

2019 ANALYSIS AND RECOMMENDATIONS

IDAHO

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.*

Idaho’s human trafficking law does not require force, fraud, or coercion if the person induced to perform the commercial sex act is under the age of 18. Idaho Code Ann. § 18-8602(1)(a)(i)² (Human trafficking defined) defines “human trafficking” in part as “[s]ex trafficking³ in which commercial sexual activity⁴ is induced by

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

² The text of Idaho Code Ann. § 18-8602 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1005 during the 2019 1st Regular Session of Idaho’s 65th Legislature (effective July 1, 2019).

³ Idaho Code Ann. § 18-8602(1)(c) defines “sex trafficking” to include “all forms of commercial sexual activity, which may include the following conduct:

- (i) Sexual conduct, as defined in section 18-5610(2)(a), Idaho Code;
- (ii) Sexual contact, as defined in section 18-5610(2)(b), Idaho Code;
- (iii) Sexually explicit performance;
- (iv) Prostitution; or
- (v) Participation in the production of pornography.

force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age.”

Idaho Code Ann. § 18-8603⁵ (Penalties) states,

Notwithstanding any other law to the contrary, on and after July 1, 2019, any person who commits the crime of human trafficking, as defined in section 18-8602 [Human trafficking defined], Idaho Code, shall be punished by imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by 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.*

The following laws criminalize CSEC in Idaho:

1. Idaho Code Ann. § 18-5609 (Inducing person under eighteen years of age into prostitution—Penalties) provides that “[e]very person who induces or attempts to induce a person under the age of eighteen (18) years to engage in prostitution shall be guilty of a felony.” A conviction under this statute is a felony punishable by 2 years to life imprisonment, a fine up to \$50,000, or both. Idaho Code Ann. § 18-5609.
2. Idaho Code Ann. § 18-5610(1) (Utilizing a person under eighteen years of age for prostitution—Penalties) provides that “[e]very person who exchanges or offers to exchange anything of value⁶ for sexual conduct or sexual contact⁷ with a person under the age of eighteen (18) years shall be guilty of a felony” A conviction under this statute is a felony punishable by 2 years to life imprisonment, a fine up to 50,000, or both.
3. Idaho Code Ann. § 18-1507(2) (Definitions—Sexual exploitation of a child—penalties) states,

A person commits sexual exploitation of a child⁸ if he knowingly and willfully:

. . . .

(b) Causes, induces or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material;

A conviction under subsection (2)(a) of this statute is punishable as a felony by imprisonment up to 10 years in state prison, a fine not to exceed \$10,000, or both. Idaho Code Ann. § 18-1507(3). A conviction under subsections (2)(b), (2)(c), or (2)(d) is punishable as a felony by imprisonment up to 30 years in a state prison, a fine not to exceed \$50,000 or both. Idaho Code Ann. § 18-1507(4).

⁴ Idaho Code Ann. § 18-8602(2) defines “commercial sexual activity” as “sexual conduct or sexual contact in exchange for anything of value, as defined in section 18-5610(2)(c), Idaho code, illicit or legal, given to, received by, or promised to any person.”

⁵ The text of Idaho Code Ann. § 18-8603 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1005 during the 2019 1st Regular Session of Idaho’s 65th Legislature (effective July 1, 2019).

⁶ “‘Anything of value’ includes, but is not limited to, a fee, food, shelter, clothing, medical care or membership in a criminal gang.” Idaho Code Ann. § 18-5610(2)(c),

⁷ The statute defines sexual conduct as “[s]exual intercourse or deviate sexual intercourse.” The statute defines sexual contact as “[a]ny touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.” Idaho Code Ann. § 18-5610(2)(a)–(b).

⁸ Idaho Code Ann. § 18-1507(1)(b) defines “child” as “a person who is less than eighteen (18) years of age.”

Other laws, while not expressly commercial in nature, may apply to sexual exploitation of children, including the following:

1. Idaho Code Ann. § 18-1509A(1) (Enticing a child through use of the internet or other communication device—Penalties—jurisdiction) provides,

A person aged eighteen (18) years or older shall be guilty of a felony if such person knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images or other communication to solicit, seduce, lure, persuade or entice by words or actions, or both, a person under the age of sixteen (16) years or a person the defendant believes to be under the age of sixteen (16) years to engage in any sexual act with or against the person where such act would be a violation of chapter 15 [Children and vulnerable adults], 61 [Rape] or 66 [Sex crimes], title 18, Idaho Code.

A conviction under this statute is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000.⁹ Idaho Code Ann. §§ 18-1509A (2), 18-112A.

2. Idaho Code Ann. § 18-1506(1) (Sexual abuse of a child under the age of sixteen years) states,

It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

- (a) Solicit¹⁰ a minor child under the age of sixteen (16) years to participate in a sexual act;
- (b) Cause or have sexual contact¹¹ with such minor child, not amounting to lewd conduct as defined in section 18-1508 [Lewd conduct with minor child under sixteen], Idaho Code;
- (c) Make any photographic or electronic recording of such minor child; or
- (d) Induce, cause or permit a minor child to witness an act of sexual conduct.¹²

A conviction under this statute is punishable as a felony by imprisonment up to 25 years in the state prison and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1506 (5), 18-112A.

3. Idaho Code Ann. § 18-1508 (Lewd conduct with minor child under sixteen) states that it is a crime to

commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of sixteen (16) years, including but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or [to] involve such minor child in any act of bestiality or sado-masochism as defined in section 18-1507 [Definitions—sexual exploitation of a

⁹ Where no fine is otherwise provided for an offense that is punishable as a felony, Idaho Code Ann. § 18-112A (Fine authorized) authorizes the court to impose a fine up to \$50,000.

¹⁰ Idaho Code Ann. § 18-1506(2) defines “solicit” as

any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

¹¹ Idaho Code Ann. § 18-1506(3) defines “sexual contact” as “any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.”

¹² Idaho Code Ann. § 18-1506(4) defines “sexual conduct” as

human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

child–penalties], Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or third party

A conviction under this statute is punishable as a felony by up to life imprisonment in state prison and a possible fine not to exceed \$50,000. Idaho Code Ann. §§ 18-1508, 18-112A.

4. Idaho Code Ann. § 18-1508A(1) (Sexual battery of a minor child sixteen or seventeen years of age—Penalty) provides,

It is a felony for any person at least five (5) years of age older than a minor child who is sixteen (16) or seventeen (17) years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to:

- (a) Commit any lewd or lascivious act or acts upon or with the body or any part or any member thereof of such minor child including, but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of explicit sexual conduct as defined in section 18-1507 [Definitions–sexual exploitation of a child–penalties],¹³ Idaho Code; or
- (b) Solicit¹⁴ such minor child to participate in a sexual act; or
- (c) Cause or have sexual contact¹⁵ with such minor child, not amounting to lewd conduct as defined in paragraph (a) of this subsection; or

. . . .

A conviction under subsection (1)(a) of this statute is punishable as a felony by up to life imprisonment in the state prison and a possible fine up to \$50,000, and a conviction under Idaho Code Ann. § 18-1508A(1)(b)–(c) is punishable as a felony by imprisonment up to 25 years in state prison and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1508A(4), (5), 18-112A.

5. Idaho Code Ann. § 18-1511 (Sale or barter of child for adoption or other purpose penalized —Allowed expenses) states that “[a]ny person or persons who shall sell or barter any child for adoption or for any other purpose, shall be guilty of a felony.” A conviction under this statute is punishable by up imprisonment up to 14 years in the state penitentiary, a fine up to \$5,000, or both. Idaho Code Ann. § 18-1511.

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

Neither Idaho Code Ann. § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties) nor § 18-5613 (Prostitution) refer to Idaho Code Ann. § 18-8602(1) (Human trafficking defined).

- 1.3.1 Recommendation: Amend Idaho Code Ann. § 18-5613 (Prostitution) and § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties) to refer to Idaho Code Ann. § 18-

¹³ See *supra* note 12 for the definition of “explicit sexual conduct.”

¹⁴ Idaho Code Ann. § 18-1508A(2) defines “solicit” as

any written, verbal or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

¹⁵ Idaho Code Ann. § 18-1508A(3) defines “sexual contact” as “any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have sexual contact.”

8602(1) (Human trafficking defined) 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.*

Idaho Code Ann. title 18, chapter 78 (Racketeering act) includes human trafficking and commercial sexual exploitation of children as predicate acts, allowing the statute to be used to prosecute trafficking crimes. Idaho Code Ann. § 18-7804(a)–(d) (Prohibited activities—penalties) provides,

- (a) It is unlawful for any person who has received any proceeds derived directly or indirectly from a pattern of racketeering activity in which the person has participated, to use or invest, directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any interest in, or the establishment or operation of, any enterprise¹⁶ or real property
- (b) It is unlawful for any person to engage in a pattern of racketeering activity in order to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property
- (c) It is unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of the affairs of such enterprise by engaging in a pattern of racketeering activity
- (d) It is unlawful for any person to conspire to violate any of the provisions of subsections (a) through (c) of this section

Idaho Code Ann. § 18-7803(a) (Definitions) defines “racketeering activity” as “any act which is chargeable or indictable under,” among others, Idaho Code Ann. § 18-5601 (Interstate trafficking in prostitution), § 18-5602 (Procurement), § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5605 (Detention for prostitution), § 18-5606(1) (Accepting earnings of prostitute), § 18-5608 (Harboring prostitutes), and § 18-5609 (Inducing person under eighteen years of age into prostitution), as well as indecency and obscenity statutes (sections 18-1515, 18-1518, 18-4103, 18-4103A, 18-4104, 18-4105, 18-4105A and 18-4107, Idaho Code.

A conviction under Idaho Code Ann. § 18-7804(a)–(d) is punishable as a felony by imprisonment up to 14 years in the Idaho penitentiary, a fine up to \$25,000, or both. Idaho Code Ann. § 18-7804(a)–(e). Additionally, a conviction under this statute provides for mandatory asset forfeiture. Idaho Code Ann. § 18-7804 (Prohibited activities), subsection (g) provides,

In addition to any other penalties prescribed by law, whoever violates any provisions of this act shall forfeit to the state of Idaho:

- (1) Any interest acquired or maintained in violation of the racketeering act; and
- (2) Any interest in, security of, claim against or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted or participated in the conduct of in violation of the provisions of the racketeering act.

Additional penalties are available, where the enterprise is a criminal gang.¹⁷ Idaho Code Ann. title 18, chapter 85 (Idaho Criminal Gang Enforcement Act). Idaho Code Ann. § 18-8503(1), (2) (Punishment) states,

¹⁶ Idaho Code Ann. § 18-7803(c) defines an “enterprise” as “any sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or any group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.”

¹⁷ Idaho Code Ann. § 18-8504(1) (Recruiting criminal gang members), also criminalizes, “(a) Knowingly soliciting, inviting, encouraging or otherwise causing a person to actively participate in a criminal gang; or (b) Knowingly using force, threats, violence or intimidation directed at any person, or by the infliction of bodily injury upon any

(1) An adult . . . who is convicted of any felony or misdemeanor enumerated in section 18-8502(3) [Definitions], Idaho Code, that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang¹⁸ or criminal gang member,¹⁹ in addition to the punishment provided for the commission of the underlying offense, shall be punished as follows:

(a) Any adult . . . who is convicted of a misdemeanor shall be punished by an additional term of imprisonment in the county jail for not more than one (1) year.

(b) Any adult . . . who is convicted of a felony shall be punished by an extended term of not less than two (2) years and not more than five (5) years in prison.

(c) If the underlying offense described in section 18-8502(3), Idaho Code, is a felony and committed on the grounds of, or within one thousand (1,000) feet of, a public or private elementary, secondary or vocational school during hours when the facility is open for classes or school-related programs or when minors are using the facility, the extended term shall be not less than two (2) years and not more than five (5) years in prison.

(2) This section does not create a separate offense but provides an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed facts.

Included among the offenses listed in Idaho Code Ann. § 18-8502(3) (Definitions) are Idaho Code Ann. § 18-8602 (Human trafficking defined), § 18-5601 (Interstate trafficking in prostitution), § 18-5602 (Procurement), § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5605 (Detention for prostitution), § 18-5606(1) (Accepting earnings of prostitute), § 18-5608 (Harboring prostitutes), § 18-5609 (Inducing person under eighteen years of age into prostitution), § 18-5613 (Prostitution), § 18-5614 (Patronizing a prostitute), § 18-1507 (Definitions—sexual exploitation of a child—penalties), § 18-7804 (Prohibited activities), and § 18-8201 (Money laundering and illegal investment).

Gangs and criminal enterprises also face criminal liability under Idaho Code Ann. § 18-8504(1) (Recruiting criminal gang members), which criminalizes, “(a) Knowingly soliciting, inviting, encouraging or otherwise causing a person to actively participate in a criminal gang; or (b) Knowingly using force, threats, violence or intimidation directed at any person, or by the infliction of bodily injury upon any person, to actively participate in a criminal gang.” A conviction under this statute is punishable by imprisonment up to 10 years. Idaho Code Ann. § 18-8504(2).

person, to actively participate in a criminal gang.” A conviction under this statute is punishable by imprisonment up to 10 years. Idaho Code Ann. § 18-8504(2).

¹⁸ Idaho Code Ann. § 18-8502(1) (Definitions) defines “criminal gang” as “an ongoing organization, association, or group of three (3) or more persons, whether formal or informal, that has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, having as one (1) of its primary activities the commission of one (1) or more of the criminal acts enumerated in subsection (3) of this section.”

¹⁹ Idaho Code Ann. § 18-8502(2) defines a “criminal gang member” as

any person who engages in a pattern of criminal gang activity and who meets two (2) or more of the following criteria:

(a) Admits to gang membership;

(b) Is identified as a gang member;

(c) Resides in or frequents a particular gang’s area and adopts its style of dress, its use of hand signs, or its tattoos, and associates with known gang members;

(d) Has been arrested more than once in the company of identified gang members for offenses that are consistent with usual gang activity;

(e) Is identified as a gang member by physical evidence such as photographs or other documentation;

or

(f) Has been stopped in the company of known gang members four (4) or more times.

In addition to these laws, Idaho Code Ann. § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties) includes a provision addressing gang membership. The statute states that every person who exchanges or offers “anything of value” for the sexual conduct or contact with a minor will be guilty of a felony. The law specifically states that gang membership constitutes a thing of value, bringing gang-related activities under the scope of the law. Idaho Code Ann. § 18-5610(2)(c).

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.*

Idaho Code Ann. § 18-8602(1)(a)(i)²⁰ (Human trafficking defined) criminalizes “[s]ex trafficking . . . in which the person induced to perform [commercial sexual activity] has not attained eighteen (18) years of age.” Idaho Code Ann. § 18-8602(1)(c) specifically defines “sex trafficking” as including:

all forms of commercial sexual activity,²¹ which may include the following conduct:

- (i) Sexual conduct,²² as defined in section 18-5610(2)(a), Idaho Code;
- (ii) Sexual contact,²³ as defined in section 18-5610(2)(b), Idaho Code;
- (iii) Sexually explicit performance;
- (iv) Prostitution;
- (v) Participation in the production of pornography.

Inclusion of prostitution as conduct that constitutes sex trafficking likely brings offenses committed by buyers of sex with minors within the definition of sex trafficking.

- 2.1.1 Recommendation: Amend Idaho Code Ann. § 18-8602(1)(a) (Human trafficking defined) to clarify that buyer conduct is included as a violation of Idaho Code Ann. § 18-8602.

²⁰ See *supra* note 2.

²¹ Idaho Code Ann. § 18-8602(2) defines “commercial sexual activity” as “sexual conduct or sexual contact in exchange for anything of value, as defined in section 18-5610(2)(c), Idaho code, illicit or legal, given to, received by, or promised to any person.”

²² Idaho Code Ann. § 18-5610(2)(a) defines “sexual conduct” as “sexual intercourse or deviate sexual intercourse.”

²³ Idaho Code Ann. § 18-5610(2)(b) defines “sexual contact” as “any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.”

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

Buyers of commercial sex acts with minors can be prosecuted under Idaho Code Ann. § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties), which states, “Every person who exchanges or offers to exchange anything of value for sexual conduct or sexual contact with a person under the age of eighteen shall be guilty of a felony”

Several sexual offense statutes could be used to prosecute certain buyers of commercial sex acts with a minor, but they do not specifically criminalize the commercial sexual exploitation of a child and do not refer to the human trafficking statute to bring these criminal offenses within the ambit of human trafficking under Idaho Code Ann. § 18-8602(1)(a)(i)²⁴ (Human trafficking defined).²⁵

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

While Idaho’s general solicitation law, Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute), does not differentiate between soliciting sex with an adult and soliciting sex with a minor, Idaho Code Ann. § 18-5610(1) (Utilizing a person under eighteen years of age for prostitution—Penalties) separately criminalizes soliciting sex with a minor, stating, “[E]very person who exchanges or offers to exchange anything of value for sexual conduct or sexual contact with a person under the age of eighteen shall be guilty of a felony”

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

Idaho Code Ann. § 18-8602(1)(a)(i)²⁶ (Human trafficking defined) is punishable by imprisonment up to 25 years “unless a more severe penalty is otherwise prescribed by law.” Idaho Code Ann. § 18-8603. Idaho Code Ann. § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties) is a felony punishable by 2 years to life imprisonment, a fine up to \$50,000, or both. Idaho Code Ann. § 18-5610(1).

In comparison, if the victim is under the age of 14, a conviction under the federal Trafficking Victims Protection Act²⁷ 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 offense²⁸ against a minor. 18 U.S.C. § 3559(e)(1). To the

²⁴ See *supra* note 2.

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

²⁶ See *supra* note 2.

²⁷ 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.).

²⁸ 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).

extent buyers can be prosecuted under other federal CSEC laws,²⁹ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.³⁰

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

Although not expressly commercial, Idaho Code Ann. § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) may be used to convict buyers who use the Internet or electronic communications to lure, entice, recruit, or purchase commercial sex acts with a person under the age of 16. Idaho Code Ann. § 18-1509A(1) states,

A person aged eighteen (18) years or older shall be guilty of a felony if such person knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images or other communication to solicit, seduce, lure, persuade or entice by words or actions, or both, a person under the age of sixteen (16) years or a person the defendant believes to be under the age of sixteen (16) years to engage in any sexual act with or against the person where such act would be a violation of chapter 15 [Children and vulnerable adults], 61 [Rape] or 66 [Sex crimes], title 18, Idaho Code.³¹

A conviction under this statute is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1509A(2), 18-112A.

In addition, Idaho has established a special Internet Crimes Against Children (ICAC) Unit in the office of the Attorney General. The unit “shall have the authority and responsibility to conduct a statewide program for the investigation and prosecution of violations of all applicable Idaho laws that involve or are directly related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses.” Idaho Code Ann. § 67-1410(1, 2).

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

Idaho Code Ann. § 18-8602(1)(a)(i)³² (Human trafficking defined) and § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties) are silent on the availability of a defense based on age mistake. Moreover, the defense of age mistake is irrelevant to a violation of Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) because the illegality of the conduct criminalized under that statute does not depend on the age of the prostituted victim.

- 2.6.1 Recommendation: Amend Idaho Code Ann. § 18-8602(1)(a)(i) (Human trafficking defined) and § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties) to expressly prohibit a defense of age mistake.

²⁹ 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).

³⁰ 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).

³¹ Idaho Code Ann. § 18-1509A(4) states, however, that “[i]n a prosecution under this section, it is not necessary for the prosecution to show that an act described in chapter 15 [Children and vulnerable adults], 61 [Rape] or 66 [Sex crimes], title 18, Idaho Code, actually occurred.”

³² *See supra* note 2.

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

Idaho’s buyer-applicable trafficking and CSEC laws do not stagger penalties based on the minor’s age and provide sufficiently high penalties. Idaho Code Ann. § 18-8602(1)(a)(i)³³ (Human trafficking definition) is punishable as a felony by “imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by law,” regardless of whether the person trafficked is a child or an adult. Idaho Code Ann. §§ 18-8603, 18-112A. Idaho Code Ann. § 18-5610 (Utilizing a person under eighteen years of age for prostitution—Penalties) is punishable by 2 years to life imprisonment. Idaho Code Ann. § 18-5610(1).

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

Buyers may have to pay fines and restitution.³⁴ Idaho Code Ann. § 18-8603 (Penalties) provides the penalties for human trafficking offenses and includes a possible fine of \$50,000. Idaho Code Ann. §§ 18-8603, 18-112A. If convicted under Idaho Code Ann. § 18-5610(1) (Utilizing a person under eighteen years of age for prostitution—Penalties), buyers face a fine up to 50,000, and a buyer convicted under Idaho Code Ann. § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) also faces a possible fine of up to \$50,000. Idaho Code Ann. §§ 18-5610(1), 18-1509A(2), 18-112A. Additionally, Idaho Code Ann. § 72-1025(1) (Fines—reimbursements—priority—disposition) provides that persons convicted of any crime also have to pay an additional fine or reimbursement³⁵ of at least \$75.00 per felony count, \$37.00 per misdemeanor count, and at least \$300.00 per sex offense count.³⁶ Idaho Code Ann. § 72-1025(1)(a)–(b), (d).

Asset forfeiture is generally not an available remedy in Idaho against buyers. Instead, Idaho Code Ann. § 18-314 (Property of convict not forfeited) provides,

³³ See *supra* note 2.

³⁴ Pursuant to Idaho Code Ann. § 31-3201I (Distribution of payments in criminal cases),

When ordered by the court to make one (1) of the following payments in a criminal case, a defendant shall make the payment to the clerk of the court in which the judgment was entered. The judgment shall be satisfied accordingly by entry in the electronic docket of the court, and the clerk of the court shall remit daily all such payments to the county auditor who shall, at least monthly, distribute the payments received as required by statute. The distributions shall first completely satisfy the amounts due in the following order before distribution of payments for any other amounts owed to the court:

- (1) Fees for each felony, misdemeanor and infraction . . . ;
- (2) Fines or reimbursements paid for the crime victims compensation account . . . ;
- (3) Misdemeanor probation supervision fees. . . ;
- (4) County drug and mental health fund fees . . . ;
- (5) Fines paid for the peace officer and detention officer temporary disability fund . . . ;
- (6) Restitution to victims of crime . . . if paid through the clerk of the court . . . ;
-
- (13) Criminal fines;
-

³⁵ Idaho Code Ann. § 72-1025(1) states that the court shall impose these fines unless “the defendant is indigent and at the time of sentencing shows good cause for inability to pay and written findings to that effect are entered by the court.”

³⁶ Pursuant to Idaho Code Ann. § 72-1025(1)(d), the \$300 fine applies to “any sex offense, including, but not limited to, offenses pursuant to sections 18-1506 [Sexual abuse of a child under the age of sixteen years], 18-1507 [Definitions—sexual exploitation of a child—penalties], 18-1508 [Lewd conduct with minor child under sixteen], 18-1508A [Sexual battery of a minor child sixteen or seventeen years of age], 18-6101 [Rape defined], 18-6605 [Crime against nature—Punishment] and 18-6608 [Forcible sexual penetration by use of foreign object], Idaho Code.”

No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this state, in the nature of a deodand, or where any person shall flee from justice, are abolished.

Idaho Code Ann. § 18-8603 (Penalties [for human trafficking offenses]), Idaho Code Ann. § 18-5610(1) (Utilizing a person under eighteen years of age for prostitution—Penalties) and § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) do not expressly authorize forfeiture of a defendant’s property.

The court has the discretion to order a convicted buyer to make restitution to the victim. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) states,

Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime³⁷ which results in an economic loss³⁸ to the victim³⁹ to make restitution to the victim. An order of restitution shall be a separate written order in addition to any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction; however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim’s loss shall not absolve the defendant of the obligation to pay restitution.

If a buyer is convicted of certain sex offenses or possessing or accessing child sexual abuse material (CSAM), the court also has discretion to order restitution under Idaho Code Ann. § 19-5506(6) which states, “Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order any person subject to the provisions of this section to pay restitution to help offset costs incurred by law enforcement agencies for the expense of DNA analysis.” Pursuant to Idaho Code Ann. § 19-5506(7), “The court may order such person to pay restitution for DNA analysis in an amount not to exceed five hundred dollars (\$500) per DNA sample analysis, or in the aggregate not more than two thousand dollars (\$2,000)” Subsections (1) and (2) include the following offenses: Idaho Code Ann. § 18-1506 (Sexual abuse of a child under the age of sixteen years), § 18-1507 (Definitions—Sexual exploitation of a child—penalties), § 18-1508 (Lewd conduct with minor child under sixteen), 18-1508A (Sexual battery of a minor child sixteen or seventeen years of age), 18-1509 (Enticing a child), 18-1509A (Enticing a child through use of the internet or other communication device).

2.8.1 Recommendation: Amend Idaho Code Ann. § 18-8603 (Penalties) for sex trafficking offenses, § 18-5610(1) (Utilizing a person under eighteen years of age for prostitution—Penalties), and § 18-

³⁷ Idaho Code Ann. § 19-5304(1)(b) defines “found guilty of any crime” as “a finding by a court that a defendant has committed a criminal act and shall include an entry of a plea of guilty, an order withholding judgment, suspending sentence, or entry of judgment of conviction for a misdemeanor or felony.”

³⁸ Idaho Code Ann. § 19-5304(1)(a) states,

“Economic loss” includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.

³⁹ Idaho Code Ann. § 19-5304(1)(e)(i) defines a “victim” in part as “[t]he directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant’s criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases.”

1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) to expressly require buyers to forfeit property used in or acquired by committing the crime.

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

Idaho prohibits the possession of child sexual abuse material (CSAM). Pursuant to Idaho Code Ann. § 18-1507 (Definitions—sexual exploitation of a child—penalties),

....

(2) A person commits sexual exploitation of a child⁴⁰ if he knowingly and willfully:

(a) Possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; or

....

(3) The sexual exploitation of a child pursuant to subsection (2)(a) of this section is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$10,000), or by both such imprisonment and fine.

....

Pursuant to Idaho Code Ann. § 18-1507(5)⁴¹ a person over the age of 18 who “is found to be in knowing and willful possession of content created and distributed under circumstances defined in [Idaho Code Ann. § 18-1507A (1) or (2)⁴² (Sexual exploitation of a child by electronic means)],” meaning content made by a minor without “coercion, manipulation or fraud” and intentionally sent to the adult recipient by the minor without “coercion, manipulation or fraud” commits a misdemeanor if the minor is not more than 3 years younger “than the person found to be in possession.”

Similarly, Idaho Code Ann § 18-1507A(3) provides that minors in possession of content described in Idaho Code Ann. § 18-1507A(1) or (2) are “guilty of a misdemeanor” if the minor is more than three years younger. However, pursuant to Idaho Code Ann § 18-1507A(4), if the minor in possession distributes the content to “one (1) or more third parties,” the first adjudication is a misdemeanor, but the “second or subsequent adjudicated offense” is a felony.

⁴⁰ Idaho Code Ann. § 18-1507(1)(b) defines a “child” as “a person who is less than eighteen (18) years of age.”

⁴¹ Idaho Code Ann § 18-1507(5) states,

a person eighteen (18) years of age or older who is found to be in knowing and willful possession of content created and distributed under circumstances define in section 18-1507A(1) or (2), Idaho Code, is guilty of a misdemeanor provided that:

(a) The minor depicted in the content distributed the content in such a way that the minor intended the person found to be in possession to receive it;

(b) The minor depicted in the content is not greater than three (3) years younger than the person found to be in possession; and

(c) The person found to be in possession of the content did not use coercion, manipulation or fraud to obtain possession of the content.

⁴² Idaho Code Ann § 18-1507A addresses content defined in Idaho Code Ann. § 18-1507(1) (c)–(j), which includes “erotic fondling,” “erotic nudity,” “explicit sexual conduct,” “masturbation,” “sodomasochism,” “sexual excitement,” “sexually exploitative material.”

In comparison, a federal conviction for possession of CSAM⁴³ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴⁴ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁵

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

Idaho Code Ann. § 18-8306(2), (3) (Notice of duty to register and initial registration) provides,

(2) A person convicted of an offense identified in section 18-8304, Idaho Code, and released on probation without a sentence of incarceration in a county jail or correctional facility, including release pursuant to a withheld judgment or release from any mental institution, shall be notified by the sentencing court of the duty to register pursuant to the provisions of this chapter and the offender shall register in accordance with this chapter no later than two (2) working days after sentence is imposed or judgment is withheld

(3) With respect to an offender convicted of a sexual offense identified in section 18-8304, Idaho Code, and sentenced to a period of immediate incarceration in a jail or correctional facility and subsequently released, placed on probation, or paroled, the department of correction or jail shall provide, prior to release from confinement, written notification of the duty to register and the offender shall register prior to his or her release

Idaho Code Ann. § 18-8304(1)(a)⁴⁶ (Application of chapter—rulemaking authority) states,

The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section . . . 18-1506 (sexual abuse of a child under sixteen years of age), . . . felony violations of 18-1507 (sexual exploitation of a child), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child through the use of the internet), . . . 18-5610 (utilizing a person under eighteen years of age for prostitution), . . . or 18-8602(1)(a)(i) (sex trafficking), Idaho Code.

Buyers convicted under Idaho Code Ann. § 18-5614(1) (Patronizing a prostitute) are not required to register as sex offenders, even when the person with whom sex is purchased is a minor.

⁴³ 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).

⁴⁴ 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).

⁴⁵ 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).

⁴⁶ The text of Idaho Code Ann. § 18-8304 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1005 during the 2019 1st Regular Session of Idaho’s 65th Legislature (effective July 1, 2019).

Legal Components:

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

Legal Analysis:

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

A trafficker who commits human trafficking⁴⁷ in violation of Idaho Code Ann. § 18-8602 (Human trafficking defined) “shall be punished by imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by law.” Idaho Code Ann. § 18-8603.

A trafficker also may be punished under Idaho’s CSEC laws. A conviction under Idaho Code Ann. § 18-5609 (Inducing person under eighteen years of age into prostitution) is a felony conviction punishable by 2 years to life imprisonment, a fine up to \$50,000, or both a conviction under Idaho Code Ann. § 18-1507(2)(a) (Definitions—sexual exploitation of a child—penalties) is punishable as a felony by imprisonment up to 10 years in state prison, a fine up to \$10,000, or both; a conviction under Idaho Code Ann. § 18-1507(2)(b), (c) (Definitions—sexual exploitation of a child—penalties) is punishable as a felony by imprisonment up to 30 years in state prison, a fine up to \$50,000, or both; and a conviction under Idaho Code Ann. § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-5609, 18-1509A(1), (2), 18-112A.

Traffickers who “sell or barter any child for adoption or for any other purpose” may be convicted under Idaho Code Ann. § 18-1511 (Sale or barter of child for adoption or other purpose penalized). A conviction under this statute is punishable as a felony by imprisonment up to 14 years in the state penitentiary, a fine up to \$5,000, or both. Idaho Code Ann. § 18-1511.

Additionally, Idaho Code Ann. § 18-8201 (Money laundering and illegal investment—Penalty—Restitution) makes it illegal for a person to engage in a financial transaction that furthers racketeering, stating,

- (1) It is unlawful for any person to knowingly or intentionally give, sell, transfer, trade, invest, conceal, transport, or make available anything of value that the person knows is intended to be used to commit or further a pattern of racketeering activity
- (2) It is unlawful for any person to knowingly or intentionally direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known by that person to be derived from a pattern of racketeering activity

⁴⁷ See *supra* Component 1.1 for the definition of “human trafficking” in Idaho Code Ann. § 18-8602.

(3) It is unlawful for any person to knowingly or intentionally conduct a financial transaction involving proceeds known by that person to be derived from a pattern of racketeering activity . . . if the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, or to avoid a transaction reporting requirement under state or federal law.

A conviction under this statute is punishable as a felony by imprisonment up to 10 years, a fine up to of the greater of \$250,000 or “twice the value of the property involved in the transaction,” or both imprisonment and fine. Idaho Code Ann. § 18-8201(4).

Traffickers also face enhanced penalties under Idaho Code Ann. title 18, chapter 85 (Idaho Criminal Gang Enforcement Act)⁴⁸, which provides for an additional penalty for felonies or misdemeanors enumerated in section 18-8502(3). Included among the offenses listed in Idaho Code Ann. § 18-8502(3) (Definitions) are Idaho Code Ann. § 18-8602 (Human trafficking defined), § 18-5601 (Interstate trafficking in prostitution), § 18-5602 (Procurement), § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5605 (Detention for prostitution), § 18-5606(1) (Accepting earnings of prostitute), § 18-5608 (Harboring prostitutes), § 18-5609 (Inducing person under eighteen years of age into prostitution), § 18-5613 (Prostitution), § 18-5614 (Patronizing a prostitute), § 18-1507 (Definitions—sexual exploitation of a child—penalties), § 18-7804 (Prohibited activities), and § 18-8201 (Money laundering and illegal investment).

Idaho Code Ann. §18-8503(1), creates the following additional penalties, to be added to sentences for the above offenses:

- (a) Any adult . . . who is convicted of a misdemeanor shall be punished by an additional term of imprisonment in the county jail for not more than one (1) year.
- (b) Any adult . . . who is convicted of a felony shall be punished by an extended term of not less than two (2) years and not more than five (5) years in prison.
- (c) If the underlying offense described in section 18-8502(3), Idaho Code, is a felony and committed on the grounds of, or within one thousand (1,000) feet of, a public or private elementary, secondary or vocational school during hours when the facility is open for classes or school-related programs or when minors are using the facility, the extended term shall be not less than two (2) years and not more than five (5) years in prison.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁴⁹ 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 offense⁵⁰ against a minor. 18 U.S.C. § 3559(e)(1).

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

Creating and distributing child sexual abuse material (CSAM) is criminalized under Idaho Code Ann. § 18-1507 which states,

-
(2) A person commits sexual exploitation of a child⁵¹ if he knowingly and willfully:

⁴⁸ See *supra* Component 1.4 for discussion of the applicable provisions of Idaho Code Ann. title 18, chapter 85.

⁴⁹ See *supra* note 27.

⁵⁰ See *supra* note 28.

⁵¹ See *supra* note 8.

- (c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits, or advertises any sexually exploitative material; or
- (d) Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

....

(4) The sexual exploitation of a child pursuant to subsections (2)(b), (c) and (d) of this section is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars (\$50,000) or by both such fine and imprisonment.

....

Additionally, Idaho Code Ann. § 18-1507A(5) (Sexual exploitation of a child by electronic means) provides that a minor offender who possess “photographic, video or electronic” content⁵² described in Idaho Code Ann § 18-1507A (1) or (2)⁵³ who then “threatens to distribute the image for the purposes of coercing any action, causing any embarrassment or otherwise controlling or manipulating the sender is guilty of a felony.” Violations of Idaho Code Ann. § 18-1507A “fall under the jurisdiction of the juvenile corrections act,” which provides for a punishment up to 180 days. Idaho Code Ann. §§ 18-1507A(5),(7), 20-520(d).

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 offense⁵⁴ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM⁵⁵ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵⁶ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁷

⁵² Idaho Code Ann § 18-1507A addresses content defined in Idaho Code Ann. § 18-1507(1) (c)–(j), which includes “erotic fondling,” “erotic nudity,” “explicit sexual conduct,” “masturbation,” “sodomasochism,” “sexual excitement,” “sexually exploitative material,”

⁵³ Idaho Code Ann § 18-1507A addresses situations in which a minor without “coercion, manipulation or fraud” intentionally sends content without “coercion, manipulation or fraud” to another minor for their viewing.

⁵⁴ See *supra* note 28.

⁵⁵ 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).

⁵⁶ 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).

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

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

Idaho Code Ann. § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) makes it a crime to use the Internet or electronic communications to lure or entice a person under the age of 16 to engage in a sexual act; however, the statute has limited applicability to traffickers, as it only applies to offenders who attempt to have the person “engage in any sexual act with or against the person where such act is a violation of chapter 15 [Children and vulnerable adults], 61 [Rape] or 66 [Sex crimes], title 18, Idaho Code.”⁵⁸ This statute likely applies to traffickers who use the Internet with the intent to commit a violation of Idaho Code Ann. § 18-1507 (Definitions—sexual exploitation of a child—penalties). A conviction under Idaho Code Ann. § 18-1509A(1) is punishable as a felony by imprisonment up to 15 years and a possible fine up to \$50,000. Idaho Code Ann. §§ 18-1509A(1), (2), 18-112A.⁵⁹

In addition, Idaho has established a special Internet Crimes Against Children Unit under the Attorney General. The unit “shall have the authority and responsibility to conduct a statewide program for the investigation and prosecution of violations of all applicable Idaho laws that involve or are directly related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses.” Idaho Code Ann. § 67-1410(1-2).

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

Traffickers may be subject to forfeiture, fines, and restitution.⁶⁰ A trafficker convicted under Idaho Code Ann. § 18-8602 (Human trafficking defined) or § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) may be subject to a fine up to \$50,000. Idaho Code Ann. §§ 18-8603, 18-1509A(2), 18-112A. A trafficker convicted under Idaho Code Ann. § 18-5609 (Inducing person under eighteen years of age into prostitution) or § 18-1507(23) (Definitions—sexual exploitation of a child—

⁵⁸ Idaho Code Ann. § 18-1509A(4) states that “[i]n a prosecution under this section, it is not necessary for the prosecution to show that an act described in chapter 15, 61 or 66, title 18, Idaho Code, actually occurred.”

⁵⁹ Further, Idaho Code Ann § 18-1507A(5) (Sexual exploitation of a child by electronic means) provides that a minor offender who possess “photographic, video or electronic” content described in Idaho Code Ann § 18-1507A (1) or (2) who then “threatens to distribute the image for the purposes of coercing any action, causing any embarrassment or otherwise controlling or manipulating the sender is guilty of a felony.” Idaho Code Ann § 18-1507A addresses content defined in Idaho Code Ann. § 18-1507(1) (c)–(j), which includes “erotic fondling,” “erotic nudity,” “explicit sexual conduct,” “masturbation,” “sadoomasochism,” “sexual excitement,” “sexually exploitative material.” Idaho Code Ann § 18-1507A addresses situation in which a minor without “coercion, manipulation or fraud” intentionally sends content without “coercion, manipulation or fraud” to another minor for their viewing.

⁶⁰ Pursuant to Idaho Code Ann. § 31-3201I (Distribution of payments in criminal cases),

When ordered by the court to make one (1) of the following payments in a criminal case, a defendant shall make the payment to the clerk of the court in which the judgment was entered. The judgment shall be satisfied accordingly by entry in the electronic docket of the court, and the clerk of the court shall remit daily all such payments to the county auditor who shall, at least monthly, distribute the payments received as required by statute. The distributions shall first completely satisfy the amounts due in the following order before distribution of payments for any other amounts owed to the court:

- (1) Fees for each felony, misdemeanor and infraction . . . ;
- (2) Fines or reimbursements paid for the crime victims compensation account . . . ;
- (3) Misdemeanor probation supervision fees. . . ;
- (4) County drug and mental health fund fees . . . ;
- (5) Fines paid for the peace officer and detention officer temporary disability fund . . . ;
- (6) Restitution to victims of crime . . . if paid through the clerk of the court . . . ;

.....

- (13) Criminal fines;

.....

penalties) may be required to pay a fine up to \$50,000. Idaho Code Ann. §§ 18-5609, 18-1507(4). A trafficker convicted under Idaho Code Ann. § 18-5601 (Interstate trafficking in prostitution), § 18-5602 (Procurement), § 18-5603 (Receiving pay for procurement), § 18-5604 (Paying for procurement), § 18-5605 (Detention for prostitution), § 18-5606(1) (Accepting earnings of prostitute), or § 18-5608 (Harboring prostitutes) may be required to pay a fine of \$1,000–\$50,000. Idaho Code Ann. §§ 18-5601, to -5606, 18-5608. A trafficker convicted under Idaho Code Ann. § 18-1511 (Sale or barter of child for adoption or other purpose penalized) may be required to pay a fine up to \$5,000. Idaho Code Ann. § 18-1511.

Idaho Code Ann. § 18-314 (Property of convict not forfeited)⁶¹ limits the availability of asset forfeiture to where it is expressly authorized by law; however, Idaho Code Ann. § 18-5612 (Property subject to criminal forfeiture) subjects traffickers convicted under the age-neutral offense of Idaho Code Ann. § 18-5602 (Procurement definition and penalty)⁶² or the CSEC offense under § 18-5609 (Inducing persons under 18 into prostitution—Penalties) to asset forfeiture. Pursuant to Idaho Code Ann. § 18-5612 (Property subject to criminal forfeiture),

(1) Any person who is found guilty of, who enters a plea of guilty or who is convicted of a violation of section 18-5602 [Procurement definition and penalty] or 18-5609 [Inducing persons under 18 into prostitution—Penalties], Idaho Code, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(a) Any property constituting, or derived from, any proceeds the person obtained directly or indirectly as the result of such violation; and

(b) Any of the person's property used, or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.

(2) The court, in imposing sentence on such person as described in subsection (1) of this section, shall order, in addition to any other sentence imposed, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed in any manner to prevent the state of Idaho, the attorney general or the appropriate prosecuting attorney from requesting restitution pursuant to section 19-5304, Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

Pursuant to Idaho Code Ann. § 18-5618⁶³ (Property subject to forfeiture),

Property subject to criminal forfeiture under this chapter includes:

(1) "Real property" including things growing on, affixed to or found on the land; and

(2) "Tangible and intangible personal property" including rights, privileges, interests, claims and securities.

Idaho Code Ann. § 18-5620 (Forfeiture request—rebuttable presumption) provides in part,

⁶¹ See *supra* Component 2.8 for the provisions of Idaho Code Ann. § 18-314 (Property of convict not forfeited).

⁶² Pursuant to Idaho Code Ann. § 18-5602 (Procurement -- definition and penalty),

Any person who induces, compels, entices, or procures another person to engage in acts as a prostitute shall be guilty of a felony punishable by imprisonment for a period of not less than two (2) years nor more than twenty (20) years, or by a fine of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), or by both such fine and imprisonment.

⁶³ Idaho Code Ann. § 18-5618(1) defines property as including “things growing on, affixed to or found on the land.” Idaho Code Ann. § 18-5618(2) defines “tangible and intangible personal property” as including “rights, privileges, interests, claims and securities.”

There is a rebuttable presumption that any property of a person subject to the provisions of section 18-5612, Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

- (1) The property was acquired by a person during the period of the violation of either section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement), Idaho Code, or within a reasonable time after such violation; and
- (2) There was no likely source for such property other than the violation of either section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement), Idaho Code.

Traffickers' assets may also be forfeited if deemed a moral nuisance; real property deemed a moral nuisance may be forfeited temporarily while personal property and monies deemed a moral nuisance may be forfeited permanently. Idaho Code Ann. § 52-406 (Right to possession of real property and personal property after hearing on the temporary injunction—Conditions for avoidance of temporary forfeiture) authorizes the court to “declare a temporary forfeiture of the use of the real property upon which [a] public nuisance is located and the personal property located therein” where allegations complaining of a moral nuisance are supported by clear and convincing evidence. Idaho Code Ann. § 52-104(F) (Moral nuisances—types) expressly declares that “[e]very place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur,” is a moral nuisance.⁶⁴ Additionally, Idaho Code Ann. § 52-415 (Civil penalty—Forfeiture—Accounting—Lien as to expenses of abatement) states,

All personal property declared to be a moral nuisance . . . and all monies and other considerations declared to be a moral nuisance . . . are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such monies may be traced to and shall be recoverable from persons who, under section 52-405 [Notice of hearing on temporary injunction—Consolidation], Idaho Code, have knowledge of the nuisance at the time such monies are received by them.

A trafficker convicted under Idaho Code Ann. § 18-8201 (Money laundering and illegal investment) may be ordered to pay a fine up to the greater of \$250,000 or “twice the value of the property involved in the transaction.” Idaho Code Ann. §§ 18-7804(e), 18-8201(4). Additionally, Idaho Code Ann. § 72-1025(1) (Fines) provides that a trafficker convicted of any crime also may have to pay an additional fine or

⁶⁴ Idaho Code Ann. § 52-103(E) (Moral nuisance—definitions) defines a “moral nuisance” as “a nuisance which is injurious to public morals.” Pursuant to Idaho Code Ann. § 52-104 (Moral nuisances – types)

The following are declared to be moral nuisances:

- (A) Any and every place in the state where lewd films are publicly exhibited as a regular course of business, or possessed for the purpose of such exhibition;
- (B) Any and every place in the state where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;
- (C) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a moral nuisance under this section;
- (D) Any and every place of business in the state in which lewd publications constitute a principal part of the stock in trade;
- (E) Any and every lewd publication possessed at a place which is a moral nuisance under this section; and
- (F) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur.

reimbursement of \$37.00 per misdemeanor count, at least \$75.00 per felony count, and at least \$300.00 per sex offense count.⁶⁵

A court is required to order that traffickers to pay restitution to the victims of human trafficking. Idaho Code Ann. § 18-8604(1), (2) (Restitution—rehabilitation) provides,

- (1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of:
 - (a) The gross income or value to the defendant of the victim’s labor or services; or
 - (b) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.
- (2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

A trafficker convicted of any other crime also may be required to make restitution to the victims at the court’s discretion. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) requires the court to order a defendant to make restitution where the crime resulted in an economic loss⁶⁶ to the victim, unless restitution is determined to be “inappropriate or undesirable.”⁶⁷ Idaho Code Ann. § 18-8201(5) (Money laundering and illegal investment) further authorizes the court to “order restitution for all costs and expenses of prosecution and investigation,” where a trafficker is convicted under Idaho Code Ann. § 18-8201(1)–(3).

Traffickers convicted of certain offenses will also be subject to discretionary restitution under Idaho Code Ann. § 19-5506(6) which states, “Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order any person subject to the provisions of this section to pay restitution to help offset costs incurred by law enforcement agencies for the expense of DNA analysis.” Pursuant to Idaho Code Ann. § 19-5506(7), “The court may order such person to pay restitution for DNA analysis in an amount not to exceed five hundred dollars (\$500) per DNA sample analysis, or in the aggregate not more than two thousand dollars (\$2,000)” Subsections (1) and (2) include the following offenses: Idaho Code Ann. § 18-1507 (Definitions—Sexual exploitation of a child—penalties), § 18-1509 (Enticing a child), § 18-1509A (Enticing a child through use of the internet or other communication device), § 18-5601 (Interstate trafficking in prostitution), and § 18-5609 (Inducing a minor into prostitution).

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

Idaho Code Ann. § 18-8306(2), (3) (Notice of duty to register and initial registration) requires those convicted of offenses listed in Idaho Code Ann. § 18-8304 (Applicability of chapter) to register as sex offenders.⁶⁸ Offenses listed in Idaho Code Ann. § 18-8304(1)(a)⁶⁹ include Idaho Code Ann. § 18-8602(a)(i) (Human trafficking defined), § 18-5609 (Inducing person under eighteen years of age into prostitution), felony violations of § 18-1507 (Definitions—sexual exploitation of a child—penalties), § 18-1509A(1) (Enticing a child through use of the internet or other communication device), and § 18-5605 (Detention for prostitution).

⁶⁵ See *supra* note 36 for the applicable sex offenses.

⁶⁶ See *supra* note 38 for the definition of “economic loss.”

⁶⁷ See *supra* Component 2.8 for the provisions of Idaho Code Ann. § 19-5304(2) (Restitution for crime victims).

⁶⁸ See *supra* Component 2.10 for the provisions of Idaho Code Ann. § 18-8306.

⁶⁹ See *supra* note 46.

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 Idaho Code Ann. § 18-8602(1)(a)(i)⁷⁰ (Human trafficking defined) are not listed as grounds for terminating parental rights in Idaho. However, Idaho Code Ann. § 18-1507 (Definitions—Sexual exploitation of a child—penalties) is a CSEC offense that is listed as a form of sexual abuse for the purposes of circumstances which allow for the termination of parental rights under Idaho Code Ann. § 16-2005(2)(b) (Conditions under which termination may be granted); in addition to sexual abuse, torture or battery against the child are also factors that can enable termination of a parental rights. The court may also presume it is in the best interests of the child to terminate the relationship if the parent has abandoned, caused chronic abuse or neglect in an extreme or repetitious manner, which would place the child in an unacceptable risk. Idaho Code Ann. § 16-2005(2)(b)(i). Idaho Code Ann. § 16-2005(1)–(3) could be used to terminate the relationship between a familial trafficker and a child include when it is in the child’s best interest and “[t]he parent has neglected or abused the child” or “has been incarcerated and is likely to remain incarcerated for a substantial period of time during the child’s minority.” Idaho Code Ann. § 16-2005(1)(b), (e). Finally, pursuant to Idaho Code Ann. § 16-2005(3), “[t]he court may grant an order terminating the relationship if termination is found to be in the best interest of the parent and child.”

⁷⁰ See *supra* note 2.

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.*

Idaho Code Ann. § 18-8602(1)(a)(i)⁷¹ (Human trafficking defined) does not expressly criminalize assisting, enabling, or financially benefitting from domestic minor sex trafficking, stating instead that “‘human trafficking’ means: (i) Sex trafficking⁷² . . . in which the person induced to perform such act has not attained eighteen (18) years of age.” Additionally, no CSEC laws include the acts of facilitators. However, other laws related to prostitution may be used to prosecute facilitators.

A facilitator may be convicted under several Idaho prostitution laws, all of which are punishable as felonies by imprisonment for 2–20 years, a \$1,000–\$50,000 fine, or both. Idaho Code Ann. §§ 18-5603, 18-5604, 18-5606, 18-5608. Idaho Code Ann. § 18-5603 (Receiving pay for procurement) applies to a facilitator “who knowingly receives money or any object of value to procure a prostitute.” Idaho Code Ann. § 18-5604 (Paying for procurement) applies to a facilitator “who pays another money or any object of value to procure a third person to engage in prostitution.” Idaho Code Ann. § 18-5606(1) (Accepting earnings of prostitute) applies to a facilitator “who shall knowingly accept or appropriate any money or item of value from the proceeds or earnings of any person engaged in prostitution as part of a joint venture⁷³ with such person.” Lastly, Idaho Code Ann. § 18-5608 (Harboring prostitutes) applies to a facilitator “maintaining, controlling or supporting a house of prostitution.”

Additionally, Idaho Code Ann. § 18-8201 (Money laundering and illegal investment) separately makes it illegal for a facilitator to knowingly engage in certain financial transactions that further racketeering.⁷⁴ A conviction under this statute is punishable as a felony by imprisonment up to 10 years, a fine of the greater of up to

⁷¹ See *supra* note 2.

⁷² Idaho Code Ann. § 18-8602(1)(c) defines “sex trafficking” to include “all forms of commercial sexual activity, which may include the following conduct:

- (i) Sexual conduct, as defined in section 18-5610(2)(a), Idaho Code;
- (ii) Sexual contact, as defined in section 18-5610(2)(b), Idaho Code;
- (iii) Sexually explicit performance;
- (iv) Prostitution; or
- (v) Participation in the production of pornography.

⁷³ Idaho Code Ann. § 18-5606(2) defines “joint venture” as “an undertaking by two (2) or more persons jointly to carry out a single business enterprise involving one or more transactions for profit. Such joint venture can be created by oral agreement or may be inferred from acts or conduct.”

⁷⁴ See *supra* Component 3.1 for the provisions of Idaho Code Ann. § 18-8201.

\$250,000 or “twice the value of the property involved in the transaction,” or both fine and imprisonment. Idaho Code Ann. § 18-8201(4).

4.1.1 Recommendation: Amend Idaho Code Ann. § 18-8602(1) (Human trafficking defined) to include anyone who knowingly assists, enables, or financially benefits from human trafficking.

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

Facilitators may be subject to forfeiture, fines, and restitution.⁷⁵ A facilitator convicted under Idaho Code Ann. § 18-5603 (Receiving pay for procurement), §18-5604 (Paying for procurement), § 18-5606(1) (Accepting earnings of prostitute), or § 18-5608 (Harboring prostitutes) may be required to pay a fine of \$1,000–\$50,000. Idaho Code Ann. §§ 18-5604, 18-5603, 18-5606, 18-5608.

A facilitator convicted under Idaho Code Ann. § 18-8201(4) (Money laundering and illegal investment) may be ordered to pay a fine of the greater of up to \$250,000 or “twice the value of the property involved in the transaction.” Idaho Code Ann. §§ 18-7804(e), 18-8201(4). Additionally, Idaho Code Ann. § 72-1025(1) (Fines) provides that a facilitator convicted of any crime also may have to pay an additional fine or reimbursement of \$37.00 per misdemeanor count, at least \$75.00 per felony count, and at least \$300.00 per sex offense account.⁷⁶

Facilitators convicted of any crime may be required to make restitution to their victims, at the discretion of the court. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) requires the court to order a defendant to make restitution when the crime resulted in an economic loss⁷⁷ to the victim, unless the court determines that restitution is “inappropriate or undesirable.”⁷⁸ Idaho Code Ann. § 18-8201(5) (Money laundering and illegal investment) further authorizes the court to “order restitution for all costs and expenses of prosecution and investigation,” if a facilitator is convicted under Idaho Code Ann. § 18-8201(1)–(3).

Restitution may also be ordered under Idaho Code Ann. § 19-5506(6) which states, “Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order any person subject to the provisions of this section to pay restitution to help offset costs incurred by law enforcement agencies for the expense of DNA analysis.” Pursuant to Idaho Code Ann. § 19-5506(7), “The court may order such person to

⁷⁵ Pursuant to Idaho Code Ann. § 31-3201I (Distribution of payments in criminal cases),

When ordered by the court to make one (1) of the following payments in a criminal case, a defendant shall make the payment to the clerk of the court in which the judgment was entered. The judgment shall be satisfied accordingly by entry in the electronic docket of the court, and the clerk of the court shall remit daily all such payments to the county auditor who shall, at least monthly, distribute the payments received as required by statute. The distributions shall first completely satisfy the amounts due in the following order before distribution of payments for any other amounts owed to the court:

- (1) Fees for each felony, misdemeanor and infraction . . . ;
- (2) Fines or reimbursements paid for the crime victims compensation account . . . ;
- (3) Misdemeanor probation supervision fees. . . ;
- (4) County drug and mental health fund fees . . . ;
- (5) Fines paid for the peace officer and detention officer temporary disability fund . . . ;
- (6) Restitution to victims of crime . . . if paid through the clerk of the court . . . ;
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- (13) Criminal fines;
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⁷⁶ See *supra* note 36 for the applicable sex offenses.

⁷⁷ See *supra* note 38 for the definition of “economic loss.”

⁷⁸ See *supra* Component 2.8 for the provisions of Idaho Code Ann. §19-5304(2) (Restitution for crime victims).

pay restitution for DNA analysis in an amount not to exceed five hundred dollars (\$500) per DNA sample analysis, or in the aggregate not more than two thousand dollars (\$2,000)” Subsections (1) and (2) include the following offenses: Idaho Code Ann. § 18-1507 (Definitions—Sexual exploitation of a child—penalties), § 18-1509 (Enticing a child), § 18-1509A (Enticing a child through use of the internet or other communication device), § 18-5601 (Interstate trafficking in prostitution), and § 18-5609 (Inducing a minor into prostitution).

Idaho Code Ann. § 18-314⁷⁹ (Property of convict not forfeited) limits the availability of asset forfeiture to when it is expressly authorized by law. Most of the laws under which facilitators may be prosecuted do not expressly authorize asset forfeiture. However, facilitators may face forfeiture of assets deemed a moral nuisance under Idaho Code Ann. § 52-406 (Right to possession of real property and personal property after hearing on the temporary injunction) which authorizes the court to “declare a temporary forfeiture of the use of the real property upon which [a] public nuisance is located and the personal property located therein” if allegations complaining of a moral nuisance⁸⁰ are supported by “clear and convincing evidence.” Idaho Code Ann. § 52-104(F) (Moral nuisances—types) expressly declares that “[e]very place which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution, and every such place in or upon which acts of lewdness, assignation, or prostitution, are held or occur” is a moral nuisance. Additionally, Idaho Code Ann. § 52-415 (Civil penalty) states in part,

All personal property declared to be a moral nuisance . . . and all monies and other considerations declared to be a moral nuisance . . . are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such monies may be traced to and shall be recoverable from persons who, under section 52-405 [Notice of hearing on temporary injunction—consolidation], Idaho Code, have knowledge of the nuisance at the time such monies are received by them.

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

Idaho does not specifically prohibit child sex tourism.

- 4.3.1 Recommendation: Enact a law that specifically 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 offer, sale, or travel occurs in Idaho.

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

Promoting and selling child sexual abuse material (CSAM) is criminalized under Idaho Code Ann. § 18-1507 (Definitions—sexual exploitation of a child—penalties), which states,

. . . .

(2) A person commits sexual exploitation of a child⁸¹ if he knowingly and willfully:

. . . .

(c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits, or advertises any sexually exploitative material; or

(d) Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material.

Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

. . . .

⁷⁹ See *supra* Component 2.8 for the provisions of Idaho Code Ann. § 18-314 (Property of convict not forfeited).

⁸⁰ See *supra* note 64 for the definition of “moral nuisance.”

⁸¹ See *supra* note 8.

(4) The sexual exploitation of a child pursuant to subsections (2)(b), (c) and (d) of this section is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars (\$50,000) or by both such fine and imprisonment.
.....

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.*⁸²

Idaho’s human trafficking offense includes all commercial sexual exploitation of minors. Under Idaho Code Ann. § 18-8602(1)(a)(i)⁸³ (Human trafficking defined), sex trafficking does not require force, fraud, or coercion if the person induced to perform the commercial sex act is under the age of 18. In addition, the human trafficking offense includes buyer conduct.⁸⁴ Idaho Code Ann. § 18-8602. Furthermore, the definition of human trafficking under Idaho Code Ann. § 18-8602 does not require that a trafficker or controlling third party be identified. Consequently, Idaho’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether the victim identifies a trafficker. Idaho Code Ann. § 18-8602.

- 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.*

Idaho Code Ann. § 18-8602(1) (Human trafficking defined), § 18-1507(1) (Definitions—Sexual exploitation of a child—penalties), § 18-5609 (Inducing person under eighteen years of age into prostitution), and § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) do not expressly prohibit a defendant from asserting a defense based on the willingness of the

⁸² 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).

⁸³ See *supra* note 2.

⁸⁴ See *supra* discussion of buyer applicability in Component 2.1.

minor to engage in the commercial sex act. However, permissibility of such a defense appears to be inconsistent with the statutes' language.⁸⁵

5.2.1 Recommendation: Amend Idaho Code Ann. § 18-8602(1) (Human trafficking defined), § 18-1507(1) (Definitions—Sexual exploitation of a child—penalties), § 18-5609 (Inducing person under eighteen years of age into prostitution), and § 18-1509A(1) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) to expressly eliminate a defense based on the minor's willingness to engage in the commercial sex act.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁸⁶

Idaho Code Ann. § 18-5613 (Prostitution) is age neutral, rendering minors subject to prosecution for prostitution offenses. Idaho Code Ann. § 18-5613(1) states,

A person is guilty of prostitution when he or she:

- (a) engages in or offers or agrees to engage in sexual conduct, or sexual contact with another person in return for a fee; or
- (b) is an inmate of a house of prostitution; or
- (c) loiters in or within view of any public place for the purpose of being hired to engage in sexual conduct or sexual contact.

A first or second conviction under this statute is a misdemeanor punishable by imprisonment up to 6 months in county jail, a fine up to \$1,000, or both. Idaho Code Ann. §§ 18-5613(2), 18-113(1). A third or subsequent conviction is punishable as a felony by imprisonment up to 5 years in the state prison, a fine up to \$50,000, or both. Idaho Code Ann. §§ 18-5613(2), 18-112.

However, Idaho Code Ann. § 18-8606(2)⁸⁷ (Safe harbor provisions) provides trafficking victims with an affirmative defense to prostitution and other offenses committed pursuant to their victimization; it states,

A person charged with any offense not identified in section 18-310(2),⁸⁸ Idaho Code, committed as a direct and immediate result of being a victim of human trafficking may assert an affirmative defense that the person is a victim of human trafficking.

⁸⁵ Senate Bill 1337 passed during the second regular session of the sixty-first legislature of the State of Idaho, 2012 Ida. Ch. 269, deleted the legislative findings contained in Idaho Code Ann. § 18-1507(1), which stated: “[t]he legislature hereby finds and declares that the commercial sexual exploitation of children constitute a wrongful invasion of the child’s right of privacy and results in social, developmental, and emotional injury to the child; that a child below the age of eighteen (18) years is incapable of giving informed consent to the use of his or her body for a commercial purpose; and that to protect children from commercial sexual exploitation it is necessary to prohibit the production for trade or commerce of material which involves or is derived from such exploitation and to exclude all such material from the channels of trade and commerce.”

⁸⁶ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁸⁷ The text of Idaho Code Ann. § 18-8606 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1003 during the 2019 1st Regular Session of Idaho’s 65th Legislature (effective July 1, 2019).

⁸⁸ Offenses under Idaho Code Ann. § 18-310(2) include:

- (a) Aggravated assault (18-905, 18-915, Idaho Code);
- (b) Aggravated battery (18-907, 18-915, Idaho Code);
-
- (h) Enticing of children, felony (18-1509, Idaho Code);
- (i) Forcible sexual penetration by use of a foreign object (18-6608, Idaho Code);
- (j) Indecent exposure, felony (18-4116, Idaho Code);
- (k) Injury to child, felony (18-1501, Idaho Code);

5.3.1 Recommendation: Amend Idaho Code Ann. § 18-5613 (Prostitution) to eliminate liability for prostitution offenses for all minors under 18.⁸⁹

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

Idaho law does not prohibit a minor from being prosecuted for the crime of prostitution. While specialized services are afforded through a mandatory diversion process, commercially sexually exploited youth must endure an inherently punitive response in order to access them. Specifically, Idaho Code Ann. § 18-8606(1)⁹⁰ (Safe harbor provisions) provides,

- (a) When a minor is alleged to have committed any offense not listed in section 18-310(2),⁹¹ Idaho Code, a prosecutor shall divert the offense if the minor committed the offense as a direct and immediate result of being a victim of human trafficking.
- (b) If a minor has an offense diverted pursuant to paragraph (a) of this subsection, the minor shall be placed in a state-licensed residential facility, as defined in section 39-1202, Idaho Code, that provides a comprehensive rehabilitative program with access to:
 - (i) Comprehensive case management;
 - (ii) Integrated mental health and chemical dependency services, including specialized trauma recovery services;
 - (iii) Education and employment training and services; and
 - (iv) Off-site specialized services, as appropriate.

-
-
 - (m) Lewd conduct with a minor or child under sixteen (18-1508, Idaho Code);
 - (n) Sexual abuse of a child under sixteen (18-1506, Idaho Code);
 - (o) Sexual exploitation of a child (18-1507, Idaho Code);
 -
 - (s) Degrees of murder (18-4003, Idaho Code);
 - (t) Voluntary manslaughter (18-4006(1), Idaho Code);
 -
 - (w) Kidnapping (18-4501, Idaho Code);
 -
 - (y) Rape (18-6101, Idaho Code);
 - (z) Robbery (18-6501, Idaho Code);
 -
 - (cc) Felonious manufacture, delivery or possession with the intent to manufacture or deliver, or possession of a controlled or counterfeit substance (37-2732, Idaho Code);
 - (dd) Trafficking [of drugs] (37-2732B, Idaho Code);
 -
 - (ff) Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home (18-3317, Idaho Code);
 -
 - (ii) Attempt (18-306, Idaho Code), conspiracy (18-1701, Idaho Code), or solicitation (18-2001, Idaho Code), to commit any of the crimes described in paragraphs (a) through (hh) of this subsection.
 -

⁸⁹ 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).

⁹⁰ See *supra* note 87.

⁹¹ See *supra* note 88 for a list of offenses included within Idaho Code Ann. § 18-310(2).

(c) A diversion agreement under this subsection may extend for up to twelve (12) months.

....

Notably, Idaho Code Ann. § 18-8606(1)(d) states, “[d]iversion shall only be available pursuant to this section if the minor expresses a willingness to cooperate and receive specialized services. If the minor is unwilling to cooperate with specialized services, continuation of the diversion shall be at the discretion of the court.”

Summary

Specialized services are only available to juvenile sex trafficking victims in conjunction with diversion, a punitive process that requires the victim’s willful cooperation.

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

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*⁹²

Idaho Code Ann. § 16-1602(1)(b) (Definitions) identifies commercial sexual exploitation and human trafficking as child abuse. “Abused”—as defined by Idaho Code Ann. § 16-1602(1)(b)—encompasses “[s]exual conduct, including . . . prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, human trafficking as defined in section 18-8602, Idaho Code, or other similar forms of sexual exploitation harming or threatening the child’s health or welfare or mental injury to the child.”

Furthermore, “sexual exploitation” under Idaho Code Ann. § 18-1507(2) (Definitions –sexual exploitation of a child –penalties) occurs when a person,

- (a) Possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; or
- (b) Causes, induces or permits a child to engage in, or be used for, any explicit sexual conduct for the purposes of producing or making sexually exploitative material; or
- (c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits or advertises any sexually exploitative material; or
- (d) Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

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

The definition of caregiver or another related term does not create a barrier for child sex trafficking victims to access child welfare services because fault of someone in a caregiver role is not required to constitute abuse. Idaho Code Ann. § 16-1602(1)(b) (Definitions) states, “[A] child who is a victim of “sexual conduct, including . . . prostitution . . . human trafficking . . . or other forms of sexual exploitation . . .” is “abused” without mention of the relationship or identity of the perpetrator.⁹³

Additionally, pursuant to Idaho Code Ann. § 16-1629 (Powers and duties of the department), the department of health and welfare has

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

⁹³ See *supra* Component 5.5. for a full discussion regarding the definition of abuse.

the duty to do all things reasonably necessary to carry out the purpose of this chapter, including, but not limited to, the following:

- (1) The department shall administer treatment programs for the protection and care of neglected, abused and abandoned children, and in so doing may place in foster care, shelter care, or other diagnostic, treatment, or care centers or facilities, children of whom it has been given custody.

....

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

Crime victims' compensation is not specifically available to victims of domestic minor sex trafficking, but under the Crime Victims Compensation Act, such victims still may receive compensation.

Idaho Code Ann. § 72-1002 (Legislative purpose and intent) explains that, in enacting the Crime Victims Compensation Act, it was the legislature's intent to assist and compensate "those persons within the state who are innocent victims of criminal acts and who suffer injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons." As defined in Idaho Code Ann. § 72-1003(8)(a) (Definitions), a "victim" is "a person who suffers injury or death as a result of . . . [c]riminally injurious conduct." Idaho Code Ann. § 72-1003(4) defines "criminally injurious conduct" as

intentional, knowing, or reckless conduct that:

- (a) Occurs or is attempted in this state or occurs outside the state of Idaho against a resident of the state of Idaho and which occurred in a state which does not have a crime victims' compensation program for which the victim is eligible as eligibility is set forth in this statute;
- (b) Constitutes an act of terrorism as defined by 18 U.S.C. 2331, committed outside the United States against a resident of this state;
- (c) Results in injury or death; and
- (d) Is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state

....

The Crime Victims Compensation Act contains ineligibility criteria that could bar a domestic minor sex trafficking victim's claim for compensation. Idaho Code Ann. § 72-1018 (Award of compensation) provides,

- (1) The commission shall award compensation benefits under this chapter, if satisfied by a preponderance of the evidence that the requirements for compensation have been met.
- (2) An award may be made whether or not any person is prosecuted or convicted
- (3) The commission may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under section 72-1017 [Tentative award of compensation], Idaho Code.

However, a victim will not receive compensation unless the crime was reported to law enforcement within 72 hours and an application for compensation was filed within 1 year of the crime's occurrence, unless in either case good cause is shown. Idaho Code Ann. § 72-1016(1), (3). Nothing in Idaho Code Ann. § 72-1016 clarifies what is sufficient to constitute good cause.

Idaho Code Ann. § 72-1016(4) (Limitations on awards) further requires victims to fully cooperate with law enforcement "in the apprehension and prosecution of the offender." Additionally, if a domestic minor sex trafficking victim is convicted under Idaho Code Ann. § 18-5613 (Prostitution) and sentenced to imprisonment, the minor will be unable to receive compensation, as Idaho Code Ann. § 72-1016(6) prohibits incarcerated persons from receiving compensation. Additionally, victims who are deemed to have "contributed to the

infliction of death or injury with respect to which the claim is made” may have the amount of compensation they are eligible to receive reduced “in proportion to what the commission finds to be the victim’s contribution.” Idaho Code Ann. § 72-1016(7)(a). Finally, a child convicted for a third or subsequent violation of Idaho Code Ann. § 18-5613 may face a 50% reduction in the award for having “engaged in a felony.” Idaho Code Ann. § 72-1016(7)(b).

5.7.1 Recommendation: Amend Idaho Code Ann. § 72-1016 (Limitations on awards) to create exceptions for domestic minor sex trafficking victims to the listed criteria.

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

Under Idaho’s address confidentiality program, child sex trafficking victims may apply for a designated address in order to inhibit a trafficker from locating the child. Idaho Code Ann. § 19-5703(2) (Address confidentiality program—Application—Certification). Further, child sex trafficking victims may avail themselves of protections available to crime victims generally.

Children who are victim witnesses in criminal or civil proceedings, including child victims of sex trafficking and CSEC offenses, receive some special protections under Idaho’s laws. The Uniform Child Witness Testimony by Alternative Methods Act protects a child witness “under the age of thirteen (13) years who has been or will be called to testify in” any criminal or noncriminal case. Idaho Code Ann. §§ 9-1802(2), 9-1803. Idaho Code Ann. § 9-1805(1) (Standards for determining whether child witness’ testimony may be presented by alternative method) explains that in a criminal proceeding, a child witness may give testimony via an “alternative method”⁹⁴ only in certain circumstances. Idaho Code Ann. § 9-1805(1) states,

(a) A child witness’ testimony may be taken otherwise than in an open forum in the presence and full view of the finder of fact if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child’s ability to communicate with the finder of fact if required to testify in the open forum.

(b) A child witness’ testimony may be taken other than in a face-to-face confrontation between the child and a defendant if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child’s ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

In noncriminal proceedings, the child may give testimony via an alternative method where the “presiding officer finds by a preponderance of the evidence that presenting the testimony of the child by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact.” Idaho Code Ann. § 9-1805(2).

Idaho Code Ann. § 19-3023(1) (Child summoned as witness) further provides,

When a child is summoned as a witness in . . . any criminal matter, . . . parents, a counselor, friend or other person having a supportive relationship with the child, or a facility dog, shall be allowed to remain in the courtroom at the witness stand with the child during the child’s testimony unless . . . the court finds that the defendant’s constitutional right to a fair trial will be unduly prejudiced.

Other protections that are generally afforded to crime victims may be available to domestic minor sex

⁹⁴ Idaho Code Ann. § 9-1802(1) (Definitions) defines “alternative method” as

a method by which a child witness testifies which does not include all of the following:

- (a) Having the child present in person in an open forum;
- (b) Having the child testify in the presence and full view of the finder of fact and presiding officer; and
- (c) Allowing all of the parties to be present, to participate and to view and be viewed by the child.

trafficking victims. Idaho Code Ann. § 19-5306(1) (Rights of victim during investigation, prosecution, and disposition of the crime) enumerates the rights of crime victims.⁹⁵ Idaho Code Ann. § 19-5306(1) provides crime victims the rights to be

- (a) Treated with fairness, respect, dignity and privacy throughout the criminal justice process;
- (b) Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings;
- (c) Entitled to a timely disposition of the case;
- (d) Given prior notification of trial court, appellate, probation and parole proceedings and, upon request, to information about the sentence, incarceration, placing on probation or release of the defendant;
- (e) Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant unless manifest injustice would result;
- (f) Afforded the opportunity to communicate with the prosecution in criminal or juvenile offenses, and be advised of any proposed plea agreement by the prosecuting attorney prior to entering into a plea agreement in criminal or juvenile offenses involving crimes of violence, sex crimes or crimes against children;
- (g) Allowed to refuse an interview, ex parte contact or other request by the defendant or any other person acting on behalf of the defendant, unless such request is authorized by law;
- (h) Consulted by the presentence investigator during the preparation of the presentence report and have included in that report a statement of the impact which the defendant's criminal conduct had upon the victim and shall be allowed to read, prior to the sentencing hearing, the presentence report relating to the crime. The victim shall maintain the confidentiality of the presentence report, and shall not disclose its contents to any person except statements made by the victim to the prosecuting attorney or the court;
- (i) Assured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence;
- (j) Notified whenever the defendant or suspect is released or escapes from custody

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.*

Idaho law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be expunged after a waiting period.

Regarding expungement, Idaho Code Ann. § 20-525A(1)–(3) (Expungement of record) mandates a minimum 1 to 5 year waiting period, stating,

- (1) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed a felony offense or having been committed to the department of juvenile corrections may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the court, or, in case the juvenile offender was committed to the juvenile correctional center, five (5) years from the date of his release from the juvenile correctional center, or after reaching age eighteen (18) years, whichever occurs last, petition the court for the expungement of his record
- (2) Any person who has been adjudicated in a case under this act and found to be within the purview of the act for having committed misdemeanor or status offenses only and not having been committed to the department of juvenile corrections may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record

⁹⁵ Idaho Code Ann. § 19-5306(5)(a) (Rights of victim during investigation, prosecution, and disposition of the crime) defines “victim” as “an individual who suffers direct or threatened physical, financial or emotional harm as the result of the commission of a crime or juvenile offense.”

(3) In any case where the prosecuting attorney has elected to utilize the diversion process or the court orders an informal adjustment pursuant to section 20-511, Idaho Code, the person may, after the expiration of one (1) year from the date of termination of the continuing jurisdiction of the court or after reaching age eighteen (18) years, whichever occurs later, petition the court for the expungement of his record

....

Under Idaho Code Ann. § 20-525A(5),

If the court finds after hearing that the petitioner . . . has not been convicted of a felony, or of a misdemeanor wherein violence toward another person was attempted or committed since the termination of the court’s jurisdiction or his release from the juvenile correctional center, and that no proceeding involving such felony or misdemeanor is pending or being instituted against him, and if the court further finds to its satisfaction that the petitioner has been held accountable, is developing life skills necessary to become a contributing member of the community and that the expungement of the petitioner’s record will not compromise public safety, it shall order all records in the petitioner’s case . . . sealed; and shall further order all references to said adjudication, diversion or informal adjustment removed from all indices and from all other records available to the public. However, a special index of the expungement proceedings and records shall be kept by the court ordering expungement, which index shall not be available to the public and shall be revealed only upon order of a court of competent jurisdiction Upon the entry of the order the proceedings in the petitioner’s case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of the records may thereafter be permitted only by the court upon petition by the person who is the subject of the records or by any other court of competent jurisdiction, and only to persons named in the petition.

Regarding vacatur, Idaho Code Ann. § 67-3014 (Expungement for Victims of Human Trafficking) allows victims of human trafficking to petition the court for vacatur and/or for expungement of criminal records, but the law applies specifically to “convictions,” and, therefore, does not clearly extend to delinquency adjudications. Idaho Code Ann. § 67-3014 states,

....

(2) Any person who was arrested, prosecuted and/or convicted of a violation of section 18-5613 [Prostitution], Idaho Code, or any other offense determined by the court to be appropriate, except convictions for offenses for which a defense of coercion would not be available and that was committed during a period of time when the person was a victim of human trafficking and that was the result of acts required by the human trafficker, may bring a petition under the provisions of this section to vacate such conviction and/or to expunge the criminal history records taken in connection with the conviction.

....

(4) Any action brought under this section shall be filed within a reasonable time after the arrest, prosecution or conviction that is the subject of the action brought under this section, except that a petition to expunge an arrest that did not result in a prosecution shall not be brought until two (2) years after the arrest.

....

Additionally, Idaho Code Ann. § 67-3014 applies only to violations of Idaho’s prostitution offense unless the court determines otherwise; this may foreclose the law’s applicability to other offenses related to trafficking victimization. Further, the prohibited conduct must have been required by a human trafficker, which further limits this protection to cases where a trafficker or controlling third party is identified.

5.9.1 Recommendation: Amend Idaho Code Ann. § 67-3014 (Expungement for Victims of Human Trafficking) to allow 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.

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.

Idaho Code Ann. § 18-8604 (Restitution—Rehabilitation) specifically requires the court to order an offender convicted of a human trafficking violation to make restitution. Idaho Code Ann. § 18-8604 states,

- (1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of:
 - (a) The gross income or value to the defendant of the victim’s labor or services; or
 - (b) The value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.
- (2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

More generally, offenders convicted of other crimes also may be required to make restitution to their victims. Idaho Code Ann. § 19-5304(2) (Restitution for crime victims) states,

Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime⁹⁶ which results in an economic loss⁹⁷ to the victim⁹⁸ to make restitution to the victim. An order of restitution shall be a separate written order in addition to any other sentence the court may impose, including incarceration, and may be complete, partial, or nominal. The court may also include restitution as a term and condition of judgment of conviction; however, if a court orders restitution in the judgment of conviction and in a separate written order, a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter. Restitution shall be ordered for any economic loss which the victim actually suffers. The existence of a policy of insurance covering the victim’s loss shall not absolve the defendant of the obligation to pay restitution.

Commercially sexually exploited minors may also be able to pursue civil remedies for “any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding,” even if they are not specifically articulated in the code. Idaho Code Ann. § 18-103.

Additionally, children may pursue a tort claim where they have been victims of Idaho Code Ann. § 18-1507 (Definitions—sexual exploitation of a child—penalties) and other non-CSEC sexual offenses. Idaho Code Ann. § 6-1701. Specifically, Idaho Code Ann. § 6-1703 (Damages—Attorneys’ fees) explains that child victims of Idaho Code Ann. § 18-1507 may be able to receive damages that

consist of compensation for past and future damages and may consist of emotional and physical pain and suffering, mental anguish, disability, loss of society and companionship, expenses for past and future therapy, and punitive damages where the claimant proves malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.

Also, “The prevailing party in a child abuse tort action shall be entitled to costs and reasonable attorneys’ fees.” Idaho Code Ann. § 6-1703.

⁹⁶ See *supra* note 37 for the definition of “found guilty of a crime.”

⁹⁷ See *supra* note 38 for the definition of “economic loss.”

⁹⁸ See *supra* note 39 for the definition of “victim.”

Lastly, commercially sexually exploited children whose offenders engage in a pattern of racketeering activity⁹⁹ in violation of Idaho Code Ann. § 18-7804 (Prohibited activities) may be liable for civil damages up to 3 “times the actual damages proved and the cost of the suit, including reasonable attorney’s fees.” Idaho Code Ann. § 18-7805(a).

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.

Idaho Code Ann. § 19-401 (No statute of limitations for certain felonies) provides that no statute of limitations applies to prosecutions for violations of Idaho Code Ann. § 18-1506 (Sexual abuse of a child under the age of sixteen years) and § 18-1508 (Lewd conduct with minor child under sixteen). Most other felonies, including violations of Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and Idaho’s CSEC laws, are subject to 5 year statutes of limitations. Idaho Code Ann. § 19-402. Finally, there is a 1 year statute of limitations for prosecutions of misdemeanors, except where the misdemeanor is failure to report child abuse, in which case a 4 year statute of limitations applies. Idaho Code Ann. § 19-403(1), (2).

Idaho Code Ann. § 6-1704(1) (Statute of limitations) provides that child abuse tort actions, such as those related to Idaho Code Ann. § 18-1507 (Definitions—sexual exploitation of a child--penalties) have a 5 year statute of limitations from the date the child reaches the age of 18 “or, after the child reaches the age of eighteen (18) years, within five (5) years of the time the child discovers or reasonably should have discovered the act, abuse or exploitation and its causal relationship to an injury or condition suffered by the child, whichever occurs later.” Idaho Code Ann. § 5-218(1) (Statutory liabilities, trespass, trover, replevin, and fraud) establishes a 3 year statute of limitations for causes of action “created by statute, other than a penalty or forfeiture,” such as an action brought pursuant to Idaho Code Ann. § 18-7805(a) (Racketeering—civil remedies). However, Idaho Code Ann. § 5-230 (Persons under disabilities—Other than for real property) provides for tolling of the statute of limitations until the child reaches the age of majority, “provided however, that the time limited for the commencement of an action shall not be tolled for a period of more than six (6) years on account of minority.”

5.11.1 Recommendation: Amend Idaho Code Ann. § 19-401 (No statute of limitations for certain felonies) to eliminate statutes of limitations for prosecutions involving violations of Idaho Code Ann. § 18-8602 (Human trafficking defined) and Idaho’s CSEC laws.

⁹⁹ See *supra* Component 1.4 for the definition of a “pattern of racketeering activity.”

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 other electronic communication to investigate buyers and traffickers is a permissible investigative technique.*
- 6.6 *State law requires reporting of missing children and located missing children.*

Legal Analysis:

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

Idaho encourages law enforcement to receive training on human trafficking and domestic minor sex trafficking. Idaho Code Ann. § 18-8601¹⁰⁰ (Legislative intent) states in part,

In addition to the other provisions enumerated in this chapter, the legislature finds that it is appropriate for members of the law enforcement community to receive training from the respective training entities in order to increase awareness of human trafficking cases occurring in Idaho and to assist and direct victims of such trafficking to available community resources.

Despite the legislative intent to have law enforcement trained in human trafficking, such training is not mandated under Idaho Code Ann. § 19-5109 (Powers of the council—Standards of training, education and employment of peace officers). However, Idaho Code Ann. § 19-5109(1)(a) requires the Peace Officers Standards and Training Council (Council) to establish basic training requirements for peace officers, which must include “a course in the investigation of and collection of evidence in cases involving an allegation of sexual assault or battery.” Additionally, Idaho Code Ann. § 19-5109(7) separately allows the Council to establish basic training requirements “for juvenile detention officers, juvenile probation officers, and employees of the Idaho department of juvenile corrections who are engaged in the direct care and management of juveniles.” Additionally, under Idaho Code Ann. § 67-1401 (Duties of Attorney General) and § 67-1410 (Internet Crimes against Children Unit) investigators and prosecutors within this unit will have to be trained and educated on minor prostitution, solicitation, and sex-related offenses.

- 6.1.1 **Recommendation:** Amend Idaho Code Ann. § 19-5109 (Powers of the council—Standards of training, education and employment of peace officers) to mandate or expressly authorize training for law enforcement on domestic minor sex trafficking.

¹⁰⁰ The text of Idaho Code Ann. § 18-8601 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1005 during the 2019 1st Regular Session of Idaho’s 65th Legislature (effective July 1, 2019).

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

Idaho permits single party consent to audiotaping. Under Idaho Code Ann. § 18-6702(2)(c), (d) (Interception and disclosure of wire, electronic or oral communications prohibited),

(c) It is lawful under this chapter for a law enforcement officer or a person acting under the direction of a law enforcement officer to intercept a wire, electronic or oral communication when such person is a party to the communication or one (1) of the parties to the communication has given prior consent to such interception.

(d) It is lawful under this chapter for a person to intercept a wire, electronic or oral communication when one (1) of the parties to the communication has given prior consent to such interception.

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

Although wiretapping in sex trafficking investigations is not expressly authorized, law enforcement may be able to use wiretapping, pursuant to Idaho Code Ann. § 18-6706 (Authorization for interception of wire, electronic or oral communications), when investigating violations of Idaho Code Ann. § 18-8602(1)(a)(i)¹⁰¹ (Human trafficking defined) and Idaho’s CSEC laws. Idaho Code Ann. § 18-6706 authorizes the issuance of an order authorizing wiretapping where

such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marijuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one (1) year, or any conspiracy to commit any of the foregoing offenses.

Idaho Code Ann. § 18-8602 (Human trafficking defined) and Idaho’s CSEC laws are each punishable by imprisonment for more than 1 year and could be considered crimes that are “dangerous to life, limb, or property.”

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.*

Neither Idaho’s CSEC laws nor Idaho Code Ann. § 18-8602 (Human trafficking defined) prohibit a defense as to the use of a law enforcement decoy in investigating child sex trafficking or CSEC.¹⁰² However, the non-commercial offense under Idaho Code Ann. § 18-1509A(3) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction), expressly provides that “[i]t shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.” Idaho Code Ann. § 18-1509A(4) further provides “In a prosecution under this section, it is not necessary for the prosecution to show that an act described in chapter 15, 61 or 66, title 18, Idaho Code, actually occurred.”

6.4.1 Recommendation: Enact a law explicitly prohibiting the use of a law enforcement decoy in investigating violations of Idaho Code Ann. § 18-8602(1) (Human trafficking defined) and CSEC offenses.

¹⁰¹ See *supra* note 2.

¹⁰² Under one CSEC offense, Idaho Code Ann. § 18-5610(1) (Utilizing a person under eighteen years of age for prostitution—Penalties), “Every person who . . . offers to exchange anything of value for sexual conduct or sexual contact with a person under the age of eighteen (18) years shall be guilty of a felony” Although Idaho Code Ann. § 18-5610 prohibits offering, regardless of whether an exchange actually occurs, the statute is still unclear as to whether the offer must be made to an actual minor

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

Idaho Code Ann. § 18-1509A(3) (Enticing a child through the use of the internet or other communication device—penalties—jurisdiction) authorizes law enforcement to use the Internet or electronic communications when investigating buyers and traffickers. This statute applies to a person who “knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images or other communication to solicit, seduce, lure, persuade or entice by words or actions, or both, a person under the age of sixteen (16) years or a person the defendant believes to be a minor child under the age of sixteen (16) years to engage in” certain sexual acts. Idaho Code Ann. §18-1509A(1). Furthermore, Idaho Code Ann. § 18-1509A(3) states that “[i]t shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.” Idaho Code Ann. § 18-1509A(4) further provides “In a prosecution under this section, it is not necessary for the prosecution to show that an act described in chapter 15, 61 or 66, title 18, Idaho Code, actually occurred.”

Additionally, Idaho Code Ann. §18-1509A (Sexual exploitation of a child by electronic means) addresses both minors who create and send images of sexual content to other minors and minors who receive and possess these images. Idaho Code Ann. §18-1509A (1) - (4). Additionally, Idaho Code Ann. § 18-1507A(5) (Sexual exploitation of a child by electronic means) provides that a minor offender who possess “photographic, video or electronic” content¹⁰³ described in Idaho Code Ann § 18-1507A (1) or (2)¹⁰⁴ who then “threatens to distribute the image for the purposes of coercing any action, causing any embarrassment or otherwise controlling or manipulating the sender is guilty of a felony.”

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

Idaho Code Ann. § 18-4509(1) (Missing child reports—Law enforcement agencies—Duties) requires law enforcement agencies to enter information about a missing child into the national crime information center computer immediately after receiving a report of a missing or runaway child and further states, “Law enforcement agencies having direct access to the national crime information center computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the system.”

If the law enforcement agency has reason to believe the child is a student at an Idaho school, it will notify the child’s school. Idaho Code Ann. §18-4509(2). A school notified of a missing or runaway child, pursuant to Idaho Code Ann. § 18-4511(1) (School duties), is required to flag the child’s records and report any requests made regarding the flagged records to law enforcement. Idaho Code Ann. § 18-4510(1) (Birth records of missing children) imposes similar requirements on the state registrar to flag a child’s birth certificate records and report any inquiries made regarding the flagged records.

Additionally, Idaho Code Ann. § 18-4512(1) (Missing persons clearinghouse) establishes a missing persons clearinghouse “as a resource center of information and assistance regarding missing and unidentified persons.”

When a missing or runaway child is returned, Idaho Code Ann. § 18-4509(5) states that “the law enforcement agency having jurisdiction over the investigation shall clear the entry from the national crime information center computer.”

¹⁰³ Idaho Code Ann § 18-1507A addresses content defined in Idaho Code Ann. § 18-1507(1) (c)–(j), which includes “erotic fondling,” “erotic nudity,” “explicit sexual conduct,” “masturbation,” “sadoomasochism,” “sexual excitement,” “sexually exploitative material,”

¹⁰⁴ Idaho Code Ann § 18-1507A addresses situation in which a minor without “coercion, manipulation or fraud” intentionally sends content without “coercion, manipulation or fraud” to another minor for their viewing.

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