general or a district attorney, or his or her designee if the attorney general or district attorney is absent from his or her jurisdiction, showing by affidavit that there is probable cause to believe that evidence will be obtained of the commission of any one of the crime enumerated in this subsection (1) or that one of said enumerated crimes will be committed:

. . . .

(X) Human trafficking as described in section 18-3-503 or 18-3-504.

6.3.1 Recommendation: Amend Colo. Rev. Stat. Ann. § 16-15-102(1)(a) (Ex parte order authorizing the interception of wire, oral, or electronic communications) to allow wiretapping in investigations of Colorado’s CSEC offenses.

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.*

Colorado’s trafficking and CSEC statutes do not prohibit a defense to prosecution based on the use of a law enforcement decoy posing as a minor. However, Colo. Rev. Stat. Ann. § 18-3-306(1) (Internet luring of a child) states, “An actor commits internet luring of a child if the actor knowingly communicates over a computer or computer network, telephone network, or data network or by a text message or instant message to a person who the actor knows or believes to be under fifteen years of age.” Additionally, Colo. Rev. Stat. Ann. § 18-3-306(2) further provides, “It shall not be a defense to this section that a meeting did not occur.” Similarly, Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) states in part, “An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor”

However, 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. Colo. Rev. Stat. Ann. § 18-3-504 (Human trafficking in for sexual servitude, § 18-7-406 (Patronizing a prostituted child), and § 18-7-402 (Soliciting a child for prostitution) are buyer-applicable sex trafficking and CSEC offenses¹²⁴ that do not expressly prohibit this defenses, meaning that buyers charged for attempting to solicit or purchase sex with a minor under Colo. Rev. Stat. Ann. § 18-3-

¹²⁴ See *supra* Components 2.1 and 2.2 for more information on Colo. Rev. Stat. Ann. §§ 18-3-504, 18-7-406, and 18-7-402.

504, § 18-7-406, and § 18-7-402 would not be prohibited from raising a defense based on the fact that an actual minor was not involved.

- 6.4.1 Recommendation: Enact a statute that prohibits a defense to prosecution based on the use of a law enforcement decoy posing as a minor to investigate the buying or selling of commercial sex acts with a minor.

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

Colorado law does not expressly authorize law enforcement officers to use the Internet or other electronic communication to investigate buyers and traffickers of domestic minor sex trafficking; however, such tactics are likely permissible. Colo. Rev. Stat. Ann. § 18-3-405.4(1) (Internet sexual exploitation of a child) states in part, “An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor” Similarly, Colo. Rev. Stat. Ann. § 18-3-306 (Internet luring of a child) makes it a crime when a person

knowingly communicates over a computer or computer network . . . to a person who the actor knows or believes to be under fifteen years of age and, in that communication or in any subsequent communication . . . describes explicit sexual conduct . . . and, in connection with that description, makes a statement persuading or inviting the person to meet the actor for any purpose, and the actor is more than four years older than the person or than the age the actor believes the person to be.

The use of the language “believes to be under fifteen years of age” suggests that it is permissible for law enforcement to be involved in the investigation of Colo. Rev. Stat. Ann. § 18-3-405.4 and § 18-3-306.

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

Colorado requires the reporting of both missing and located missing children. Colo. Rev. Stat. Ann. § 16-2.7-102(1) (Missing person reports—acceptance) provides that “[a]ny person with relevant, credible information suggesting that a person is missing may make a missing person report to a law enforcement agency.” Colo. Rev. Stat. Ann. 16-2.7-102(2) requires the law enforcement agency that receives the report to accept the report without delay if

- (a) The missing person resides, or was last known to reside, within the jurisdiction of the law enforcement agency and the missing person’s last-known location is the missing person’s residence or his or her location is unknown; or
- (b) There is credible information indicating that the missing person was last believed to be within the jurisdiction of the law enforcement agency.

Colo. Rev. Stat. Ann. § 24-33.5-415.1(2)(a) directs the bureau to “compile, maintain, and distribute a list of missing children,”¹²⁵ and Colo. Rev. Stat. Ann. § 24-33.5-415.1(5) directs the bureau to distribute this list to all school districts in Colorado. Colo. Rev. Stat. Ann. § 24-33.5-415.1(3) (List of missing children) provides,

[E]very law enforcement agency in this state shall, upon receipt of information that a child is believed to be missing, send a missing child report containing identifying and descriptive information about the

¹²⁵ Colo. Rev. Stat. Ann. § 24-33.5-415.1(1) (List of missing children) provides, “For the purposes of this section, ‘missing child’ means a child whose whereabouts are unknown, whose domicile at the time he was first reported missing was Colorado, and whose age at the time he was first reported missing was seventeen years of age or younger.”

child to the bureau as soon as possible but no later than twenty-four hours after obtaining such information. If, at a later time, the law enforcement agency determines that the missing child has been located, the agency shall send notification to the bureau no later than twenty-four hours after making such determination.

Colo. Rev. Stat. Ann. § 24-33.5-415.1(5) further requires school districts to “immediately notify the bureau if it comes in contact with a child whose name appears on the list of missing children . . . and, if a missing child is identified, the bureau shall, in turn, notify the law enforcement agency that submitted the missing child report.” The bureau also may distribute the list of missing children “to any other person or entity the bureau determines might be instrumental in the identification and location of missing children.” Colo. Rev. Stat. Ann. § 24-33.5-415.1(6).

Child welfare is also required to promptly report to law enforcement and the National Center for Missing and Exploited Children when a child in out-of-home placement is missing. Pursuant to Colo. Rev. Stat. Ann. § 19-1-115.3 (Missing children and youth from out-of-home placement - required reporting to law enforcement.),

If a child or youth for whom the Department of Human Services or a county department of human or social services has legal custody pursuant to the provisions of this title is determined by the agency to be missing, the agency having legal custody of said child or youth shall report the disappearance immediately, and in no case later than twenty-four hours after learning of the disappearance, to the National Center for Missing and Exploited Children and to law enforcement. Law enforcement authorities shall notify the Colorado Bureau of Investigation for transmission to the Federal Bureau of Investigation for entry into the National Crime Information Center database pursuant to section 16-2.7-103, C.R.S. notwithstanding the provisions of this section, the reporting requirements set forth for foster parents and out-of-home placement facilities in section 19-2-920 shall still apply.

Pursuant to Colo. Rev. Stat. Ann. § 16-2.7-103(2)(b)(II) (Missing person reports – response), “If the missing person is under eighteen years of age and under the legal custody of the state Department of Human Services or a county department of human or social services, the law enforcement agency shall, within twenty-four hours after receiving notification pursuant to section 19-1-115.3, C.R.S., notify the Colorado Bureau of Investigation for transmission to the Federal Bureau of Investigation for entry into the National Crime Information Center database.”

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