

2019 ANALYSIS AND RECOMMENDATIONS

IOWA

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.*

Iowa Code § 710A.2 (Human trafficking) criminalizes sex trafficking without regard to force, fraud, or coercion, and imposes enhanced penalties, if the victim of the offense is a minor.

Iowa Code § 710A.2 states,

1. A person who knowingly engages in human trafficking is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.
2. A person who knowingly engages in human trafficking by causing or threatening to cause serious physical injury to another person is guilty of a class “C” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “B” felony.
3. A person who knowingly engages in human trafficking by physically restraining or threatening to physically restrain another person is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.
4. A person who knowingly engages in human trafficking by soliciting services or benefiting from the services of a victim is guilty of a class “D” felony, except that if the victim is under the age of eighteen,

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

the person is guilty of a class “C” felony.

5. A person who knowingly engages in human trafficking by abusing or threatening to abuse the law or legal process is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.

6. A person who knowingly engages in human trafficking by knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of a victim is guilty of a class “D” felony, except that if that other person is under the age of eighteen, the person is guilty of a class “C” felony.

7. A person who benefits financially or by receiving anything of value from knowing participation in human trafficking is guilty of a class “D” felony, except that if the victim is under the age of eighteen, the person is guilty of a class “C” felony.

8. A person’s ignorance of the age of the victim or a belief that the victim was older is no defense to a violation of this section.

Iowa Code § 710A.1(4) (Definitions) defines “human trafficking” as,

[P]articipating in a venture² to recruit, harbor, transport, supply provisions, or obtain³ a person for any of the following purposes:

• • • •

b. Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen, the commercial sexual activity need not involve force, fraud, or coercion.

Iowa Code § 710A.1(1) defines “commercial sexual activity” as “any sex act or sexually explicit performance for which anything of value is given, promised to, or received by any person and includes, but is not limited to, prostitution, participation in the production of pornography, and performance in strip clubs.”

Class B, C, and D felonies are punishable as follows: Class B felonies are punishable by imprisonment up to 25 years, Class C felonies by imprisonment up to 10 years and a fine of \$1,000–\$10,000,⁴ and Class D felonies by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(b), (d), (e) (Maximum sentence for felons). A habitual felon may receive imprisonment up to 15 years.⁵ Iowa Code § 902.9(1)(c). In addition to fines imposed for an offense under Iowa Code § 710A.2, Iowa Code § 911.2A (Human trafficking victim surcharge) requires a convicted person to pay a human trafficking victim surcharge of \$1,000 to be deposited in the human trafficking victim fund.

² Iowa Code § 710A.1(12) (Definitions) defines “venture” to mean “any group of two or more persons associated in fact, whether or not a legal entity.”

³ Iowa Code § 710A.1(8) (Definitions) defines “obtain” to mean “in relation to labor or services, to secure performance thereof.” “Services” is further defined under Iowa Code § 710A.1(10) to mean, “[A]n ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor, including commercial sexual activity and sexually explicit performances.”

⁴ Iowa Code § 911.1(1) (Criminal penalty surcharge) states in part, “When a court imposes a fine or forfeiture for a violation of state law, or a city or county ordinance, except an ordinance regulating the parking of motor vehicles, the court or the clerk of the district court shall assess an additional penalty in the form of a criminal penalty surcharge equal to thirty-five percent of the fine or forfeiture imposed.”

⁵ Iowa Code § 902.8 (Minimum sentence—habitual offender) states, “An habitual offender is any person convicted of a class ‘C’ or a class ‘D’ felony, who has twice before been convicted of any felony in a court of this or any other state, or of the United States. An offense is a felony if, by the law under which the person is convicted, it is so classified at the time of the person’s conviction. A person sentenced as an habitual offender shall not be eligible for parole until the person has served the minimum sentence of confinement of three years.”

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

The following laws make CSEC a distinct crime in Iowa:

1. Iowa Code § 725.3(2) (Pandering) makes it illegal if,

[a] person . . . persuades, arranges, coerces, or otherwise causes a minor to become a prostitute or to return to the practice of prostitution after having abandoned it, or keeps or maintains any premises for the purpose of prostitution involving minors or knowingly shares in the income from such premises knowing the character and content of such income

A first conviction under Iowa Code § 725.3(2) is punishable as a Class C felony by imprisonment up to 10 years, a fine of \$1,000–\$10,000, and an additional “law enforcement initiative surcharge” of \$125.⁶ Iowa Code §§ 725.3(2), 902.9(1)(d), 911.3. A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(d), 901A.2(3), (4), 902.1.

2. Iowa Code § 728.12(1) (Sexual exploitation of a minor) states in part,

It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act⁷ or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a visual depiction.⁸

A first conviction under Iowa Code § 728.12(1) is punishable as a Class C felony by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 728.12(1), 902.9(1)(d). A second conviction is

⁶ Iowa Code § 902.9 (Maximum sentences for felons) specifies that the surcharges required by Iowa Code § 911.1 (Criminal penalty surcharge), § 911.2 (Drug abuse resistance education surcharge), and § 911.3 (Law enforcement initiative surcharge) “are not a part of or subject to the maximums set in this section.” Iowa Code § 911.3(1)(b) sets out a \$125 surcharge “if an adjudication of guilt or a deferred judgment has been entered for a criminal violation under any of the following: b. Section . . . 725.1 [Prostitution], 725.2 [Pimping], or 725.3 [Pandering].”

⁷ Iowa Code § 728.1(7) (Definitions), defines “prohibited sexual act,” except as otherwise provided, as

any of the following:

a. A sex act as defined in section 702.17.

. . . .

c. Fondling or touching the pubes or genitals of a minor.

d. Fondling or touching the pubes or genitals of a person by a minor.

. . . .

g. Nudity of a minor for the purpose of arousing or satisfying the sexual desires of a person who may view a visual depiction of the nude minor.

Pursuant to Iowa Code § 702.17 (Sex act), the term “sex act” or “sexual activity,”

[M]eans any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person . . . ; ejaculation onto the person of another; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

⁸ Under Iowa Code § 728.1(11) (Definitions), “visual depiction” means but is not limited to any picture, slide, photograph, digital or electronic image, negative image, undeveloped film, motion picture, videotape, digital or electronic recording, live transmission, or other pictorial of three-dimensional representation.

punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(b), 901A.2(3), (4), 902.1. Additionally, Iowa Code § 728.12(1) states, “Notwithstanding section 902.9 [Maximum sentence for felons], the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.”

3. Iowa Code § 710.10(1), (2) (Enticing a minor) states,

1. A person commits a class “C” felony when, without authority and with the intent to commit . . . sexual exploitation upon a minor under the age of thirteen, the person entices or attempts to entice a person reasonably believed to be under the age of thirteen.
2. A person commits a class “D” felony when, without authority and with the intent to commit . . . sexual exploitation of a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen.
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7. For purposes of this section, methods of enticement include but are not limited to personal contact and communication by any means including through the mail, telephone, internet, or any social media, and include[s] text messages, instant messages and electronic mail.

A first conviction under Iowa Code § 710.10(1) is punishable as a Class C felony by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1. A conviction under Iowa Code § 710.10(2) is punishable as a Class D felony by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e).

4. Iowa Code § 710A.2A (Solicitation of commercial sexual activity) states,

A person shall not entice, coerce, or recruit, or attempt to entice, coerce, or recruit either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, to engage in a commercial sexual activity.

Violation of this provision will result in a Class D felony punishable by up to 5 years in prison and a fine between \$750-7,500. Iowa Code § 902.9(1)(e).

5. Iowa Code § 725.1(2) (Prostitution) establishes that

A person who purchases or offers to purchase services as a partner in a sex act from a person who is under the age of eighteen commits a class ‘D’ felony.

A class D felony is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e).

6. Iowa Code § 725.2(2) (Pimping) states,

A person who solicits a patron for a prostitute who is under the age of eighteen, or who knowingly takes or shares in the earnings of a prostitute who is under the age of eighteen, or who knowingly furnishes a room or other place to be used for the purposes of prostitution of a prostitute who is under the age of eighteen, whether for compensation or not, commits a class ‘C’ felony.⁹

⁹ Iowa Code § 725.2 (Affirmative defense) states, “It shall be an affirmative defense to a prosecution of a person under the age of twenty-one . . . that the person was allowed, permitted, or encouraged by an adult having influence or control of the person to engage in acts prohibited . . . while the person was under the age of eighteen.

A class “C” felony is punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 728.12(1), 902.9(1)(d).

Several other sexual offenses, while not expressly commercial in nature, may also be applicable in cases involving the commercial sexual exploitation of a child. Some of those statutes are as follows:

1. Iowa Code § 709.2 (Sexual abuse in the first degree) states that “[a] person commits sexual abuse in the first degree when in the course of committing sexual abuse¹⁰ the person causes another serious injury.” A conviction under Iowa Code § 709.2 is punishable as a Class A felony by imprisonment for life or, if the offender was under 18 years of age at the time of the offense, for a minimum of 25 years. Iowa Code §§ 709.2, 902.1(1), (2)(a).
2. Iowa Code § 709.3(2) (Sexual abuse in the second degree), states that “[1] [a] person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances The other person is under the age of twelve.” Sexual abuse in the second degree is a Class B felony punishable by imprisonment up to 25 years. Iowa Code §§ 709.3, 902.9(1)(b). The conviction is punishable as a Class A felony under Iowa Code § 902.14(1) (Enhanced penalty—sexual abuse or lascivious acts with a child) by imprisonment between 25 years to life if a person has a prior conviction under this statute or a number of other statutes. Iowa Code § 902.14(1).¹¹
3. Iowa Code § 709.4(2)(b), (c)(4) (Sexual abuse in the third degree) states,

A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

. . . .

b. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

. . . .

2. The other person is twelve or thirteen years of age.

3. The other person is fourteen or fifteen years of age and any of the following are true:

(a) The person is a member of the same household as the other person.

. . . .

(d) The person is four or more years older than the other person.

Sexual abuse in the third degree is a Class C felony punishable by imprisonment up to 10 years and a fine of \$1,000 to \$10,000. Iowa Code §§ 709.4, 902.9(1)(d). A conviction is punishable as a Class A felony, however, if a person has a prior conviction under this statute or a number of other statutes. Iowa Code § 902.14(1).¹²

4. Iowa Code § 709.12 (Indecent contact with a child) states,

¹⁰ Iowa Code § 709.1(3) (Sexual abuse defined) states, “Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances: . . . 3. Such other person is a child.” Iowa Code § 702.5 states, “For purposes of Title XVI [Criminal Code], unless another age is specified, a ‘child’ is any person under the age of fourteen years.” This definition is not applicable to chapters 709A (Contributing to juvenile delinquency), 718A, 822, 904, 913, and 914 even though they are codified in Title XVI.

¹¹ Iowa Code § 902.14(1) states,

A person commits a class “A” felony if the person commits a second or subsequent offense involving any combination of the following offenses:

a. Sexual abuse in the second degree in violation of section 709.3,

b. Sexual abuse in the third degree in violation of section 709.4.

c. Lascivious acts with a child in violation of section 709.8, subsection (1), paragraph “a” or “b”.

¹² See *supra* note 11 for the provisions of Iowa Code § 902.14(1).

1. A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:
 - a. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.
 - b. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.
 - c. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.
 - d. Solicit a child to engage in any act prohibited under section 709.8 [Lascivious acts with a child], subsection 1, paragraph "a", "b", or "d".

....

An offender convicted of an aggravated misdemeanor may receive imprisonment up to 2 years and a fine of \$625–\$6,250. Iowa Code § 903.1(2) (Maximum sentence for misdemeanants).¹³

5. Iowa Code § 709.8 (Lascivious acts with a child) states,

1. It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:
 - a. Fondle or touch the pubes or genitals of a child.
 - b. Permit or cause a child to fondle or touch the person's genitals or pubes.
 - c. Cause the touching of the person's genitals to any part of the body of a child.
 - d. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.
 - e. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

....

Convictions under Iowa Code § 709.8(1)(a), (b), (c) are punishable as Class C felonies by imprisonment up to 10 years and a fine of \$1,000–\$10,000, while convictions under Iowa Code § 709.8(1)(d),(e) are punishable as Class D felonies by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 709.8, 902.9(1)(d), (e). A conviction under Iowa Code § 709.8(1)(a), (b), (c) may be punishable as a Class A felony for prior convictions under this statute or other listed statutes. Iowa Code § 902.14(1).¹⁴

6. Iowa Code § 710.10 (Enticing a minor) states,

1. A person commits a class "C" felony when, without authority and with the intent to commit sexual abuse¹⁵ . . . upon a minor under the age of thirteen, the person entices or attempts to entice a person reasonably believed to be under the age of thirteen.
2. A person commits a class "D" felony when, without authority and with the intent to commit an illegal sex act upon . . . a minor under the age of sixteen, the person entices or attempts to entice a person reasonably believed to be under the age of sixteen.
3. A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices a person reasonably believed to be under the age of sixteen.
4. A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice a

¹³ Iowa Code § 903.1(2) (Maximum sentence for misdemeanants) further states, "When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term."

¹⁴ See *supra* note 11 for the provisions of Iowa Code § 902.14(1).

¹⁵ See *supra* note 10 for the definition of "sexual abuse."

person reasonably believed to be under the age of sixteen. A person convicted under this subsection shall not be subject to the registration requirements under chapter 692A [Sex offender registry] unless the finder of fact determines that the illegal act was sexually motivated.

5. A person shall not be convicted of a violation of this section unless the person commits an overt act evidencing a purpose to entice.

....

7. For purposes of this section, methods of enticement include but are not limited to personal contact and communication by any means including through the mail, telephone, internet, or any social media, and include[s] text messages, instant messages and electronic mail.

Class D felonies are punishable by imprisonment up to 5 years and a fine of \$750–\$7,500, while offenders convicted of an aggravated misdemeanor may receive imprisonment up to 2 years and a fine of \$625–\$6,250. Iowa Code §§ 902.9(1)(e), 903.1(2).

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

Iowa Code § 725.1 (Prostitution) does not refer to the human trafficking law; accordingly, state law does not specifically acknowledge the intersection of prostitution with trafficking victimization.

1.3.1 Recommendation: Amend Iowa Code § 725.1 (Prostitution) to refer to Iowa Code § 710A.2 (Human trafficking) 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.*

Iowa Code § 706A.2 (Violations) criminalizes engaging in “specified unlawful activity”. Iowa Code § 706A.2 states in part,

1. Specified unlawful activity influenced enterprises.¹⁶

a. It is unlawful for any person who has knowingly received any proceeds¹⁷ of specified unlawful activity to use or invest, directly or indirectly, any part of such proceeds in the acquisition of any interest in any enterprise or any real property, or in the establishment or operation of any enterprise.

b. It is unlawful for any person to knowingly acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through specified unlawful activity.

c. It is unlawful for any person to knowingly conduct the affairs of any enterprise through specified unlawful activity or to knowingly participate, directly or indirectly, in any enterprise that the person knows is being conducted through specified unlawful activity.

d. It is unlawful for any person to conspire or attempt to violate or to solicit or facilitate the violations of the provisions of paragraph “a”, “b”, or “c”.

....

4. Acts of specified unlawful activity. It is unlawful for a person to commit specified unlawful activity as defined in section 706A.1.

....

Iowa Code § 706A.1(5) (Definitions) defines “specified unlawful activity” as “any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable as an

¹⁶ Iowa Code § 706A.1(2) defines a “enterprise” as “any sole proprietorship, partnership, corporation, trust, or other legal entity, or any unchartered union, association, or group of persons associated in fact although not a legal entity, and includes unlawful as well as lawful enterprises.”

¹⁷ Iowa Code § 706A.1(3) defines “proceeds” as “property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.”

indictable offense under the laws of the state in which it occurred and under the laws of this state.” Iowa Code § 710A.2 (Human trafficking) and Iowa’s CSEC laws fall within the definition of specified unlawful activity, as each is punishable by imprisonment of more than 1 year. Prostitution and other misdemeanors are unlikely to fall under this category because, under Iowa law, misdemeanors are not indictable offenses. Iowa Code § 725.1 (Prostitution).

Convictions under Iowa Code § 706A.2(1) and (4) are punishable as Class B felonies by imprisonment up to 25 years. Iowa Code §§ 706A.4, 902.9(1)(b). Additionally, pursuant to Iowa Code § 706A.3 (Civil remedies—actions), “The prosecuting attorney . . . may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this chapter or to prevent, restrain, or remedy such violation.” Subsection (3) states, in part:

If the plaintiff in such a proceeding proves the alleged violation by a preponderance of the evidence, the district court, after making due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including any of the following:

- a. Ordering any defendant to divest the defendant of any interest in any enterprise, or in any real property.
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- d. Ordering the payment of all reasonable costs and expenses of the investigation and prosecution of any violation, civil or criminal, including reasonable attorney fees in the trial and appellate courts. Such payments received by the state, by judgment, settlement, or otherwise, shall be considered forfeited property and disposed of pursuant to section 809A.17.
- e. Ordering the forfeiture of any property subject to forfeiture under chapter 809A, pursuant to the provisions and procedures of that chapter.

Additionally, Iowa Code § 706A.3(12) states,

The attorney general may bring a civil action as *parens patriae* on behalf of the general economy, resources, and welfare of this state, and shall recover threefold the proceeds acquired, maintained, produced, or realized by or on behalf of the defendant by reason of a violation of this chapter, plus the costs and expenses of the investigation and prosecution of the action, including reasonable attorney fees in the trial and appellate courts.

Legal Components:

- 2.1 *The state sex trafficking law can be applied to buyers of commercial sex acts with a minor.*
- 2.2 *Buyers of commercial sex acts with a minor can be prosecuted under commercial sexual exploitation of children (CSEC) laws.*
- 2.3 *Solicitation laws differentiate between soliciting sex acts with an adult and soliciting sex acts with a minor under 18.*
- 2.4 *Penalties for buyers of commercial sex acts with minors are as high as federal penalties.*
- 2.5 *Using the Internet or electronic communications to lure, entice, or purchase, or attempt to lure, entice, or purchase commercial sex acts with a minor is a separate crime or results in an enhanced penalty for buyers.*
- 2.6 *No age mistake defense is permitted for a buyer of commercial sex acts with any minor under 18.*
- 2.7 *Base penalties for buying sex acts with a minor under 18 are sufficiently high and not reduced for older minors.*
- 2.8 *Financial penalties for buyers of commercial sex acts with minors are sufficiently high to make it difficult for buyers to hide the crime.*
- 2.9 *Buying and possessing child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.*
- 2.10 *Convicted buyers of commercial sex acts with minors are required to register as sex offenders.*

Legal Analysis:

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

Pursuant to provisions within Iowa’s core sex trafficking statute, Iowa Code § 710A, the offense of human trafficking contains language that is applicable to buyers who purchase sex with minors in some situations. Iowa Code § 710A.1(4)(b) (Definitions) provides that the crime of human trafficking includes, “[k]nowingly purchasing or attempting to purchase services involving commercial sexual activity from a victim or another person engaged in human trafficking.” Additionally, Iowa Code § 710A.2(4) (Human trafficking) states, “A person who knowingly engages in human trafficking by soliciting services or benefiting from the services of a victim is guilty of a Class ‘D’ felony, except that if the victim is under the age of eighteen, the person is guilty of a class ‘C’ felony.”

While the definition of “commercial sexual activity” under Iowa Code § 710A.1(1) (Definitions) is broad enough to include the conduct of buying sex with a minor, the definition of “services” under Iowa Code § 710A.1(10) appears to limit buyer-applicability under the trafficking law. Pursuant to the Iowa Code §§ 710A.1(4)(b), 710A.2(4), buyers are offenders of human trafficking when they “purchase or attempt to purchase services involving commercial sexual activity” or when the buyer “solicits services . . . from a victim,” respectively. However, the definition of “services” under both statutes requires “an ongoing relationship” and the performance of “activities under the supervision of or for the benefit of the actor, including commercial sexual activity . . .” Iowa Code § 710A.1(10). Thus, for buyers to commit the offense of human trafficking, they must “purchase or attempt to purchase services involving commercial sexual activity . . .” as part of an ongoing relationship with a child who is under the control of a third party or trafficker. Iowa Code §§ 710A.1(1); 710A.1(10).

- 2.1.1 **Recommendation:** Amend both Iowa Code § 710A.1(4)(b) (Definitions) and § 710A.2(4) (Human trafficking) to clarify that the conduct of all buyers of sex with children is included as a human trafficking violation under Iowa Code § 710A, regardless of the length of the relationship between the buyer and the victim.

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

Iowa's CSEC laws apply to buyers who purchase sex acts with a minor. Included under the state's human trafficking chapter, Iowa Code § 710A.2A (Solicitation of commercial sexual activity) states that "a person shall not entice, coerce, or recruit, or attempt to entice, coerce, or recruit either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, to engage in a commercial sexual activity. A person who violates this section commits a class "D" felon[y]" punishable by up to 5 years in prison and a fine between \$750–\$7,500. Iowa Code § 902.9(1)(e) (Maximum sentence for felons).

Iowa Code § 725.1(b) (Prostitution) establishes that "a person who purchases or offers to purchase services as a partner in a sex act from a person who is under the age of eighteen commits a class "D" felony. A class D felony is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e).

Additionally, several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor, but these offenses do not specifically criminalize the purchase of sex acts with a child.¹⁸

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

Iowa's solicitation law, Iowa Code § 725.1 (Prostitution), distinguishes between soliciting sex acts with an adult and soliciting sex with a minor. A conviction under Iowa Code § 725.1(2)(a) is an aggravated misdemeanor when the offense involves an adult and is punishable by imprisonment up to 2 years and a fine of \$625–\$6,250. However, Iowa Code § 725.1(2)(b) heightens the penalty to a Class D felony when "a person . . . purchases or offers to purchase services as a partner in a sex act from a person who is under the age of eighteen." Iowa Code §§ 903.1(2), 725.1(2)(b), 902.9(1)(e).

Additionally, Iowa Code § 710A.2A (Solicitation of commercial sexual activity) prohibits an individual from "enticing, coercing, or recruiting, or attempting to entice, coerce, or recruit either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, to engage in a commercial sexual activity."

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

Buyers convicted under Iowa Code § 710A.2 (Human trafficking) face enhanced penalties if the victim of the offense is a minor. Iowa Code § 710A.2 states,

1. A person who knowingly engages in human trafficking is guilty of a class "D" felony, except that if the victim is under the age of eighteen, the person is guilty of a class "C" felony.
2. A person who knowingly engages in human trafficking by causing or threatening to cause serious physical injury to another person is guilty of a class "C" felony, except that if the victim is under the age of eighteen, the person is guilty of a class "B" felony.
3. A person who knowingly engages in human trafficking by physically restraining or threatening to physically restrain another person is guilty of a class "D" felony, except that if the victim is under the age of eighteen, the person is guilty of a class "C" felony.
4. A person who knowingly engages in human trafficking by soliciting services or benefiting from the services of a victim is guilty of a class "D" felony, except that if the victim is under the age of eighteen, the person is guilty of a class "C" felony.
5. A person who knowingly engages in human trafficking by abusing or threatening to abuse the law or legal process is guilty of a class "D" felony, except that if the victim is under the age of eighteen, the

¹⁸ See *supra* Component 1.2 for a full description of the sexual offenses laws that may be used to prosecute buyers.

person is guilty of a class “C” felony.

6. A person who knowingly engages in human trafficking by knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of a victim is guilty of a class “D” felony, except that if that other person is under the age of eighteen, the person is guilty of a class “C” felony.

....

Class B, C, and D felonies are punishable as follows: Class B felonies are punishable by imprisonment up to 25 years, Class C felonies by imprisonment up to 10 years and a fine of \$1,000–\$10,000,¹⁹ and Class D felonies by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(b), (d), (e) (Maximum sentence for felons). A habitual felon may receive imprisonment up to 15 years.²⁰ Iowa Code § 902.9(1)(c). In addition to fines imposed for an offense under Iowa Code § 710A.2, Iowa Code § 911.2A (Human trafficking victim surcharge) requires a convicted buyer to pay a human trafficking victim surcharge of \$1,000 to be deposited in the human trafficking victim fund.

Buyers also face penalties under Iowa Code § 710A.2A (Solicitation of commercial sexual activity) and § 725.1 (Prostitution) which are both Class D felonies punishable by up to 5 years in prison and a fine between \$750–7,500. Iowa Code § 902.9(1)(e).

Buyers convicted under the sex offense of Iowa Code § 710.10(1), (2) (Enticing a minor) will be guilty of a Class C or D felony, depending on what provision is violated. A violation of Iowa Code § 710A.2A results in a Class D felony, which is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e). A Class C felony is punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d). A second conviction under Iowa Code § 710.10(1) is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)²¹ 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 offense²² against a minor.

¹⁹ Iowa Code § 911.1(1) (Criminal penalty surcharge) states in part, “When a court imposes a fine or forfeiture for a violation of state law, or a city or county ordinance, except an ordinance regulating the parking of motor vehicles, the court or the clerk of the district court shall assess an additional penalty in the form of a criminal penalty surcharge equal to thirty-five percent of the fine or forfeiture imposed.”

²⁰ See *supra* note 5.

²¹ 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.).

²² 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).

18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,²³ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.²⁴

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

Iowa Code § 710.10 (Enticing a minor), although not expressly applicable to buyers of commercial sex, specifically criminalizes use of the Internet or other electronic communication to commit certain sex offenses and may be used to penalize buyers who attempt to entice or purchase commercial sex acts with a minor under 16 years of age via the Internet or electronic communication.²⁵ Iowa Code § 710.10(7) defines “enticement” to include “personal contact and communication by any means including through the mail, telephone, internet, or any social media, and include[s] text messages, instant messages and electronic mail.”²⁶

Buyers who “entice a person reasonably believed to be under the age of thirteen” in violation of Iowa Code § 710.10(1) (Enticing a minor), are guilty of a Class C felony punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(4d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1. Buyers who violate Iowa Code § 710.10(2) will be guilty of a Class D felony punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e).

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

Iowa Code § 710A.2(8) (Human trafficking) states, “[a] person’s ignorance of the age of the victim or a belief that the victim was older is no defense to a violation of this section.” However, Iowa Code § 710A.2A (Solicitation of commercial sexual activity) is silent regarding the availability of such a defense. Iowa Code § 725.1 (Prostitution) is age-neutral, making the mistake of age defense inapplicable.

2.6.1 Recommendation: Amend Iowa Code § 710A.2A (Solicitation of commercial sexual activity) to specifically prohibit an age mistake defense 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.*

Iowa’s buyer-applicable trafficking and CSEC offenses do not stagger penalties based on a minor’s age, and penalties under the trafficking law are sufficiently high. A conviction under Iowa Code § 710A.2 (Human

²³ 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).

²⁴ 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).

²⁵ *See supra* Component 1.2 for the relevant provisions of Iowa Code § 710.10.

²⁶ Iowa Code § 710.10(6) also provides, “For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice or attempt to entice a person believed to be a minor who is present in this state originates from another state, or the communication to entice or attempt to entice a person believed to be a minor is sent from this state.”

trafficking) is generally punishable as a Class C felony by imprisonment up to 10 years. Iowa Code §§ 710A.2(1), 902.9(1)(d). Convictions under Iowa Code § 710A.2A (Solicitation of commercial sexual activity) and § 725.1(b) (Prostitution) are punishable as Class D felonies by up to 5 years in prison. Iowa Code § 902.9(1)(e).

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

Buyers convicted under Iowa Code § 710A.2 (Human trafficking) face fines ranging from \$750 to \$10,000. Iowa Code § 902.9(1)(b), (d), (e) (Maximum sentence for felons). Buyers convicted under Iowa Code § 710.10(1), (2) (Enticing a minor) will be guilty of a Class C or D felony, depending on what provision is violated. A conviction under Iowa Code § 725.1(2)(b) (Prostitution) also carries a Class D felony. A Class D felony is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e). A Class C felony is punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1. If convicted under Iowa Code § 710A.2A (Solicitation of commercial sexual activity), a buyer would face a Class D felony, which is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code § 902.9(1)(e). Iowa Code § 911.2A (Human trafficking victim surcharge) establishes a human trafficking victim surcharge of \$1,000 in addition to the maximum fines for prostitution, pandering, and human trafficking offenses.

Under Iowa’s “Forfeiture Reform Act,” Chapter 809A, certain types of offenses must give rise to forfeiture where authorized, including, pursuant to Iowa Code § 809A.3(1), (Conduct giving rise to forfeiture),

- a. An act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony.
 - b. An act or omission occurring outside of this state, that would be punishable by confinement of one year or more in the place of occurrence and would be a serious or aggravated misdemeanor or felony if the act or omission occurred in this state.
 - c. An act or omission committed in furtherance of any act or omission described in paragraph “a”, which is a serious or aggravated misdemeanor or felony, including any inchoate or preparatory offense.
-

The following types of property are subject to forfeiture under Iowa Code § 809A.4 (Property subject to forfeiture),

-
2. a. All property . . . including the whole of any lot or tract of land and any appurtenances or improvements to real property, including homesteads that are otherwise exempt from judicial sale pursuant to section 561.16, that is either:
 - (1) Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture.
 - (2) Used or intended to be used in any manner or part to facilitate²⁷ conduct giving rise to forfeiture.
-
6. a. Any property of a person up to the value of property which is either of the following:
 - (1) Described in subsection 2 that the person owned or possessed for the purpose of a use described in subsection 2.

²⁷ Iowa Code § 809A.4(7) (Property subject to forfeiture) states, “As used in this section, ‘facilitate’ means to have a substantial connection between the property and the conduct giving rise to forfeiture.”

(2) Described in subsection 3 and is proceeds of conduct engaged in by the person or for which the person is criminally responsible.

....
....

Property may be seized pursuant to procedures outlined in Iowa Code § 809A.6. Property may be forfeited in an *in rem* proceeding, pursuant to Iowa Code § 809A.13 or an *in personam* proceeding pursuant to Iowa Code § 809A.14. Both of these actions are civil in nature. Iowa Code § 809A. 17 provides for the allocation of forfeited property and states, in part:

....

2. Forfeited property not needed as evidence in a criminal case shall be delivered to the department of justice, or, upon written authorization . . . the property may be destroyed, sold, or delivered to an appropriate agency for disposal in accordance with this section.

3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

4. Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state.

Buyers are subject to a mandatory order of restitution, to be paid directly to the victim. Iowa Code § 910.2(1)²⁸ (Restitution or community service to be ordered by sentencing court) states,

a. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims²⁹ of the offender’s criminal activities³⁰

....

c. In structuring a plan of restitution, the court shall provide for payments in the following order of priority:

(1) Victim.

(2) Fines, penalties, and surcharges.

(3) Crime victim compensation program reimbursement.

(4) Public agencies.

(5) Court costs including correctional fees

(6) Court-appointed attorney fees . . . , including the expense of a public defender.

(7) Contribution to a local anticrime organization.

(8) The medical assistance program.

Iowa Code § 910.1(4) (Definitions) defines “restitution” as

²⁸ The text of Iowa Code § 910.2 cited here and elsewhere in this report includes amendments made by the enactment of House File 679 during the 2019 Regular Session of the 88th General Assembly of the Iowa Legislature (effective July 1, 2019).

²⁹ Iowa Code § 910.1(5) defines a “victim” as “a person who has suffered pecuniary damages as a result of the offender’s criminal activities”

³⁰ Iowa Code § 910.1(1) defines “criminal activities” as

any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982, which is admitted or not contested by the offender, whether or not prosecuted. However, “criminal activities” does not include simple misdemeanors under chapter 321.

payment of pecuniary damages to a victim in an amount and in the manner provided by the offender’s plan of restitution. “Restitution” also includes fines, penalties, and surcharges, . . . court costs . . . and payment to the medical assistance program pursuant to chapter 249A [State supplementary assistance] for expenditures paid on behalf of the victim resulting from the offender’s criminal activities including investigative costs incurred by the Medicaid fraud control unit pursuant to section 249A.7 [Assistance inalienable].

Iowa Code § 915.100(2) (Victim restitution rights) states,

The right to restitution includes the following:

a. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender’s criminal activities.

. . . .

e. Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program reimbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

. . . .

i. The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

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

Iowa Code § 728.12(3) (Sexual exploitation of a minor) prohibits the purchase or sale of child sexual abuse material (CSAM). Iowa Code § 728.12(3) states,

It shall be unlawful to knowingly purchase or possess a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A visual depiction containing pictorial representation of different minors shall be prosecuted and punished as separate offenses for each pictorial representation of a different minor in the visual depiction. However, violations of this subsection involving multiple visual depictions of the same minor shall be prosecuted and punished as one offense

An offender’s first violation of Iowa Code § 728.12(3) is an aggravated offense, punishable by imprisonment up to 2 years and a fine of \$625–\$6,250, while any subsequent violations are Class D felonies punishable by imprisonment up to 5 years and a fine of \$750–\$7,500.³¹ Iowa Code §§ 728.12(3), 903.1(2), 902.9(1)(e).

In comparison, a federal conviction for possession of CSAM³² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.³³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.³⁴

³¹ Iowa Code § 728.12(3) explains,

For purposes of this subsection, an offense is considered a second or subsequent offense if, prior to the person’s having been convicted under this subsection, any of the following apply:

a. The person has a prior conviction or deferred judgment under this subsection.

b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

- 2.9.1 Recommendation: Amend Iowa Code § 728.12(3) (Sexual exploitation of a minor) to increase the penalties for buying and possessing CSAM to reflect the seriousness of the offense.

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

Iowa Code § 692A.103(1) (Offenders required to register) states,

A person who has been convicted of any sex offense classified as a tier I, tier II, or tier III offense, or an offender required to register in another jurisdiction under the other jurisdiction's sex offender registry, shall register as a sex offender as provided in this chapter if the offender resides, is employed, or attends school in this state.

Iowa Code § 692A.102(1) (Sex offense classifications) outlines a tiered offender registry for purposes of Chapter 692A (Sex offender registry), as follows:

For purposes of this chapter [Sex offender registry], all individuals required to register shall be classified as a tier I, tier II, or tier III offender. For purposes of this chapter, sex offenses are classified into the following tiers:

- a. Tier I offenses include a conviction for the following sex offenses:

....

(12) Receipt or possession of child pornography in violation of 18 U.S.C. § 2252.

(13) Material containing child pornography in violation of 18 U.S.C. § 2252A.

....

- b. Tier II offenses include a conviction for the following sex offenses:

(1) Lascivious acts with a child in violation of section 709.8, subsection 1 paragraph "d" or "e".

(2) Solicitation of a minor to engage in an illegal sex act in violation of section 705.1 [Solicitation].

(3) Solicitation of a minor to engage in an illegal act under section 709.8, subsection 1 paragraph c, in violation of section 705.1.

....

(19) Sexual exploitation of a minor in violation of section 728.12, subsection . . . 3 [Prohibiting the purchase or possession of child pornography].

....

(22) Transportation of a minor for illegal sexual activity in violation of 18 U.S.C. § 2421.

(23) Coercion and enticement of a minor for illegal sexual activity in violation of 18 U.S.C. § 2422(a) or (b).

³² 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).

³³ 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).

³⁴ 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).

- (24) Transportation of minors for illegal sexual activity in violation of 18 U.S.C. § 2423(a).
- (25) Travel with the intent to engage in illegal sexual conduct with a minor in violation of 18 U.S.C. § 2423.
- (26) Engaging in illicit sexual conduct in foreign places in violation of 18 U.S.C. § 2423(c).

....

c. Tier III offenses include a conviction for the following sex offenses:

....

(23) Human trafficking in violation of section 710A.2 if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense.

(24) Purchase or sale of an individual in violation of section 710.11 if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

(25) Sexual exploitation of a minor in violation of section 728.12, subsection 1.

....

(30) Enticing a minor in violation of section 710.10, if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor.

(31) Solicitation of commercial sexual activity in violation of section 710A.2A [Solicitation of a commercial sexual activity].

(32) Sex trafficking of children in violation of 18 U.S.C. § 1591.

....

(38) Sexual exploitation of children in violation of 18 U.S.C. § 2251.

(39) Selling or buying of children in violation of 18 U.S.C. § 2251A.

....

Legal Components:

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.
- 3.2 Creating and distributing child sexual abuse material (CSAM) carries penalties as high as similar federal offenses.
- 3.3 Using the Internet or electronic communications to lure, entice, recruit or sell commercial sex acts with a minor is a separate crime or results in an enhanced penalty for traffickers.
- 3.4 Financial penalties for traffickers, including asset forfeiture, are sufficiently high.
- 3.5 Convicted traffickers are required to register as sex offenders.
- 3.6 Laws relating to parental custody and termination of parental rights include sex trafficking or commercial sexual exploitation of children (CSEC) offenses as grounds for sole custody or termination in order to prevent traffickers from exploiting their parental rights as a form of control.

Legal Analysis:

- 3.1 Penalties for trafficking a child for sexual exploitation are as high as federal penalties.

Traffickers who violate Iowa Code § 710A.2³⁵ (Human trafficking) when the victim is a minor, commit a Class B or a Class C felony. Class B felonies are punishable by imprisonment up to 25 years, while Class C felonies are punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(b), (d) (Maximum sentence for felons). To the extent that a trafficker is a habitual offender,³⁶ the trafficker may receive imprisonment up to 15 years. Iowa Code § 902.9(1)(c).

A conviction under Iowa Code § 725.3(2) (Pandering)³⁷ is punishable as a Class C felony by imprisonment up to 10 years, a fine of \$1,000–\$10,000, and an additional “law enforcement initiative surcharge” of \$125. Iowa Code §§ 902.9(1)(d), 911.3. A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(d), 901A.2(3), (4), 902.1.

A conviction under Iowa Code § 710.10(1) (Enticing a minor)³⁸ is punishable as a Class C felony by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1. A conviction under Iowa Code § 710.10(2) is punishable as a Class D felony by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e).

Traffickers may be convicted under Iowa Code § 710A.2A (Solicitation of commercial sexual activity), which also results in a Class D felony punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. A conviction under Iowa Code § 725.2 (Pimping) is punishable as a Class C felony by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(b), (d). In addition to fines imposed for an offense under Iowa Code § 710A.2 and § 725.2 (Pimping), Iowa Code § 911.2A (Human trafficking victim surcharge) requires a convicted trafficker to pay a human trafficking victim surcharge of \$1,000 to be deposited in the human trafficking victim fund.

³⁵ See *supra* Component 1.1 for the provisions of Iowa Code § 710A.2.

³⁶ This provision applies throughout Component 3.1 in all cases where a trafficker is a habitual offender, the offense committed is a Class D or C felony, and the maximum imprisonment term otherwise provided for an offense is less than 15 years. See *supra* note 5 for the provisions of Iowa Code § 902.8 (Minimum sentence—habitual offender).

³⁷ See *supra* Component 1.2 for the provisions of Iowa Code § 725.3(2).

³⁸ See *supra* Component 1.2 for the provisions of Iowa Code § 710.10(1), (2)..

Iowa Code § 710.8(2), (3) (Harboring a runaway child prohibited—penalty) states,

2. A person shall not harbor a runaway child with the intent of committing a criminal act involving the child or with the intent of enticing or forcing the runaway child to commit a criminal act.
3. A person shall not harbor a runaway child with the intent of allowing the runaway child to remain away from home against the wishes of the child’s parent, guardian, or custodian. However, the provisions of this subsection do not apply to a shelter care home which is licensed or approved by the department of human services.

A conviction under Iowa Code § 710.8(2), (3) is punishable as an aggravated misdemeanor by imprisonment up to 2 years and a fine of \$625–\$6,250. Iowa Code §§ 710.8(4), 903.1(2).

Lastly, traffickers may be prosecuted under Iowa Code § 706B.2 (Money laundering penalty—civil remedies). Iowa Code § 706B.2(1) states,

It is unlawful for a person to commit money laundering by doing any of the following:

- a. To knowingly transport, receive, or acquire property or to conduct a transaction involving property, knowing that the property involved is the proceeds of some form of unlawful activity,³⁹ when, in fact, the property is the proceeds of specified unlawful activity.⁴⁰
- b. To make property available to another, by transaction, transportation, or otherwise, knowing that it is intended to be used for the purpose of committing or furthering the commission of specified unlawful activity.
- c. To conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the intent to conceal or disguise the nature, location, source, ownership, or control of the property or the intent to avoid a transaction-reporting requirement under chapter 529, the Iowa financial transaction reporting Act, or federal law.
- d. To knowingly engage in the business of conducting, directing, planning, organizing, initiating, financing, managing, supervising, or facilitating transactions involving property, knowing that the property involved in the transaction is the proceeds of some form of unlawful activity, that, in fact, is the proceeds of specified unlawful activity.

Iowa Code § 710A.2 and Iowa’s CSEC laws fall within the definition of specified unlawful activity, as each is punishable by imprisonment of more than 1 year. A conviction under Iowa Code § 706B.2(1)(a),(b), (c) is punishable as a Class C felony by imprisonment up to 10 years, a fine up to the greater of \$10,000 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code § 706B.2(2)(a). A conviction under Iowa Code § 706B.2(1)(d) is punishable as a Class D felony and by imprisonment up to 5 years, a fine up to the greater of \$7,500 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code § 706B.2(2)(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁴¹ 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

³⁹ Iowa Code § 706B.1(5) (Definitions) defines “unlawful activity” as “any act which is chargeable or indictable as a public offense of any degree under the laws of the state in which the act occurred or under federal law and, if the act occurred in a state other than this state, would be chargeable or indictable as a public offense of any degree under the laws of this state or under federal law.”

⁴⁰ Iowa Code § 706B.1(3) defines for this section “specified unlawful activity” as “any act, including any preparatory or completed offense, committed for financial gain on a continuing basis, that is punishable by confinement of one year or more under the laws of this state, or, if the act occurred outside this state, would be punishable by confinement of one year or more under the laws of the state in which it occurred and under the laws of this state.”

⁴¹ See *supra* note 21.

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 offense⁴² 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.*

The creation or distribution of child sexual abuse material (CSAM) is prohibited under Iowa Code § 728.12 (Sexual exploitation of a minor). Iowa Code § 728.12 states,

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act⁴³ or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a visual depiction
2. It shall be unlawful to knowingly promote⁴⁴ any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act

Traffickers who produce CSAM in violation of Iowa Code § 728.12(1), a Class C felony, face imprisonment up to 10 years and a fine of \$1,000–\$10,000 and may receive an additional \$50,000 fine for each violation under Iowa Code § 728.12. Iowa Code §§ 728.12(1), 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(b), 901A.2(3), (4), 902.1. Those who distribute CSAM in violation of Iowa Code § 728.12(2), a Class D felony, face imprisonment up to 5 years and a fine of \$750–\$7,500 and may receive an additional \$25,000 fine for each violation under Iowa Code § 728.12. Iowa Code §§ 728.12(2), 902.9(1)(e).

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 offense⁴⁵ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM⁴⁶ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴⁷ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁸

⁴² See *supra* note 22.

⁴³ See *supra* note 7 for definition of “prohibited sexual act.”

⁴⁴ Iowa Code § 728.1(8) defines “promote” as “to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do any of these acts.”

⁴⁵ See *supra* note 22.

⁴⁶ 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).

⁴⁷ 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).

⁴⁸ 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

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

Iowa Code § 710.10 (Enticing a minor) may be used to penalize traffickers who attempt to lure, entice, or recruit a minor under 16 years of age for sex acts via the Internet or other electronic communication and specifically reaches a trafficker's use of the internet to sell sex acts with recruit commercial sex acts from minors under 16 years of age. Iowa Code § 710.10(7) defines "enticement" to include "personal contact and communication by any means including through the mail, telephone, internet, or any social media, and include[s] text messages, instant messages and electronic mail."⁴⁹

A person who "entices or attempts to entice a person reasonably believed to be under the age of thirteen" in violation of Iowa Code § 710.10(1),⁵⁰ is guilty of a Class C felony punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(d). A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(c), 901A.2(3), (4), 902.1. A person who violates Iowa Code § 710.10(2) commits a Class D felony punishable by imprisonment up to 5 years and a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e).

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

Several statutes impose financial penalties for trafficking a child for sexual exploitation. A violation of Iowa Code § 710A.2 (Human trafficking) involving a minor victim is punishable either as a Class B or as a Class C felony, whereas a violation of Iowa Code § 710A.2A (Solicitation of commercial sexual activity) results in a Class D felony. Traffickers convicted of Class B felonies are not required to pay a fine; however, those convicted of Class C felonies will be required to pay a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(b), (d) (Maximum sentence for felons). Traffickers convicted of CSEC crimes are subject to fines. A conviction under Iowa Code § 710.10(1) (Enticing a minor),⁵¹ is punishable as a Class C felony carrying a fine of \$1,000–\$10,000. Iowa Code §§ 710.10(1), 902.9(1)(d), while a conviction under Iowa Code § 710.10(2) is punishable as a Class D felony with a fine of \$750–\$7,500. Iowa Code §§ 710.10(2), 902.9(1)(e). A conviction under Iowa Code § 728.12(1) (Sexual exploitation of a minor)⁵² is punishable as a Class C felony, generally subject to fine of \$1,000–\$10,000; however, "[n]otwithstanding section 902.9 [Maximum sentence for felons], the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence." Traffickers convicted of violating Iowa Code § 725.3(2) (Pandering),⁵³ a Class C felony, face a fine of \$1,000–\$10,000, as well as an additional "law enforcement initiative surcharge" of \$125.⁵⁴ Iowa Code §§ 725.3(2), 902.9(1)(d). Traffickers convicted of violating Iowa Code § 725.2 (2) (Pimping) when the offense involves a minor victim are subject to a Class C felony carrying a fine of \$1,000–\$10,000. Iowa Code § 911.2A (Human trafficking victim surcharge) establishes a human trafficking victim surcharge of one thousand dollars in addition to the maximum fines for human trafficking and pimping offenses.

Traffickers prosecuted under Iowa Code § 706B.2 (Money laundering penalty—civil remedies) also will be required to pay fines. Convictions under Iowa Code § 706B.2(1)(a), (b), (c), punishable as Class C felonies, may be required to pay a fine up to the greater of \$10,000 or twice the value of the of the property involved.

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).

⁴⁹ *See supra* note 26.

⁵⁰ *See supra* Component 1.2 for the provisions of Iowa Code § 710.10(1), (2).

⁵¹ *See supra* Component 1.2 for the provisions of Iowa Code § 710.10(1), (2)..

⁵² *See supra* Component 1.2 for the provisions of Iowa Code § 728.12(1).

⁵³ *See supra* Component 1.2 for the provisions of Iowa Code § 725.3(2).

⁵⁴ *See supra* note 6 for the provisions of Iowa Code § 911.3 (Law enforcement initiative surcharge).

Iowa Code § 706B.2(2)(a). A conviction under Iowa Code § 706B.2(1)(d) is punishable as a Class D felony with a fine up to the greater of \$7,500 or twice the value of the of the property involved. Iowa Code § 706B.2(2)(b).

Iowa Code § 809A.3(1)(a), (b), (c) (Conduct giving rise to forfeiture) and Iowa Code § 809A.4 (Property subject to forfeiture) broadly provide that defendants who commit serious misdemeanors, aggravated misdemeanors, or felonies will be required to forfeit all proceeds of the “conduct giving rise to forfeiture,” as well as all property used to commit or “to facilitate the conduct giving rise to forfeiture.”⁵⁵

Furthermore, traffickers convicted of crimes under Iowa’s laws will be required to make restitution directly to their victims. Iowa Code § 910.2(1)(a)⁵⁶ (Restitution or community service to be ordered by sentencing court) states that “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender’s criminal activities”⁵⁷ Iowa Code § 710A.4 (Restitution) further specifies that in making restitution to a victim of Iowa Code § 710A.2, “[t]he gross income of the defendant or the value of labor or services performed by the victim⁵⁸ to the defendant shall be considered when determining the amount of restitution.”

In addition to a fine of \$625–\$6,250 imposed by § 903.1(2) for the aggravated misdemeanor offense of harboring a runaway under Iowa Code § 710.8, pursuant to Iowa Code § 710.9 (Civil liability for harboring a runaway child),

A parent, guardian, or custodian of a runaway child has a right of action against a person who harbored the runaway child in violation of section 710.8 [Harboring a runaway child—penalty] for expenses sustained in the search for the child, for damages sustained due to physical or emotional distress due to the absence of the child, and for punitive damages.

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

Iowa Code § 692A.103(1) (Offenders required to register) states,

A person who has been convicted of any sex offense classified as a tier I, tier II, or tier III offense,⁵⁹ or an offender required to register in another jurisdiction under the other jurisdiction’s sex offender registry, shall register as a sex offender as provided in this chapter if the offender resides, is employed, or attends school in this state.

Tier I offenses includes both Iowa Code § 725.2 (Pimping) and Iowa Code § 725.3(2) (Pandering) where the victim was a minor and “a determination is made that the offense was sexually motivated pursuant to section 692A.126 [Sexually motivated offense].” Iowa Code § 692A.102(1)(a)(7), (8) (Sex offense classifications). Tier II offenses include Iowa Code § 728.12(2) (Sexual exploitation of a minor). Iowa Code § 692A.102(1)(b)(19). Tier III offenses include Iowa Code § 710A.2 (Human trafficking) “if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense,” § 710.11 (Purchase or sale of an individual) “if a determination is made that the offense was sexually motivated,” and § 728.12(1) (Sexual exploitation of a minor). Iowa Code § 692A.102(1)(c)(23), (24), (25).

⁵⁵ See *supra* Component 2.8 for the provisions of Iowa Code § 809A.3(1)(a), (b), (c) (Conduct giving rise to forfeiture) and Iowa Code § 809A.4 (Property subject to forfeiture).

⁵⁶ See *supra* note 28.

⁵⁷ See *supra* Component 2.8 for the provisions of Iowa Code § 910.2(1)(a) (Restitution or community service to be ordered by sentencing court). See *supra* note 30 for definition of “criminal activities.”

⁵⁸ Pursuant to Iowa Code § 710A.1(13), “victim” is defined as “a person subjected to human trafficking.”

⁵⁹ See *supra* Component 2.10 for a full list of sex offense classifications grouped into tier I, tier II, and tier III offenses.

3.6 *Laws relating to parental custody and termination of parental rights include sex trafficking or commercial sexual exploitation of children (CSEC) offenses as grounds for sole custody or termination in order to prevent traffickers from exploiting their parental rights as a form of control.*

Convictions under Iowa Code § 710A.2 (Human trafficking) and Iowa’s CSEC laws are included as grounds for terminating parental rights under Iowa Code § 232.116(1)(o) (Grounds for termination) and § 600A.8(10) (Grounds for termination). Both Iowa Code § 232.116(1)(o) and § 600A.8(10) authorize the termination of parental rights if:

The parent has been convicted of a felony offense that is a sex offense against a minor as defined in section 692A.101 [Definitions], the parent is divorced from or was never married to the minor’s other parent, and the parent is serving a minimum sentence of confinement of at least five years for that offense.

Iowa Code § 600A.8 also authorizes the termination of parental rights if a court, “finds there is clear and convincing evidence that the child was conceived as the result of sexual abuse as defined in section 709.1 [Sexual abuse defined], and the biological parent against whom the sexual abuse was perpetrated requests termination of the parental rights of the biological parent who perpetrated the sexual abuse.”⁶⁰

Iowa Code § 692A.101(28) defines a “sex offense against a minor” as “an offense for which a conviction has been entered for a sex offense classified as a tier I, tier II, or tier III offense under this chapter if such offense was committed against a minor, or otherwise involves a minor.” Therefore, a conviction under the following laws, assuming the other requirements of the statute are met, could serve as the basis for terminating parental rights: Iowa Code § 710A.2 (Human trafficking), “if sexual abuse or assault with intent to commit sexual abuse is committed or sexual conduct or sexual contact is an element of the offense;” Iowa Code § 725.3(2) (Pandering), “if a determination is made that the offense was sexually motivated pursuant to section 692A.126;” Iowa Code § 710.10(1) (Enticing a minor), “if the violation includes an intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct directed towards a minor;” Iowa Code § 710.11 (Purchase or sale of individual), “if a determination is made that the offense was sexually motivated pursuant to section 692A.126;” and Iowa Code § 728.12(1) (Sexual exploitation of a minor). Iowa Code §§ 629A.101(a)(8), (c)(23)–(25), (30).

Other grounds for terminating parental rights provided under Iowa Code § 232.116(1) include the following:

....

i. The court finds that all of the following have occurred:

- (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse⁶¹ or neglect as a result of the acts or omissions of one or both parents.
- (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
- (3) There is clear and convincing evidence that the offer or receipt of services would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

....

m. The court finds that both of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.
- (2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child’s sibling, or any other child in the household.

⁶⁰ See *infra* Component 5.5 for a discussion on child sex trafficking and commercial sexual exploitation falling within the definition of sexual abuse.

⁶¹ See *supra* note 10 for the definition of “sexual abuse.”

....

p. The court finds that the child was conceived as the result of sexual abuse as defined in section 709.1, and the biological parent against whom the sexual abuse was perpetrated requests termination of the parental rights of the biological parent who perpetrated the sexual abuse.

Legal Components:

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

Legal Analysis:

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

The act of assisting or facilitating the crime of sex trafficking is prohibited under Iowa Code § 710A.2(7) (Human trafficking), which states it is a Class C felony if the victim is under 18 and a facilitator “benefits financially or by receiving anything of value from knowing participation in human trafficking.” Iowa Code § 710A.1(4)(a) (Definitions) defines “human trafficking” as, “participating in a venture⁶² to . . . transport . . . a person for,” among other things, “[c]ommercial sexual activity,” without regard to the use of force, fraud, or coercion where the trafficked person is a minor.” Therefore, facilitators also may be prosecuted under Iowa Code § 710A.2(1) for “knowingly engag[ing] in human trafficking,” which is a Class C felony when the victim is a minor. Class C felonies are punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d) (Maximum sentence for felons). Habitual offenders may receive imprisonment up to 15 years.⁶³ Iowa Code § 902.9 (1)(c).

A facilitator also may be prosecuted under Iowa Code § 725.3(2) (Pandering) to the extent that a facilitator “keeps or maintains any premises for the purpose of prostitution involving minors or knowingly shares in the income from such premises knowing the character and content of such income” A violation of Iowa Code § 725.3(2) is a Class C felony, punishable by imprisonment up to 10 years, a fine of \$1,000–\$10,000, and an additional “law enforcement initiative surcharge” of \$125. Iowa Code §§ 725.3(2), 902.9(1)(d), 911.3. A second conviction is punishable by imprisonment for 25 years and subsequent convictions are punishable as Class A felonies by imprisonment for life. Iowa Code §§ 901A.1(1)(d), 901A.2(3), (4), 902.1. A habitual offender may receive imprisonment up to 15 years.⁶⁴ Iowa Code § 902.9(1)(c). A facilitator who “knowingly takes or shares in the earnings of a prostitute . . . or who knowingly furnishes a room or other place to be used for the purpose of prostitution” is subject to prosecution under Iowa Code § 725.2(2) (Pimping), a class C felony.” Class C felonies are punishable by imprisonment up to 10 years and a fine of \$1,000–\$10,000. Iowa Code § 902.9(1)(d). Facilitators convicted of Iowa Code § 725.2(2) (Pimping) and § 710A.2 (Human trafficking) are required to pay an additional fine of \$1,000 under Iowa Code § 911.2A (Human trafficking victim surcharge) for pandering, human trafficking, and pimping offenses.

Lastly, facilitators may be prosecuted under Iowa Code § 706B.2 (Money laundering penalty—civil remedies). Iowa Code § 706B.2.⁶⁵ Facilitators who violate Iowa Code § 710A.2 and Iowa’s CSEC laws will fall within the

⁶² See *supra* note 2 for the definition of “venture.”

⁶³ This provision applies throughout section 4.1 in all cases where a facilitator is a habitual offender and the maximum imprisonment term otherwise provided for an offense is less than 15 years. See *supra* note 5 for the provisions of Iowa Code § 902.8 (Minimum sentence—habitual offender).

⁶⁴ See *supra* note 5.

⁶⁵ See *supra* Component 3.1 for the provisions of Iowa Code § 706B.2 and the definition of “specified unlawful activity” under Iowa Code § 706B.1(3).

definition of “specified unlawful activity,” as each is punishable by imprisonment of more than 1 year. A conviction under Iowa Code § 706B.2(1)(a), (b), (c), is punishable as a Class C felony by imprisonment up to 10 years, a fine up to the greater of \$10,000 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code § 706B.2(2)(a). A conviction under Iowa Code § 706B.2(1)(d), is punishable as a Class D felony by imprisonment up to 5 years, a fine up to the greater of \$7,500 or twice the value of the of the property involved, or both imprisonment and a fine. Iowa Code § 706B.2(2)(b).

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

Facilitators who violate Iowa Code § 710A.2(1), (4), (7) (Human trafficking), a Class C felony when the victim is a minor, face a fine of \$1,000–\$10,000. Iowa Code §§ 710A.2(1), (4), (7), 902.9(1)(d). A facilitator convicted under Iowa Code § 725.3(2) (Pandering) or Iowa Code § 725.2(2) (Pimping), also Class C felonies, face a fine of \$1,000–\$10,000, as well as an additional “law enforcement initiative surcharge” of \$125. Iowa Code §§ 725.3, 902.9(1)(e), 911.3. Iowa Code § 911.2A (Human trafficking victim surcharge) requires a human trafficking victim surcharge of one thousand dollars in addition to the maximum fines for pandering, human trafficking, and pimping offenses.

Facilitators convicted under Iowa Code § 706B.2(1)(a), (b), (c) (Money laundering penalty — civil remedies), face a fine up to the greater of \$10,000 or twice the value of the of the property involved, while those convicted under Iowa Code § 706B.2(1)(d) face a fine up to the greater of \$7,500 or twice the value of the of the property involved. Iowa Code § 706B.2(2). Additionally, property involved in a violation of Iowa Code § 706B.2 “is subject to forfeiture under chapter 809A [Forfeiture Reform Act].” Iowa Code § 706B.2(4).

Facilitators convicted of other crimes also are subject to forfeiture provisions. Iowa Code § 809A.3 (Conduct giving rise to forfeiture) and Iowa Code § 809A.4 (Property subject to forfeiture) explain that facilitators convicted of serious misdemeanors, aggravated misdemeanors, and felonies will be required to forfeit property used in the commission of the illegal act and proceeds from the prohibited conduct.⁶⁶

Mandatory restitution laws also apply to facilitators of domestic minor sex trafficking.⁶⁷ Iowa Code § 910.2(1)(a)⁶⁸ (Restitution or community service to be ordered by sentencing court) states that “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims⁶⁹ of the offender’s criminal activities”⁷⁰ Iowa Code § 915.100(1) (Victim restitution rights) reiterates that “[v]ictims, as defined in section 910.1, have the right to recover pecuniary damages, as defined in section 910.1.” Furthermore, under chapter 710 (Human trafficking), Iowa Code § 710A.4 (Restitution) specifies that “[t]he gross income of the defendant or the value of labor or services performed by the victim⁷¹ to the defendant shall be considered when determining the amount of restitution.”

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

Iowa has not enacted a law prohibiting the promotion or sale of child sex tourism.

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

⁶⁶ See *supra* Component 2.8 for the provisions of Iowa Code § 809A.3 and Iowa Code § 809A.4.

⁶⁷ See *supra* Component 2.8 for a discussion of Iowa’s restitution laws.

⁶⁸ See *supra* note 28.

⁶⁹ See *supra* note 29 for the definition of “victim.”

⁷⁰ See *supra* note 30 for the definition of “criminal activities.”

⁷¹ See *supra* note 58.

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

Promoting child sexual abuse material (CSAM) is criminalized under Iowa Code § 728.12(2) (Sexual exploitation of a minor), which states,

It shall be unlawful to knowingly promote any material visually depicting a live performance of a minor engaging in a prohibited sexual act⁷² or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class “D” felony. Notwithstanding section 902.9 [Maximum sentence for felons], the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

As a Class D felony, a conviction under Iowa Code § 728.12(2) is punishable by imprisonment up to 5 years and a fine of \$750–\$7,500, in addition to the fine of up to \$25,000 authorized under Iowa Code § 728.12(2). Iowa Code §§ 725.2, 902.9(1)(e).

- 4.4.1 Recommendation: Amend § 728.12(2) (Sexual exploitation of a minor) to increase the penalties for promoting and selling CSAM to reflect the seriousness of the offense.

⁷² See *supra* note 7 for definition of “prohibited sexual act.”

Legal Components:

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

Legal Analysis:

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.⁷³*

Pursuant to provisions within Iowa’s core sex trafficking statute, Iowa Code § 710A (Human trafficking), not all commercially sexually exploited children are identifiable as sex trafficking victims. Use of force, fraud, or coercion are not required when the victim is a minor; minors include all persons younger than 18 years of age. Iowa Code § 710A.1(4)(a)(2) (Definitions).

However, the human trafficking law is only applicable to buyers in a few, limited circumstances. For a buyer to commit the offense of human trafficking pursuant to Iowa Code § 710A.2(4) (Human trafficking), the buyer must “solicit services or benefit from the services of a victim.” The applicability of the statute is limited by the definition of “services” under Iowa Code § 710A.1(10); “services” is defined as “[A]n ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor, including commercial sexual activity and sexually explicit performances.” Thus, for a buyer to commit the offense of human trafficking under Iowa Code § 710A.2(4), a controlling third party or trafficker must be involved and identified.

Furthermore, the requirement of “ongoing relationship” under Iowa Code § 710A.1(10) may limit culpability for traffickers in some situations, particularly in relation to initial encounters between traffickers and victims, including acts of recruitment and transport.

⁷³ 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).

5.1.1 Recommendation: Amend Iowa Code § 710A.1 (Definitions) to ensure all commercially sexually exploited children are identified as victims and eligible for protections pursuant to their victim status.

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.*

Iowa Code § 710A.2(8) (Human trafficking), § 710A.2A (Solicitation of commercial sexual activity), § 728.12(1) (Sexual exploitation of a minor), § 710.10(1), (2) (Enticing a minor), and § 725.3(2) (Pandering) are silent regarding the availability of a defense based on the minor’s willingness to engage in the commercial sex act.

However, Iowa Code § 709.8 (Lascivious acts with a child), a non-CSEC offense, explicitly states, “It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child’s consent unless married to each other” Similarly, Iowa Code § 709.12 (Indecent contact with a child) states, “A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person’s spouse, with or without the child’s consent”

5.2.1 Recommendation: Amend Iowa Code § 710A.2(8) (Human trafficking), § 728.12(1) (Sexual exploitation of a minor), § 710.10(1), (2) (Enticing a minor), and § 725.3(2) (Pandering) to expressly prohibit a defense based on the minor’s willingness to engage in the commercial sex act.⁷⁴

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁷⁵

Iowa Code § 725.1 (Prostitution) does not eliminate a minor’s criminal liability for prostitution-related offenses; however, minors charged with offenses under Iowa Code § 725.1 (Prostitution) may be referred to the Department of Human Services at the discretion of the county attorney. Iowa Code § 725.1(1)(b) states,

If the person who sells or offers for sale the person’s services as a partner in a sex act is under the age of eighteen, the county attorney may elect, in lieu of filing a petition alleging that the person has committed a delinquent act, to refer that person to the department of human services for the possible filing of a petition alleging that the person is a child in need of assistance.

5.3.1 Recommendation: Amend Iowa Code § 725.1 (Prostitution) to ensure that all minors are protected from criminalization for prostitution offenses.⁷⁶

⁷⁴ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁷⁵ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁷⁶ 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

I. Services through child welfare

A juvenile sex trafficking victim may come to the attention of the department of human services through different avenues, including reports of abuse.⁷⁷ “If the department has reasonable cause to believe that a child under the placement, care, or supervision of the department is, or is at risk of becoming, a sex trafficking victim,” Iowa Code §§ 232.70(10), 232.71B(3)(c) require the department of human services to take the following steps:

- a. Identify the child as a sex trafficking victim or at risk of becoming a sex trafficking victim and include documentation in the child’s department records.
- b. Refer the child for appropriate services.
- c. Refer the child identified as a sex trafficking victim, within twenty-four hours, to the appropriate law enforcement agency having jurisdiction to investigate the allegation.

Once a minor is identified as a victim, child protection assistance teams are available to assist juvenile sex trafficking victims. Pursuant to Iowa Code § 915.35(1) (Child victim services), a victim is defined in part as “a minor under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter . . . 710A [Human trafficking].” Pursuant to Iowa Code § 915.35(2), (4),

2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim’s parents or guardians.

. . . .

4. a. A child protection assistance team involving the county attorney, law enforcement personnel, and personnel of the department of human services shall be established for each county by the county attorney. However, by mutual agreement, two or more county attorneys may establish a single child protection assistance team to cover a multicounty area. A child protection assistance team, to the greatest extent possible, may be consulted in cases involving a forcible felony against a child who is less than age fourteen in which the suspected offender is the person responsible for the care of a child, as defined in section 232.68. A child protection assistance team may also be utilized in cases involving a violation of chapter 709 or 726 or other crime committed upon a victim as defined in subsection 1.
- b. A child protection assistance team may also consult with or include juvenile court officers, medical and mental health professionals, physicians or other hospital-based health professionals, court-appointed special advocates, guardians ad litem, and members of a multidisciplinary team created by the department of human services for child abuse investigations. A child protection assistance team may work cooperatively with the early childhood Iowa area board established under chapter 256I. The child protection assistance team shall work with the department of human services in accordance with section 232.71B [Duties of the department upon receipt of the report], subsection 3, in developing the protocols for prioritizing the actions taken in response to child abuse assessments and for law enforcement agencies working jointly with the department at the local level in processes for child abuse assessments. The department of justice may provide training and other assistance to support the activities of a child protection assistance team.

Some protective provisions are also available to a juvenile sex trafficking victim found to be a “child in need of assistance.”⁷⁸ Pursuant to Iowa Code § 709.13 (Child in need of assistance complaints),

⁷⁷ See *infra* Component 5.5 for a full discussion of Iowa’s abuse provisions.

⁷⁸ Iowa Code § 232.2(6) (Definitions) defines a “child in need of assistance” as

During or following an investigation into allegations of violations of this chapter [Sexual Abuse] or of chapter 726 [Protection of family and dependent persons] or 728 [Obscenity, which includes § 728.12 Sexual exploitation of a minor] involving an alleged victim under the age of eighteen and an alleged offender who is not a person responsible for the care of the child, anyone with knowledge of the alleged offense may file a complaint pursuant to section 232.83 [Child sexual abuse involving a person not responsible for the care of the child] alleging the child to be a child in need of assistance. In all cases, the complaint shall be filed by any peace officer with knowledge of the investigation when the peace officer has reason to believe that the alleged victim may require treatment as a result of the alleged offense and that the child's parent, guardian, or custodian will be unwilling or unable to provide the treatment.

II. Services through juvenile justice

Iowa Code § 232.2(12)(a), (b) (Definitions) defines delinquent act, in part, as a “violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter” or a “violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.” Because a minor could be charged with prostitution under Iowa Code § 725.1 (Prostitution), a court could find a sexually exploited minor to be delinquent.

However, Iowa Code § 725.1(b) provides an alternative to a delinquency adjudication for minors charged with engaging in prostitution. It states,

If the person who sells or offers for sale the person's services as a partner in a sex act is under the age of eighteen, the county attorney may elect, in lieu of filing a petition alleging that the person has committed a delinquent act, to refer that person to the department of human services for the possible filing of a petition alleging that the person is a child in need of assistance.

If not diverted as a commercially sexually exploited child, a victim may still be able to avoid a delinquency adjudication through the informal adjustment process. When a child has admitted his or her involvement in a delinquent act, the child can proceed under Iowa Code § 232.29(1) (Informal adjustment). A child may voluntarily enter into an informal adjustment agreement and sign the terms of the agreement to proceed through this informal procedure. Iowa Code § 232.29(1)(c), (d).

Summary

Juvenile sex trafficking victims may receive services after being identified as abused or in need of assistance. Further, Iowa law authorizes a child to be referred to the department of human services in lieu of delinquency

an unmarried child:

....

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian, or other member of the household in which the child resides.

....

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political, or artistic value.

....

proceedings for prostitution offenses, but this process is discretionary. Regardless, services are not required to be specialized.

- 5.4.1 Recommendation: Amend Iowa’s protective response to direct child sex trafficking victims away from the juvenile justice system and to specialized services.⁷⁹

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*⁸⁰

Child sex trafficking and sexual exploitation are identified as types of abuse within Iowa’s child protection statutes.⁸¹ As used within Iowa’s laws related to children in need of assistance, Iowa Code § 232.68(2)(a) (Definitions), defines “child abuse” or “abuse” as

3. The commission of a sexual offense with or to a child pursuant to chapter 709 [Sexual abuse] . . . or section 728.12 [Sexual exploitation of a minor], subsection 1, as a result of the acts or omissions of the person responsible for the care of the child or of a person who is fourteen years of age or older and resides in a home with the child. Notwithstanding section 702.5 [defines child as a person under 14 years of age], the commission of a sexual offense under this subparagraph includes any sexual offense referred to in this subparagraph with or to a person under the age of eighteen years.

....

5. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1 [Prostitution]. Notwithstanding section 702.5 5 [defines child as a person under 14 years of age], acts or omissions under this subparagraph include an act or omission referred to in this subparagraph with or to a person under the age of eighteen years.

....

11. The recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of commercial sexual activity as defined in section 710A.1 [Definitions].

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.*⁸²

The definition of “person responsible for the care of a child”⁸³ is not a barrier to a sex trafficked child accessing the protection of child welfare. Iowa Code § 232.68(2)(a) (Definitions)⁸⁴ expressly requires fault by a “person responsible for the care of a child” for all conduct constituting “child abuse” except child sex trafficking. In contrast, the subsection defining child sex trafficking as “abuse” is silent regarding the child’s relationship to the perpetrator of the abuse. Iowa Code § 232.68(2)(a)(11). Resultantly, the absence of language requiring

⁷⁹ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁸⁰ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁸¹ The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁸² The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁸³ Iowa Code § 232.68(8)(b), (d) defines a “person responsible for the care of a child” as

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

....

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

⁸⁴ See *supra* Component 5.5 for the definition of “child abuse” or “abuse.”

fault by a “person responsible for the welfare of a child” allows for child welfare intervention in non-familial trafficking cases.

5.7 *Crime victims’ compensation is specifically available to a child victim of sex trafficking or CSEC.*

Pursuant to Iowa Code § 915.94 (Victim compensation fund),

A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of section 915.41 and this subchapter. In addition, the department may use moneys from the fund . . . for the award of funds to programs that provide services and support . . . to victims of sexual abuse as provided in chapter 236A,⁸⁵ to victims under section 710A.2 [Human trafficking] . . . for reimbursement to the Iowa law enforcement academy for domestic abuse and human trafficking training

Child sex trafficking victims who suffer personal injury⁸⁶ resulting from a crime⁸⁷ may apply for victims’ compensation under Iowa Code § 915.84(1) (Application for compensation). However, minor victims who otherwise qualify for compensation still may face barriers to receiving crime victims’ compensation due to certain ineligibility criteria in the laws. Iowa Code § 915.84(1) requires the application to be filed “within two years after the date of the crime, the discovery of the crime, or the date of death of the victim.” Also, subsection (2) requires a report “to the local police department or county sheriff department within seventy-two hours of” the occurrence of the crime or of the time a “report can reasonably be made.” In either case, the department of justice “may waive this requirement if good cause is shown.” Iowa Code § 915.84(1), (2). Also, subsection (3) states,

Notwithstanding subsection 2, a victim under the age of eighteen . . . who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 [Sexual abuse] or 726 [Protection of the family or dependent persons] or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for compensation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in section 232.68 [Definitions], subsection 7,⁸⁸ . . . and was reported to an employee of the department of human services and the employee verifies the report to the department.

Other potential barriers to a child sex trafficking victim receiving crime victims’ compensation includes the requirement in Iowa Code § 915.84(6) that the victim “cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation or prosecution of the crime.” Also, victims face possible reductions in compensation claims if found to have “committed the crime or . . . [are] otherwise responsible for damages resulting from the crime.” Iowa Code § 915.87(1)(a).

Iowa Code § 915.87(2) (Reductions and disqualifications) states that “[c]ompensation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following: a. Consent, provocation, or incitement by the victim, b. The victim assisting, attempting, or committing a criminal act. This paragraph shall not apply to a victim under the age of eighteen involved in commercial sexual activity as defined in section 710A.1.” Consequently, child sex trafficking victims may not be ineligible for compensation on the basis of “assisting, attempting, or committing a criminal act,” but may still be denied compensation on

⁸⁵ Iowa Code § 236A.2(5) (Definitions) defines “sexual abuse” to include a violation of Iowa Code § 728.12 (Sexual exploitation of a minor) and several sexual offenses.

⁸⁶ Iowa Code § 915.80(6)(a) (Definitions) defines “victim” in part as “a person who suffers personal injury or death as a result of . . . [a] crime.”

⁸⁷ Iowa Code § 915.80(2) (Definitions) defines “crime” in part as “conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony or misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state.”

⁸⁸ See *supra* Component 5.6.

the basis of consent under subsection (a). Since consent is not expressly barred as a defense under the human trafficking or CSEC laws, this could constitute a barrier to compensation in some cases.

- 5.7.1 Recommendation: Amend Iowa Code § 915.87 (Reductions and disqualifications) to extend the exception for commercially sexually exploited children to the grounds for disqualification under subsection (a) as well as the filing and reporting time limits under subsections (1) and (2).⁸⁹

5.8 *Victim-friendly procedures and protections are provided in the trial process for minors under 18.*⁹⁰

Child crime victims and witnesses are provided some protections throughout the trial process. Iowa Code § 915.37 (Guardian ad litem for prosecuting child witnesses) expressly authorizes the court to appoint a guardian ad litem for a child who is a victim of Iowa Code § 710A.2 (Human trafficking) or CSEC. Specifically, Iowa Code § 915.37(1) states in part,

A prosecuting witness who is a child, as defined in section 702.5,⁹¹ in a case involving a violation of chapter 709 [Sexual abuse] or 710A [Human trafficking], or section . . . or 728.12 [Commercial sexual exploitation of a minor], is entitled to have the witness's interests represented by a guardian ad litem at all stages of the proceedings arising from such violation

Children who are witnesses in criminal cases also may be allowed to provide testimony through closed-circuit television. Under Iowa Code § 915.38(1) (Televised, videotaped, and recorded evidence—limited court testimony—minors and others), the court may order a minor's⁹² testimony taken outside the courtroom and broadcast by closed-circuit equipment to protect the minor "from trauma caused by testifying in the physical presence of the defendant where it would impair the minor's ability to communicate However, such an order shall be entered only upon a specific finding by the court that such measures are necessary to protect the minor." Pursuant to the section, "Only the judge, prosecuting attorney, defendant's attorney, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the minor may be present in the room with the minor during the minor's testimony" and the minor shall be informed that "the defendant will not be present in the room in which the minor will be testifying but that the defendant will be viewing the minor's testimony through closed-circuit television."

Additionally, under Iowa Code § 915.38(2)–(4),

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a minor, as defined in section 599.1, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 2.13(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the minor is unavailable as provided in

⁸⁹ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁹⁰ The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁹¹ Iowa Code § 702.5 (Child) states "unless another age is specified, a 'child' is any person under the age of fourteen years."

⁹² Iowa Code § 915.38(1) refers to the definition of minor in Iowa Code § 599.1 (Period of minority—exception for certain inmates), which states,

The period of minority extends to the age of eighteen years, but all minors attain their majority by marriage

A person who is less than eighteen years old, but who is tried, convicted, and sentenced as an adult and committed to the custody of the director of the department of corrections shall be deemed to have attained the age of majority for purposes of making decisions and giving consent to medical care, related services, and treatment during the period of the person's incarceration.

rule of evidence 5.804(a), order the videotaping of the minor’s testimony for viewing in the courtroom by the court

3. The court may upon motion of a party admit into evidence the recorded statements of a child, as defined in section 702.5 [Child], describing sexual contact performed with or on the child, not otherwise admissible in evidence by statute or court rule if the court determines that the recorded statements substantially comport with the requirements for admission under rule of evidence 5.803(24)⁹³ or 5.804(b)(5).⁹⁴

4. A court may, upon its own motion or upon the motion of a party, order the court testimony of a child to be limited in duration in accordance with the developmental maturity of the child. The court may consider or hear expert testimony in order to determine the appropriate limitation on the duration of a child’s testimony. However, the court shall, upon motion, limit the duration of a child’s uninterrupted testimony to one hour, at which time the court shall allow the child to rest before continuing to testify.

Certain additional protections apply to child sex trafficking victims whose offenders are prosecuted under Iowa’s sexual offense laws. Iowa R. Evid. 5.412(a) (Sexual abuse cases; relevance of victim’s past behavior) states generally that “[n]otwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, reputation or opinion evidence of the past sexual behavior of an alleged victim of such sexual abuse is not admissible.” However, pursuant to Iowa R. Evid. 5.412(b),

Notwithstanding any other provision of law, in a criminal case in which a person is accused of sexual abuse, evidence of a victim’s past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence is either of the following:

(1) Admitted in accordance with rules 5.412(c)(1) and 5.412(c)(2) and is constitutionally required to be admitted.

(2) Admitted in accordance with rule 5.412(c) and is evidence of either of the following:

(A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury.

(B) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which sexual abuse is alleged.

Iowa Code § 915.36(1), (2) (Protection of child victim’s privacy) states that in filings related to any violation of chapter 709 (Sexual abuse) or § 728.12 (Sexual exploitation of a minor), in which the child victim is under 14 years of age, “the name of the child and identifying biographical information shall not appear on the information or indictment or any other public record. Instead, a nondescriptive designation shall appear on all public records.”

Iowa has enacted statutes to prevent assailants or probable assailant from finding individuals attempting to escape from actual or threatened sexual abuse or human trafficking. Iowa Code § 9E.1 (Address Confidentiality Program) states,

The purpose of this chapter is to enable state and local agencies to respond to requests for data without disclosing the location of a victim of . . . sexual abuse, . . . or human trafficking; to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of . . . sexual abuse, . . . or human trafficking; and to enable program participants to use an address designated by the secretary of state as a substitute mailing address for the purposes specified in this chapter. In addition, the purpose of this chapter is to prevent such victims from being physically located through a public records search.

⁹³ Rule 5.803(24) has been transferred to Rule 5.807 (Residual exception). Rule 5.807 states that “[a] statement not specifically covered by any of the exceptions in rules 5.803 or 5.804 but having equivalent circumstantial guarantees of trustworthiness is not excluded by the hearsay rule” if the requirements of the rule are met.

⁹⁴ Rule 5.804(b)(5) has been transferred to Rule 5.807 (Residual exception).

Pursuant to Iowa Code § 9E.2(6)(a) (Eligible person), all minor victims of sexual abuse or human trafficking who are residents of Iowa are eligible to participate in the address confidentiality program. However, the confidentiality of a program participant is not all encompassing. Pursuant to Iowa Code § 9E.7 (Confidentiality of information), confidential information may be released when ordered by a court, by the lawful custodian of the records pursuant to state or federal law, upon request from the department of public safety, to a law enforcement agency upon verification that the release will aid the law enforcement agency in responding to an emergency situation, a criminal complaint, or an ongoing investigation. Further, pursuant to Iowa Code § 9E.8(1) (Disclosure of program participant address in legal proceedings—protective order), the disclosure exception does not apply “during discovery or during a proceeding before a court or other tribunal” if

- (a) A reasonable belief exists that the address is needed to obtain information or evidence without which the investigation, prosecution, or litigation cannot proceed [and]
- (b) No other practical means is available of obtaining the information or evidence from any other source.

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.*

Iowa law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization. However, record expungement is automatic for child sex trafficking victims convicted of a prostitution offense once a two year waiting period has passed. Iowa Code § 725.1(1)(c) (Prostitution) provides,

If the person who sells or offers for sale the person’s services as a partner in a sex act is under the age of eighteen, upon the expiration of two years following the person’s conviction for a [prostitution] violation . . . the person may petition the court to expunge the conviction, and if the person has had no other criminal convictions, other than local traffic violations or simple misdemeanor violations . . . during the two-year period, the conviction shall be expunged as a matter of law.

Pursuant to Iowa Code § 232.150(1) (Sealing of records), juvenile records for other offenses may be sealed as follows:

- a. In the case of an adjudication of delinquency, the court, shall, upon its own motion, schedule a sealing of records hearing to be held two years after the date of the last official action, or the date the child becomes eighteen years of age, whichever is later. The court shall also schedule a sealing of records hearing upon application of a person who was the subject of a complaint petition alleging delinquency that did not result in an adjudication. The court, after hearing, shall order the official juvenile court records in the case including those specified in sections 232.147 [Confidentiality of juvenile court records], 232.149 [Records of criminal or juvenile justice agencies, intake officers, and juvenile court officers], 232.149A [Confidentiality orders], 232.149B [Public record orders], and 915.25 [Right to review complaint against juvenile], sealed if the court finds all of the following:
 - (1) The person is eighteen years of age or older and two years have elapsed since the last official action in the person’s case.
 - (2) The person has not been subsequently convicted of a felony or an aggravated or serious misdemeanor or adjudicated a delinquent child for an act which if committed by an adult would be a felony, an aggravated misdemeanor, or a serious misdemeanor and no proceeding is pending seeking such conviction or adjudication.
 - (3) The person was not placed on youthful offender status, transferred back to district court after the youthful offender’s eighteenth birthday, and sentenced for the offense which precipitated the youthful offender placement.

....

b. If the person was adjudicated delinquent for an offense which if committed by an adult would be an aggravated misdemeanor or a felony, the court shall not order the records in the case sealed unless, upon application of the person or upon the court's own motion and after hearing, the court finds that paragraph "a", subparagraphs (1) and (2), apply and that the sealing is in the best interests of the person and the public.

....

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.⁹⁵

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

Restitution is available to victims in any criminal sentencing; however, civil remedies are limited. Iowa Code § 910.2(1)(a)⁹⁶ (Restitution or community service to be ordered by sentencing court)⁹⁷ states, "In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities . . ." Iowa Code § 915.100(1) (Victim restitution rights) further states that "[v]ictims, as defined in section 910.1 [Definitions], have the right to recover pecuniary damages,⁹⁸ as defined in section 910.1." Furthermore, Iowa Code § 915.100(2) specifies that,

a. In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender's criminal activities.

....

e. Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program reimbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

....

i. The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

Iowa Code § 710A.4 (Restitution) specifies that, with regard to a victim of Iowa Code § 710A.2 (Human trafficking), "[t]he gross income of the defendant or the value of labor or services⁹⁹ performed by the victim¹⁰⁰ to the defendant shall be considered when determining the amount of restitution."

⁹⁵ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

⁹⁶ See *supra* note 28.

⁹⁷ See *supra* Component 2.8 for the provisions of Iowa Code § 910.2(1)(a).

⁹⁸ Pursuant to Iowa Code § 910.1(3) (Definitions),

"Pecuniary damages" means all damages to the extent not paid by an insurer on an insurance claim by the victim, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity.

⁹⁹ Pursuant to Iowa Code § 710A.1 (Definitions), "services" is defined as "an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor, including commercial sexual activity and sexually explicit performances."

Victims of Iowa Code § 706B.2 (Money laundering penalty — civil remedies) also may seek civil remedies. Offenders may be required to pay “a civil penalty of three times the value of the property involved in the transaction, in addition to any criminal sanction imposed.” Iowa Code § 706B.2(3). Traffickers who violate Iowa Code § 706B.2 will also be “subject to forfeiture under chapter 809A [Forfeiture Reform Act].” Iowa Code § 706B.2(4).

Finally, victims of ongoing criminal conduct, pursuant to Iowa Code § 706A may seek civil remedies. Iowa Code § 706A.3 states, in part: “[A]n aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this chapter or to prevent, restrain, or remedy such violation.”

5.10.1 Recommendation: Enact a law to provide a civil remedy for victims of violations of Iowa’s human trafficking and CSEC laws.¹⁰¹

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.*

Iowa’s criminal statute of limitations are lengthened for the state’s core human trafficking statute and a number of CSEC laws, including child sexual exploitation. Iowa Code § 802.2D (Human trafficking) and § 802.2B (Other sexual offenses) establish a 10 year statute of limitations commencing after the date that the child victim attains the age of 18 years; the statute of limitations is limited to 3 years if the offender is identified through DNA evidence, whichever date is later. However, pursuant to Iowa Code § 802.3 (Felony—aggravated or serious misdemeanor), violations of several CSEC laws are subject to a 3 year statute of limitations. Iowa Code § 802.3 specifies that “[i]n all cases, except those enumerated in section . . . 802.2 [Sexual abuse] . . . 802.2D [Human trafficking] . . . an indictment or information for a felony or aggravated or serious misdemeanor shall be found within three years after its commission.” The statute of limitations for sexual abuse and some sexual offenses is tolled until the defendant is identified through DNA profiling, and then extended to ten years. Iowa Code § 802.10(3) states,

[A]n indictment or information shall be found against a person within three years from the date the person is identified by the person’s DNA profile. If the action involves sexual abuse, another sexual offense, kidnapping, or human trafficking, the indictment or information shall be found as provided in section 802.2, 802.2B, 802.2C [Kidnapping], or 802.2D [Human Trafficking], if the person is identified by the person’s DNA profile.

With regard to civil actions, Iowa Code § 614.8A (Damages for child sexual abuse—time limitation) states,

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

To the extent that a civil claim by a CSEC victim does not fall within the exception provided in Iowa Code § 614.8A, the general 2 year statute of limitations for civil claims “founded on injuries to the person or reputation” would apply. Iowa Code § 614.1(2) (Period). However, Iowa Code § 614.8(2) (Minors and persons with mental illness) states,

¹⁰⁰ See *supra* note 58 for definition of “victim.”

¹⁰¹ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

Except as provided in section 614.1, subsection 9 [relating to medical malpractice], the times limited for actions in this chapter . . . except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have one year from and after attainment of majority within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.

- 5.11.1 Recommendation: Amend Chapter 802 (Limitation of criminal actions) to allow offenses committed under Iowa Code § 710A.2 (Human Trafficking) and Iowa’s CSEC laws to be commenced at any time, and amend and Chapter 614 (Limitations of actions) to toll the statute of limitations for civil actions by victims to recover for injuries resulting from these offenses.¹⁰²

¹⁰² The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

Legal Components:

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

Legal Analysis:

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

Iowa Code § 80B.11 (Rules) establishes the training standards applicable to law enforcement officers in Iowa, including minimum entrance requirements, basic training requirements, and advanced training requirements for law enforcement officers.

Iowa Code § 80B.11(1)(e) states,

The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

. . . .

- e. Training standards on the subject of human trafficking, to include curricula on cultural sensitivity and the means to deal effectively and appropriately with trafficking victims. Such training shall encourage law enforcement personnel to communicate in the language of the trafficking victims. The course of instruction and training standards shall be developed by the director in consultation with the appropriate national and state experts in the field of human trafficking.

Iowa Code § 80B.10 (Rules) establishes that an annual report be given to the governor, attorney general, and commissioner of public safety which includes “pertinent data regarding standards established and the degree of participation of agencies in the training program.” The report “shall specifically include data regarding academy resources devoted to training relating to human trafficking.”

Furthermore, pursuant to Iowa Code § 710A.6 (Outreach, public awareness, and training programs),

The crime victim assistance division of the department of justice, in cooperation with other governmental agencies and nongovernmental or community organizations, shall develop and conduct outreach, public awareness, and training programs for the general public, law enforcement agencies, first responders, potential victims, and persons conducting or regularly dealing with businesses or other ventures that have a high statistical incidence of debt bondage or forced labor or services. The programs shall train participants to recognize and report incidents of human trafficking and to suppress the demand that fosters exploitation of persons and leads to human trafficking.

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

Iowa law allows for single party consent to audio-taping. Although Iowa Code § 727.8(2) (Electronic and mechanical eavesdropping) states, “Any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor.” The law carves out an exception, stating, “This section does not apply to any of the following: . . . a sender or recipient of a message or one who is openly present and participating in or listening to a communication from recording such message or communication.” Iowa Code. § 727.8(3)(a).

Furthermore, Iowa Code § 808B.2(2)(c) (Unlawful acts—penalty) makes it clear that it is not “unlawful under this chapter [Interception of communications] for a person not acting under color of law to intercept a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.” Additionally, Iowa Code § 808B.2(2)(b) states, “It is not unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, if the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.”

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

Iowa Code § 727.8 (Electronic and mechanical eavesdropping) and § 808B.2 (Unlawful acts—penalty) generally prohibit wiretapping. However, Iowa Code § 727.8 provides an exception for monitoring devices, stating,

. . . .

2. Any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor.

3. This section does not apply to any of the following:

. . . .

(c) The use of a monitoring device.

Iowa Code § 727.8(1) defines “monitoring device” as “a digital video or audio streaming or recording device that records, listens to, or otherwise intercepts video or audio communications in order to provide proof of or prevent criminal activity that is placed outside of a person’s dwelling or other structure that is not in a shared hallway and is on real property owned or leased by the person.” Iowa Code § 727.8(1), (3)(c). Although this exception applies broadly to the prevention of “criminal activity,” its applicability is limited to monitoring devices placed on one’s own property. Accordingly, this exception would not apply in most trafficking and CSEC investigations.

Further, Iowa Code § 808B.3 (Court order for interception by special agents) allows the attorney general to “authorize and prepare any application for an order authorizing the interception of wire, oral, or electronic communications.” Iowa Code § 808B.3 explains that the court may issue an order authorizing wiretapping by law enforcement investigating specified crimes, subject to the requirements of the chapter. Iowa Code § 710A (Human trafficking) is included among the specified crimes eligible for wiretapping; Iowa’s CSEC laws are not. To the extent that a trafficker or facilitator violates Iowa Code § 706B.2 (Money laundering penalty—civil remedies) or the statutes against ongoing criminal conduct, wiretapping may also be authorized under Iowa Code § 808B.3. Iowa Code § 808B.3 states,

[T]he court may grant, subject to this chapter, an order authorizing the interception of wire, oral, or electronic communications by special state agents having responsibility for the investigation of the offense as to which application is made, when the interception may provide or has provided evidence of the following:

-
- 2. A forcible felony as defined in section 702.11 [Forcible felony].¹⁰³
- 3. A felony offense involving ongoing criminal conduct in violation of chapter 706A.
- 4. A felony offense involving money laundering in violation of chapter 706B.
-
- 6. A felony offense involving human trafficking in violation of chapter 710A.

Pursuant to Iowa Code § 808B.4(2) (Permissible disclosure and use),

An investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of a wire, oral, or electronic communication or has obtained evidence derived from a wire, oral, or electronic communication may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

- 6.3.1 Recommendation: Amend Iowa Code § 808B.2 (Unlawful acts—penalty) to permit the use of wiretaps in investigations of violations of Iowa's CSEC laws.

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

Iowa Code § 710A.2A (Solicitation of commercial sexual activity) expressly prohibits a defense to the use of a law enforcement decoy posing as a minor. Iowa Code § 710A.2A states,

A person shall not entice, coerce, or recruit, or attempt to entice, coerce, or recruit, either a person who is under the age of eighteen or a law enforcement officer or agent who is representing that the officer or agent is under the age of eighteen, to engage in commercial sexual activity.

The defense is likewise unavailable to some buyers who violate another of Iowa's CSEC provisions. Under Iowa Code § 710.10(2) (Enticing a minor), "A person commits a class D felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices a person reasonably believed to be under the age of sixteen."¹⁰⁴ The language "reasonably believed to be under the age of sixteen" suggests that Iowa Code § 710.10 may apply when a law enforcement officer decoy poses as a minor for the purpose of investigation a violation of Iowa Code § 710.10. Therefore, a decoy defense would be unavailable to those charged under Iowa Code § 710A.2A and § 710.10(2) through reverse sting operations, which are the most likely situations in which a defendant would try to raise such a defense.

Although Iowa Code § 710A.2A and § 710.10(2) do not allow for a defense to investigations in which a law enforcement decoy poses as a minor to investigate attempts to buy or sell commercial sex acts with a child, the defense may still be available for some buyer-applicable offenses. Iowa Code § 710.10(2) implicitly prohibits the defense only when the buyer "reasonably believes" the minor to be under the age of sixteen; thus, buyers charged for attempting to entice a minor who is sixteen or seventeen years of age would not be prohibited from raising a defense based on the fact that an actual minor was not involved.

¹⁰³ Iowa Code § 702.11 (1) (Forcible felony) defines "forcible felony" as "any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, or burglary in the first degree."

¹⁰⁴ Under Iowa Code § 710.10, the offense is elevated to a Class "C" felony when the minor is under the age of thirteen.

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

Iowa law expressly authorizes the use of the Internet to investigate buyers and traffickers. Iowa Code § 710.10(2) (Enticing a minor) makes it a crime when a person “with the intent to commit an illegal sex act upon or sexual exploitation of a minor . . . entices or attempts to entice a person reasonably believed to be under the age of sixteen.” The language “reasonably believed to be under the age of sixteen” suggests that Iowa Code § 710.10 may apply when a law enforcement officer uses the internet to investigate a violation of Iowa Code § 710.10. “Enticement” is defined under Iowa Code § 710.10(7) to include “personal contact and communication by any means including through the mail, telephone, internet, or any social media, and include[s] text messages, instant messages and electronic mail.”¹⁰⁵

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

While not child specific, pursuant to Iowa Code § 694.3 (Complaint of missing person), law enforcement agencies who have received a complaint of a missing person¹⁰⁶ “shall prepare, as soon as practicable, a report on the missing person,” which must include information from the complaint, any evidence gathered through any investigation, any statement by law enforcement officers in charge, and an explanation of the next steps that will be taken by the law enforcement agency. Furthermore, pursuant to Iowa Code § 694.4 (Dissemination of report), once the report is completed, a copy must be forwarded to various other law enforcement agencies. Iowa Code § 694.5(1) (Unemancipated minors) states that when “a report of missing persons involves an unemancipated minor, the law enforcement agency shall immediately transmit the proper information for inclusion in the national crime information center computer.” Lastly, “a law enforcement agency shall not prevent an immediate active investigation on the basis of an agency rule which specifies an automatic time limitation for a missing person investigation.” Iowa Code § 694.5 (2).

Iowa Code § 694.10(2)–(6) (Missing person information clearinghouse) specifies the duties of Iowa’s department of public safety (department) regarding missing persons.¹⁰⁷ Iowa Code § 694.10(2) directs the department of public safety to establish a “statewide missing person information clearinghouse” and to perform various duties related to training and investigations of missing persons. Included among these duties, the department is required to “[d]istribute monthly bulletins to all local law enforcement agencies and to media outlets . . . containing . . . the names of person reported missing whose locations have been determined and confirmed.” Iowa Code § 694.10(2)(g). Pursuant to Iowa Code § 694.10(3), “A law enforcement agency shall submit all missing person reports compiled pursuant to section 694.3 and updated information relating to the reports to the clearinghouse.” Iowa Code § 694.10(4) further states, “Subsequent to the filing of a complaint of a missing person with a law enforcement agency pursuant to section 694.2, the person filing the complaint may submit information regarding the missing person to the clearinghouse. If the person reported missing is an unemancipated minor, any person may submit information regarding the missing unemancipated minor to the clearinghouse.”

¹⁰⁵ See *supra* note 26.

¹⁰⁶ Pursuant to Iowa Code § 694.1 (Missing persons), “missing person” is defined as a person who is missing and meets one of the following characteristics:

1.

.

- b. Is missing under circumstances indicating that the person’s safety may be in danger.
- c. Is missing under circumstances indicating that the disappearance was not voluntary.
- d. Is an unemancipated minor.

2. “Unemancipated minor” means a minor who has not married and who resides with a parent or other legal guardian.

¹⁰⁷ ““Missing person” means a missing person as defined in section 694.1 whose temporary or permanent residence is in Iowa, or is believed to be in Iowa, whose location has not been determined, and who has been reported as missing to a law enforcement agency.” Iowa Code § 694.10(1)(a).

Iowa Code § 694.10(5) states, “A person who has filed a missing person complaint with a law enforcement agency shall immediately notify that law enforcement agency when the location of the missing person has been determined.” Pursuant to Iowa Code § 694.10(6), “All information relating to a missing person in the clearinghouse shall be purged when the person’s location has been determined and confirmed, except that information relating to a missing child shall be purged when the child reaches eighteen years of age and the child’s location has been determined and confirmed.”

Lastly, pursuant to Iowa Code § 232.71B(3)(d), (Founded child abuse – central registry) the Department of Human Services is mandated to report missing children within the care of the Department to the appropriate agencies. Iowa Code § 232.71B(3)(d) states,

The department shall report a child under the placement, care, or supervision of the department who is reported as missing or abducted to law enforcement and to the national center for missing and exploited children within twenty-four hours of receipt of the report.

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