

2019 ANALYSIS AND RECOMMENDATIONS

MARYLAND

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.*

Maryland law directly addresses sex trafficking without the need to show force, fraud, or coercion. Under Md. Code Ann., Crim. Law § 3-1102(a)(1)² (Sex trafficking), it is illegal for a person to knowingly

- (i) take or cause another to be taken to any place for prostitution;³
- (ii) place, cause to be placed, or harbor another in any place for prostitution;
- (iii) persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;

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

² The text of Md. Code Ann., Crim. Law § 3-1102 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

³ Pursuant to Md. Code Ann., Crim. Law § 3-1101(c) (Definitions), “Prostitution” has the meaning stated in § 11-301 of this article.” Md. Code Ann., Crim. Law § 11-301(c) (Definitions) defines “Prostitution” as “the performance of a sexual act, sexual contact, or vaginal intercourse for hire.”

The text of Md. Code Ann., Crim. Law § 3-1101 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

- (iv) receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;⁴
- (v) engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance,⁵ the other or a third person would suffer physical restraint or serious physical harm . . .

. . . .

If the victim of the conduct described in Md. Code Ann., Crim. Law § 3-1102(a)(1) is a minor,⁶ the defendant is guilty of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000, or both. Md. Code Ann., Crim. Law § 3-1102(b), (c)(2).⁷

Pursuant to Md. Code Ann., Crim. Law § 3-1102(e)(1), “A person who knowingly benefits financially by receiving anything of value from participation in a venture that includes an act described in subsection (a) or (b) of this section is subject to the same penalties that would apply if the person had violated that subsection.” If the offense involves a minor, that person also will be guilty, without regard to the use of force, fraud, or coercion, of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000 or both. Md. Code Ann., Crim. Law § 3-1102(e)(1), (c)(2).

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 Maryland laws specifically criminalize CSEC.

1. Md. Code Ann., Crim. Law § 11-305(a) (Child kidnapping for the purpose of committing a sexual crime) states,

For purposes of prostitution or committing a crime under Title 3, Subtitle 3 of this article [Sexual crimes, including sexual solicitation of minor], a person may not:

- (1) persuade or entice or aid in the persuasion or enticement of an individual under the age of 16 years from the individual’s home or from the custody of the individual’s parent or guardian; or

⁴ Pursuant to Md. Code Ann., Crim. Law § 3-1101(b) (Definitions), “‘Assignation’ has the meaning stated in § 11-301 of this article.” Md. Code Ann., Crim. Law § 11-301(b) (Definitions) defines “Assignation” as “the making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement.”

⁵ “Sexually explicit performance” is defined as “a public or private, live, photographed, recorded, or videotaped act or show in which the performer is wholly or partially nude, and which is intended to sexually arouse or appeal to the prurient interest of patrons or viewers.” Md. Code Ann., Crim. Law § 11-301(f).

⁶ The term “minor” is not defined in Md. Code Ann., Crim. Law § 11-301 (Definitions), but “minor” is defined under Md. Code Ann., Crim. Law § 1-101(g) (Definitions) as “an individual under the age of 18 years.” Md. Code Ann., Crim. Law § 1-101 contains general definitions used throughout Maryland’s Criminal Code.

⁷ Pursuant to Md. Code Ann., Crim. Law § 14-101(a)(18) (Mandatory sentences for crimes of violence), “a felony offense under Title 3, Subtitle 11 of this article [Human Trafficking]” is considered a “crime of violence.” Upon a second conviction of a crime of violence, an offender shall receive a prison sentence of at least 10 years. Md. Code Ann., Crim. Law § 14-101(d). Upon a third conviction, when the “convictions do not arise from a single incident,” of a “crime of violence,” an offender shall serve a prison sentence of at least 25 years, and upon a fourth separate conviction of a “crime of violence,” an offender shall be sentenced to life imprisonment without the possibility of parole. Md. Code Ann., Crim. Law § 14-101(b), (c).

The text of Md. Code Ann., Crim. Law § 14-101 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

(2) knowingly secrete or harbor or aid in the secreting or harboring of an individual under the age of 16 years who has been persuaded or enticed in a manner described in item (1) of this subsection.

A conviction under this statute is a felony conviction punishable by imprisonment up to 25 years, a fine not to exceed \$5,000, or both. Md. Code Ann., Crim. Law § 11-305(b).

2. Md. Code Ann., Crim. Law § 3-324(b)⁸ (Sexual solicitation of minor) makes it a crime for a person to

with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-303, § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306 or § 3-307 of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article.

As used within Md. Code Ann., Crim. Law § 3-324(b), “solicit” is not defined in an expressly commercial way, but Md. Code Ann., Crim. Law § 3-324(a) defines “solicit” as the following:

[T]o command, authorize, urge, entice, request, or advise a person by any means, including:

- (1) in person;
- (2) through an agent or agency;
- (3) over the telephone;
- (4) through any print medium;
- (5) by mail;
- (6) by computer or Internet; or
- (7) by any other electronic means.

A conviction under this statute is a felony punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

3. Md. Code Ann., Crim. Law § 11-207(a) (Child pornography) makes it a crime for a person to

- (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;
- (2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (4) knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:
 - (i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or
 - (ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or
- (5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor’s name,

⁸ The text of Md. Code Ann., Crim. Law § 3-324 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

A first conviction under this statute is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Several other laws, while non-commercial in nature or not limited in application to minors, may also apply in cases involving the commercial sexual exploitation of a child. Those statutes are as follows:

1. Md. Code Ann., Crim. Law § 3-602(b) (Sexual abuse of a minor) prohibits a “parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor,” a “household member,”⁹ or a “family member”¹⁰ from “caus[ing] sexual abuse to a minor.” “Sexual abuse” is defined as “an act that involves sexual molestation or exploitation of a minor whether physical injuries are sustained or not.” Md. Code Ann., Crim. Law § 3-602(a)(4)(i). Sexual abuse “includes: 1. incest; 2. rape; 3. sexual offense in any degree; 4. sodomy; and 5. unnatural or perverted sexual practices.” Md. Code Ann., Crim. Law § 3-602(a)(4)(ii). A conviction under this statute is a felony conviction punishable by imprisonment up to 25 years.¹¹ Md. Code Ann., Crim. Law § 3-602(c).
2. Md. Code Ann., Crim. Law § 3-304(a)(3) (Rape in the second degree) prohibits a person from engaging in vaginal intercourse or a sexual act with a child who is younger than 14 “and the person performing the act is at least 4 years older than the victim.” A conviction under this statute is a felony conviction punishable by imprisonment up to 20 years. Md. Code Ann., Crim. Law § 3-304(c)(1). However, if the defendant has a prior conviction under Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree) or § 3-304 (Rape in the second degree)—or § 3-305 (Sexual offense in the first degree) or § 3-306 (Sexual offense in the second degree) as they existed before October 1, 2017—a conviction is punishable by a sentence not to exceed life imprisonment.¹² Md. Code Ann., Crim. Law § 3-313(a)(1) (Prior conviction—Sentencing).

⁹ “Household member” is defined as “a person who lives with or is a regular presence in a home of a minor at the time of the alleged abuse.” Md. Code Ann., Crim. Law §§ 3-601(a)(4), 3-602(a)(3).

¹⁰ “Family member” is defined as a “relative of a minor by blood, adoption, or marriage.” Md. Code Ann., Crim. Law §§ 3-601(a)(3), 3-602(a)(2).

¹¹ Pursuant to Md. Code Ann., Crim. Law § 14-101(a)(16) (Mandatory sentences for crimes of violence), if “the victim is under the age of 13 years and the offender is an adult at the time of the offense,” sexual abuse of a minor is considered a “crime of violence” if any of the following are involved in the offense:

1. vaginal intercourse, as defined in § 3-301 of this article;
2. a sexual act, as defined in § 3-301 of this article;
3. an act in which a part of the offender’s body penetrates, however slightly, into the victim’s genital opening or anus; or
4. the intentional touching of the victim’s or the offender’s genital, anal, or other intimate area for sexual arousal, gratification, or abuse.

Upon a second conviction of a crime of violence, an offender shall receive a prison sentence of at least 10 years. Md. Code Ann., Crim. Law § 14-101(d). Upon a third conviction, when the “convictions do not arise from a single incident,” of a “crime of violence,” an offender shall serve a prison sentence of at least 25 years, and upon a fourth separate conviction of a “crime of violence,” an offender shall be sentenced to life imprisonment without the possibility of parole. Md. Code Ann., Crim. Law § 14-101(b), (c).

¹² Rape is a “crime of violence” as defined in Md. Code Ann., Crim. Law § 14-101(a)(8). See *supra* note 11 for the minimum sentences applicable to repeat offenders of crimes of violence.

3. Md. Code Ann., Crim. Law § 3-307(a)(3)–(5) (Sexual offense in the third degree) makes it a crime for a person to

(3) engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual act is at least 4 years older than the victim; or

(4) engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or

(5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

A conviction under this statute is a felony conviction punishable by imprisonment up to 10 years. Md. Code Ann., Crim. Law § 3-307(b). However, if the defendant has a prior conviction under Md. Code Ann., Crim. Law § 3-303 (Rape in the first degree) or § 3-304 (Rape in the second degree)—or § 3-305 (Sexual offense in the first degree) or § 3-306 (Sexual offense in the second degree) as they existed before October 1, 2017—a conviction is punishable by a sentence not to exceed life imprisonment. Md. Code Ann., Crim. Law § 3-313(a)(1) (Prior conviction—Sentencing).

4. Md. Code Ann., Crim. Law § 3-308(b)(2), (3) (Sexual offense in the fourth degree) states,

A person may not engage in:

....

(2) except as provided in § 3-307(a)(4) [prohibiting a defendant who is at least 21 years old from engaging in a sexual act with a victim 14 or 15 years of age] of this subtitle, a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or

(3) except as provided in § 3-307(a)(5) [prohibiting a defendant who is at least 21 years old from engaging in vaginal intercourse with a victim 14 or 15 years of age] of this subtitle, vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim.

A conviction under this statute is a misdemeanor conviction punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Md. Code Ann., Crim. Law § 3-308(d)(1). However, if the defendant has a prior conviction under Md. Code Ann., Crim. Law §§ 3-303–3-310 (Rape in the first or second degree; Sexual offense in the first through fourth degree; Attempted rape in the first or second degree), § 3-311 or § 3-312 (Attempted sexual offense in the first or second degree) as they existed before October 1, 2017, § 3-315 (Continuing course of conduct with child), or § 3-602 (Sexual abuse of a minor), a conviction is punishable by imprisonment up to 3 years, a fine not to exceed \$1,000, or both. Md. Code Ann., Crim. Law § 3-308(d)(2)(i).

5. Md. Code Ann., Crim. Law § 3-315(a) (Continuing course of conduct with child) makes it a separate crime for a person to “engage in a continuing course of conduct which includes three or more acts that would constitute violations of § 3-303 [Rape in the first degree], § 3-304 [Rape in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle, or violations of § 3-305 or § 3-306 [Sexual offense in the first or second degree] of this subtitle as the sections existed before October 1, 2017, over a period of 90 days or more, with a victim who is under the age of 14 years at any time during the course of conduct.” A conviction under this statute is a felony conviction punishable by imprisonment up to 30 years, which “may be separate from and consecutive to or concurrent with a sentence under § 3-602 [Sexual abuse of a minor] of this title.”¹³ Md. Code Ann., Crim. Law § 3-315(b).

¹³ Continuing course of conduct with child is a “crime of violence” as defined in Md. Code Ann., Crim. Law § 14-101(a)(20). See *supra* note 11 for the minimum sentences applicable to repeat offenders of crimes of violence.

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

Md. Code Ann., Crim. Law § 11-303(c)(1)¹⁴ refers to the sex trafficking statute by providing victims with an affirmative defense. Md. Code Ann., Crim. Law § 11-303(c)(1) states in part,

[I]n a prosecution under this section, it is an affirmative defense of duress if the defendant committed the act as a result of being a victim of an act of another in violation of Title 3, Subtitle 11 [Human Trafficking] of this article or the prohibition against human trafficking under federal law.

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.*

Although Maryland does not have a crime that pertains to racketeering offenses, it does criminalize participation in a criminal gang and criminal gang activity. Pursuant to Md. Code Ann., Crim. Law § 9-804 (Participation in criminal gang prohibited),

- (a) A person may not:
 - (1) participate in a criminal gang knowing that the members of the gang engage in a pattern of criminal gang activity; and
 - (2) knowingly and willfully direct or participate in an underlying crime, or act by a juvenile that would be an underlying crime if committed by an adult, committed for the benefit of, at the direction of, or in association with a criminal gang.
- (b) A criminal gang or an individual belonging to a criminal gang may not:
 - (1) receive proceeds known to have been derived directly or indirectly from an underlying crime; and
 - (2) use or invest, directly or indirectly, an aggregate of \$10,000 or more of the proceeds from an underlying crime in:
 - (i) the acquisition of a title to, right to, interest in, or equity in real property; or
 - (ii) the establishment or operation of any enterprise.¹⁵
- (c) A criminal gang may not acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through an underlying crime.
- (d) A person may not conspire to violation subsection (a), (b), or (c) of this section.

Pursuant to Md. Code Ann., Crim. Law § 9-801(c) (Definitions), “criminal gang”¹⁶ is defined as

- a group or association of three or more persons whose members:
 - (1) individually or collectively engage in a pattern of criminal gang activity;

¹⁴ The text of Md. Code Ann., Crim. Law § 11-303 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹⁵ Pursuant to Md. Code Ann., Crim. Law § 9-801(d), “enterprise” means “(1) a sole proprietorship, partnership, corporation, business trust, or other legal entity; (2) or any group of individuals associated in fact although not a legal entity.”

¹⁶ Md. Code Ann., Crim. Law § 9-802(a) (Criminal gang activity) makes it illegal for a person to “threaten an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang.” A conviction under Md. Code Ann., Crim. Law § 9-802(a) is a misdemeanor punishable by imprisonment up to 2 years, a possible fine not to exceed \$10,000, or both. Md. Code Ann., Crim. Law § 9-802(b).

- (2) have as one of their primary objectives or activities the commission of one or more underlying crimes, including acts by juveniles that would be underlying crimes if committed by adults; and
- (3) have in common an overt or covert organizational or command structure.

A “pattern of criminal gang activity” is defined as “the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.” Md. Code Ann., Crim. Law § 9-801(e). The definition of “underlying crime” includes “a violation of . . . § 3-1102 (sex trafficking), . . . § 11-304 (receiving earnings of prostitute), or § 11-307 (house of prostitution) . . .” and “a crime of violence,” which is defined under Md. Code Ann., Crim. Law § 14-101(a)(1) (Mandatory sentences for crimes of violence) to include “abduction.” Md. Code Ann., Crim. Law § 9-801(g)(1), (2).¹⁷

A conviction under Md. Code Ann., Crim. Law § 9-804(a) is a felony conviction punishable by imprisonment up to 15 years, a fine not to exceed \$1,000,000, or both. Md. Code Ann., Crim. Law § 9-804(f)(1)(i). However, if the commission of the underlying crime results in the victim’s death, a conviction is punishable by imprisonment up to 25 years, a fine not to exceed \$5,000,000, or both. Md. Code Ann., Crim. Law § 9-804(f)(1)(ii). Further, Md. Code Ann., Crim. Law § 9-804(f)(3) states,

- In addition to the other penalties provided in this subsection, on conviction the court may:
- (i) order a person or criminal gang to be divested of any interest in an enterprise or real property;
 - (ii) order the dissolution or reorganization of an enterprise; and
 - (iii) order the suspension or revocation of any license, permit, or prior approval granted to the enterprise or person by a unit of the State or a political subdivision of the State.

Lastly, persons who “organize, supervise, promote, sponsor, finance, or manage a criminal gang” are guilty of a felony punishable by imprisonment up to 20 years, a fine not to exceed \$1,000,000, or both. Md. Code Ann., Crim. Law § 9-805(a), (b) (Organization or supervision of gang prohibited).¹⁸

¹⁷ The text of Md. Code Ann., Crim. Law § 9-801 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹⁸ “A sentence imposed under this section shall be separate from and consecutive to a sentence for any crime based on the act establishing a violation of this section.” Md. Code Ann., Crim. Law § 9-805(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.*
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Legal Analysis:

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

Md. Code Ann., Crim. Law § 3-1102¹⁹ (Sex trafficking) does not contain language specifically criminalizing purchasing or soliciting sex acts with minors.²⁰

- 2.1.1 Recommendation: Amend Md. Code Ann., Crim. Law § 3-1102 (Sex trafficking) to make the statute applicable to the actions of buyers of commercial sex with minors.

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

Pursuant to Md. Code Ann., Crim. Law § 3-324(b)²¹ (Sexual solicitation of minor),

[A] person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-303, § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] of this article, [to] knowingly solicit²² a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article.

¹⁹ See *supra* note 2.

²⁰ See *supra* Component 1.1 for discussion of relevant provisions.

²¹ See *supra* note 8.

²² See *supra* Component 1.2 for discussion of the definition of “solicit.”

A conviction under Md. Code Ann., Crim. Law § 3-324(b) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

Additionally, Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) states it is illegal for a person to use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

A conviction under Md. Code Ann., Crim. Law § 11-207 is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207 (b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

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

Maryland law differentiates between soliciting sex with an adult and soliciting sex with a minor. Specifically, Md. Code Ann., Crim. Law § 3-324(b)²³ (Sexual solicitation of minor) makes it a crime for a person to “with the intent to commit a violation of . . . § 11-306 . . . of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under . . . § 11-306”²⁴ A conviction under this statute is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

In contrast, lower penalties apply to buyers convicted under Maryland's general solicitation law. Md. Code Ann., Crim. Law § 11-306(a)²⁵ states, “A person may not knowingly procure or solicit or offer to procure or solicit prostitution²⁶ or assignment.”²⁷ A conviction under Md. Code Ann., Crim. Law § 11-306(a) is a misdemeanor conviction punishable by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-306(b).

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

Convictions under Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) or Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) are punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law §§ 3-324(d), 11-207(b)(1). Subsequent convictions under Md. Code Ann., Crim. Law § 11-207(a)(5) are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection

²³ See *supra* note 8.

²⁴ See *supra* Component 1.2 for discussion of the definition of “solicit.”

²⁵ The text of Md. Code Ann., Crim. Law § 11-306 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

²⁶ “Prostitution” is defined as “the performance of a sexual act, sexual contact, or vaginal intercourse for hire.” Md. Code Ann., Crim. Law § 11-301(c).

²⁷ “Assignment” means “the making of an appointment or engagement for prostitution or any act in furtherance of the appointment or engagement.” Md. Code Ann., Crim. Law § 11-301(b).

Act (TVPA)²⁸ 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 offense²⁹ against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,³⁰ a conviction is punishable by penalties ranging from a fine not to exceed \$250,000 to life imprisonment and a fine not to exceed \$250,000.³¹

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

Using the Internet or electronic communications to solicit a minor for commercial sex is prohibited under Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor). Pursuant to Md. Code Ann., Crim. Law § 3-324(b),³²

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-303, § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article.

For purposes of this statute, Md. Code Ann., Crim. Law § 3-324(a)(1) defines soliciting to include “command[ing], authoriz[ing], urg[ing], entic[ing], request[ing], or advis[ing] a person by any means, including . . . (6) by computer or Internet; or (7) by any other electronic means.” A conviction under Md. Code Ann., Crim. Law § 3-324(b) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

²⁸ 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.).

²⁹ 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).

³⁰ 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).

³¹ 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).

³² *See supra* note 8.

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

Md. Code Ann., Crim. Law § 3-1102(f)³³ (Sex trafficking) prohibits a mistake of age defense, stating, “It is not a defense to a prosecution under subsection (b)(1) or (e) of this section that the person did not know the age of the victim.” However, the sex trafficking law does not apply to buyers of commercial sex acts with minors.³⁴ Further, neither of Maryland’s buyer-applicable CSEC laws prohibit such a defense.

2.6.1 Recommendation: Amend Md. Code Ann., Crim. Law § 3-1102 (Sex trafficking) to make the statute applicable to the actions of buyers of commercial sex with minors so that it’s clear that buyers may not use mistake of age as a defense for their actions.

2.6.2 Recommendation: Amend Maryland’s CSEC laws to prohibit the use of a mistake of age defense when the victim of the crime is a minor.

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

Maryland’s buyer-applicable CSEC laws do not stagger penalties based on a minor’s age and provide sufficiently high penalties. Convictions under Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) and Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) are felonies punishable by imprisonment up to 10 years. Md. Code Ann., Crim. Law §§ 3-324(d), 11-207(b)(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 of commercial sex with minors may be required to pay fines ranging from \$500 to \$25,000, in the case of a first offense, and \$50,000, for repeat offenders. Specifically, buyers convicted under Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of minor) or Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) are subject to a possible fine not to exceed \$25,000; however, buyers with a prior conviction under Md. Code Ann., Crim. Law § 11-207(a)(5) are subject to a possible fine not to exceed \$50,000. Md. Code Ann., Crim. Law §§ 3-324(d), 11-207(b). Lastly, a buyer convicted under Md. Code Ann., Crim. Law § 11-306(a)³⁵ is subject to a possible fine not to exceed \$500. Md. Code Ann., Crim. Law § 11-306(b).

Although Maryland law provides for asset forfeiture in conjunction with violations of Md. Code Ann., Crim. Law. § 3-1102 (Sex trafficking), because Md. Code Ann., Crim. Law. § 3-1102 does not clearly apply to buyers, buyers are subject to more limited asset forfeiture laws than traffickers or facilitators. Buyers may be subject to asset forfeiture based on violations of the “human trafficking law,” which, as defined under Md. Code Ann., Crim. Proc. § 13-501(g)³⁶ (Definitions), includes not only the sex trafficking statute in § 3-1102, but also “§ 3-324 [Sexual solicitation of minor], . . . § 11-207[Child pornography]” and “§ 11-304 [Receiving earnings of prostitute], and § 11-305 [Child kidnapping for the purpose of committing a sexual crime] of the Criminal Law Article.”

Specifically, money is subject to forfeiture if it is used in connection with a violation of and conviction under the human trafficking law, or if it is “found in close proximity to or at the scene of the arrest for a violation of the human trafficking law,” which is defined under Md. Code Ann., Crim. Proc. § 13-501(g) to include the trafficking and prostitution-related offenses noted above. Md. Code Ann., Crim. Proc. § 13-502(2) (Property

³³ See *supra* note 2.

³⁴ See *supra* Component 2.1 for a further discussion.

³⁵ See *supra* note 25.

³⁶ The text of Md. Code Ann., Crim. Proc. Law § 13-501 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

subject to forfeiture). Further, pursuant to Md. Code Ann., Crim. Proc. § 13-503(b)(1) (Forfeiture of property or interest in property) “[a] motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire” may be seized or forfeited if “the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the human trafficking law.”

However, provisions of the asset forfeiture law that include more broad powers of asset forfeiture for real property and motor vehicles³⁷ apply only to violations of Md. Code Ann., Crim. Proc. § 3-1102 and therefore do not apply to buyers.

In addition to those more targeted statutes, Md. Code Ann., Crim. Proc. § 11-603(a) (Restitution determination) may require a buyer to make restitution if any of the following circumstances exist:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
 - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
 - (ii) direct out-of-pocket loss;
 - (iii) loss of earnings; or
 - (iv) expenses incurred with rehabilitation;
- (3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;
- (4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;
- (5) the Criminal Injuries Compensation Board paid benefits to a victim; or
- (6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

If the court orders the buyer to pay restitution, the court also may enter “an immediate and continuing earnings withholding order” and specify an amount the buyer’s employers must withhold and pay to the appropriate governmental entity. Md. Code Ann., Crim. Proc. § 11-617(a)(1), (d)(1) (Immediate and continuing earnings withholding orders).

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

Possessing child sexual abuse material (CSAM) is prohibited under Md. Code Ann., Crim. Law § 11-208(b)³⁸ (Possession of visual representation of child under 16 engaged in certain sexual acts). Md. Code Ann., Crim. Law § 11-208(b) makes it a crime for a person to

knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child or a computer-generated image that is indistinguishable from an actual and identifiable child under the age of 16 years:

- (1) engaged as a subject of sadomasochistic abuse;
- (2) engaged in sexual conduct;³⁹ or

³⁷ See *infra* Components 3.4 and 4.2 for more detailed discussion of these provisions.

³⁸ The text of Md. Code Ann., Crim. Law § 11-208 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 1027 and Senate Bill 736 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

³⁹ Md. Code Ann., Crim. Law § 11-101(d) defines “sexual conduct” as the following:

(3) in a state of sexual excitement.⁴⁰

A conviction under Md. Code Ann., Crim. Law § 11-208 is a misdemeanor conviction punishable by imprisonment up to 5 years, a fine not to exceed \$2,500, or both. Md. Code Ann., Crim. Law § 11-208(c)(1). Subsequent convictions, however, are felony convictions punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Md. Code Ann., Crim. Law § 11-208(c)(2).⁴¹

In comparison, a federal conviction for possession of CSAM⁴² is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁴³ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁴⁴

2.9.1 Recommendation: Amend Md. Code Ann., Crim. Law § 11-208(b) (Possession of visual representation of child under 16 engaged in certain sexual acts) to apply to all minors under 18 and impose substantial penalties to reflect the seriousness of the offense.

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- (1) human masturbation;
 - (2) sexual intercourse;
 - (3) whether alone or with another individual or animal, any touching of or contact with:
 - (i) the genitals, buttocks, or pubic areas of an individual; or
 - (ii) breasts of a female individual; or
 - (4) lascivious exhibition of the genitals or pubic area of any person.

The text of Md. Code Ann., Crim. Law § 11-101 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 1027 and Senate Bill 736 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

⁴⁰ Md. Code Ann., Crim. Law § 11-101(e) defines “sexual excitement” as the following:

- (1) the condition of the human genitals when in a state of sexual stimulation;
- (2) the condition of the human female breasts when in a state of sexual stimulation; or
- (3) the sensual experiences of individuals engaging in or witnessing sexual conduct or nudity.

⁴¹ However, pursuant to subsection (d), “It is an affirmative defense to a charge of violating this section that the person promptly and in good faith: (1) took reasonable steps to destroy each visual representation; or (2) reported the matter to a law enforcement agency.”

⁴² 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).

⁴³ 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).

⁴⁴ 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).

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

Pursuant to Md. Code Ann., Crim. Proc. § 11-704(a) (Registration required), sex offender registration is required for tier I, II, and III sex offenders, and “a sex offender who is required to register by another jurisdiction” who moves to Maryland to live, work, attend school, or be a transient.

According to Md. Code Ann., Crim. Proc. § 11-701(o) (Definitions), a “tier I sex offender” includes a person convicted of any the following:

- (1) conspiring to commit, attempting to commit, or committing a violation of § 3-308 [Sexual offense in the fourth degree] . . . ;
- (2) conspiring to commit, attempting to commit, or committing a violation of . . . § 11-208 [Possession of visual representation of child under 16 engaged in certain sexual acts] . . . if the victim is a minor;
- (3) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection;
- (4) any of the following federal offenses:
 -
 - (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591;
 - (vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);
 -

A “tier II sex offender,” according to Md. Code Ann., Crim. Proc. § 11-701(p),⁴⁵ includes a person convicted of

- (1) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(4) or (5) [Sexual offense in the third degree where the victim is 14 or 15 years old and the defendant is at least 21], § 3-324 [Sexual solicitation of minor], [or] § 11-207 [Child pornography] . . . ;
- (2) conspiring to commit, attempting to commit, or committing a violation of § 3-1102 [Sex trafficking], . . . § 11-303, § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] . . . if the intended prostitute or victim is a minor;
- (3) conspiring to commit, attempting to commit, or committing a violation of . . . § 3-603 [Sale of Minor] . . . if the victim is a minor who is at least 14 years old;
- (4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender;
- (5) a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection . . .
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Similarly, Md. Code Ann., Crim. Proc. § 11-701(q)(1)–(5) defines “tier III sex offender” as including persons convicted of any of following:

- (1) conspiring to commit, attempting to commit, or committing a violation of:
 -
 - (ii) § 3-303 [Rape in the first degree], § 3-304 [Rape in the second degree], . . . § 3-315 [Continuing course of conduct with child], . . . or § 3-602 [Sexual abuse of minor]
 -
 - (vi) § 3-305 [Sexual offense in the first degree] or § 3-306 [Sexual offense in the second degree] of the Criminal Law Article as the sections existed before October 1, 2017.

⁴⁵ The text of Md. Code Ann., Crim. Proc. Law § 11-701 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

(2) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(3) [Sexual offense in the third degree where the victim is under 14 and the defendant is at least 4 years older than the victim] . . . if the victim is under the age of 14 years;

. . . .

(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;

(5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection

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.*⁴⁶

If the victim is a minor, a trafficker convicted under Md. Code Ann., Crim. Law § 3-1102(a)(1)⁴⁷ (Sex trafficking) is guilty of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000, or both. Md. Code Ann., Crim. Law § 3-1102(c)(2).

Traffickers may also be prosecuted under Md. Code Ann., Crim. Law § 11-305(a) (Child kidnapping for the purpose of committing a sexual crime), a felony punishable by imprisonment up to 25 years, a fine not to exceed \$5,000, or both. Md. Code Ann., Crim. Law § 11-305(b).

Traffickers convicted under Md. Code Ann., Crim. Law § 3-324(b) (Sexual solicitation of a minor)⁴⁸ are guilty of a felony punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

In addition, although not specifically applicable to sexual exploitation, a trafficker may be guilty of Md. Code Ann., Crim. Law § 3-603(a) (Sale of minor), a felony punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Md. Code Ann., Crim. Law § 3-603(b).⁴⁹

Although not specific to the commercial sexual exploitation of children, Md. Code Ann., Crim. Law § 11-307(a)⁵⁰ (House of prostitution) could be used to prosecute a trafficker. This statute makes it a crime for a person to knowingly

⁴⁶ See *supra* Components 1.1 and 1.2 for discussion of relevant provisions.

⁴⁷ See *supra* note 2.

⁴⁸ See *supra* Component 1.2 for discussion of the definition of “solicit.”

⁴⁹ The text of Md. Code Ann., Crim. Law § 3-603 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 481 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

⁵⁰ The text of Md. Code Ann., Crim. Law § 11-307 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

- (1) allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation;
- (2) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or
- (3) keep, set up, maintain, or operate a building, structure or conveyance for prostitution or assignation.

A trafficker convicted under this statute is guilty of a misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-307(b).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)⁵¹ 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 offense⁵² 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.*

Md. Code Ann., Crim. Law § 11-207(a) (Child pornography) prohibits the creation, distribution, promotion, and sale of child sexual abuse material (CSAM). Specifically, Md. Code Ann., Crim. Law § 11-207(a) makes it illegal for a person to

- (1) cause, induce, solicit, or knowingly allow a minor to engage as a subject in the production of obscene matter or a visual representation or performance that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;
- (2) photograph or film a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (3) use a computer to depict or describe a minor engaging in an obscene act, sadomasochistic abuse, or sexual conduct;
- (4) knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:
 - (i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or
 - (ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct; or
- (5) use a computer to knowingly compile, enter, transmit, make, print, publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any notice, statement, advertisement, or minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful sadomasochistic abuse or sexual conduct of or with a minor.

A trafficker's first conviction under Md. Code Ann., Crim. Law § 11-207(a) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2). In contrast, 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).

⁵¹ See *supra* note 28.

⁵² See *supra* note 29.

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 offense⁵³ against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM⁵⁴ is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.⁵⁵ Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.⁵⁶

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.*

Using the Internet or electronic communications to “command, authorize, urge, entice, request, or advise” a minor to engage in a violation of Md. Code Ann., Crim. Law § 11-303, among other crimes, is prohibited under Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor). Pursuant to Md. Code Ann., Crim. Law § 3-324(b),⁵⁷

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-303, § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] of this article, knowingly solicit a minor or law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article.

Md. Code Ann., Crim. Law § 3-324(a) defines “solicit” as follows:

[T]o command, authorize, urge, entice, request, or advise a person by any means, including:

- (1) in person;
- (2) through an agent or agency;
- (3) over the telephone;
- (4) through any print medium;
- (5) by mail;

⁵³ See *supra* note 29.

⁵⁴ 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).

⁵⁵ 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).

⁵⁶ 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).

⁵⁷ See *supra* note 8.

- (6) by computer or Internet; or
- (7) by any other electronic means.

A conviction under Md. Code Ann., Crim. Law § 3-324(b) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 3-324(d).

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

Traffickers convicted under Maryland laws for crimes related to the trafficking of domestic minor sex victims face fines, asset forfeiture, and restitution. Specifically, traffickers convicted under Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor) or Md. Code Ann., Crim. Law § 11-207 (Child pornography) are subject to a possible fine not to exceed \$25,000, and traffickers convicted under Md. Code Ann., Crim. Law § 9-804(a)–(e) (Participation in criminal gang prohibited) are subject to a possible fine not to exceed \$5,000,000. Md. Code Ann., Crim. Law §§ 9-804(f), 3-324(d), 11-207(b)(1). Subsequent convictions under Md. Code Ann., Crim. Law § 11-207 are subject to a possible fine not to exceed \$50,000. Md. Code Ann., Crim. Law § 11-207(b)(2). Traffickers convicted under Md. Code Ann., Crim. Law § 3-1102(b)⁵⁸ (Sex trafficking) are subject to a possible fine not to exceed \$15,000, while traffickers convicted under either Md. Code Ann., Crim. Law § 3-603 (Sale of minor) or Md. Code Ann., Crim. Law § 11-304 (Receiving earnings of prostitute) are subject to a possible fine not to exceed \$10,000. Md. Code Ann., Crim. Law §§ 3-1102(c)(2), 3-603(b), 11-304(b). Traffickers convicted under Md. Code Ann., Crim. Law § 11-305 (Child kidnapping for the purpose of committing a sexual crime) are subject to a possible fine not to exceed \$5,000. Md. Code Ann., Crim. Law §§ 11-305(b). Lastly, traffickers convicted under Md. Code Ann., Crim. Law § 11-307⁵⁹ (House of prostitution) are subject to a possible fine not to exceed \$500. Md. Code Ann., Crim. Law § 11-307(b).

Maryland law provides for asset forfeiture of motor vehicles, real property, and money used by traffickers in conjunction with commercial exploitation and sex trafficking of minors. Specifically, under Md. Code Ann., Crim. Proc. § 13-502(1), (3)⁶⁰ (Property subject to forfeiture), motor vehicles and real property are subject to forfeiture if used in connection with a violation of and conviction under Md. Code Ann., Crim. Law. § 3-1102.⁶¹ Money is subject to forfeiture not merely for violations of § 3-1102, but more broadly if it is used in connection with a violation of and conviction under the “human trafficking law,” or if it is “found in close proximity to or at the scene of the arrest for a violation of the human trafficking law.” Md. Code Ann. Crim. Proc. § 13-502(2). For purposes of subtitle 5, Md. Code Ann., Crim. Proc. § 13-501(g)⁶² (Definitions) defines “human trafficking law” as “§ 3-324, § 3-1102, . . . § 11-207, § 11-304, and § 11-305 of the Criminal Law Article.”

Pursuant to Md. Code Ann., Crim. Proc. § 13-503(b)(1) (Forfeiture of property or interest in property) “[a] motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire” may be seized or forfeited if “the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the human trafficking law.” Furthermore, Md. Code Ann., Crim. Proc. § 13-507⁶³ (Seizure of motor vehicles) states that a motor vehicle used in violation of Md. Code Ann., Crim. Law § 3-1102 may be

⁵⁸ See *supra* note 2.

⁵⁹ See *supra* note 50.

⁶⁰ The text of Md. Code Ann., Crim. Proc. Law § 13-502 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

⁶¹ However, real property used as the principal family residence may only be forfeited if one of the owners of the real property is convicted of violating, attempting to violate, or conspiring to violate Md. Code Ann., Crim. Law § 3-1102. Md. Code Ann., Crim. Proc. § 13-503(c).

⁶² See *supra* note 36.

⁶³ The text of Md. Code Ann., Crim. Proc. Law § 13-507 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

seized and forfeited when justified. In determining whether a seizure is justified, the seizing authority should consider the following circumstances: “(1) evidence that the motor vehicle was acquired by use of proceeds from a transaction involving a violation of § 3-1102 . . . of the Criminal Law Article; (2) the circumstances of the arrest; and (3) the way in which the motor vehicle was used.” Md. Code Ann., Crim. Proc. § 13-507(b).

Under Md. Code Ann., Crim. Proc. § 13-522⁶⁴ (Interest in real property forfeited if owner convicted of human trafficking) an owner’s interest in real property may be forfeited if the owner is convicted of violating, attempting to violate, or conspiring to violate Md. Code Ann., Crim. Law § 3-1102. This provision does not require that the real property have been used to commit human trafficking. If the real property is held by the husband and wife as tenants by the entirety and is used as the primary residence, it may only be forfeited if both the husband and wife are convicted of Md. Code Ann. Crim. Law § 3-1102 and the property was used in connection with attempting to violate, or conspiring to violate Md. Code Ann. Crim. Law § 3-1102. Md. Code Ann., Crim. Proc. § 13-503(d).⁶⁵

Md. Code Ann., Crim. Proc. § 13-525(a)⁶⁶ (Presumption that property or interest in property subject to forfeiture) creates a rebuttable presumption that property or an owner’s interest in property is subject to forfeiture if the state establishes by clear and convincing evidence that:

- (i) the person was convicted of violating § 3-1102 . . . of the Criminal Law Article or attempting or conspiring to violate § 3-1102 . . . of the Criminal Law Article;
- (ii) the property was acquired by the person during the violation or within a reasonable time after the violation; and
- (iii) there was no other likely source for the property.

Pursuant to Md. Code Ann., Crim. Proc. § 13-514⁶⁷ (Property directly or indirectly dangerous to health or safety or used for criminal purposes) forfeiture proceedings shall be filed promptly when there is probable cause to believe that the seized property is “directly or indirectly dangerous to health or safety and that the property was or will be used to violate § 3-1102 . . . of the Criminal Law Article”

Md. Code Ann., Crim. Proc. § 11-603(a) (Restitution determination) may, however, require a trafficker to make restitution if any of the following circumstances exist:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
 - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
 - (ii) direct out-of-pocket loss;
 - (iii) loss of earnings; or
 - (iv) expenses incurred with rehabilitation;

⁶⁴ The text of Md. Code Ann., Crim. Proc. Law § 13-522 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

⁶⁵ The text of Md. Code Ann., Crim. Proc. Law § 13-503 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

⁶⁶ The text of Md. Code Ann., Crim. Proc. Law § 13-525 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

⁶⁷ The text of Md. Code Ann., Crim. Proc. Law § 13-514 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

- (3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;
- (4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;
- (5) the Criminal Injuries Compensation Board paid benefits to a victim; or
- (6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

If the court orders the trafficker to make restitution, the court also may enter “an immediate and continuing earnings withholding order” and specify an amount the trafficker’s employer must withhold and pay to the appropriate governmental entity. Md. Code Ann., Crim. Proc. § 11-617(a)(1), (d)(1) (Immediate and continuing earnings withholding orders).

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

Pursuant to Md. Code Ann., Crim. Proc. § 11-704(a) (Registration required), sex offender registration is required for tier I, II, and III sex offenders, and “a sex offender who is required to register by another jurisdiction” who moves to Maryland to live, work, attend school, or be a transient.

According to Md. Code Ann., Crim. Proc. § 11-701(o)(4) (Definitions), a “tier I sex offender” includes a person convicted of any the following:

any of the following federal offenses:

-
- (vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591; or
- (vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);
-

A “tier II sex offender,” according to Md. Code Ann., Crim. Proc. § 11-701(p),⁶⁸ includes a person convicted of

- (1) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(4) or (5) [Sexual offense in the third degree where the victim is 14 or 15 years old and the defendant is at least 21], § 3-324 [Sexual solicitation of minor], [or] § 11-207 [Child pornography] . . . ;
- (2) conspiring to commit, attempting to commit, or committing a violation of § 3-1102 [Sex trafficking], . . . § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] . . . if the intended prostitute or victim is a minor;
- (3) conspiring to commit, attempting to commit, or committing a violation of . . . § 3-603 [Sale of Minor] . . . if the victim is a minor who is at least 14 years old;
- (4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender;
- (5) a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection . . .
-

Similarly, Md. Code Ann., Crim. Proc. § 11-701(q) defines “tier III sex offender” as including persons convicted of any of following:

- (1) conspiring to commit, attempting to commit, or committing a violation of:
-

⁶⁸ See *supra* note 45.

(ii) § 3-303 [Rape in the first degree], § 3-304 [Rape in the second degree], . . . § 3-315 [Continuing course of conduct with child] . . . or § 3-602 [Sexual abuse of minor] . . .

. . . .

(vi) § 3-305 [Sexual offense in the first degree] or § 3-306 [Sexual offense in the second degree] of the Criminal Law Article as the sections existed before October 1, 2017;

(2) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(3) [Sexual offense in the third degree where the victim is under 14 and the defendant is at least 4 years older than the victim] . . . if the victim is under the age of 14 years;

. . . .

(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;

(5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection . . .

. . . .

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.*

Child sex trafficking is included as a ground for terminating parental rights based on the definitions of “abuse,” “sexual abuse,”⁶⁹ and “crime of violence.”

Under Md. Code Ann., Fam. Law § 5-323(b) (Grant of guardianship—Nonconsensual), the court has the authority to terminate parental rights if, after considering a number of factors, it “finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child”

In determining whether to terminate parental rights, Md. Code Ann., Fam. Law § 5-323(d) provides,

a juvenile court shall give primary consideration to the health and safety of the child and consideration to all other factors needed to determine whether terminating a parent’s rights is in the child’s best interests, including:

. . . .

(3) whether:

(i) the parent has abused or neglected the child or a minor and the seriousness of the abuse or neglect;

. . . .

(iii) the parent subjected the child to:

1. chronic abuse;
2. chronic and life-threatening neglect;
3. sexual abuse; or
4. torture;

(iv) the parent has been convicted, in any state or any court of the United States, of:

1. a crime of violence⁷⁰ against:

⁶⁹ See *infra* Component 5.5 for full discussion regarding the definitions of “abuse” and “sexual abuse.”

⁷⁰ Pursuant to Md. Code Ann., Crim. Law § 14-101(a) (Mandatory sentences for crimes of violence), a “crime of violence” includes the following:

(3) kidnapping;

- A. a minor offspring of the parent;
- B. the child; or
- C. another parent of the child; or
- 2. aiding or abetting, conspiring, or soliciting to commit a crime described in item 1 of this item; and
- (v) the parent has involuntarily lost parental rights to a sibling of the child;

....

Because the definitions of “abuse” and “sexual abuse” specifically include child sex trafficking, a conviction under Md. Code Ann., Crim. Law § 3-1102(a)(1)⁷¹ (Sex trafficking) is included as a ground for terminating parental rights.⁷²

The court may terminate parental rights without considering any of these factors, if the child’s parent has not come forward within 60 days of the “child’s adjudication as a child in need of assistance,” and “the identities of the child’s parents are unknown.” Md. Code Ann., Fam. Law § 5-323(c). “Child in need of assistance,” or “CINA,” is defined as a person under 18 “who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(e)–(g) (Definitions).

....

(8) rape;

....

(12) sexual offense in the first degree;

(13) sexual offense in the second degree;

....

(15) child abuse in the first degree under § 3-601 of this article;

(16) sexual abuse of a minor under § 3-602 of this article if:

(i) the victim is under the age of 13 years and the offender is an adult at the time of the offense; and

(ii) the offense involved:

1. vaginal intercourse, as defined in § 3-301 of this article;

2. a sexual act, as defined in § 3-301 of this article;

3. an act in which a part of the offender’s body penetrates, however slightly, into the victim’s genital opening or anus; or

4. the intentional touching of the victim’s or the offender’s genital, anal, or other intimate area for sexual arousal, gratification, or abuse;

....

(18) a felony offense under Title 3, Subtitle 11 of this article [Human trafficking];

(19) an attempt to commit any of the crimes described in items (1) through (18) of this subsection;

(20) continuing course of conduct with a child under § 3-315 of this article;

....

See supra note 7.

⁷¹ *See supra* note 2.

⁷² *See infra* component 5.5 for full discussion regarding the definitions of abuse and sexual abuse.

Legal Components:

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

Legal Analysis:

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

Md. Code Ann., Crim. Law § 3-1102(e)(1)⁷³ (Sex trafficking) provides that “[a] person who knowingly benefits financially by receiving anything of value from participation in a venture that includes an act described in [Md. Code Ann., Crim. Law § 3-1102(a) or (b)]⁷⁴ . . . is subject to the same penalties that would apply if the person had violated that subsection.” Thus, if the victim of the conduct described in Md. Code Ann., Crim. Law § 3-1102(a)(1) is a minor,⁷⁵ a facilitator convicted under Md. Code Ann., Crim. Law § 3-1102(e)(1) is guilty of a felony punishable by imprisonment up to 25 years, a fine not to exceed \$15,000, or both. Md. Code Ann., Crim. Law § 3-1102(c)(2).

The conduct of some facilitators may fall under Md. Code Ann., Crim. Law § 11-304(a) (Receiving earnings of prostitute),⁷⁶ which is a misdemeanor punishable by imprisonment up to 10 years, a fine not to exceed \$10,000, or both. Also, facilitators convicted under Md. Code Ann., Crim. Law § 11-307(a)⁷⁷ (House of prostitution)⁷⁸ are guilty of a misdemeanor punishable by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-307(b).

Facilitators may also be prosecuted under Md. Code Ann., Crim. Law § 11-207(a)(5) (Child pornography) if they “use a computer to knowingly . . . transmit, . . . sell, . . . exchange, or disseminate any notice, statement, advertisement, or minor’s name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of . . . facilitating [or] encouraging . . . unlawful sadomasochistic abuse or sexual conduct of or with a minor.” A conviction under this statute is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Facilitators who are corporate entities or individuals responsible for managing corporations may have their corporate charters or their corporation’s charters terminated pursuant to Md. Code Ann., Corps. & Assocs. § 1-405(b) (Forfeiture of charter, revocation of permit, or injunction against business other than corporation for

⁷³ See *supra* note 2.

⁷⁴ See *supra* Component 1.1 for discussion of relevant provisions.

⁷⁵ See *supra* note 6.

⁷⁶ See *supra* Component 3.1 for discussion of relevant provisions.

⁷⁷ See *supra* note 50.

⁷⁸ See *supra* Component 3.1 for discussion of relevant provisions.

illegal conduct connected with organized crime). Specifically, Md. Code Ann., Corps. & Assocs. § 1-405(b) (Proceeding to forfeit charter) states,

The Attorney General may institute a civil proceeding in the courts to forfeit the charter of any Maryland corporation and to revoke the authority of any foreign corporation to do business in this State, if:

- (1) (i) A corporate officer or any person controlling the management or operation of the corporation, with the knowledge of the president and a majority of the board of directors or under circumstances where the president and a majority of the directors should have knowledge, is a person engaged in organized crime or connected directly or indirectly with an organization or criminal society engaged in organized crime; or
(ii) A director, officer, employee, agent, or stockholder acting for, through, or on behalf of a corporation in conducting its affairs purposely engages in a persistent course of organized crime or other criminal conduct with the knowledge of the president and a majority of the board of directors or under circumstances where the president and a majority of the directors should have knowledge, with the intent to compel or induce any person to deal with the corporation or to engage in organized crime; and
- (2) For the prevention of future illegal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the authorization to be revoked.

As used in Md. Corps. & Assocs. Code Ann. § 1-405, “organized crime” includes “any combination or conspiracy . . . to violate, aid or abet the violation of criminal laws related to prostitution” Md. Corps. & Assocs. Code Ann. § 1-405(a)(2).

Additionally, if a facilitator engages in some other business that is not a corporation, Md. Corps. & Assocs. Code Ann. § 1-405(c) provides,

The Attorney General may institute a civil proceeding in the courts to enjoin the operation of any business other than a corporation, including a partnership, limited partnership, unincorporated association, joint venture, or sole proprietorship, if:

- (1) Any person in control of the business, who may be a partner in a partnership, a participant in a joint venture, the owner of a sole proprietorship, an employee or agent of any of these businesses, or a person who, in fact, exercises control over the operations of the business in conducting its business affairs, purposely engages in a persistent course of organized crime or other illegal conduct with the intent to compel or induce any person to deal with the business or engage in organized crime; and
- (2) For the prevention of future illegal conduct of the same character, the public interest requires the operation of the business to be enjoined.

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

Facilitators convicted under Maryland laws for crimes related to the trafficking of domestic minor sex victims are subject to possible fines ranging from \$500 to \$100,000. Specifically, facilitators convicted under Md. Code Ann., Crim. Law § 9-804(a)–(e) (Participation in criminal gang prohibited) are subject to a possible fine not to exceed \$5,000,000, and facilitators convicted under Md. Code Ann., Crim. Law § 11-207 (Child pornography) are subject to a possible fine not to exceed \$25,000. Md. Code Ann., Crim. Law §§ 9-804(f)(1), 11-207(b)(1). Subsequent convictions under Md. Code Ann., Crim. Law § 11-207(b)(2) are subject to a

possible fine not to exceed \$50,000. Facilitators convicted under Md. Code Ann., Crim. Law § 3-1102(e)(1)⁷⁹ (Sex trafficking) are subject to a possible fine not to exceed \$15,000, while facilitators convicted under Md. Code Ann., Crim. Law § 11-304 (Receiving earnings of prostitute) are subject to a possible fine not to exceed \$10,000. Md. Code Ann., Crim. Law §§ 3-1102(c)(2), 11-304(b). Facilitators convicted under Md. Code Ann., Crim. Law § 9-802 (Criminal gang activity) are subject to a possible fine not to exceed \$10,000. Md. Code Ann., Crim. Law § 9-802(b). Lastly, facilitators convicted under Md. Code Ann., Crim. Law § 11-307⁸⁰ (House of prostitution) are subject to a possible fine not to exceed \$500. Md. Code Ann., Crim. Law § 11-307(b).

Maryland law provides for asset forfeiture of motor vehicles, real property, and money used by facilitators in conjunction with commercial exploitation and sex trafficking of minors. Specifically, under Md. Code Ann., Crim. Proc. § 13-502(1), (3)⁸¹ (Property subject to forfeiture), motor vehicles and real property are subject to forfeiture if used in connection with a violation of and conviction under Md. Code Ann., Crim. Law § 3-1102.⁸² Money is more broadly subject to forfeiture if it is used in connection with a violation of and conviction under “the human trafficking law,” or if it is “found in close proximity to or at the scene of the arrest for a violation of the human trafficking law.” Md. Code Ann., Crim. Proc. § 13-502(2). For purposes of subtitle 5, Md. Code Ann., Crim. Proc. § 13-501(g)⁸³ (Definitions) defines “human trafficking law” as “§ 3-324 [Sexual solicitation of minor], § 3-1102 [Sex trafficking], . . . § 11-207 [Child pornography], § 11-304 [Receiving earnings of a prostitute], and § 11-305 [Child kidnapping for the purpose of committing a sexual crime] of the Criminal Law Article.”

Pursuant to Md. Code Ann., Crim. Proc. § 13-503(b)(1) (Forfeiture of property or interest in property) “[a] motor vehicle for hire in the transaction of business as a common carrier or a motor vehicle for hire” may be seized or forfeited if “the owner or other person in charge of the motor vehicle was a consenting party or privy to a violation of the human trafficking law,” which is defined under Md. Code Ann., Crim. Proc. § 13-501(g) to include the trafficking and prostitution-related offenses noted above. Furthermore, Md. Code Ann., Crim. Proc. § 13-507⁸⁴ (Seizure of motor vehicles) states that a motor vehicle used in violation of Md. Code Ann., Crim. Law § 3-1102 may be seized and forfeited when justified. In determining whether a seizure is justified, the seizing authority should consider the following circumstances: “(1) evidence that the motor vehicle was acquired by use of proceeds from a transaction involving a violation of § 3-1102 . . . of the Criminal Law Article; (2) the circumstances of the arrest; and (3) the way in which the motor vehicle was used.” Md. Code Ann., Crim. Proc. § 13-507(b).

Under Md. Code Ann., Crim. Proc. § 13-522⁸⁵ (Interest in real property forfeited if owner convicted of human trafficking) an owner’s interest in real property may be forfeited if the owner is convicted of violating, attempting to violate, or conspiring to violate Md. Code Ann., Crim. Law § 3-1102. This provision does not require that the real property have been used to commit human trafficking. If the real property is held by the husband and wife as tenants by the entirety and is used as the primary residence, it may only be forfeited if both the husband and wife are convicted of Md. Code Ann. Crim. Law § 3-1102 and the property was used in connection with attempting to violate, or conspiring to violate Md. Code Ann. Crim. Law § 3-1102. Md. Code Ann., Crim. Proc. § 13-503(d).⁸⁶

⁷⁹ See *supra* note 2.

⁸⁰ See *supra* note 50.

⁸¹ See *supra* note 60.

⁸² See *supra* note 61 for further discussion on forfeiture of principal family residence.

⁸³ See *supra* note 36.

⁸⁴ See *supra* note 63.

⁸⁵ See *supra* note 64.

⁸⁶ See *supra* note 65.

Md. Code Ann., Crim. Proc. § 13-525(a)⁸⁷ (Presumption that property or interest in property subject to forfeiture) creates a rebuttable presumption that property or an owner’s interest in property is subject to forfeiture “if the state establishes by clear and convincing evidence that:

- (i) the person was convicted of violating § 3-1102 . . . of the Criminal Law Article or attempting or conspiring to violate § 3-1102 . . . of the Criminal Law Article;
- (ii) the property was acquired by the person during the violation or within a reasonable time after the violation; and
- (iii) there was no other likely source for the property.

Pursuant to Md. Code Ann., Crim. Pro. § 13-514⁸⁸ (Property directly or indirectly dangerous to health or safety or used for criminal purposes) forfeiture proceedings shall be filed promptly when there is probable cause to believe that the seized property is “directly or indirectly dangerous to health or safety and that the property was or will be used to violate § 3-1102 . . . of the Criminal Law Article.”

Md. Code Ann., Crim. Proc. § 11-603(a) (Restitution determination) may, however, require a facilitator to make restitution if any of the following circumstances exist:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
 - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
 - (ii) direct out-of-pocket loss;
 - (iii) loss of earnings; or
 - (iv) expenses incurred with rehabilitation;
- (3) the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;
- (4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;
- (5) the Criminal Injuries Compensation Board paid benefits to a victim; or
- (6) the Department of Health and Mental Hygiene or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

If the court orders the facilitator to make restitution, the court also may enter “an immediate and continuing earnings withholding order” and specify an amount the facilitator’s employer must withhold and pay to the appropriate governmental entity. Md. Code Ann., Crim. Proc. § 11-617(a)(1), (d)(1) (Immediate and continuing earnings withholding orders).

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

Maryland has no specific provision prohibiting promoting or selling child sex tourism in Maryland.

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

⁸⁷ See *supra* note 66.

⁸⁸ See *supra* note 67.

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

Md. Code Ann., Crim. Law § 11-207 (Child pornography) prohibits the promotion and sale of child sexual abuse material (CSAM). Specifically, Md. Code Ann., Crim. Law § 11-207(a)(4) makes it a crime for a person to

knowingly promote, advertise, solicit, distribute, or possess with the intent to distribute any matter, visual representation, or performance:

- (i) that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct; or
- (ii) in a manner that reflects the belief, or that is intended to cause another to believe, that the matter, visual representation, or performance depicts a minor engaged as a subject of sadomasochistic abuse or sexual conduct.

A conviction under Md. Code Ann., Crim. Law § 11-207(a) is a felony conviction punishable by imprisonment up to 10 years, a fine not to exceed \$25,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(1). Subsequent convictions are punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Md. Code Ann., Crim. Law § 11-207(b)(2).

Md. Code Ann., Crim. Law § 11-208.1 (Removal of child pornography from Internet) may also be used to prosecute a facilitator who “provides a service that provides or enables computer access via the Internet by multiple users to a computer server or similar device used for the storage of graphics, video, or images” and does not remove an “item of child pornography that is the subject of [a court] order within 5 business days after receiving the court order.” Md. Code Ann., Crim. Law § 11-208.1(a)(4), (f). Pursuant to subsection (h), such facilitators must also

report the location of an item of child pornography to the State Police if the item of child pornography:

- 1. resides on a server or storage device that is:
 - A. controlled or owned by the interactive computer service provider; and
 - B. located in the State; or
- 2. based on information apparent to the provider at the time of the report or discovery of an item of child pornography, pertains to a subscriber or user of the interactive computer service who resides in the State.⁸⁹

....

A facilitator who willfully refuses to remove CSAM from a computer server pursuant to Md. Code Ann., Crim. Law § 11-208.1(f) or who knowingly and willfully refuses to make reports as required under Md. Code Ann., Crim. Law § 11-208.1(h) is, upon conviction, guilty of a misdemeanor punishable by a fine not to exceed \$5,000 for a first conviction, \$20,000 for a second conviction, or \$30,000 for each subsequent conviction. Md. Code Ann., Crim. Law § 11-208.1(i), (h)(2).

⁸⁹ Interactive computer service providers do not have to report the location of CSAM to the State Police if “1. federal law expressly provides for or permits the referral of a report of an item of child pornography to a State or local law enforcement agency; and 2. the interactive computer service provider complies with the federal law.” Md. Crim. Law § 11-208.1(h)(1)(ii).

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 the 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.*⁹⁰

Md. Code Ann. Crim. Law § 3-1102⁹¹ (Sex trafficking), Maryland’s sex trafficking offense, does not include all commercial sexual exploitation of minors. Under Md. Code Ann. Crim. Law § 3-1102, means of force, fraud, or coercion are not required.⁹² However, the sex trafficking law does not apply to buyers; thus, buying commercial sex with a person who is under 18 does not constitute sex trafficking.⁹³ As such, the offense of sex trafficking, under Md. Code Ann. Crim. Law § 3-1102, requires that a trafficker or controlling third party be identified. Consequently, not all commercially sexually exploited children are identifiable as victims under Md. Code Ann. Crim. Law § 3-1102.

- 5.1.1 **Recommendation:** Amend the definition of Md. Code Ann. Crim. Law § 3-1102 (Sex trafficking) so that all commercially sexually exploited children are identifiable as victims and eligible for protections pursuant to their victim status.

⁹⁰ 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).

⁹¹ See *supra* note 2.

⁹² See *supra* discussion in Component 1.1.

⁹³ See *supra* discussion of buyer applicability in Component 2.1.

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

Md. Code Ann., Crim. Law § 3-1102⁹⁴ (Sex trafficking) does not prohibit a defense based on the minor's willingness to engage in a commercial sex act.

5.2.1 Recommendation: Amend Md. Code Ann., Crim. Law § 3-1102 (Sex trafficking) to expressly provide that the minor's willingness to engage in a commercial sex act is not a defense.

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*⁹⁵

Maryland law does not prohibit the criminalization of minors for prostitution offenses. Under Md. Code Ann., Crim. Law § 11-303,⁹⁶ "A person may not knowingly: (1) engage in prostitution or assignation by any means; or (2) occupy a building, structure, or conveyance for prostitution or assignation." A violation of Md. Code Ann., Crim. Law § 11-303 is punishable as a misdemeanor by imprisonment up to 1 year, a fine not to exceed \$500, or both. Md. Code Ann., Crim. Law § 11-303(b).

However, several prostitution-related offenses, including Md. Code Ann., Crim. Law § 11-303, Md. Code Ann., Crim. Law § 11-306, and Md. Code Ann., Crim. Law § 11-307 [House of prostitution], provide trafficking victims with an affirmative defense of duress, stating in part, "in a prosecution under this section, it is an affirmative defense of duress if the defendant committed the act as a result of being a victim of an act of another in violation of Title 3, Subtitle 11 of this article [Human Trafficking] or the prohibition against human trafficking under federal law." Md. Code Ann., Crim. Law §§ 11-303(c)(1), 11-306(c)(1),⁹⁷ 11-307(c)(1).⁹⁸

5.3.1 Recommendation: Amend Md. Code Ann., Crim. Law § 11-303 to ensure that all minors are protected from criminalization for prostitution offenses.⁹⁹

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

The Safe Harbor Regional Navigators Grant Program was established to provide funded services to juvenile sex trafficking victims. Through the program, specialized services will be available and accessible to commercially sexually exploited youth statewide. Specifically, Md. Code Ann., Fam. Law § 5-704.4¹⁰⁰ states,

- (b) (1) There is a Safe Harbor Regional Navigator Grant Program.
- (2) The purpose of the program is to support services for youth¹⁰¹ victims of sex trafficking by:

⁹⁴ See *supra* note 2.

⁹⁵ For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

⁹⁶ See *supra* note 14.

⁹⁷ See *supra* note 25.

⁹⁸ See *supra* note 50.

⁹⁹ 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).

¹⁰⁰ The text of Md. Code Ann., Fam. Law § 5-704.4 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 827 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹⁰¹ Md. Code Ann., Fam. Law § 5-704.4(a)(8) defines "youth" as "an individual under the age of 24 years."

- (i) creating and sustaining projects to provide services for youth victims of sex trafficking that are victim-centered and trauma-informed;
 - (ii) facilitating and coordinating among local departments, the Department of Juvenile Services, sexual assault crisis programs, child advocacy programs, local offices of the Office of the Public Defender, and other state and local agencies responding to youth victims of sex trafficking;
 - (iii) ensuring that youth victims of sex trafficking have access to services described under subsection (e) of this section;
 - (iv) increasing the State’s capacity to respond to youth sex trafficking, and
 - (v) training providers to appropriately identify and serve youth victims of sex trafficking.
- (c) A grantee under the program may include:
- (1) a child advocacy center;
 - (2) a sexual assault crisis program; or
 - (3) a qualified community-based victim services provider.¹⁰²
- (d) Grants under this section shall be awarded:
- (1) to ensure that emergency and long-term services are available for youth victims of sex trafficking in every jurisdiction in the State by January 1, 2022, and
 - (2) to provide services in one jurisdiction or in more than one similar jurisdiction in the same region.
- (e) Services coordinated and provided by a grantee under this section shall include:
- (1) safety planning;
 - (2) emergency response;
 - (3) basic living needs, not including housing;
 - (4) trauma counseling and mental health services;
 - (5) drug and alcohol abuse treatment;
 - (6) legal services;
 - (7) victim advocacy;
 - (8) case management; and
 - (9) designation of regional navigators.¹⁰³
- (f) Notwithstanding any appropriation made under subsection (h) of this section, not later than October 1, 2019, the Governor’s Office of Crime Control and Prevention shall provide grant funding for services provided by the Safe Harbor Regional Navigator Grant Program.
-
- (h) The Governor may annually appropriate up to \$3,000,000 for grant funding provided under this section.
-

Referral to an appropriate regional navigator is mandated. Pursuant to Md. Code Ann., Fam. Law § 5-704.3,¹⁰⁴

¹⁰² Md. Code Ann., Fam. Law § 5-704.4(a)(4) defines “qualified community-based victim services provider” as

a non-profit organization with:

- (i) demonstrated expertise providing direct services to victims of sex trafficking or sexually exploited youth;
- (ii) the capacity to provide victim-centered, trauma-informed case management for youth victims of sex trafficking;
- (iii) a demonstrated history of working in the community where services will be provided; and
- (iv) the ability to collaborate with other agencies, including law enforcement, sexual assault crisis programs, child advocacy centers, and other direct services providers.

¹⁰³ Md. Code Ann., Fam. Law § 5-704.4(a)(5) defines “regional navigator” as “a provider of services designated by a grantee of the Safe Harbor Regional Navigator Grant Program established under subsection (b) of this section.”

A local department that receives a report of suspected abuse or neglect under this subtitle involving a child who is a suspected victim of sex trafficking shall refer the child to any appropriate regional navigator, as defined in § 5-704.4 of this subtitle, for the jurisdiction where the trafficking occurred or where the child is a resident for services.

Similarly, Md. Code Ann., Cts. & Jud. Proc. § 3-8A-14(D)¹⁰⁵ states,

In addition to the requirements for reporting child abuse and neglect under § 5-704 of the Family Law Article, if a law enforcement officer has reason to believe that a child who has been detained is a victim of sex trafficking, as defined in § 5-701 of the Family Law Article, the law enforcement officer shall notify any appropriate regional navigator, as defined in § 5-704.4 of the Family Law Article, for the jurisdiction where the child was taken into custody or where the child is a resident that the child is a suspected victim of sex trafficking.

Further, Md. Code Ann., Fam. Law § 5-706(g)¹⁰⁶ sets forth a screening requirement to ensure commercially sexually exploited youth are identified; it states,

(1) The agencies responsible for investigating reported cases of suspected sexual abuse, including the local department, the appropriate law enforcement agencies, and the local State's Attorney, shall implement a joint investigation procedure for conducting joint investigations of sexual abuse under subsections (c) and (d) of this section.

(2) The joint investigation procedure shall:

....

(iv) include screening to determine whether a child is a victim of sex trafficking.

In contrast to these service-oriented provisions, however, Maryland law does not prevent commercially sexually exploited youth from facing a juvenile justice response for commercial sex acts committed as a result of their victimization.¹⁰⁷

Summary

Maryland law established a statewide system for providing specialized services to commercially sexually exploited youth, but juvenile sex trafficking victims may still face a punitive response for commercial sex acts committed as a result of their victimization.

5.4.1 Recommendation: Amend Maryland's response to direct child sex trafficking victims away from the juvenile justice system and to specialized services.¹⁰⁸

¹⁰⁴ The text of Md. Code Ann., Fam. Law § 5-704.3 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 827 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹⁰⁵ The text of Md. Code Ann., Cts. & Jud. Proc. § 3-8A-14 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 827 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹⁰⁶ The text of Md. Code Ann., Fam. Law § 5-706 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 827 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹⁰⁷ See *supra* Component 5.3 for discussion of protecting minors from prosecution for prostitution offenses.

¹⁰⁸ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*¹⁰⁹

Child sex trafficking¹¹⁰ is identified as a form of abuse within Maryland’s child abuse and neglect laws. Md. Code Ann., Fam. Law § 5-701(b)(1) (Definitions) defines “abuse” as follows:

- (i) the physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed by:
 - 1. A parent;
 - 2. A household member or family member;
 - 3. A person who has permanent or temporary care or custody of the child;
 - 4. A person who has responsibility for supervision of the child; or
 - 5. A person who, because of the person’s position or occupation, exercises authority over the child;or
- (ii) sexual abuse of a child, whether physical injuries are sustained or not.

Pursuant to Md. Code Ann., Fam. Law § 5-701(y), (z),

- (y) “Sexual abuse” means any act that involves:
 - (1) Sexual molestation or exploitation of a child by:
 - (i) A parent;
 - (ii) A household member or family member;
 - (iii) A person who has permanent or temporary care or custody of the child;
 - (iv) A person who has responsibility for supervision of the child; or
 - (v) A person who, because of the person’s position or occupation, exercises authority over the child.
 - (2) Sex trafficking¹¹¹ of a child by any individual.
- (z) “Sexual molestation or exploitation” includes:
 - (1) Allowing or encouraging a child to engage in:
 - (i) Obscene photography, films, poses, or similar activity;
 - (ii) Pornographic photography, films, poses, or similar activity; or
 - (iii) Prostitution
 - (2) Incest;
 - (3) Rape;
 - (4) Sexual offense in any degree;
 - (5) Sodomy; and
 - (6) Unnatural or perverted sexual practices

Further, Md. Code Ann., Fam. Law § 5-701(s) defines “neglect” as follows:

- [T]he leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:
- (1) that the child’s health or welfare is harmed or placed at substantial risk of harm; or
 - (2) mental injury to the child or a substantial risk of mental injury.

¹⁰⁹ For more information regarding recent federal legislation impacting this component see:

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

¹¹⁰ The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

¹¹¹ Md. Code Ann., Fam. Law § 5-701(x) defines “sex trafficking” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.”

As used within Maryland’s provisions regarding Children in Need of Assistance,¹¹² Md. Code Ann., Cts. & Jud. Proc. § 3-801(b) (Definitions) defines “abuse” as follows:

- (1) Sexual abuse of a child, whether a physical injury is sustained or not; or
- (2) Physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or is at substantial risk of being harmed by:
 - (i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or
 - (ii) A household or family member.

Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-801(z), (aa),¹¹³

- (z) “Sexual abuse” means an act that involves:
 - (1) Sexual molestation or exploitation of a child by:
 - (i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or
 - (ii) A household or family member; or
 - (2) Sex trafficking¹¹⁴ of a child by any individual.
- (aa) “Sexual molestation or exploitation” includes:
 - (1) Allowing or encouraging a child to engage in:
 - (i) Obscene photography, films, poses, or similar activity;
 - (ii) Pornographic photography, films, poses, or similar activity; or
 - (iii) Prostitution
 - (2) Incest;
 - (3) Rape;
 - (4) Sexual offense in any degree;
 - (5) Sodomy; and
 - (6) Unnatural or perverted sexual practices.”

Md. Code Ann., Cts. & Jud. Proc. § 3-801(s) defines “neglect” as follows:

[T]he leaving of a child unattended or other failure to give proper care and attention to a child by any parent or individual who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) That the child’s health or welfare is harmed or placed at substantial risk of harm; or
- (2) That the child has suffered mental injury or been placed at substantial risk of mental injury.

The definitions of “abuse” and “neglect” under Md. Code Ann., Fam. Law § 5-701 and Md. Code Ann., Cts. & Jud. Proc. § 3-801, cover substantially the same conduct. Most notably, both definitions of “sexual abuse” expressly include child sex trafficking and “[a]llowing a child to engage in . . . [p]rostitution.”

¹¹²As used within Md. Code Ann., Cts. & Jud. Proc. § 3-801(b), a “child in need of assistance” is defined as “a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(f).

¹¹³ The text of Md. Code Ann., Cts. & Jud. Proc. § 3-801 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 1043 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹¹⁴ Md. Code Ann., Cts. & Jud. Proc. § 3-801(y) defines “sex trafficking” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.”

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 “household member” does not constitute a barrier to a sex trafficked child¹¹⁵ accessing the protection of child welfare. Although Md. Code Ann., Fam. Law § 5-701(k) (Definitions) does not define “household member”¹¹⁶ broadly enough to include all third party offenders in CSEC cases, the definition of “sexual abuse” includes “sex trafficking of a child by any individual.” Md. Code Ann., Fam. Law § 5-701(y)(2). The phrase “by any individual” removes the potential barrier, thus permitting child welfare’s intervention and involvement in non-familial cases of child sex trafficking.

For purposes of Maryland’s “Children in Need of Assistance” provisions, “custodian” is narrowly defined as “a person or governmental agency to whom custody of a child has been given by order of court, including a court other than the juvenile court,” and “custody” is defined as “the right and obligation, unless otherwise determined by the court, to provide ordinary care for a child and determine placement.” Md. Code Ann., Cts. & Jud. Proc. § 3-801(j), (k). However, the definition of “sexual abuse” also includes the phrase “by any individual,” which removes the potential “caregiver” barrier in cases of child sex trafficking. Md. Code Ann., Cts. & Jud. Proc. § 3-801(z)(2).¹¹⁷

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

Generally, victims are eligible to receive an award from the Criminal Injuries Compensation Board. Md. Code Ann., Crim. Proc. § 11-808(a)(1)(i) (Eligibility for awards). Several additional requirements for compensation may, however, present difficulties for victims of domestic minor sex trafficking. Specifically, “A person who commits the crime or delinquent act that is the basis of a claim, or an accomplice of the person, is not eligible to receive an award with respect to the claim.” Md. Code Ann., Crim. Proc. § 11-808(a)(2). Additionally, the Criminal Injuries Compensation Board will not award compensation to a victim unless it finds that “the crime or delinquent act or the discovery of child abuse was reported to the proper authorities within 48 hours after the occurrence of the crime or delinquent act or the discovery of the child abuse; and . . . the victim has cooperated fully with all law enforcement units,” unless “good cause” is shown for the victim’s failure to meet those requirements. Md. Code Ann., Crim. Proc. § 11-810(a)(1)(iii)–(iv), (2) (Grounds for award). Claims for compensation generally must be filed within 3 years of the discovery of the crime’s occurrence, except “[i]n a case of child abuse, a claimant may file a claim: (i) up to the date the child who was the subject of the abuse reaches the age of 25 years; or (ii) if the Board determines that there was good cause for failure to file a claim before the date the child who was the subject of the abuse reached the age of 25 years, at any time.” Md. Code Ann., Crim. Proc. § 11-809(a)(1), (2)¹¹⁸ (Filing of claims).

Additionally, Md. Code Ann., Crim. Proc. § 11-810(d)(1)(i) states in part that “the Board shall determine whether the victim’s conduct contributed to the infliction of the victim’s injury, and, if so, reduce the amount of the award or reject the claim.” Pursuant to Md. Code Ann., Crim. Proc. § 11-810(d)(1)(ii), however, the Criminal Injuries Compensation Board may

¹¹⁵ The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

¹¹⁶ Md. Code Ann., Fam. Law § 5-701(k) defines a “household member” as “a person who lives with, or is a regular presence in, a home of a child at the time of the alleged abuse or neglect.” Additionally, “household” is defined as “the location: (1) in which the child resides; (2) where the abuse or neglect is alleged to have taken place; or (3) where the person suspected of abuse or neglect resides.”

¹¹⁷ See *supra* note 113.

¹¹⁸ The text of Md. Code Ann., Crim. Proc. Law § 11-809 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 968 during the 2019 Regular Session of the Maryland General Assembly (effective January 1, 2020).

disregard the responsibility of the victim for the victim's own injury if that responsibility is attributable to efforts by the victim:

1. to prevent a crime or delinquent act or an attempted crime or delinquent act from occurring in the victim's presence; or
2. to apprehend an offender who had committed a crime or delinquent act in the victim's presence or had committed a felony or delinquent act that would be a felony if committed by an adult.

Nothing expressly exempts domestic minor sex trafficking victims from these requirements or award reduction factors, or explains what constitutes good cause for the failure to report the crime or cooperate with law enforcement.

- 5.7.1 Recommendation: Amend Md. Code Ann., Crim. Proc. § 11-808(a) (Eligibility for Awards), Md. Code Ann., Crim. Proc. § 11-809(a) (Filing of claims), and Md. Code Ann., Crim. Proc. § 11-810(a), (d) (Grounds for awards) to expressly provide that victims of domestic minor sex trafficking are exempt from all ineligibility and award reduction factors, and that victims of commercial sexual exploitation and sex trafficking are eligible for a good cause exception under Md. Code Ann., Crim. Proc. § 11-810(a)(1)(iv).¹¹⁹

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

Maryland law provides special protections for children who are victims of abuse as defined and outlined under Md. Code Ann., Fam. Law § 5-701(b) (Definitions),¹²⁰ Md. Code Ann., Crim. Law § 3-601 (Child abuse), or Md. Code Ann., Crim. Law § 3-602 (Sexual abuse of minor). Md. Code Ann., Crim. Proc. § 11-303(a) (Testimony of a child victim by closed circuit television). Specifically, Md. Code Ann., Crim. Proc. § 11-303(b) provides that such a child victim may give testimony outside the courtroom via closed circuit television in the following circumstances:

- (1) the court determines that testimony by the child victim in the presence of a defendant or a child respondent will result in the child victim's suffering serious emotional distress such that the child victim cannot reasonably communicate; and
- (2) the testimony is taken during the proceeding.

When the court determines that the child may provide testimony via closed circuit television, only certain people may be in the room, including "subject to the Maryland Rules, any person whose presence, in the opinion of the court, contributes to the well-being of the child victim, including a person who has dealt with the child victim in a therapeutic setting concerning the abuse." Md. Code Ann., Crim. Proc. § 11-303(d)(v).

The out of court statements of a child under 13 years old who is the victim of Md. Code Ann., Crim. Law § 3-601, § 3-602, §§ 3-303–3-307 (first or second degree rape or first, second, or third degree sexual offense), §§ 3-309–3-312 (attempted first or second degree rape or attempted first, second, or third degree sexual offense), or who has been abused or neglected as defined under Md. Code Ann., Fam. Law § 5-701, may be admitted in court "only if the statement was made to and is offered by a person acting lawfully in the course of the person's profession when the statement was made [to a person] who is: (1) a physician; (2) a psychologist; (3) a nurse; (4) a social worker;" a specified school employee, therapist, or counselor. Md. Code Ann., Crim. Proc. § 11-304(a)–(c) (Out-of-court statements of child victims).

¹¹⁹ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

¹²⁰ See *supra* Component 5.5 for definition of abuse under Md. Code Ann., Fam. Law § 5-701(b) (Definitions), which includes child sex trafficking.

Regardless of the victim's age, pursuant to Md. Code Ann., Crim. Law § 3-319(a) (Rape and sexual offense—Admissibility of evidence),

Evidence relating to a victim's reputation for chastity or abstinence and opinion evidence relating to a victim's chastity or abstinence may not be admitted in a prosecution for:

- (1) a crime specified under this subtitle or a lesser included crime;
- (2) the sexual abuse of a minor under § 3-602 of this title or a lesser included crime; or
- (3) the sexual abuse of a vulnerable adult under § 3-604 of this title or a lesser included crime.

Pursuant to Md. Code Ann., Crim. Law § 3-319(b),

Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution described in subsection (a) of this section only if the judge finds that:

- (1) the evidence is relevant;
 - (2) the evidence is material to a fact in issue in the case;
 - (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value;
- and
- (4) the evidence:
 - (i) is of the victim's past sexual conduct with the defendant;
 - (ii) is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
 - (iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime;or
 - (iv) is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue.

Trafficking victims who testify in a prosecution under Md. Code Ann., Crim. Law § 3-1102¹²¹ (Sex trafficking) are not provided the protection of Md. Code Ann., Crim. Law § 3-319(a) as it is not within subtitle 3 (Sexual crimes) of title 3 (Other crimes against the person). Also, Md. Code Ann., Crim. Law § 3-602 (Sexual abuse of minor) does not refer to Md. Code Ann., Crim. Law § 3-1102.

Pursuant to Md. Code Ann., St. Govt. §§ 7-301 through 7-313, regardless of the age of the victim and upon application, Maryland law allows a trafficking victim to substitute his or her actual address with one provided by the Office of the Secretary of State.

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.*

Maryland 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, Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27.1(b)(1) (Expungement of records) states, "A person may file a petition for expungement of the person's juvenile record in the court in which the petition or citation was filed." However, subsection (c) requires all of the following conditions to be met:

- (1)
 - (v) The court, in a disposition hearing, finds that the person does or does not require guidance, treatment, or rehabilitation;

¹²¹ See *supra* note 2.

- (2) The person has attained the age of 18 years and at least 2 years have elapsed since the last official action in the person’s juvenile record;
- (3) The person has not been adjudicated delinquent more than once;
- (4) The person has not subsequently been convicted of any offense;
- (5) No delinquency petition or criminal charge is pending against the person;
- (6) The person has not been adjudicated delinquent for an offense that, if committed by an adult, would constitute:
 - (i) A crime of violence as defined in § 14-101 of the Criminal Law Article;
 - (ii) A violation of 3-308 [Sexual offense in the fourth degree] of the Criminal Article; or
 - (iii) A felony;
- (7) The person was not required to register as a sex offender under § 11-704(c) of the Criminal Procedure Article;
- (8) The person has not been adjudicated delinquent for an offense involving the use of a firearm, as defined in § 5-101 of the Public Safety Article, in the commission of a crime of violence, as defined in § 14-101 of the Criminal Law Article; and
- (9) The person has fully paid any monetary restitution ordered by the court in the delinquency proceeding.

A minor may also petition to seal juvenile records under Md. Code Ann., Cts. & Jud. Proc. § 3-8A-27(c) (Privacy of records), which states,

The court on its own motion or on petition, and for good cause shown, may order the court records of a child sealed, and, upon petition or on its own motion, shall order them sealed after the child has reached 21 years of age. If sealed, the court records of a child may not be opened, for any purpose, except by order of the court upon good cause shown.

Because minors face a minimum 2 year waiting period to expunge records or must turn 21 to seal records, however, a child sex trafficking victim may face collateral consequences associated with having an accessible juvenile record.

Regarding vacatur, Md. Code Ann., Crim. Proc. § 8-302¹²² (Motion to vacate judgment for prostitution committed under duress) provides,

- (a) A person convicted of prostitution under § 11-303 of the Criminal Law Article may file a motion to vacate the judgment if, when the person committed the act or acts of prostitution, the person was acting under duress caused by an act of another committed in violation of Title 3, Subtitle 11 [Human Trafficking] of the Criminal Law Article or the prohibition against human trafficking under federal law.
- (b) A motion filed under this section shall:

-
- (3) be made within a reasonable period of time after the conviction . . .
-
-

Because Md. Code Ann., Crim. Proc. § 8-302 applies specifically to “convictions,” however, this protection does not clearly extend to delinquency adjudications.

¹²² The text of Md. Code Ann., Crim. Proc. Law § 8-302 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

Further, Md. Code Ann., Crim. Proc. § 8-302 applies only to prostitution offenses, foreclosing the law’s applicability to other offenses related to trafficking victimization, and requires duress caused by another, meaning that a trafficker or controlling third party must be identified. Finally, Md. Code Ann., Crim. Proc. § 8-302 does not make record expungement automatic upon granting vacatur, making separate proceedings necessary to obtain both forms of relief.

- 5.9.1 Recommendation: Amend Md. Code Ann., Crim. Proc. § 8-302 (Motion to vacate judgment for prostitution committed under duress) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization.¹²³

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.*

Pursuant to Md. Code Ann., Crim. Proc. § 11-603(b) (Restitution determination), “A victim is presumed to have a right to restitution under subsection (a) of this section if: (1) the victim or the State requests restitution; and (2) the court is presented with competent evidence of any item listed in subsection (a) of this section.” However, a restitution order is not mandatory. Md. Code Ann., Crim. Proc. § 11-603(a) provides that a court *may* order restitution if any of the following circumstances exist:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) as a direct result of the crime or delinquent act, the victim suffered:
 - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
 - (ii) direct out-of-pocket loss;
 - (iii) loss of earnings; or
 - (iv) expenses incurred with rehabilitation;
-

If the court orders the defendant to pay restitution, the court may also enter “an immediate and continuing earnings withholding order” and specify an amount employers of the defendant must withhold and pay to the appropriate governmental entity. Md. Code Ann., Crim. Proc. § 11-617(a)(1), (d) (Immediate and continuing earnings withholding orders).

- 5.10.1 Recommendation: Amend Md. Code Ann., Crim. Proc. § 11-603 (Restitution determination) to provide for mandatory restitution for victims of sex trafficking or CSEC offenses.¹²⁴

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.*

Maryland law does not require prosecutions for felony offenses to be commenced within any designated time period.¹²⁵ Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-106(a) (Prosecutions for misdemeanors; manslaughter by automobile, motorboat, etc.; homicide by motor vehicle), however, prosecutions for misdemeanors must be commenced within 1 year of the crime’s occurrence, except, pursuant to subsection (b),

¹²³ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

¹²⁴ The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

¹²⁵ *Clark v. State*, 774 A.2d 1136, 1144 n.8 (Md. 2001) (“Maryland has no statute of limitations on felonies or penitentiary misdemeanors beyond that imposed by the life of the offender.”).

“if a statute provides that a misdemeanor is punishable by imprisonment in the penitentiary or that a person is subject to this subsection [Md. Code Ann., Cts. & Jud. Proc. § 5-106(b)] . . . [t]he State may institute a prosecution for the misdemeanor at any time.” Md. Code Ann., Cts. & Jud. Proc. § 5-106(b). Statutes subject to this exception include the following: Md. Code Ann., Crim. Law § 3-1102(a)¹²⁶ (Sex trafficking) and § 11-304 (Receiving earnings of prostitute). Md. Code Ann., Crim. Law §§ 3-1102(c)(1)(ii), 11-304(c). Prosecution under Md. Code Ann., Crim Law § 11-208 (Possession of visual representation of child under 16 engaged in certain sexual acts), however, must be brought within two years of the alleged crime. Md. Code Ann., Cts. & Jud. Proc. § 5-106(bb).

Prosecutions or suits for a “fine, penalty, or forfeiture” must be commenced within 1 year of the commission of the crime. Md. Code Ann., Cts. & Jud. Proc. § 5-107 (Suits for fines, penalties, and forfeitures).

Pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-117(b) (Actions arising from alleged sexual abuse),

An action for damages arising out of an alleged incident . . . of sexual abuse that occurred while the victim was a minor shall be filed:

- (1) At any time before the victim reaches the age of majority; or
- (2) Subject to subsections (c) and (d) of this section, within the later of:
 - (i) 20 years after the date the victim reaches the age of majority; or
 - (ii) 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents

Other civil actions generally are subject to a 3 year statute of limitations. Md. Code Ann., Cts. & Jud. Proc. § 5-101 (Civil actions).

¹²⁶ See *supra* note 2.

Legal Components:

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

Legal Analysis:

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

Maryland law mandates law enforcement training on human trafficking. Under Md. Code Ann., Pub. Safety § 3-207(a)(6) (General powers and duties of commission), the Police Training Commission has the authority to

require, for entrance-level police training and at least every 3 years for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special training, attention to, and study of the application and enforcement of:

- (i) the criminal laws concerning rape and sexual offenses, including the sexual abuse and exploitation of children and related evidentiary procedures;
- (ii) the criminal laws concerning human trafficking, including services and support available to victims and the rights and appropriate treatment of victims;

....

In fact, Maryland’s Department of Public Safety & Correctional Services have previously instituted training regarding domestic violence and victims’ issues.¹²⁷ Additionally, pursuant to Md. Code Ann., Pub. Safety § 4-602(B)(1)–(2) (Internet Crimes Against Children Task Force Fund), grants are provided “. . . to local law enforcement agencies for salaries, training, and equipment to be used for the investigation and prosecution of Internet crimes against children; and funding to support ongoing operations of the task force,” which could include crimes such as Md. Code Ann., Crim. Law § 3-324 (Sexual solicitation of minor) and Md. Code Ann., Crim. Law § 11-207(a) (Child pornography).

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

Md. Code Ann., Cts. & Jud. Proc. § 10-402(a)(1) (Interception of communications generally; divulging contents of communications; violations of subtitle) states that “Except as otherwise specifically provided in this subtitle it is unlawful for any person to: (1) Willfully intercept, endeavor to intercept, or procure

¹²⁷ See *Victim Services*, DEPT. OF PUB. SAFETY & CORRECTIONAL SERVS., http://www.dpscs.state.md.us/initiatives/bhc/index_BHC_vs-new.shtml#one (last visited Aug. 11, 2011).

any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.” A conviction is a felony punishable by imprisonment up to 5 years, a fine not to exceed \$ 10,000, or both. Md. Code Ann., Cts. & Jud. Proc. § 10-402(b).

However, a law enforcement officer is allowed to use “body wires” to intercept an oral communication where “there is reasonable cause to believe that a law enforcement officer’s safety may be in jeopardy;” however, such communications “may not be recorded, and may not be used against the defendant in a criminal proceeding.” Md. Code Ann., Cts. & Jud. Proc. § 10-402(c)(6).

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

Md. Code Ann., Cts. & Jud. Proc. § 10-402 (Interception of communications generally; divulging contents of communications; violations of subtitle) makes it unlawful, unless an exception is provided in the statute, for a person to “[w]illfully intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication” without the consent of both parties. Md. Code Ann., Cts. & Jud. Proc. § 10-402(a)(1), (c)(3). A conviction under this statute is a felony punishable by imprisonment up to 5 years, a fine not to exceed \$10,000, or both. Md. Code Ann., Cts. & Jud. Proc. § 10-402(b).

However, Md. Code Ann., Cts. & Jud. Proc. § 10-402(c)(2)(ii)(1)¹²⁸ states,

It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence:

(1) Of the commission of:

....

(B) Kidnapping;

(C) Rape;

(D) A sexual offense in the first or second degree;

(E) Child abuse in the first or second degree;

(F) Child pornography under § 11-207, § 11-208, or § 11-208.1 of the Criminal Law Article;

....

(O) A human trafficking offense under Title 3, Subtitle 11 of the Criminal Law Article;

(P) Sexual solicitation of a minor under § 3-324 of the Criminal Law Article;

....

(R) Sexual abuse of a minor under § 3-602 of the Criminal Law Article; [or]

....

(W) A conspiracy or solicitation to commit an offense listed in items (A) through (V) of this item.¹²⁹

¹²⁸ The text of Md. Code Ann., Cts. & Jud. Proc. § 10-402 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹²⁹ Md. Code Ann., Cts. & Jud. Proc. § 10-406 (Attorney General, State Prosecutor or State’s Attorney may apply for order authorizing interception) echoes this exception, stating that a court may enter an order allowing law enforcement to intercept communications of non-consenting parties during investigations of certain enumerated crimes. Specifically, Md. Code Ann., Cts. & Jud. Proc. § 10-406(a) states,

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction, and the judge, in accordance with the provisions of Md. Code Ann., Cts. & Jud. Proc. § 10-408

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.*

Md. Code Ann., Crim. Law § 3-324(b)¹³⁰ (Sexual solicitation of minor) prohibits a defense based on the use of a law enforcement decoy posing as a minor during an investigation; it states,

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-303, § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] of this article, knowingly solicit¹³¹ a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article.

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

Using of the Internet or electronic communications to investigate buyers and traffickers appears to be a permissible investigative technique under Maryland law. Md. Code Ann., Crim. Law § 3-324(b)¹³² (Sexual solicitation of minor) states,

A person may not, with the intent to commit a violation of § 3-304 [Rape in the second degree], § 3-306 [Sexual offense in the second degree], or § 3-307 [Sexual offense in the third degree] of this subtitle or § 11-303, § 11-304 [Receiving earnings of prostitute], § 11-305 [Child kidnapping for the purpose of committing a sexual crime], § 11-306, or § 11-307 [House of prostitution] of this article, knowingly solicit a . . . law enforcement officer posing as a minor, to engage in activities that would be unlawful

of this subtitle, may grant an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of:

-
- (2) Kidnapping;
- (3) Rape;
- (4) A sexual offense in the first or second degree;
- (5) Child abuse in the first or second degree;
- (6) Child pornography under § 11-207, § 11-208, or § 11-208.1 of the Criminal Law Article;
-
- (15) A human trafficking offense under Title 3, Subtitle 11 of the Criminal Law Article;
- (16) Sexual solicitation of a minor under § 3-324 of the Criminal Law Article;
-
- (18) Sexual abuse of a minor under § 3-602 of the Criminal Law Article; [or]
-
- (23) A conspiracy or solicitation to commit an offense listed in items (1) through (22) of this subsection.

Md. Code Ann., Cts. & Jud. Proc. § 10-406(b) further provides that “[n]o application or order shall be required if the interception is lawful under the provisions of Md. Code Ann., Cts. & Jud. Proc. § 10-402(c) of this subtitle.”

The text of Md. Code Ann., Cts. & Jud. Proc. § 10-406 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 871 and Senate Bill 690 during the 2019 Regular Session of the Maryland General Assembly (effective October 1, 2019).

¹³⁰ See *supra* note 8.

¹³¹ See *supra* Component 1.2 for discussion of the definition of “solicit.”

¹³² See *supra* note 8.

for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-303, § 11-304, § 11-305, § 11-306, or § 11-307 of this article.

The definition of “solicit” includes “to command, authorize, urge, entice, request, or advise a person by any means, including: . . . (6) by computer or Internet; or (7) by any other electronic means.” Md. Code Ann., Crim. Law § 3-324(a)(6).

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

Pursuant to Md. Code Ann., Fam. Law § 9-402(a) (Determinations of law enforcement agency upon receipt of report), law enforcement agencies that receive a report of a missing child are required to determine immediately whether the following has occurred:

- (1) the missing child has not been the subject of a prior missing persons report;
- (2) the missing child suffers from a mental or physical handicap or illness;
- (3) the disappearance of the missing child is of a suspicious or dangerous nature;
- (4) the person filing the report of a missing child has reason to believe that the missing child may have been abducted;
- (5) the missing child has ever previously been the subject of a child abuse report filed with the State or local law enforcement agency; or
- (6) the missing child is under 17 years of age.

When conditions listed in subsection (a) are present, Md. Code Ann., Fam. Law § 9-402(b) specifies that the law enforcement agency must immediately,

- (1) enter all necessary and available information into the Maryland Interagency Law Enforcement System (MILES) and the National Crime Information Center (NCIC) computer networks within 2 hours after receipt of the minimum information necessary to make the entry;
- (2) institute appropriate intensive search procedures, including the coordination of volunteer search teams;
- (3) notify the National Center for Missing and Exploited Children;
- (4) notify the appropriate local department and, to the extent possible, obtain any information that may assist in the locating of the missing child; and
- (5) enlist the aid of the Department of State Police, when appropriate, in locating the missing child.

When a condition from subsection (a) is not present, law enforcement shall do the following pursuant to subsection (c): “(1) immediately seek to determine the circumstances surrounding the disappearance of the missing child; and (2) implement the procedures set forth in subsection (b) of this section within 12 hours of the filing of a report regarding a missing child, if the missing child has not been located.” Md. Code Ann., Fam. Law § 9-402(c). Subsection (d) also provides, “Notwithstanding any provision of law to the contrary, if a missing child has not been located within 24 hours of the filing of a missing persons report and either the local law enforcement agency or the Department of State Police have reason to believe that the missing child may be located in a jurisdiction other than the jurisdiction where the missing persons report was filed, the Department of State Police shall enter the investigation and, in cooperation with the appropriate local law enforcement agencies, assist State and national efforts to locate the missing child.” Md. Code Ann., Fam. Law § 9-402(d). Pursuant to subsection (f), “Every person filing a report of a missing child shall be required to notify the local law enforcement agency and the Department of State Police immediately upon the locating of the missing child if it is unlikely that the local law enforcement agency or the Department of State Police have knowledge that the missing child has been located.”

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