

## 2019 ANALYSIS AND RECOMMENDATIONS

### MINNESOTA

#### FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

##### *Legal Components:*

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

##### *Legal Analysis<sup>1</sup>:*

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

Minnesota criminalizes sex trafficking of a minor, without the need to show force, fraud, or coercion, under Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking). Subsection (a) states,

Whoever, while acting other than as a prostitute<sup>2</sup> or patron,<sup>3</sup> intentionally does any of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$50,000, or both:

- (1) solicits or induces an individual under the age of 18 years to practice prostitution;<sup>4</sup>

<sup>1</sup> The statutory hierarchy used in Minnesota Statutes Annotated uses numbered subdivisions followed by numbers in parentheses for further subsections. For clarity, this report will place the numbered provision pincite in parentheses in citations to distinguish it from the statute number. This report includes legislation enacted as of August 1, 2019.

<sup>2</sup> “Prostitute” is defined as “an individual who engages in prostitution by being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.” Minn. Stat. Ann. § 609.321(8).

<sup>3</sup> “Patron” is defined as “an individual who engages in prostitution by hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact.” Minn. Stat. Ann. § 609.321(4).

- (2) promotes the prostitution of an individual under the age of 18 years;
- (3) receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual under the age of 18 years; or
- (4) engages in the sex trafficking of an individual under the age of 18 years.

Minn. Stat. Ann. § 609.321(7) (Prostitution and sex trafficking; definitions) defines “promotes the prostitution of an individual” as an action by a person who knowingly does the following:

- (1) solicits or procures patrons for a prostitute;
- (2) provides, leases or otherwise permits premises or facilities owned or controlled by the person to aid the prostitution of an individual;
- (3) owns, manages, supervises, controls, keeps, or operates, either alone or with others, a place of prostitution to aid the prostitution of an individual;
- (4) owns, manages, supervises, controls, operates, institutes, aids or facilitates, either alone or with others, a business of prostitution to aid the prostitution of an individual;
- (5) admits a patron to a place of prostitution to aid the prostitution of an individual; or
- (6) transports an individual from one point within this state to another point either within or without this state, or brings an individual into this state to aid the prostitution of the individual.

“Sex trafficking” is defined as “(1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or (2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).” Minn. Stat. Ann. § 609.321(7a).<sup>5</sup>

A conviction under Minn. Stat. Ann. § 609.322(1)(a) is punishable by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. Minn. Stat. Ann. § 609.322(1)(a). However, a defendant may receive imprisonment up to 25 years or a fine not to exceed \$60,000 if at least one of the following aggravating factors listed in Minn. Stat. Ann. § 609.322(1)(b) is present:

- (1) the offender has committed a prior qualified human trafficking-related offense;
- (2) the offense involved a sex trafficking victim who suffered bodily harm during the commission of the offense;
- (3) the time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or
- (4) the offense involved more than one sex trafficking victim.

Also, Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) states,

Unless the person’s conduct constitutes a violation of section 609.282 [Labor trafficking], a person who knowingly destroys, conceals, removes, confiscates, or possesses, any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person:

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<sup>4</sup> “Prostitution” is defined as “hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact, or being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.” Minn. Stat. Ann. § 609.321(9).

<sup>5</sup> Pursuant to Minn. Stat. Ann. § 609.322(1b), “a minor who is dependent on an individual acting as a prostitute and who may have benefited from or been supported by the individual’s earnings derived from prostitution,” and “a parent over the age of 55 who is dependent on an individual acting as a prostitute” who has been similarly supported, may not be convicted under Minn. Stat. Ann. § 609.322(1)(a).

- (1) in the course of a violation of section . . . 609.322 [Solicitation, inducement and promotion of prostitution; sex trafficking];
  - (2) with intent to violate section . . . 609.322; or
  - (3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, a person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a violation of section . . . 609.322;
- is guilty of a crime . . . .

If the victim is under the age of 18, a conviction for violating Minn. Stat. Ann. § 609.283(1) may be punished by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 609.283(2)(1).

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

The following laws treat CSEC as distinct crimes.

1. Minn. Stat. Ann. § 609.324(1) (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties) states,
  - (a) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$40,000, or both:
    - (1) engages in prostitution with an individual under the age of 13 years; or
    - (2) hires or offers or agrees to hire an individual under the age of 13 years to engage in sexual penetration or sexual contact; or
    - (3) hires or offers or agrees to hire an individual who the actor reasonably believes to be under the age of 13 years to engage in sexual penetration or sexual contact.
  - (b) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both:
    - (1) engages in prostitution with an individual under the age of 16 years but at least 13 years; or
    - (2) hires or offers or agrees to hire an individual under the age of 16 years but at least 13 years to engage in sexual penetration or sexual contact; or
    - (3) hires or offers or agrees to hire an individual who the actor reasonable believes to be under the age of 16 years but at least 13 years to engage in sexual penetration or sexual contact.
  - (c) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:
    - (1) engages in prostitution with an individual under the age of 18 years but at least 16 years; or
    - (2) hires or offers or agrees to hire an individual under the age of 18 years but at least 16 years to engage in sexual penetration or sexual contact; or
    - (3) hires or offers or agrees to hire an individual who the actor reasonably believes to be under the age of 18 years but at least 16 years to engage in sexual penetration or sexual contact.

Additionally, Minn. Stat. Ann. § 609.324(1a) (Housing unrelated minor engaged in prostitution; penalties) states,

Any person, other than one related by blood, adoption, or marriage to the minor, who permits a minor to reside, temporarily or permanently, in the person's dwelling without the consent of the minor's parents or guardian, knowing or having reason to know that the minor is engaging in prostitution may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; except that, this subdivision does not apply to residential placements made, sanctioned, or supervised by a public or private social service agency.

2. Minn. Stat. Ann. § 617.246(2)(a)<sup>6</sup> (Use of minors in sexual performance prohibited) states in part, “It is unlawful for a person to promote, employ, use or permit a minor to engage in or assist others to engage minors in posing or modeling alone or with others in any sexual performance<sup>7</sup> or pornographic work<sup>8</sup> if the person knows or has reason to know that the conduct intended is a sexual performance or a pornographic work . . . .” A conviction under Minn. Stat. Ann. § 617.246(2)(a) is punishable as a felony by imprisonment up to 10 years, a fine not to exceed \$20,000, or both imprisonment and a fine. Minn. Stat. Ann. § 617.246(2)(a). However, Minn. Stat. Ann. § 617.246(2)(b) states that a conviction under paragraph (a) is punishable as a felony by imprisonment up to 15 years, a fine not to exceed \$40,000, or both imprisonment and a fine if:

- (1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.247;
- (2) the violation occurs when the person is a registered predatory offender under section 243.166; or
- (3) the violation involved a minor under the age of 13 years.

Several other laws, while not expressly commercial, may also apply to cases of commercial sexual exploitation of a child. These include the following statutes:

1. Minn. Stat. Ann. § 609.342(1) (Criminal sexual conduct in the first degree) states in part,

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<sup>6</sup> The text of Minn. Stat. Ann. § 617.246 cited here and elsewhere in this report includes amendments made by the enactment of Senate File 8 during the 2019 Regular Session of the Minnesota Legislature (effective August 1, 2019).

<sup>7</sup> Under Minn. Stat. Ann. § 617.246(1)(d) “sexual performance,” includes, “any play, dance or other exhibition presented before an audience or for purposes of visual or mechanical reproduction that uses a minor to depict actual or simulated sexual conduct as defined by clause (e).” Minn. Stat. Ann. § 617.246(1)(e), defines “sexual conduct” as

[A]ny of the following:

- (1) an act of sexual intercourse, normal or perverted, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between a human being and an animal;
- (2) sadomasochistic abuse, meaning flagellation, torture, or similar demeaning acts inflicted by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed;
- (3) masturbation;
- (4) lewd exhibitions of the genitals; or
- (5) physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

<sup>8</sup> Minn. Stat. Ann. § 617.246(1)(f) defines a “pornographic work” as the following:

- (1) an original or reproduction of a picture, film, photograph, negative, slide, videotape, videodisc, or drawing of a sexual performance involving a minor; or
- (2) any visual depiction, including any photograph, film, video, picture, drawing, negative, slide, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means that:
  - (i) uses a minor to depict actual or simulated sexual conduct;
  - (ii) has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct; or
  - (iii) is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexual conduct.

A person who engages in sexual penetration<sup>9</sup> with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c),<sup>10</sup> is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

....

A conviction under Minn. Stat. Ann. § 609.342(1) is punishable by imprisonment up to 30 years, a fine not to exceed \$40,000, or both. Offenders are also subject to “conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release].” Minn. Stat. Ann. § 609.342(2)(c). Additionally, “Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section.” Minn. Stat. Ann. § 609.342(2)(b).

2. Minn. Stat. Ann. § 609.343(1)(a) (Criminal sexual conduct in the second degree) states,

A person who engages in sexual contact<sup>11</sup> with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists:

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<sup>9</sup> Minn. Stat. Ann. § 609.341(12) defines “Sexual penetration” as

[A]ny of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

- (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or
- (2) any intrusion however slight into the genital or anal openings:
  - (i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;
  - (ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a current or recent position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or
  - (iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a current or recent position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

The text of Minn. Stat. Ann. § 609.341 cited here and elsewhere in this report includes amendments made by the enactment of Senate File 8 during the 2019 Regular Session of the Minnesota Legislature (effective August 1, 2019).

<sup>10</sup> Minn. Stat. Ann. § 609.341(11)(c) defines “sexual contact with a person under 13” as “the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.”

<sup>11</sup> Minn. Stat. Ann. § 609.341(11)(a) states,

“Sexual contact,” for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (p), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant's intimate parts, or
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a current or recent position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced.

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A conviction under Minn. Stat. Ann. § 609.343(1)(a) is punishable by imprisonment up to 25 years, a fine not to exceed \$35,000, or both. Offenders are also “subject to conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release].” Minn. Stat. Ann. § 609.343(2)(a), (c).

3. Minn. Stat. Ann. § 609.344(1)(b)<sup>12</sup> (Criminal sexual conduct in the third degree) states,

A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

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(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant’s age shall not be a defense. Consent by the complainant is not a defense.

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A conviction under Minn. Stat. Ann. § 609.344(1) may be punished by imprisonment up to 15 years, a fine not to exceed \$30,000, or both Minn. Stat. Ann. § 609.344(2). However, if convicted under (1)(b) (covering situations in which the child is 13–15 and the buyer is more than 2 years older than the child) and the “actor was no more than 48 months but more than 24 months older than the complainant” a conviction may be punished up to 5 years, a fine not to exceed \$30,000, or both. § 609.344(2) Offenders are also “subject to conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release].” Minn. Stat. Ann. § 609.344(2).

4. Minn. Stat. Ann. § 609.345(1)(b)<sup>13</sup> (Criminal sexual conduct in the fourth degree) states,

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

....

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- (iii) the touching by another of the complainant’s intimate parts effected by coercion or by a person in a current or recent position of authority, or
  - (iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts, or
  - (v) the intentional touching with seminal fluid or sperm by the actor of the complainant’s body or the clothing covering the complainant’s body.

<sup>12</sup> Minn. Stat. Ann. § 609.344(1)(b) (Criminal sexual conduct in the third degree) was held unconstitutional as applied in *State v. Bussman*, 741 N.W.2d 79 (Minn. 2007), but it was not found to be facially unconstitutional. The Minnesota Supreme Court stated, “Because we are equally divided on the issue of whether the clergy sexual conduct statute facially violates the Establishment Clause of the United States Constitution, we affirm the decision of the court of appeals that the statute does not facially violate the Establishment Clause.” *Id.* at 92. The case was remanded based on excessive government entanglement in the manner of prosecution as applied to the defendant. *Id.* at 93-95.

<sup>13</sup> The text of Minn. Stat. Ann. § 609.345 cited here and elsewhere in this report includes amendments made by the enactment of Senate File 8 during the 2019 Regular Session of the Minnesota Legislature (effective August 1, 2019).



(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a current or recent position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense.

A conviction under Minn. Stat. Ann. § 609.345(1) is punishable by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Offenders are also “subject to conditional release under section 609.3455 [Dangerous sex offenders; life sentences; conditional release].” Minn. Stat. Ann. § 609.345(2).

5. Minn. Stat. Ann. § 609.352(2) (Prohibited Act) makes it illegal if a person age 18 or older “solicits<sup>14</sup> a child or someone the person reasonably believes is a child to engage in sexual conduct<sup>15</sup> with intent to engage in sexual conduct . . . .” Additionally, Minn. Stat. Ann. § 609.352(2a) (Electronic solicitation of children) states,

A person 18 years of age or older who uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:

- (1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;
- (2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or
- (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

For purposes of Minn. Stat. Ann. § 609.352, a “child” includes only minors “15 years of age or younger.” Minn. Stat. Ann. § 609.352(1)(a) (Definitions). Convictions for violating both Minn. Stat. § 609.352(2) and (2a) are punishable as felonies by imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Minn. Stat. Ann. § 609.352(4) (Penalty).

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

Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) refers to Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) for purposes of sentencing enhancement,<sup>16</sup> but Minn. Stat. Ann. § 609.3243 (Loitering with intent to participate in prostitution) does not refer to § 609.322 when the person charged is a minor. However, defenses applicable to prostitution laws refer to the sex trafficking law to provide sex trafficking victims an affirmative defense to

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<sup>14</sup> Minn. Stat. Ann. § 609.352(1)(c) (Definitions) defines “solicit” as “commanding, entreating, or attempting to persuade a specific person in person, by telephone, by letter, or by computerized or other electronic means.”

<sup>15</sup> Minn. Stat. Ann. § 609.352(1)(b) (Definitions) defines “sexual conduct” as “sexual contact of the individual’s primary genital area, sexual penetration as defined in section 609.341, or sexual performance as defined in section 617.246.” See *supra* notes 7 & 9 for the definitions of “sexual performance” and “sexual penetration.”

<sup>16</sup> Minn. Stat. Ann. § 609.324 (3)(b) (General prostitution crimes; penalties for patrons) states in part, “Whoever violates the provisions of this subdivision within two years of a previous prostitution conviction for violating this section or section 609.322 is guilty of a gross misdemeanor.”

charges under Minn. Stat. Ann. § 609.324 under some circumstances. Minn. Stat. Ann. § 609.325(4) (Defenses) states,

It is an affirmative defense to a charge under section 609.324 if the defendant proves by a preponderance of the evidence that the defendant is a labor trafficking victim, as defined in section 609.281, or a sex trafficking victim, as defined in section 609.321, and that the defendant committed the acts underlying the charge as a result of being a labor trafficking or sex trafficking victim.

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

Minnesota includes human trafficking and some CSEC offenses as predicate criminal acts under its Racketeer Influenced and Corrupt Organizations (RICO) Act. Minn. Stat. Ann. § 609.903(1) (Racketeering) states that:

A person is guilty of racketeering if the person:

- (1) is employed by or associated with an enterprise<sup>17</sup> and intentionally conducts or participates in the affairs of the enterprise by participating in a pattern of criminal activity;<sup>18</sup>
- (2) acquires or maintains an interest in real property,<sup>19</sup> by participating in a pattern of criminal activity; or
- (3) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise or in real property.

Minn. Stat. Ann. § 609.902(4) (Definitions) defines a “criminal act” as:

conduct constituting, or a conspiracy or attempt to commit, a felony violation of . . . 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking]; . . . 609.342 [Criminal sexual conduct in the first degree]; 609.343 [Criminal sexual conduct in the second degree]; 609.344 [Criminal sexual conduct in the third degree]; 609.345 [Criminal sexual conduct in the fourth degree] . . . .

Pursuant to Minn. Stat. Ann. § 609.902(6) (Definitions),

“Pattern of criminal activity” means conduct constituting three or more criminal acts that:

- (1) were committed within ten years of the commencement of the criminal proceeding;
- (2) are neither isolated incidents, nor so closely related and connected in point or time or circumstance of commission as to constitute a single criminal offense; and
- (3) were either: (i) related to one another through a common scheme or plan or a shared criminal purpose or (ii) committed, solicited, requested, importuned, or intentionally aided by

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<sup>17</sup> Minn. Stat. Ann. § 609.902(3) (Definitions) defines an “enterprise” as “a sole proprietorship, partnership, corporation, trust, or other legal entity, or a union, governmental entity, association, or group of persons, associated in fact although not a legal entity, an includes illicit as well as legitimate enterprises.”

<sup>18</sup> Minn. Stat. Ann. § 609.902(5) (Definitions) defines “participation in a pattern of criminal activity” as “when the person is a principal\* with respect to the conduct constituting at least three of the criminal acts included in the pattern and two of the acts constitute felonies other than conspiracy.” Subdivision (8) defines a “principal” as “a person who personally engages in conduct constituting a violation or who is criminally liable under section 609.05 [Criminal forfeiture] for the conduct of another constituting violation.” Minn. Stat. Ann. § 609.902(8).

<sup>19</sup> Minn. Stat. Ann. § 609.902(10) (Definitions) defines “real property” as “any real property or an interest in real property, including a lease of, or mortgage on, real property. A beneficial interest in real property is deemed to be located where the real property is located.”



persons acting with the mental culpability required for the commission of the criminal acts and associated with or in an enterprise involved in those activities.

Pursuant to Minn. Stat. Ann. § 609.904(1) (Criminal penalties), a person convicted of a RICO violation under Minn. Stat. Ann. § 609.903(Racketeering) faces a maximum of 20 years in prison, a fine up to \$1,000,000, or both. Furthermore, instead of the fine mentioned in subdivision (1), a person convicted, “who received economic gain from the act or caused economic gain from the act or caused loss or personal injury during the act may be sentenced to pay a fine . . . [and the] maximum fine is three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, less the value of any property forfeited under section 609.905 [Criminal forfeiture].” Minn. Stat. Ann. § 609.904(2).

Pursuant to Minn. Stat. Ann. § 609.905(1), (2),

[1] When a person is convicted of violating section 609.903, the court may order the person to forfeit to the prosecuting authority any real or personal property subject to forfeiture under this section. Property subject to forfeiture is real and personal property that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 609.903. A court may not order the forfeiture of property that has been used to pay reasonable attorney fees in connection with a criminal proceeding under section 609.903 . . . .

[2] The district court may order criminal forfeiture of any other property of the defendant up to the value of the property that is unreachable if any property subject to criminal forfeiture under subdivision 1:

- (1) cannot be located;
- (2) has been sold to a bona fide purchaser for value;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value by the conduct of the defendant;
- (5) has been commingled with other property that cannot be divided without difficulty or undue injury to innocent persons; or
- (6) is otherwise unreachable without undue injury to an innocent person.

For defendants who violate Minn. Stat. Ann. § 609.903 (Racketeering), pursuant to Minn. Stat. Ann. § 609.911(3),

The prosecuting authority may institute proceedings against an enterprise or an individual to recover a civil penalty. The penalty may be imposed in the discretion of the district court for conduct constituting a violation of section 609.903. The civil penalty may not exceed \$1,000,000 less a fine imposed under section 609.903. Penalties collected under this section must be applied to the costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution, and the balance, if any, to the state general fund.

Finally, Minn. Stat. Ann. § 609.904(5) directs the prosecuting authority to “vigorously advocate full and complete restitution to an aggrieved person” when a trafficker is convicted of Minn. Stat. Ann. § 609.903.

***Legal Components:***

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

***Legal Analysis:***

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

Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking) does not apply to buyers of sex with minors. Minn. Stat. Ann. § 609.322(1)(a) expressly states that its provisions only apply to a person who solicits a minor to practice prostitution if the person is “acting other than as a prostitute or patron.”

- 2.1.1 Recommendation: Amend Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; 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.*

Minn. Stat. Ann. § 609.324(1)(c) (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties) makes it a crime to buy sex with a minor, stating:

Whoever intentionally does any of the following may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:

- (1) engages in prostitution with an individual under the age of 18 years but at least 16 years;
- (2) hires or offers or agrees to hire an individual under the age of 18 years but at least 16 years to engage in sexual penetration or sexual contact; or
- (3) hires or offers or agrees to hire an individual who the actor reasonably believes to be under the age of 18 years but at least 16 years to engage in sexual penetration or sexual contact.

A buyer who engages in prostitution with a minor aged 13–15 “or hires or offers or agrees to hire an individual under the age of 16 years but at least 13 years to engage in sexual penetration or sexual contact,” faces imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 609.324(1)(b). Lastly, if

the minor is under 13, a buyer convicted under the statute may receive imprisonment up to 20 years, a fine not to exceed \$40,000, or both. Minn. Stat. Ann. § 609.324(1)(a).

Several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor, but these statutes do not specifically make the commercial sexual exploitation of a child illegal.<sup>20</sup>

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

Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) differentiates between the act of soliciting sex with a minor and the act of soliciting sex with an adult.<sup>21</sup> Minn. Stat. Ann. § 609.324(1)(Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties) generally criminalizes “[e]ngaging in, hiring, or agreeing to hire [a] minor to engage in prostitution,” while Minn. Stat. Ann. § 609.324(3)(a) applies when a buyer “(1) engages in prostitution with an individual 18 years of age or older; or (2) hires, offers to hire, or agrees to hire an individual 18 years of age or older to engage in sexual penetration or sexual contact . . .” The penalty for a conviction under Subdivision 1, depending on the minor’s age or the age the buyer reasonably believed the individual to be, ranges from 5 to 20 years imprisonment, a fine ranging from \$10,000 to \$40,000, or both. Minn. Stat. Ann. § 609.324(1)(a), (b), (c).

By contrast, a conviction under Minn. Stat. Ann. § 609.324(3)(a), is punishable as a misdemeanor by a fine of at least \$500, unless the buyer has been convicted of Minn. Stat. Ann. § 609.324(3)(a) or § 609.322 within the previous 2 years, in which case the buyer will be guilty of a gross misdemeanor punishable by a fine of at least \$1,500 and a minimum of community work service for 20 hours, which may be waived by the court if it “makes specific, written findings that the community work service is not feasible or appropriate under the circumstances of the case.” Minn. Stat. Ann. § 609.324(3)(a), (b). If a person “hires, offers to hire, or agrees to hire an individual 18 years of age or older to engage in sexual penetration or sexual contact” in a public place, a conviction is punishable by a fine of at least \$1,500<sup>22</sup> pursuant to Minn. Stat. Ann. § 609.324(2) (Prostitution in public place; penalty for patrons).

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

Buyers of commercial sex with minors may be prosecuted for crimes carrying penalties ranging from imprisonment between 1 and 30 years, fines of \$5,000–\$40,000, or both imprisonment and a fine. Buyers convicted of Minn. Stat. Ann. § 609.324(1) (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties) may receive imprisonment between 5 and 20 years, based on the minor’s age or the age the buyer reasonably believed the individual to be, a fine ranging from \$10,000–\$40,000, based on the minor’s age or the age the buyer reasonably believed the individual to be, or both imprisonment and a fine. Minn. Stat. Ann. § 609.324(1).

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<sup>20</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute buyers.

<sup>21</sup> See *supra* Component 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.324 (Patrons, prostitutes; housing individuals engaged in prostitution; penalties).

<sup>22</sup> Minn. Stat. Ann. § 609.324(4) (Community service in lieu of minimum fine) states,

The court may order a person convicted of violating subdivision 2 or 3 to perform community work service in lieu of all or a portion of the minimum fine required under those subdivisions if the court makes specific, written findings that the convicted person is indigent or that payment of the fine would create undue hardship for the convicted person or that person’s immediate family. Community work service ordered under this subdivision is in addition to any mandatory community work service ordered under subdivision 3.

Buyers found convicted of violating Minn. Stat. Ann. § 609.352(2) (Prohibited act) may receive imprisonment up to 3 years, fines of up to \$5,000, or both. Minn. Stat. Ann. § 609.352(4) (Penalty).

Lastly, several other sexual offense laws could be used to prosecute some buyers of commercial sex acts with minors, which could result, depending on the offense, in imprisonment up to 30 years, a fine up to \$40,000, or both imprisonment and a fine.<sup>23</sup>

In contrast, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>24</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the buyer has a prior conviction for a federal sex offense<sup>25</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>26</sup> 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.<sup>27</sup>

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.*

Under Minn. Stat. Ann. § 609.352(2a) (Electronic solicitation of children),

A person 18 years of age or older who uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:

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<sup>23</sup> See *supra* Component 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.342, § 609.343, § 609.344, and § 609.345 that may apply to some buyers.

<sup>24</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1466 (codified in scattered sections of 18 and 22 U.S.C.).

<sup>25</sup> Pursuant to 18 U.S.C. § 3559(e)(2), “federal sex offense” is defined as

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

<sup>26</sup> 18 U.S.C. §§ 2251A(b) (Selling or buying of children), 2251(a) (Sexual exploitation of children), 2423(a) (Transportation of a minor with intent for minor to engage in criminal sexual activity), 2422(a) (Coercion and enticement), 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors).

<sup>27</sup> 18 U.S.C. §§ 2251A(b) (conviction punishable by imprisonment for 30 years to life and a fine), 2251(e) (conviction punishable by imprisonment for 15–30 years and a fine), 2423(a) (conviction punishable by imprisonment for 10 years to life and a fine), 2422(a) (conviction punishable by a fine, imprisonment up to 20 years, or both), 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

- (1) soliciting<sup>28</sup> a child or someone the person reasonably believes is a child to engage in sexual conduct;<sup>29</sup>
- (2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or
- (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

For purposes of Minn. Stat. Ann. § 609.352(2a), a “child” only includes minors “15 years of age or younger.” Minn. Stat. Ann. § 609.352(1)(a) (Definitions). A conviction under Minn. Stat. Ann. § 609.352(2a) is punishable as a felony by imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Minn. Stat. Ann. § 609.352(4) (Penalty).

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

While the trafficking law does not apply to buyers, a mistake of age defense is specifically prohibited for a buyer prosecuted under Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) or § 609.352(2a) (Electronic solicitation of children). Minn. Stat. Ann. §§ 609.325 (2), 609.352 (3)(a).

- 2.6.1 Recommendation: Amend Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking) to expressly prohibit a defendant from asserting a mistake of age defense.<sup>30</sup>

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

Minnesota’s buyer-applicable CSEC law, Minn. Stat. Ann. § 609.324(1) (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties), staggers penalties based on a minor’s age; penalties are not sufficiently high when the victim is an older minor. If the buyer “hires or agrees to hire” an individual who is or is believed to be 16–17, a conviction is punishable by up to 5 years imprisonment. Minn. Stat. Ann. § 609.324(1)(c). If the minor is or is believed to be 13–15, a conviction is punishable by up to 10 years imprisonment. Minn. Stat. Ann. § 609.324(1)(b). Lastly, if the minor is or is believed to be under 13, a conviction is punishable by up to 20 years imprisonment. Minn. Stat. Ann. § 609.324(1)(a).

- 2.7.1 Recommendation: Amend Minn. Stat. Ann. § 609.324(1) (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties) to impose sufficiently high penalties for buying commercial sex with any minor under 18 to reflect the seriousness of the offense.

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

Buyers of commercial sex with minors may be required to pay fines ranging from \$5,000–\$40,000. Specifically, buyers convicted of Minn. Stat. Ann. § 609.324(1) (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties) may be required to pay fines ranging from \$10,000–\$40,000, depending on the minor’s age or the age the buyer reasonably believed the individual to be. In addition, when a buyer is convicted under Minn. Stat. Ann. § 609.324, § 609.352, or § 617.247, “the court shall impose an assessment<sup>31</sup>

<sup>28</sup> See *supra* note 14.

<sup>29</sup> See *supra* note 15.

<sup>30</sup> This recommendation in this component is predicated upon the recommendation in 2.1 being simultaneously or previously enacted.

<sup>31</sup> Minn. Stat. Ann. § 609.3241(c) provides,



of not less than \$500 and not more than \$750 for . . . a violation of section 609.324, subdivision 2, or a misdemeanor violation of section 609.324, subdivision 3 . . . ; otherwise the court shall impose an assessment of not less than \$750 and not more than \$1,000. The assessment . . . is in addition to the surcharge required by section 357.021, subdivision 6.” Minn. Stat. Ann. § 609.3241(a) (Penalty assessment authorized). Minn. Stat. Ann. § 357.021(6) requires the court administrator to “collect a \$75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense.” Buyers convicted of sexual offenses may be required to pay fines up to \$40,000. Minn. Stat. Ann. §§ 609.342(2)(a), 609.343(2)(a), 609.344(2), 609.345(2), 609.352(4).

Defendants, including, presumably, buyers, may also be ordered to make restitution. Pursuant to Minn. Stat. Ann. § 611A.04(1)(a) (Order of restitution),

A victim<sup>32</sup> of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent . . . . A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child’s parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim’s right to obtain court-ordered restitution under this section . . . .

Additionally, buyers, through a civil procedure, may be required to forfeit certain property, including money, used in committing a designated crime. Minn. Stat. Ann. § 609.531(6a) (Forfeitures). Pursuant to Minn. Stat. Ann. § 609.5312(1)(a), (b) (Forfeiture of property associated with designated offenses),

(a) All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property, are subject to forfeiture, except as provided in this section.

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The assessment collected under paragraph (a) must be distributed as follows:

- (1) 40 percent of the assessment shall be forwarded to the political subdivision that employs the arresting officer for use in enforcement, training, and education activities related to combating sexual exploitation of youth, or if the arresting officer is an employee of the state, this portion shall be forwarded to the commissioner of public safety for those purposes identified in clause (3);
- (2) 20 percent of the assessment shall be forwarded to the prosecuting agency that handled the case for use in training and education activities relating to combating sexual exploitation activities of youth; and
- (3) 40 percent of the assessment must be forwarded to the commissioner of public health to be deposited in the safe harbor for youth account in the special revenue fund and are appropriated to the commissioner for distribution to crime victims’ services organizations that provide services to sexually exploited youth, as defined in section 260C.007, subdivision 31.
- (d) A safe harbor for youth account is established as a special account in the state treasury.

<sup>32</sup> “Victim” is defined in part in Minn. Stat. Ann. § 611A.01(b) as “a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime . . . .” “Crime” is defined as “conduct that is prohibited by local ordinance and results in bodily harm to an individual; or conduct that is included within the definition of ‘crime’ in section 609.02, subdivision 1, or would be included within that definition but for the fact that (1) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state, or (2) the act was alleged or found to have been committed by a juvenile.” Minn. Stat. Ann. § 611A.01(a). Pursuant to Minn. Stat. Ann. § 609.02(1), “‘Crime’ means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine.”



(b) All money used or intended to be used to facilitate the commission of a violation of section 609.322<sup>33</sup> [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324<sup>34</sup> [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.322 or 609.324 is subject to forfeiture.

Seizure of the property may be upon process issued by a court or without process, where certain circumstances apply. Minn. Stat. Ann. § 609.531(4). Minn. Stat. Ann. § 609.531(5) also states that “[a]ll right, title, and interest in property subject to forfeiture under sections 609.531 to 609.5318 vests in the appropriate agency<sup>35</sup> upon commission of the act or omission giving rise to forfeiture.”

As defined in Minn. Stat. Ann. § 609.531(1)(f) (Forfeitures), “designated offenses” include felony violations of, or felony-level attempts and conspiracies to violate Minn. Stat. Ann. § 609.352 (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), § 617.247 (Possession of pornographic work involving minors), or any violation of § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

Furthermore, Minn. Stat. Ann. § 609.5312(3)(a), states,

A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense . . . .

Buyers may also be ordered to make restitution for a violation of Minnesota’s RICO act. Minn. Stat. Ann. § 609.904(5) directs the prosecuting authority to “vigorously advocate full and complete restitution to an aggrieved person” when a trafficker is convicted of Minn. Stat. Ann. § 609.903.

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

Minn. Stat. Ann. § 617.247(4)<sup>36</sup> (Possession of pornographic work involving minors) states,

(a) A person who possesses a pornographic work<sup>37</sup> or a computer disk or computer or other electronic, magnetic, or optical storage system or a storage system of any other type, containing a pornographic work, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both

(b) A person who violates paragraph (a) is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both, if:

<sup>33</sup> See *supra* Component 2.1 for discussion of inapplicability of Minn. Stat. Ann. § 609.322 to buyers.

<sup>34</sup> See *supra* Component 2.2 for discussion of applicability of Minn. Stat. Ann. § 609.324 to buyers.

<sup>35</sup> Minn. Stat. Ann. § 609.531(1)(e) defines “appropriate agency” as “the Bureau of Criminal Apprehension, the Department of Commerce Division of Insurance Fraud Prevention, the Minnesota Division of Driver and Vehicle Services, the Minnesota State Patrol, a county sheriff’s department, the Three Rivers District park rangers, the Department of Natural Resources Division of Enforcement, the University of Minnesota Police Department, the Department of Corrections Fugitive Apprehension Unit, a city, metropolitan transit, or airport police department; or a multijurisdictional entity established under section 299A.642 or 299A.681.”

<sup>36</sup> The text of Minn. Stat. Ann. § 617.247 cited here and elsewhere in this report includes amendments made by the enactment of Senate File 8 during the 2019 Regular Session of the Minnesota Legislature (effective August 1, 2019).

<sup>37</sup> See *supra* note 8 for the definition of “pornographic work.”

- (1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.246;
- (2) the violation occurs when the person is a registered predatory offender under section 243.166; or
- (3) the violation involved a minor under the age of 13 years.

In contrast, a federal conviction for possession of child sexual abuse material (CSAM)<sup>38</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>39</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>40</sup>

2.9.1 Recommendation: Amend Minn. Stat. Ann. § 617.247(4)(a) (Possession of pornographic work involving minors) to increase the penalty to reflect the seriousness of the offense.

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

Pursuant to Minn. Stat. Ann. § 243.166(1b)(a)<sup>41</sup> (Registration of predatory offenders),

A person shall register under this section if:

- ....
- (2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit any of the following and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:
  - ....
  - (iii) solicitation, inducement, or promotion of the prostitution of a minor or engaging in the sex trafficking of a minor in violation of section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking];
  - (iv) a prostitution offense involving a minor in violation of section 609.324, subdivision 1, paragraph (a) [Patrons, prostitutes; housing individuals engaged in prostitution; penalties—Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties];
  - (v) soliciting a minor to engage in sexual conduct in violation of section 609.352, subdivision 2 or 2a, clause (1) [Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children—Prohibited Act; Electronic solicitation of children];
  - ....

<sup>38</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (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), (b) (Obscene visual representations of the sexual abuse of children).

<sup>39</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(2) is punishable by imprisonment for 5–20 years and a fine, while a conviction under subsection (a)(4) is punishable by imprisonment up to 10 years, a fine, or both), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>40</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(2), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years, but if a person has a prior conviction under subsection (a)(4), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 10–20 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>41</sup> The text of Minn. Stat. Ann. § 243.166 cited here and elsewhere in this report includes amendments made by the enactment of Senate File 8 during the 2019 Regular Session of the Minnesota Legislature (effective August 1, 2019).

(vii) possessing pornographic work involving a minor in violation of section 617.247  
[Possession of pornographic work involving minors];

....

(4) the person was charged with or petitioned for, including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3), and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;

***Legal Components:***

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

***Legal Analysis:***

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

Traffickers convicted under Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement and promotion of prostitution; sex trafficking in the first degree)<sup>42</sup> may be punished by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. However, a trafficker may receive imprisonment up to 25 years, a fine not to exceed \$60,000, or both under Minn. Stat. Ann. § 609.322(1)(b) if at least one of the following aggravating factors is present:

- (1) the offender has committed a prior qualified human trafficking-related offense;
- (2) the offense involved a sex trafficking victim who suffered bodily harm during the commission of the offense;
- (3) the time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or
- (4) the offense involved more than one sex trafficking victim.

Additionally, traffickers face prosecution under Minn. Stat. Ann. § 609.324(1a) (Housing unrelated minor engaged in prostitution; penalties) and § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking).<sup>43</sup> A trafficker convicted under Minn. Stat. Ann. § 609.324(1a) may receive imprisonment up to 1 year, a fine not to exceed \$3,000, or both. If the victim of Minn. Stat. Ann. § 609.283(1) is under the age of 18, a conviction under Minn. Stat. Ann. § 609.283(1) may be punished by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 609.283(2).

Furthermore, Minn. Stat. Ann. § 609.3453 (Criminal sexual predatory conduct) enhances a sentence “if the person commits a predatory crime<sup>44</sup> that was motivated by the offender’s sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal.” Minn. Stat. Ann. § 609.3453(1). A person convicted who falls under Minn. Stat. Ann. § 609.3453(1) may have the sentence enhanced by up to “25 percent longer than for the underlying predatory crime” and a possible fine of up to \$20,000. If the offender has

<sup>42</sup> See *supra* Component 1.1 for the substantive provisions of Minn. Stat. Ann. § 609.322(1)(a).

<sup>43</sup> See *supra* Component 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.324(1a) and § 609.283(1).

<sup>44</sup> “Predatory crime” is defined as “a felony violation of . . . 609.25 (kidnapping), 609.255 (false imprisonment), 609.498 (tampering with a witness), 609.561 (first-degree arson), or 609.582, subdivision 1 (first-degree burglary).” Minn. Stat. Ann. § 609.341(22).

prior sex offense convictions, the sentence may be enhanced by up to “50 percent longer than for the underlying predatory crime” and a possible fine of up to \$20,000. Minn. Stat. Ann. § 609.3453(2).

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>45</sup> for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>46</sup> against a minor. 18 U.S.C. § 3559(e)(1).

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

Creating child sexual abuse material (CSAM) is prohibited under Minn. Stat. Ann. § 617.246(2)(a)<sup>47</sup> (Use of minors in sexual performance prohibited).<sup>48</sup> Minn. Stat. Ann. § 617.246(4)(a) criminalizes the sale of CSAM, making it unlawful for a person to “knowing[ly] or with reason to know its content and character, disseminate[] for profit . . . a pornographic work,”<sup>49</sup> while Minn. Stat. Ann. § 617.246(3)(a) makes it unlawful for a person to “own[] or operate[] a business in which pornographic work . . . is disseminated . . . or is reproduced” when the person “knows the content and character of the pornographic work disseminated or reproduced.” Convictions under Minn. Stat. Ann. § 617.246(2)(a), (3)(a), and (4)(a) are all felonies punishable by imprisonment up to 10 years, a fine not to exceed \$20,000, or both. Minn. Stat. Ann. § 617.246(2)(a), (3)(a), (4)(a). However, Minn. Stat. Ann. § 617.246(2)(b), (3)(b), (4)(b) state that a violation is punishable as a felony by imprisonment up to 15 years, a fine not to exceed \$40,000, or both imprisonment and a fine if:

- (1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.247;
- (2) the violation occurs when the person is a registered predatory offender under section 243.166; or
- (3) the violation involved a minor under the age of 13 years.

In comparison, if the victim is under the age of 14, a conviction under the TVPA for child sex trafficking is punishable by 15 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(1), 3559(a)(1), 3571(b)(3). If the victim is between the ages of 14–17, a conviction is punishable by 10 years to life imprisonment and a fine not to exceed \$250,000. 18 U.S.C. §§ 1591(b)(2), 3559(a)(1), 3571(b)(3). A conviction is punishable by mandatory life imprisonment, however, if the trafficker has a prior conviction for a federal sex offense<sup>50</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM<sup>51</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>52</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>53</sup>

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<sup>45</sup> See *supra* note 24.

<sup>46</sup> See *supra* note 25.

<sup>47</sup> See *supra* note 6.

<sup>48</sup> See *supra* Component 1.2 for the substantive provisions of Minn. Stat. Ann. § 617.246(2).

<sup>49</sup> See *supra* note 8 for the definition of “pornographic work.”

<sup>50</sup> See *supra* note 25.

<sup>51</sup> 18 U.S.C. §§ 2252(a)(1), (a)(2), (a)(3) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2), (a)(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a) (Obscene visual representations of the sexual abuse of children).

<sup>52</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C.

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.*

Minn. Stat. Ann. § 609.352(2a) (Electronic solicitation of children) makes it illegal to use the Internet or electronic communications to solicit a child for the purpose of engaging in sexual conduct.<sup>54</sup> A conviction under Minn. Stat. Ann. § 609.352(2a) is punishable as a felony by imprisonment up to 3 years, a fine not to exceed \$5,000, or both. Minn. Stat. Ann. § 609.352(4) (Penalty).

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

Traffickers convicted under Minnesota's trafficking related criminal laws may be required to pay fines ranging from \$3,000 to \$1,000,000. Specifically, traffickers convicted of Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking) may be ordered to pay a fine not to exceed \$50,000. Minn. Stat. Ann. § 609.322(1)(a). However, a trafficker may be required to pay a fine not to exceed \$60,000 under Minn. Stat. Ann. § 609.322(1)(b) if at least one aggravating factor is present.

Traffickers prosecuted under Minn. Stat. Ann. § 609.324(1a) (Housing unrelated minor engaged in prostitution; penalties) may be required to pay a fine not to exceed \$3,000, while those convicted under Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking), if the victim is under the age of 18, may be ordered to pay a fine not to exceed \$20,000. Minn. Stat. Ann. §§ 609.324(1a), 609.283(2).

In addition, when a trafficker is convicted under Minn. Stat. Ann. § 609.322, § 609.324, § 609.352, or § 617.246, "the court shall impose as assessment<sup>55</sup> of not less than \$500 and not more than \$750 for . . . a violation of section 609.324, subdivision 2, or a misdemeanor violation of section 609.324, subdivision 3 . . . ; otherwise the court shall impose an assessment of not less than \$750 and not more than \$1,000. The assessment . . . is in addition to the surcharge required by section 357.021, subdivision 6." Minn. Stat. Ann. § 609.324(1)(a) (Penalty assessment authorized). Minn. Stat. Ann. § 357.021(6) requires the court administrator to "collect a \$75 surcharge on every person convicted of any felony, gross misdemeanor, misdemeanor, or petty misdemeanor offense."

A trafficker convicted under Minn. Stat. Ann. § 609.352(2) (Prohibited act) or (2a) (Electronic solicitation of children), both felonies, may have to pay fines not to exceed \$5,000. Traffickers convicted under Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited) may be required to pay a fine not to exceed \$20,000 (\$40,000 if the victim is under 13 years of age, the violation is a subsequent offense, or the defendant is registered as a predatory offender). Minn. Stat. Ann. § 617.246(2)(b), (3)(b), (4)(b).<sup>56</sup> Lastly, traffickers convicted under Minn. Stat. Ann. § 609.903(1) (Racketeering)<sup>57</sup> may be ordered to pay a fine not to exceed \$1,000,000 or "three times the gross value gained or three times the gross loss caused, whichever is greater, plus

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§§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>53</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>54</sup> *See supra* Component 2.5 for the substantive provisions of Minn. Stat. Ann. § 609.352(2a) (Electronic solicitation of children).

<sup>55</sup> *See supra* note 31.

<sup>56</sup> *See supra* note 6.

<sup>57</sup> *See supra* Component 1.4 for relevant RICO provisions under Minnesota law.



court costs and the costs of investigation and prosecution reasonably incurred, less the value of any property forfeited under section 609.905 [Criminal forfeiture].” Minn. Stat. Ann. § 609.904(1), (2).

Defendants may also be ordered to make restitution. Pursuant to Minn. Stat. Ann. § 611A.04(1)(a) (Order of restitution),

A victim<sup>58</sup> of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent . . . . A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child’s parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim’s right to obtain court-ordered restitution under this section . . . .

Additionally, traffickers may be required, under a civil procedure, to forfeit certain property, including money, used in committing a designated crime. Pursuant to Minn. Stat. Ann. § 609.5312(1)(a), (b) (Forfeiture of property associated with designated offenses),

(a) All personal property<sup>59</sup> is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property are subject to forfeiture, except as provided in this section.

(b) All money used or intended to be used to facilitate the commission of a violation of section 609.322<sup>60</sup> [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324<sup>61</sup> [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.322 or 609.324 is subject to forfeiture.

Minn. Stat. Ann. § 609.531(5) states that “[a]ll right, title, and interest in property subject to forfeiture under sections 609.531 to 609.5318 vests in the appropriate agency<sup>62</sup> upon commission of the act or omission giving rise to forfeiture.” Seizure of the property may be upon process issued by a court or without process, where certain circumstances apply. Minn. Stat. Ann. § 609.531(4).

As defined in Minn. Stat. Ann. § 609.531(1)(f) (Forfeitures), “designated offenses” include Minn. Stat. Ann. § 609.352 (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children), Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited), Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), or any violation of section 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

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<sup>58</sup> See *supra* note 32.

<sup>59</sup> Minn. Stat. Ann. § 609.531 (Forfeitures) defines “property” for the purposes of Minn. Stat. Ann. § 609.5312(1), according to “section 609.52, subdivision 1, clause (1),” which states that property

means all forms of tangible property, whether real or personal, without limitation including documents of value, electricity, gas, water, corpses, domestic animals, dogs, pets, fowl, and heat supplied by pipe or conduit by municipalities or public utility companies and articles, as defined in clause (4), representing trade secrets, which articles shall be deemed for the purposes of Extra Session Laws 1967, chapter 15 to include any trade secret represented by the article.

<sup>60</sup> See *supra* Component 3.1 for discussion of applicability of Stat. Ann. § 609.322 to traffickers.

<sup>61</sup> See *supra* Component 3.1 for discussion of applicability of Stat. Ann. § 609.324 to traffickers.

<sup>62</sup> See *supra* note 35.

Furthermore, Minn. Stat. Ann. § 609.5312(3)(a) states,

A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense . . . .

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

Pursuant to Minn. Stat. Ann. § 243.166(1b)(a)<sup>63</sup> (Registration of predatory offenders),

A person shall register under this section if:

. . . .

(2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit any of the following and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:

. . . .

(iii) solicitation, inducement, or promotion of the prostitution of a minor or engaging in the sex trafficking of a minor in violation of section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking];

(iv) a prostitution offense involving a minor in violation of section 609.324, subdivision 1, paragraph (a) [Patrons, prostitutes; housing individuals engaged in prostitution; penalties—Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties];

(v) soliciting a minor to engage in sexual conduct in violation of section 609.352, subdivision 2 or 2a, clause (1) [Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children—Prohibited Act; Electronic solicitation of children];

(vi) using a minor in a sexual performance in violation of section 617.246 [Use of minors in sexual performance prohibited];

. . . .

. . . .

(4) the person was charged with or petitioned for, including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3), and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;

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.*

Under Minn. Stat. Ann. § 260C.301(1) (Termination of parental rights), the juvenile court has discretion to file a petition to terminate parental rights under certain circumstances:

The juvenile court may upon petition, terminate all rights of a parent to a child:

- (a) with the written consent of a parent who for good cause desires to terminate parental rights; or
- (b) if it finds that one or more of the following conditions exist:

. . . .

(6) that a child has experienced egregious harm in the parent’s care which is of a nature, duration, or chronicity that indicates a lack of regard for the child’s well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be

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<sup>63</sup> See *supra* note 41.

in the parent's care;

....

(9) that the parent has been convicted of a crime listed in section 260.012, paragraph (g), clauses (1) to (5).

....

The list of crimes in Minn. Stat. Ann. § 260.012(g)(1)–(3) does not include Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324(1a) (Housing unrelated minor engaged in prostitution; penalties), § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking), § 609.352(2) (Prohibited act) or (2a) (Electronic solicitation of children), or § 617.246 (Use of minors in sexual performance prohibited). However, pursuant to Minnesota state law,<sup>64</sup> “egregious harm” is defined as the following:

[T]he infliction of bodily harm to a child or neglect of a child which demonstrates a grossly inadequate ability to provide minimally adequate parental care . . . . Egregious harm includes, but is not limited to:

....

(7) conduct towards a child that constitutes solicitation, inducement, or promotion of, or receiving profit derived from prostitution under section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking];

....

(10) conduct toward a child that constitutes criminal sexual conduct under sections 609.342 [Criminal sexual conduct in the first degree] to 609.345 [Criminal sexual conduct in the fourth degree].

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<sup>64</sup> Minn. Stat. Ann. § 260C.007(14).

***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.*

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***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.*

Minn. Stat. Ann. § 609.322(1)(a)(3) (Solicitation, inducement and promotion of prostitution; sex trafficking) could be used to prosecute a facilitator who “receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual under the age of 18 years.”<sup>65</sup> A facilitator who is convicted under Minn. Stat. Ann. § 609.322(1)(a) may be punished by imprisonment up to 20 years, a fine not to exceed \$50,000, or both. However, according to Minn. Stat. Ann. § 609.322(1)(b), a facilitator may receive imprisonment up to 25 years, a fine not to exceed \$60,000, or both imprisonment and a fine, if at least one of the following aggravating factors is present:

- (1) the offender has committed a prior qualified human trafficking-related offense;
- (2) the offense involved a sex trafficking victim who suffered bodily harm during the commission of the offense;
- (3) the time period that a sex trafficking victim was held in debt bondage or forced labor or services exceeded 180 days; or
- (4) the offense involved more than one sex trafficking victim.

Additionally, facilitators may face prosecution under Minn. Stat. Ann. § 609.324(1a)<sup>66</sup> (Housing unrelated minor engaged in prostitution; penalties), which states,

Any person, other than one related by blood, adoption, or marriage to the minor, who permits a minor to reside, temporarily or permanently, in the person’s dwelling without the consent of the minor’s parents or guardian, knowing or having reason to know that the minor is engaging in prostitution may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; except that, this subdivision does not apply to residential placements made, sanctioned, or supervised by a public or private social service agency.

- 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 Minnesota’s criminal laws may be required to pay fines ranging from \$3,000 to \$1,000,000. Specifically, facilitators convicted of violating Minn. Stat. Ann. § 609.322(1)(a) (Solicitation,

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<sup>65</sup> See *supra* Component 1.1 for the substantive provisions of Minn. Stat. Ann. § 609.322(1)(a).

<sup>66</sup> See *supra* Component 1.2 for the substantive provisions of Minn. Stat. Ann. § 609.324(1a).

inducement and promotion of prostitution; sex trafficking) may be ordered to pay a fine not to exceed \$50,000 or \$60,000 if aggravating factors are present. Minn. Stat. Ann. § 609.322(1)(a), (b).

Facilitators convicted under Minn. Stat. Ann. § 609.324(1a) (Housing unrelated minor engaged in prostitution; penalties) may be required to pay a fine not to exceed \$3,000. Minn. Stat. Ann. § 609.324(1a). Facilitators convicted of Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited) may be required to pay a fine not to exceed \$20,000 (\$40,000 if the victim is under 13 years of age, the violation is a subsequent offense, or the defendant is registered as a predatory offender), while facilitators convicted of Minn. Stat. Ann. § 617.247(3)(a) (Possession of pornographic work involving minors) may have to pay fine not to exceed \$10,000 (\$20,000 if the victim is under 13 years of age, the violation is a subsequent offense, or the defendant is registered as a predatory offender). Minn. Stat. Ann. §§ 617.246(2)(b), (3)(b), (4)(b),<sup>67</sup> 617.247(3)(b).<sup>68</sup>

Defendants may also be ordered to make restitution. Pursuant to Minn. Stat. Ann. § 611A.04(1)(a) (Order of restitution),

A victim<sup>69</sup> of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent . . . . A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section . . . .

A person convicted of a RICO violation may also be ordered to criminally forfeit certain items. Pursuant to Minn. Stat. Ann. § 609.905(1), (2) (Criminal forfeiture),

When a person is convicted of violating section 609.903 [Racketeering], the court may order the person to forfeit to the prosecuting authority any real or personal property subject to forfeiture under this section. Property subject to forfeiture is real and personal property that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section 609.903. A court may not order the forfeiture of property that has been used to pay reasonable attorney fees in connection with a criminal proceeding under section 609.903 . . . .

Under subdivision (2), "The district court may order criminal forfeiture of any other property of the defendant up to the value of the property that is unreachable if any property subject to criminal forfeiture under subdivision 1: (1) cannot be located . . . ."

Additionally, a crime<sup>70</sup> victim, including a commercially sexually exploited child who, pursuant to Minn. Stat. Ann. § 611A.01(b), "incurs loss or harm as a result of a crime" and has "the right to receive restitution as part of

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<sup>67</sup> See *supra* note 6.

<sup>68</sup> See *supra* note 36.

<sup>69</sup> See *supra* note 32.

<sup>70</sup> Pursuant to Minn. Stat. Ann. § 611A.01(a) "crime" means

conduct that is prohibited by local ordinance and results in bodily harm to an individual; or conduct that is included within the definition of "crime" in section 609.02, subdivision 1, or would be included within that definition but for the fact that (1) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state, or (2) the act was alleged or found to have been committed by a juvenile.

Minn. Stat. Ann. § 609.02(1) defines "crime" as "conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine."

the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent.” Minn. Stat. Ann. § 611A.04(1). Pursuant to Minn. Stat. Ann. § 611A.04(1)(a) (Order of restitution),

A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child’s parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim’s right to obtain court-ordered restitution under this section . . . .

Additionally, facilitators may be required, under a civil procedure, to forfeit certain property, including money, used in committing a crime. Pursuant to Minn. Stat. Ann. § 609.5312(1)(a), (b) (Forfeiture of property associated with designated offenses),

(a) All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all contraband property are subject to forfeiture [subject to the exceptions listed in Minn. Stat. Ann. § 609.5312(2)].

(b) All money used or intended to be used to facilitate the commission of a violation of section 609.322<sup>71</sup> [Solicitation, inducement, and promotion of prostitution; sex trafficking] or 609.324<sup>72</sup> [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.322 or 609.324 is subject to forfeiture.

Minn. Stat. Ann. § 609.531(5) states that “[a]ll right, title, and interest in property subject to forfeiture under sections 609.531 to 609.5318 vests in the appropriate agency<sup>73</sup> upon commission of the act or omission giving rise to forfeiture.” Seizure of the property may be upon process issued by a court or without process, where certain circumstances apply. Minn. Stat. Ann. § 609.531(4).

As defined in Minn. Stat. Ann. § 609.531(1)(f) (Forfeitures), “designated offenses” include felony violations, or felony-level attempts and conspiracies to violate Minn. Stat. Ann. § 617.246 (Use of minors in sexual performance prohibited), § 617.247 (Possession of pornographic work involving minors), § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), or § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties).

Additionally, Minn. Stat. Ann. § 609.5312(3) states,

A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense.

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

There is no specific provision in Minnesota law making it illegal to promote or to sell child sex tourism in Minnesota.

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<sup>71</sup> See *supra* Component 4.1 for discussion of applicability of Minn. Stat. Ann. § 609.322 to facilitators.

<sup>72</sup> See *supra* Component 4.1 for discussion of applicability of Minn. Stat. Ann. § 609.324 to facilitators.

<sup>73</sup> See *supra* note 35.



- 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, if the offer, travel, or sale is occurring in Minnesota.

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

Minn. Stat. Ann. § 617.246(3)(a)<sup>74</sup> (Use of minors in sexual performance) criminalizes ownership of a business that sells child sexual abuse material (CSAM), stating in part, “A person who owns or operates a business in which a pornographic work, as defined in this section, is disseminated to an adult or a minor or is reproduced, and who knows the content and character of the pornographic work disseminated or reproduced, is guilty of a felony.” Minn. Stat. Ann. § 617.246(4)(a) separately criminalizes the dissemination of CSAM, stating in part, “A person who, knowing or with reason to know its content and character, disseminates for profit to an adult or a minor a pornographic work, as defined in this section, is guilty of a felony.” Convictions for violating Minn. Stat. Ann. § 617.246 (3)(a) and (4)(a) are punishable as felonies by imprisonment not to exceed 10 years, a fine not to exceed \$20,000, or both imprisonment and a fine. Minn. Stat. Ann. § 617.246(3)(a), (4)(a). However, Minn. Stat. Ann. § 617.246(3)(b), (4)(b) state that a violation is punishable as a felony by imprisonment up to 15 years, a fine not to exceed \$40,000, or both imprisonment and a fine if:

- (1) the person has a prior conviction or delinquency adjudication for violating this section or section 617.247 [Possession of pornographic work involving minors];
- (2) the violation occurs when the person is a registered predatory offender under section 243.166; or
- (3) the violation involved a minor under the age of 13 years.

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<sup>74</sup> See *supra* note 6.

**Legal Components:**

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

**Legal Analysis:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.<sup>75</sup>*

Not all commercially sexually exploited children are included as victims under the core child sex trafficking offense. Minn. Stat. Ann. § 609.322(1)(a) (Core criminal sex trafficking provisions) criminalizes sex trafficking of minors under 18 years of age and removes the requirement of establishing the use of force, fraud or coercion by their traffickers.<sup>76</sup> However, Minn. Stat. Ann. § 609.322(1)(a) does not apply to buyers, as the provision explicitly prohibits the application to a person “acting . . . as a prostitute or patron;” thus, buying commercial sex with a person under the age of eighteen does not constitute human trafficking, despite it constituting a criminal offense under Minn. Stat. Ann. § 609.324(1) (Engaging in, hiring, or agreeing to hire minor to engage in prostitution). Resultantly, for a commercially sexually exploited child to be considered a victim under Minnesota’s core sex trafficking act, Minn. Stat. Ann. § 609.322(1)(a), third party control must be established.

- 5.1.1 **Recommendation:** Amend the definition of Minn. Stat. Ann. § 609.322 (Core criminal sex trafficking provisions) so that all commercially sexually exploited children are identifiable as victims and eligible for protections pursuant to their victim status.

<sup>75</sup> See generally **SHARED HOPE INTERNATIONAL**, “Eliminating the Third Party Control Barrier to Identifying Juvenile Sex Trafficking Victims,” JuST Response Policy Paper (2015), [http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper\\_Eliminating-Third-Party-Control\\_Final1.pdf](http://sharedhope.org/wp-content/uploads/2015/08/Policy-Paper_Eliminating-Third-Party-Control_Final1.pdf) (discussing need to include all commercially sexually exploited children within sex trafficking definitions and corresponding need to include buyer conduct in core sex trafficking offenses regardless of whether victim is under control of a third party).

<sup>76</sup> See *supra* Component 1.1.

5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor under 18 to engage in the commercial sex act.*<sup>77</sup>

The minor's willingness to engage in the commercial sex act is not a defense to a prosecution under Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) or § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) as Minn. Stat. Ann. § 609.325(2) (Defenses) expressly states that "[c]onsent . . . shall be no defense to prosecutions under 609.322 or 609.324." Minn. Stat. Ann. § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) also provides that "the consent or age of the victim is not a defense."

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>78</sup>

Minnesota law prohibits the criminalization of minors under the age of 18 for prostitution offenses. Minors who have engaged in prostitution or loitering as defined under Minnesota's prostitution laws, Minn. Stat. Ann. § 609.324(6) (Prostitution in public place; penalty for prostitutes) and (7) (General prostitution crimes; penalties for prostitutes) and § 609.3243 (Loitering with intent to participate in prostitution), may not be found to be delinquent under Chapter 260B (Delinquency). Minn. Stat. Ann. § 260B.007(6)(c) (Definitions) states,

The term delinquent child does not include a child alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct.

The definition of "juvenile petty offender" in Minn. Stat. Ann. § 260B.007(16)(d) states,

A child who commits a juvenile petty offense is a "juvenile petty offender." The term juvenile petty offender does not include a child alleged to have violated any law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct which, if committed by an adult, would be a misdemeanor.

Under these provisions, minors who violate Minn. Stat. Ann. § 609.324(6) (Prostitution in public place; penalty for prostitutes) or (7) (General prostitution crimes; penalties for prostitutes) or § 609.3243 (Loitering with intent to participate in prostitution) will not be treated as delinquent or as juvenile petty offenders.

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**

Minnesota law established a system to provide funded services to juvenile sex trafficking victims. Although referral to services is not mandated under the system, the regional navigators grant provisions and evaluation requirements set out goals for a statewide program meant to ensure that "support services are available, accessible, and adequate for sexually exploited youth."<sup>79</sup> Pursuant to Minn. Stat. Ann. § 145.4716(1) (Safe harbor for sexually exploited youth),<sup>80</sup> "The commissioner of health shall establish a position for a director of

<sup>77</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>78</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>79</sup> See *infra* Component 5.5 for definition of "sexually exploited youth" under Minn. Stat. § 260C.007(31) (Definitions).

<sup>80</sup> Additionally, Minn. Stat. § 145.4716 (Safe Harbor for Sexually Exploited Youth) expands eligibility for services to youth 24 years of age or younger to receive all services, support, and programs provided by the Safe Harbor laws for sexually exploited youth and youth at risk of sexual exploitation.

child sex trafficking prevention.” As discussed in subdivision (2), the director is responsible for the following duties:

- (1) developing and providing comprehensive training on sexual exploitation of youth for social service professionals, medical professionals, public health workers, and criminal justice professionals;
- (2) collecting, organizing, maintaining, and disseminating information on sexual exploitation and services across the state, including maintaining a list of resources on the Department of Health Web site;
- (3) monitoring and applying for federal funding for anti-trafficking efforts that may benefit victims in the state;
- (4) managing grant programs established under sections 145.4716 to 145.4718 and 609.3241, paragraph (c), clause (3);
- (5) managing the request for proposals for grants for comprehensive services, including trauma-informed, culturally specific services;
- (6) identifying best practices in serving sexually exploited youth, as defined in section 260C.007, subdivision 31 [Definitions—Sexually Exploited Youth];
- (7) providing oversight of and technical support to regional navigators pursuant to section 145.4717 [Regional navigator grants];
- (8) conducting a comprehensive evaluation of the statewide program for safe harbor of sexually exploited youth; and
- (9) developing a policy, consistent with the requirements of chapter 13, for sharing data related to sexually exploited youth, as defined in section 260C.007, subdivision 31, among regional navigators and community-based advocates.

Pursuant to Minn. Stat. § 145.4717 (Regional Navigator Grants),

The commissioner of health, through its director of child sex trafficking prevention, established in section 145.4716, shall provide grants to regional navigators serving six regions of the state to be determined by the commissioner. Each regional navigator must develop and annually submit a work plan to the director of child sex trafficking prevention. The work plans must include, but are not limited to, the following information:

- (1) a needs statement specific to the region, including an examination of the population at risk;
- (2) regional resources available to sexually exploited youth, as defined in section 260C.007, subdivision 31;
- (3) grant goals and measurable outcomes; and
- (4) grant activities including timelines.

Further, Minn. Stat. § 145.4718 (Program evaluation) explains,

(a) The director of child sex trafficking prevention, established under section 145.4716, must conduct, or contract for, comprehensive evaluation of the statewide program for safe harbor for sexually exploited youth. The first evaluation must be completed by June 30, 2015, and must be submitted to the commissioner of health by September 1, 2015, and every two years thereafter. The evaluation must consider whether the program is reaching intended victims and whether support services are available, accessible, and adequate for sexually exploited youth, as defined in section 260C.007 [Definitions], subdivision 31.

(b) In conducting the evaluation, the director of child sex trafficking prevention must consider evaluation of outcomes, including whether the program increases identification of sexually exploited youth, coordination of investigations, access to services and housing available for sexually exploited youth, and improved effectiveness of services. The evaluation must also include examination of the ways in which penalties under section 609.3241 are assessed, collected, and distributed to ensure funding for investigation, prosecution, and victim services to combat sexual exploitation of youth.

In addition to these service-oriented provisions, Minnesota law allows juvenile sex trafficking victims to avoid delinquency adjudications for prostitution offenses based on the definitions of “delinquent child” and “juvenile petty offender”<sup>81</sup> However, a juvenile sex trafficking victim could still face charges for other offenses committed in the course of his or her victimization.<sup>82</sup>

## Summary

Minnesota law prohibits the criminalization of minors for prostitution offenses and establishes a system for providing specialized services.

### 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>83</sup>

Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) is expressly included within the definition of child abuse as used in the child protection provisions of Minnesota’s Juvenile Court Act. Specifically, under Minn. Stat. Ann. § 260C.007(5) (Definitions), “child abuse” means the following:

[A]n act that involves a minor victim that constitutes a violation of section . . . 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking], 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties], 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree], 609.345 [Criminal sexual conduct in the fourth degree] . . . 617.246 [Use of minors in sexual performance prohibited], or that is physical or sexual abuse as defined in section 626.556, subdivision 2<sup>84</sup> [Reporting of maltreatment of minors], or an act committed in another state that involves a minor victim and would constitute a violation of one of these sections if committed in this state.

Additionally, child sex trafficking victims are specifically included in the definition of “sexually exploited youth” under Minn. Stat. Ann. § 260C.007(31) which states,

“Sexually exploited youth” means an individual who:

- (1) is alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct;
- (2) is a victim of a crime described in section 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree], 609.345 [Criminal sexual conduct in the fourth degree], 609.3451 [Criminal sexual conduct in the fifth degree], 609.3453 [Criminal sexual predatory conduct], 609.352 [Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children],

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<sup>81</sup> See *supra* Component 5.3 for provisions concerning the non-criminalization of minors for prostitution offenses.

<sup>82</sup> Although not trafficking or CSEC specific, Minn. Stat. Ann. § 388.24 (Pretrial Diversion Program for Juveniles) does establish a diversion program for juvenile offenders.

<sup>83</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>84</sup> Minn. Stat. Ann. § 626.556(2)(o)(7) (Definitions) defines “[s]ubstantial child endangerment” to include when “a person responsible for a child’s care, by act or omission, commits or attempts to commit an act against a child under their care that constitutes . . . solicitation, inducement, and promotion of prostitution under section 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking].” Minn. Stat. § 626.556(2)(n) states that “[s]exual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 [Prostitution and sex trafficking; definitions] to 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties] or 617.246 [Use of minors in sexual performance prohibited].”

617.246 [Use of minors in sexual performance prohibited], or 617.247 [Possession of pornographic work involving minors];  
(3) is a victim of a crime described in United States Code, title 18, section 2260 [Production of sexually explicit depictions of a minor for importation into the United States] ; 2421 [Transportation generally]; 2422 [Coercion or enticement]; 2423 [Transportation of minors]; 2425 [Use of interstate facilities to transmit information about a minor]; or 2256 [Definitions for chapter]; or  
(4) is a sex trafficking victim as defined in section 609.321 [Prostitution and sex trafficking; definitions], subdivision 7b.<sup>85</sup>

Finally, the definition of “sexual abuse” expressly includes child sex trafficking and commercial sexual exploitation. Minn. Stat. Ann. § 626.556(2)(n)<sup>86</sup> (Definitions) defines “sexual abuse” as

the subjection of a child by a person responsible for the child’s care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a current or recent position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), 609.3451 (criminal sexual conduct in the fifth degree), or 609.352 (solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes all reports of known or suspected child sex trafficking involving a child who is identified as a victim of sex trafficking. Sexual abuse includes child sex trafficking as defined in section 609.321 and subdivisions 7a and 7b. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

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 “custodian” is not a barrier to a sex trafficked child accessing the protection of child welfare as the definitions of “child abuse” and “child in need of protection and services” do not require a relationship between the child and the perpetrator. Minn. Stat. Ann. § 260C.007(5) (Definitions) defines “child abuse” in part as “an act that involves a minor victim that constitutes a violation of section . . . 609.322 [Solicitation, inducement, and promotion of prostitution; sex trafficking] . . .” Pursuant to Minn. Stat. Ann. § 260C.007(6), “Child in need of protection or services” means a child who is in need of protection or services because the

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<sup>85</sup> Pursuant to Minn. Stat. § 609.321(7b) (Prostitution and sex trafficking; definitions) “Sex trafficking victim” means a person subjected to the practices in subdivision 7a.” Pursuant to Minn. Stat. § 609.321(7a), “Sex trafficking” means:

- (1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or
- (2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).

<sup>86</sup> The text of Minn. Stat. Ann. § 626.556 cited here and elsewhere in this report includes amendments made by the enactment of Senate File 8 and House Files 1 and 1065 during the 2019 Regular Session of the Minnesota Legislature (effective August 1, 2019).



child: . . . (11) is a sexually exploited youth . . . .” Minn. Stat. Ann. § 260C.007(31) further defines “[s]exually exploited youth as . . .

an individual who:

- (1) is alleged to have engaged in conduct which would, if committed by an adult, violate any federal, state, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct;
- (2) is a victim of a crime described in section 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree], 609.345 [Criminal sexual conduct in the fourth degree], 609.3451 [Criminal sexual conduct in the fifth degree], 609.3453 [Criminal sexual predatory conduct], 609.352 [Solicitation of children to engage in sexual conduct; communications of sexually explicit material to children], 617.246 [Use of minors in sexual performance prohibited], or 617.247 [Possession of pornographic work involving minors];
- (3) is a victim of a crime described in United States Code, title 18, section 2260 [Production of sexually explicit depictions of a minor for importation into the United States]; 2421 [Transportation for illegal sexual activity and related crimes; transportation generally]; 2422 [Transportation for illegal sexual activity and related crimes; coercion and enticement]; 2423 [Transportation for illegal sexual activity and related crimes; transportation of minors]; 2425 [Transportation for illegal sexual activity and related crimes; use of interstate facilities to transmit information about a minor]; or 2256 [Sexual exploitation and other abuse of children; definitions for chapter]; or
- (4) is a sex trafficking victim as defined in section 609.321, subdivision 7b [Prostitution and sex trafficking; definitions; sex trafficking victim].

The definition of “sexual abuse” also removes the requirement that the perpetrator be “a person responsible for the child’s care, . . . a person who has a significant relationship to the child, . . . or . . . a person in a current or recent position of authority” in trafficking cases; Minn. Stat. Ann. § 626.556(2)(n)<sup>87</sup> (Definitions) defines “sexual abuse” as

the subjection of a child by a person responsible for the child’s care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a current or recent position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), 609.3451 (criminal sexual conduct in the fifth degree), or 609.352 (solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes all reports of known or suspected child sex trafficking involving a child who is identified as a victim of sex trafficking. Sexual abuse includes child sex trafficking as defined in section 609.321 and subdivisions 7a and 7b. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

Furthermore, pursuant to Minn. Stat. Ann. § 626.556(2)(o), Minnesota has broadened the child endangerment laws by eliminating the requirements of “significant relationship to the child” or in “a current or recent position of authority” over the child. Resultantly, a person responsible for the child’s care commits an act of “substantial

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<sup>87</sup> See *supra* note 86.

child endangerment” when the person, by act or omission, commits or attempts to commit an act against a child under their care that constitutes any of the following:

- (1) egregious harm as defined in section 260C.007(14) (Egregious harm);
- ....
- (7) solicitation, inducement, and promotion of prostitution under section 609.322 (Solicitation, inducement, and promotion of prostitution);
- (8) criminal sexual conduct under sections 609.342 to 609.3451 (Criminal sexual conduct);
- (9) solicitation of children to engage in sexual conduct under section 609.352 (Solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children).
- ....
- (11) use of a minor in sexual performance under section 617.246 (Use of minors in sexual performance prohibited).

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

Minnesota’s Crime Victims Reparation Act does not make reparation awards available to children who are victims of commercial sexual exploitation without regard to ineligibility requirements. Generally, a “victim<sup>88</sup> who has incurred economic loss” will be “entitled to reparations upon a showing by a preponderance of the evidence that the requirements for reparations have been met.” Minn. Stat. Ann. § 611A.53(1). As provided in Minn. Stat. Ann. § 611A.52(8) within the Crime Victims Reparation Act,

- (a) “Economic loss” means actual economic detriment incurred as a direct result of injury or death.
- (b) In the case of injury the term is limited to:
  - (1) reasonable expenses incurred for necessary medical, chiropractic, hospital, rehabilitative, and dental products, services, or accommodations, including ambulance services, drugs, appliances, and prosthetic devices;
  - ....
  - (3) reasonable expenses incurred for psychological or psychiatric products, services, or accommodations, not to exceed an amount to be set by the board, where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim;
  - (4) loss of income that the victim would have earned had the victim not been injured;
  - (5) reasonable expenses incurred for substitute child care or household services to replace those the victim or claimant would have performed had the victim or the claimant’s child not been injured . . . ;
  - (6) reasonable expenses actually incurred to return a child who was a victim of a crime under section 609.25 or 609.26 to the child’s parents or lawful custodian. These expenses are limited to transportation costs, meals, and lodging from the time the child was located until the child was returned home; and
  - (7) the claimant’s moving expenses, storage fees, and phone and utility installation fees, up to a maximum of \$1,000 per claim, if the move is necessary due to a reasonable fear of danger related to the crime for which the claim was filed.

Although a commercially sexually exploited child who suffers economic loss will generally be eligible to receive reparations under Minnesota’s Crime Victims Reparation Act, several additional requirements for reparations could present difficulties for victims of domestic minor sex trafficking. Specifically, reparations will not be awarded unless the crime was “reported to the police within 30 days of its occurrence or, if it could

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<sup>88</sup> See *supra* Component 5.1.

not reasonably have been reported within that period, within 30 days of the time when a report could reasonably have been made.” Minn. Stat. Ann. § 611A.53(2)(1).

Notably, however, “A victim of criminal sexual conduct in the first, second, third, or fourth degree who does not report the crime within 30 days of its occurrence is deemed to have been unable to have reported it within that period.” Minn. Stat. Ann. § 611A.53(2)(1). To be eligible to receive reparations, a victim must also “cooperate fully with the police and other law enforcement officials,” must not have been an accomplice of the offender, and must not have been “in the act of committing a crime at the time the injury occurred.” Minn. Stat. Ann. § 611A.53(2)(2), (3), (4).

Additionally, pursuant to Minn. Stat. Ann. § 611A.53(2)(5), (6), the claim must be for more than \$50, and the victim must file a claim for reparation within 3 years of the date of the harm suffered,

except that (i) if the claimant was unable to file a claim within that period, then the claim can be made within three years of the time when a claim could have been filed; and (ii) if the victim’s injury or death was not reasonably discoverable within three years of the injury or death, then the claim can be made within three years of the time when the injury or death is reasonably discoverable. The following circumstances do not render a claimant unable to file a claim for the purposes of this clause: (A) lack of knowledge of the existence of the Minnesota Crime Victims Reparations Act, (B) the failure of a law enforcement agency to provide information or assistance to a potential claimant under section 611A.66, (C) the incompetency of the claimant if the claimant’s affairs were being managed during that period by a guardian, guardian ad litem, conservator, authorized agent, or parent, or (D) the fact that the claimant is not of the age of majority.

If the victim’s claim is based on child abuse,<sup>89</sup> the claim does not have to be for more than \$50, does not have to be reported to the police within 30 days, and the 3-year period to file a claim will toll until the time the crime actually is reported to the police. Minn. Stat. Ann. § 611A.53(2). While the term “child abuse” is not defined in Minn. Stat. Ann. § 611A.52 (Definitions), the definition of child abuse for purposes of child welfare specifically includes child sex trafficking, indicating that this exception would be applicable to child sex trafficking victims.

The amount of reparations a victim receives also may be reduced to the extent: (i) “that economic loss is recouped from a collateral source or collateral sources;” and (ii) “the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims.” Minn. Stat. § 611A.54(1), (2). Additionally, in no case will the victim receive more than \$50,000. Minn. Stat. Ann. § 611A.54(3).

Despite the reporting and filing extension granted to victims of child abuse and certain sexual offenses, nothing expressly exempts victims of Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324, Subdiv. 1 (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties), § 617.246(2) (Use of minors in sexual performance prohibited), or § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) from the same requirements as other victims.

5.7.1 Recommendation: Amend Minn. Stat. Ann. § 611A.53(2) to specifically exempt victims of Minn. Stat. Ann. § 609.322(1)(a) (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324, Subdiv. 1 (Engaging in, hiring, or agreeing to hire minor to engage in prostitution; penalties), § 617.246(2) (Use of minors in sexual performance prohibited), and § 609.283(1) (Unlawful conduct with respect to documents in furtherance of labor or sex trafficking) from the listed limitations on reparations awards.

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<sup>89</sup> See *supra* Component 5.5 for the definition of “child abuse.” .

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

Regardless of the victim's age, Minnesota law provides special protections for victims of sexual offenses pursuant to Minn. Stat. Ann. § 609.347 (Evidence in criminal sexual conduct cases). Minn. Stat. Ann. § 609.347(1) provides, "In a prosecution under sections 609.342 [Criminal sexual conduct in the first degree] to 609.3451 [Criminal sexual conduct in the fifth degree]; 609.3453 [Criminal sexual predatory conduct] . . . the testimony of a victim need not be corroborated." Similarly, there is no need to demonstrate that the "victim resisted the accused." Minn. Stat. Ann. § 609.347(2). Additionally, pursuant to Minn. Stat. Ann. § 609.347(3), in prosecutions for those offenses,

[E]vidence of the victim's previous sexual conduct shall not be admitted nor shall any reference to such conduct be made in the presence of the jury, except by court order under the procedure provided in subdivision 4. The evidence can be admitted only if the probative value of the evidence is not substantially outweighed by its inflammatory or prejudicial nature and only in the circumstances set out in paragraphs (a) and (b). For the evidence to be admissible under paragraph (a), subsection (i), the judge must find by a preponderance of the evidence that the facts set out in the accused's offer of proof are true. For the evidence to be admissible under paragraph (a), subsection (ii) or paragraph (b), the judge must find that the evidence is sufficient to support a finding that the facts set out in the accused's offer of proof are true, as provided under Rule 901 of the Rules of Evidence.

- (a) When consent of the victim is a defense in the case, the following evidence is admissible:
  - (i) evidence of the victim's previous sexual conduct tending to establish a common scheme or plan of similar sexual conduct under circumstances similar to the case at issue. In order to find a common scheme or plan, the judge must find that the victim made prior allegations of sexual assault which were fabricated; and
  - (ii) evidence of the victim's previous sexual conduct with the accused.
- (b) When the prosecution's case includes evidence of semen, pregnancy, or disease at the time of the incident or, in the case of pregnancy, between the time of the incident and trial, evidence of specific instances of the victim's previous sexual conduct is admissible solely to show the source of the semen, pregnancy, or disease.

Special protections are afforded to minor victims of sexual abuse throughout the process of investigating and prosecuting a criminal offense related to the sexual abuse of the child. For example, Minn. Stat. Ann. § 609.3471 (Records pertaining to victim identity confidential) provides that "no data contained in records or reports relating to petitions, complaints, or indictments issued pursuant to section 609.322, 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree], 609.345 [Criminal sexual conduct in the fourth degree], or 609.3453, which specifically identifies a victim who is a minor shall be accessible to the public, except by order of the court." Pursuant to Minn. Stat. Ann. § 626.561 (Interviews with child abuse victims), a record must be made of every interview of an alleged child abuse victim<sup>90</sup> and that every county attorney's office must develop written guidelines for tape recording such interviews. Minn. Stat. Ann. § 626.561(3), (4).

<sup>90</sup> Minn. Stat. Ann. § 626.561(2)(1) defines "child abuse" as "physical or sexual abuse as defined in section 626.556, subdivision 2." Minn. Stat. Ann. § 626.556(2)(n) (Definitions) defines "sexual abuse" as

the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child, as defined in section 609.341, or by a person in a current or recent position of authority, as defined in section 609.341, subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), 609.3451 (criminal sexual conduct in the fifth degree), or 609.352 (solicitation of children to engage in sexual conduct; communication of sexually explicit materials to children). Sexual abuse also includes any act which involves a minor which constitutes a violation of prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes all reports of known or suspected child sex

Additional protections apply during a trial. Specifically, certain minors are allowed to give out-of-court statements in lieu of testifying in court. Minn. Stat. Ann. § 595.02(3) (Testimony of witnesses) states,

An out-of-court statement made by a child under the age of ten years . . . alleging, explaining, denying, or describing any act of sexual contact or penetration performed with or on the child or any act of physical abuse of the child or the person who is mentally impaired by another, not otherwise admissible by statute or rule of evidence, is admissible as substantive evidence if:

- (a) the court or person authorized to receive evidence finds, in a hearing conducted outside of the presence of the jury, that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and
- (b) the child . . . either:
  - (i) testifies at the proceedings; or
  - (ii) is unavailable as a witness and there is corroborative evidence of the act; and
- (c) the proponent of the statement notifies the adverse party of the proponent's intention to offer the statement and the particulars of the statement sufficiently in advance of the proceeding at which the proponent intends to offer the statement into evidence to provide the adverse party with a fair opportunity to prepare to meet the statement.

For purposes of this subdivision, an out-of-court statement includes video, audio, or other recorded statements. An unavailable witness includes an incompetent witness.

Minn. Stat. Ann. § 595.02(4) further provides that when a child under 12 years of age is “alleging, denying, or describing . . . an act of sexual contact or penetration performed with or on the child or any other person by another,” the child may provide testimony via closed-circuit television or a videotaped recording. Pursuant to Minn. Stat. Ann. § 595.02(4)(b), (c), when a child under 12 years old provides testimony via closed-circuit television or videotaped recording,

[O]nly the judge, the attorneys for the defendant and for the state, any person whose presence would contribute to the welfare and well-being of the child, persons necessary to operate the recording or closed-circuit equipment and, in a child protection proceeding under chapter 260 [Juveniles] or a dissolution or custody proceeding under chapter 518 [Marriage Dissolution], the attorneys for those parties with a right to participate may be present with the child during the child's testimony.

(c) The court shall permit the defendant in a criminal or delinquency matter to observe and hear the testimony of the child in person. If the court, upon its own motion or the motion of any party, finds in a hearing conducted outside the presence of the jury, that the presence of the defendant during testimony taken pursuant to this subdivision would psychologically traumatize the witness so as to render the witness unavailable to testify, the court may order that the testimony be taken in a manner that:

- (1) the defendant can see and hear the testimony of the child in person and communicate with counsel, but the child cannot see or hear the defendant; or
- (2) the defendant can see and hear the testimony of the child by video or television monitor from a separate room and communicate with counsel, but the child cannot see or hear the defendant.

When a prosecuting attorney discloses a videotaped interview of a child victim of physical or sexual abuse to a defendant or the defendant's attorney, only two copies of any portion of the tape may be made by the defendant,

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trafficking involving a child who is identified as a victim of sex trafficking. Sexual abuse includes child sex trafficking as defined in section 609.321 and subdivisions 7a and 7b. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation which requires registration as an offender under section 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section 243.166, subdivision 1b, paragraph (a) or (b).

*See supra* note 86.



the defendant's attorney, or by any agent or representative of the defendant, the tapes may only be used to prepare for defense, may only be publicly shown in judicial proceedings against the defendant, may only be viewed by the defendant and those working on the defense, and must be returned to the prosecuting attorney after a final disposition of the case. Minn. Stat. Ann. § 634.35(a). Furthermore, "[N]o person may be granted access to the tapes, any transcription of the tapes, or the substance of any portion of the tapes unless the person has first signed a written agreement that the person is aware of this statute and acknowledges that the person is subject to the court's contempt powers for any violation of it." Minn. Stat. Ann. § 634.35(a)(6).

In addition to limits on public access to recorded child testimony, restrictions are also placed on the discovery of "a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse." In releasing discoverable material "the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b)," which states that "[t]he court order may govern the purposes for which the videotape may be used, reproduction, release to other persons, retention and return of copies, and other requirements reasonably necessary for protection of the privacy and best interests of the child." Minn. Stat. Ann. §§ 13.03(6), 611A.90(2)(b).

Additionally, the judge may exclude spectators from the courtroom at "the trial of a complaint or indictment for a violation of sections 609.341 [Definitions] to 609.3451 [Criminal sexual conduct in the fifth degree]; 609.3453 [Criminal sexual predatory conduct]; [or] 617.246, subdivision 2 [Use of minor in sexual performance prohibited] . . . when a minor under 18 years of age is the person upon, with, or against whom the crime is alleged to have been committed," and may also authorize the presence of any supportive person in the courtroom for prosecuting witnesses who are minors in cases involving child abuse as defined in Minn. Stat. Ann. § 630.36 (Issues, how disposed of), which expressly includes conduct amounting to violations of, among other laws, Minn. Stat. Ann. § 609.321 (Prostitution and sex trafficking; definitions), § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), and § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties). Minn. Stat. Ann. §§ 631.045, 631.046(1).

Victims or alleged victims of trafficking are afforded additional protections to prevent the disclosure of the victim's identity and address. Under Minn. Stat. Ann. § 13.82(17)(b) (Protection of identities),

A law enforcement agency or . . . dispatching agency working under the direction of a law enforcement agency shall withhold public access to data on individuals to protect the identity of individuals in the following circumstances:

. . . .

(b) when access to the data would reveal the identity of a victim or alleged victim of criminal sexual conduct or sex trafficking under section 609.322, 609.342 to 609.3451 or 617.246(2).

Furthermore, when a victim is a participant of the designated address program under Minn. Stat. Ann. § 5B.05 (Use of designated address), the victim's address is prevented from being disclosed during discovery or a court proceeding except for a few limited exceptions, including to protect the Constitutional rights of the defendant.

Lastly, Minnesota prohibits any polygraph testing for victims. Under Minn. Stat. Ann. § 611A.26 (1), "No law enforcement agency or prosecutor shall require that a complainant of a criminal sexual conduct or sex trafficking offense submit to a polygraph examination as part of or a condition proceeding with the investigation, charging, or prosecution of such offense."

#### 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.*

Minnesota law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, but juvenile records may be expunged without a waiting period.



Pursuant to Minn. Stat. Ann. § 260B.171(1) (Records),

(a) . . . Except as provided in paragraph (b), the court shall keep and maintain records pertaining to delinquent adjudications until the person reaches the age of 28 years . . . .

(b) The court shall retain records of the court finding that a juvenile committed an act that would be a felony- or gross misdemeanor level offense until the offender reaches the age of 28. If the offender commits a felony as an adult, or the court convicts a child as an extended jurisdiction juvenile, the court shall retain the juvenile records for as long as the records would have been retained if the offender had been an adult at the time of the juvenile offense . . . .

Minn. Stat. Ann. § 260B.198(6) (Expungement) allows the court to expunge records without mandating a waiting period, but records “expunged” on or after January 1, 2015 are merely sealed. Minn. Stat. Ann. § 260B.198(6) states,

(a) The court may expunge all records relating to delinquency at any time if the court determines that expungement of the record would yield a benefit to the subject of the record that outweighs the detriment to the public and public safety in sealing the record . . . .

. . . .

(c) A record expunged under this subdivision prior to January 1, 2015, may not be opened or exchanged. A record expunged under this subdivision on or after January 1, 2015, is sealed and access only allowed pursuant to paragraph (d).

(d) Notwithstanding paragraph (a), a record that is expunged under this subdivision on or after January 1, 2015, may be opened, used, or exchanged between criminal justice agencies in the same manner as a criminal record under section 609A.03, subdivision 7a, paragraph (b) [Limitations of order effective before January 1, 2015].

. . . .

Because records may be “opened, used, or exchanged,” child sex trafficking victims may face collateral consequences associated with having accessible delinquency records.

5.9.1 Recommendation: Enact a law that allows child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.<sup>91</sup>

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

Minors victimized through prostitution or use in child sexual abuse material (CSAM) may pursue several civil claims under Minnesota law. Specifically, Minn. Stat. Ann. § 611A.81(1)(b) (Cause of action for coercion for use in prostitution) provides,

An individual has a cause of action against a person who did the following while the individual was a minor:

- (1) solicited or induced the individual to practice prostitution;
- (2) promoted the prostitution of the individual;
- (3) collected or received the individual’s earnings derived from prostitution; or
- (4) hired, offered to hire, or agreed to hire the individual to engage in prostitution.

Pursuant to Minn. Stat. Ann. § 611A.81(2),

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<sup>91</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

A person against whom a cause of action may be maintained under subdivision 1 is liable for the following damages that resulted from the plaintiff's being used in prostitution or to which the plaintiff's use in prostitution proximately contributed:

- (1) economic loss, including damage, destruction, or loss of use of personal property; loss of past or future income or earning capacity; and income, profits, or money owed to the plaintiff from contracts with the person; and
- (2) damages for death as may be allowed under section 573.02, personal injury, disease, and mental and emotional harm, including medical, rehabilitation, and burial expenses; and pain and suffering, including physical impairment.

Civil remedies are also available under Minn. Stat. Ann. § 617.245(2) (Civil action; use of minor in sexual performance). Under Minn. Stat. Ann. § 617.245(2), "A cause of action exists for injury caused by the use of a minor [under the age of 16] in a sexual performance. The cause of action exists against a person who promotes, employs, uses, or permits a minor to engage or assist others to engage in posing or modeling alone or with others in a sexual performance, if the person knows or has reason to know that the conduct intended is a sexual performance." Subsection (2) also states, "A person found liable for injuries under this section is liable to the minor for damages."

Civil remedies are also available under Minn. Stat. Ann. § 541.073(3) (Actions for damages due to sexual abuse; special provisions) which "applies to an action for damages commenced against a person who was a cause of the plaintiff's damages either by (1) committing sexual abuse against the plaintiff, or (2) negligence." "Sexual abuse" is defined under Minn. Stat. Ann. § 541.073(1)(1) to mean "conduct described in sections 609.342 [Criminal sexual conduct in the first degree] to 609.3451 [Criminal sexual conduct in the fifth degree]." Minn. Stat. Ann. § 541.073(2)(b) further clarifies that "[t]he plaintiff need not establish which act in a continuous series of sexual abuse acts by the defendant caused the injury."

Under Minn. Stat. Ann. § 611A.04(1),

A victim<sup>92</sup> of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent . . . . A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 [Depriving another of custodial or parental rights] to the child's parents or lawful custodian, and funeral expenses. An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim's right to obtain court-ordered restitution under this section . . . .

Finally, Minn. Stat. Ann. § 609.284 (Labor or sex trafficking crimes; defenses; civil liability; corporate liability) creates civil liability for "a person who violates section 609.282 [Labor trafficking] or 609.283 [Unlawful conduct with respect to documents in furtherance of labor or sex trafficking]" and sets out specific penalties for corporations convicted under Minn. Stat. Ann. § 609.283 or § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking).

#### 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.*

Limitations periods for criminal offenses vary. Pursuant to Minn. Stat. Ann. § 628.26(e) (Limitations), "Indictments or complaints for violation of sections 609.322 [Solicitation, inducement, and promotion of

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<sup>92</sup> See *supra* note 32.

prostitution; sex trafficking] and 609.342 [Criminal sexual conduct in the first degree] to 609.345 [Criminal sexual conduct in the fourth degree] if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.”<sup>93</sup> For offenses that do not have a specific limitation listed in Minn. Stat. Ann. § 628.26, “indictments or complaints shall be found or made and filed in the proper court within three years after the commission of the offense.” Minn. Stat. Ann. § 628.26(k).

Civil claims under Minn. Stat. Ann. § 611A.81(1) (Cause of action for coercion for use in prostitution) must be commenced within 6 years from the date that the cause of action arises, “except that the running of the limitation period is suspended during the time that coercion as defined in section 611A.80 continues, or as otherwise provided by section 541.13 [Absence from state] or 541.15 [Periods of disability not counted].” Minn. Stat. Ann. § 611A.84. Civil claims under Minn. Stat. Ann. § 617.245(2) (Civil action; use of minor in sexual performance) must be commenced within 6 years of “the time the plaintiff knew or had reason to know injury was caused by plaintiff’s use as a minor in a sexual performance.” Minn. Stat. Ann. § 617.245(3).<sup>94</sup>

Similarly, Minn. Stat. Ann. § 541.073(2)(a) (Actions for damages due to sexual abuse; special provisions) provides that

[a]n action for damages based on sexual abuse: (1) must be commenced within six years of the alleged sexual abuse in the case of alleged sexual abuse of an individual 18 years or older; (2) may be commenced at any time in the case of alleged sexual abuse of an individual under the age of 18, except as provided for in subdivision 4; and (3) must be commenced before the plaintiff is 24 years of age in a claim against a natural person alleged to have sexually abused a minor when that natural person was under 14 years of age.<sup>95</sup>

Moreover, in any case in which the plaintiff is under 18 when the cause of action arises, the applicable statute of limitations will be tolled during minority pursuant to Minn. Stat. Ann. § 541.15(a) (Periods of disability not counted). Finally, Minn. Stat. Ann. § 541.073(4) provides that

[a] claim for vicarious liability or liability under the doctrine of respondeat superior must be commenced within six years of the alleged sexual abuse, provided that if the plaintiff was under the age of 18 at the time of the alleged abuse, the claim must be commenced before the plaintiff is 24 years of age. This subdivision does not limit the availability of these claims under other law.

- 5.11.1 Recommendation: Amend Minn. Stat. Ann. § 628.26 to eliminate the statute of limitations for commencing prosecution of violations of § 609.322(1) (Solicitation, inducement, and promotion of prostitution; sex trafficking).

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<sup>93</sup> Minn. Stat. Ann. § 628.26(f) (Limitations) further states “Notwithstanding the limitations in paragraph (e), indictments or complaints for violation of sections 609.322 and 609.342 to 609.344 may be found or made and filed in the proper court at any time after commission of the offense, if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. If this evidence is not collected and preserved and the victim was 18 years old or older at the time of the offense, the prosecution must be commenced within nine years after the commission of the offense.”

<sup>94</sup> For purposes of determining when a cause of action under Minn. Stat. Ann. § 617.245 arises, “The knowledge of a parent, guardian, or custodian may not be imputed to the minor.” Minn. Stat. Ann. § 617.245(3).

<sup>95</sup> See *supra* Component 5.10 for a discussion of applicability under Minn. Stat. Ann. § 541.073 and definition of “sexual abuse.”

***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.*

Pursuant to Minn. Stat. Ann. § 299A.71(1) (Combating juvenile prostitution; prevention grants), “A grant program is established for enhanced law enforcement efforts and peace officer education and training to combat juvenile prostitution.” The grant program’s stated goal is to “provide peace officers with the knowledge and skills to recognize individuals who sexually exploit youth, charge and prosecute these individuals for promotion and solicitation of prostitution, and effectively communicate with the victims of juvenile prostitution.” Under subsection (2), the commission of public safety must make such grants available to local law enforcement agencies “to provide enhanced efforts targeted to juvenile prostitution and training and staff development relating to the prevention of juvenile prostitution,” and any law enforcement agency receiving a grant must use “all of the grant funding received for efforts to combat juvenile prostitution.” Minn. Stat. Ann. § 299A.71(2).

Minnesota appropriated funds to certain professionals who encounter sexually exploited and trafficked youth for training, identifying, investigating, intervening, and prosecuting. Specifically, Enacted Senate File 671,<sup>96</sup> article 1, section 12, subdivision 6(e) grants \$350,000 each year for use by the Ramsey County Attorney's Office to:

- (1) develop a statewide model protocol for law enforcement, prosecutors, and others, who in their professional capacity encounter sexually exploited and trafficked youth, on identifying and intervening with sexually exploited and trafficked youth;<sup>97</sup>
- (2) conduct statewide training for law enforcement and prosecutors on the model protocol and the Safe Harbor Law described in Laws 2011, First Special Session chapter 1, article 4, as modified by Senate File No. 384, article 2, if enacted; and
- (3) develop and disseminate to law enforcement, prosecutors, and others, who in their professional capacity encounter sexually exploited and trafficked youth, on investigative best practices to identify sex trafficked victims and traffickers.

In addition, the grant allows the Ramsey County attorney to “use the money appropriated in this paragraph to partner with other entities to implement clauses (1) to (3).” MN SF 671, article 1, section 12, subdivision 6(e).

<sup>96</sup> 2013 Minnesota Session Laws ch. 86, section 12, subd. 6(e).

<sup>97</sup> Minnesota’s “Safe Harbor Protocol Guidelines” can be found online at [https://www.mncasa.org/wp-content/uploads/2018/07/Safe\\_Harbor\\_Protocol\\_Guidelines.pdf](https://www.mncasa.org/wp-content/uploads/2018/07/Safe_Harbor_Protocol_Guidelines.pdf).

Furthermore, Enacted Senate File 671, article 1, section 13(c) allocates \$10,000 “for reimbursements to local governments for peace officer training costs on sexually exploited and trafficked youth, including effectively identifying sex trafficked victims and traffickers, investigation techniques, and assisting sexually exploited youth.”

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

Single party consent to audio recording and interception of oral communications is permitted in Minnesota. Minn. Stat. Ann. § 626A.02(2)(c) (Interception and disclosure of wire, electronic, or oral communications prohibited) states, “It is not unlawful under this chapter for a person acting under color of law to intercept a wire, electronic, or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.”

Further, under Minn. Stat. Ann. § 626A.02(d),

It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, electronic, or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state.

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

Law enforcement officers investigating a violation of, among other offenses, Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking) may use wiretapping and the resulting evidence. Although Minn. Stat. Ann. § 626A.02(1) (Interception and disclosure of wire, electronic, or oral communications prohibited) generally makes it unlawful if a person “intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, electronic, or oral communication,” pursuant to Minn. Stat. Ann. § 626A.05(2) (Authorization for interception of wire, electronic, or oral communications),

A warrant authorizing interception of wire, electronic, or oral communications by investigative or law enforcement officers may only be issued when the interception may provide evidence of the commission of, or of an attempt or conspiracy to commit, any of the following offenses:

- (1) a felony offense involving . . . kidnapping, criminal sexual conduct in the first, second, and third degrees, prostitution . . . as punishable under sections . . . 609.25 [Kidnapping], 609.321 [Prostitution and sex trafficking; definitions] to 609.324 [Patrons; prostitutes; housing individuals engaged in prostitution; penalties], 609.342 [Criminal sexual conduct in the first degree], 609.343 [Criminal sexual conduct in the second degree], 609.344 [Criminal sexual conduct in the third degree] . . . .

. . . .

Therefore, a law enforcement officer investigating a violation of Minn. Stat. Ann. § 609.322 (Solicitation, inducement, and promotion of prostitution; sex trafficking), § 609.324 (Patrons; prostitutes, housing individuals engaged in prostitution; penalties), and § 609.25 (Kidnapping), may be able to obtain a warrant pursuant to Minn. Stat. Ann. § 626A.06 (Procedure for interception of wire, electronic, or oral communication) authorizing the use of wiretapping.

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.*

Minnesota’s patronizing offense, Minn. Stat. Ann. § 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution; penalties) prohibits a defense as to the use of a law enforcement decoy when investigating the soliciting, purchasing or selling sex with a minor. Minn. Stat. Ann. § 609.325(3a) (Defenses) expressly prohibits the defense, stating, “[t]he fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense shall not be a defense to a prosecution under section 609.324 (Patrons; prostitutes; housing individuals engaged in prostitution penalties).” Therefore, for charges brought against buyers through reverse sting operations, this defense should not be accessible, which are the most likely situations in which a defendant would try to raise such a defense.

Additionally, buyers are prohibited from raising the defense under Minn. Stat. Ann. § 609.352(3) (Defenses) expressly provides,

The fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense under this section does not constitute a defense to prosecution under this section.”

Minn. Stat. Ann. § 609.352(2) (Prohibited act) implicitly provides an additional barrier to the defense by criminalizing the solicitation of child, regardless of any actual knowledge that the person being solicited is a child. By including the specific language of “someone the person reasonably believes is a child,” Minn. Stat. Ann. § 609.352(2)<sup>98</sup> appears to open the possibility of the use of a decoy by law enforcement in the investigation of the crime.

A person 18 years of age or older who solicits a child or someone the person reasonably believes is a child to engage in sexual conduct with intent to engage in sexual conduct is guilty of a felony and may be sentenced as provided in subdivision 4.

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

Using the Internet or electronic communications to investigate buyers and traffickers appears to be a permissible investigative technique under Minnesota law. “A person 18 years of age or older” violates Minn. Stat. Ann. § 609.352(2a) (Electronic solicitation of children) if he,

uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person . . .

- (1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;
- (2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or
- (3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

The standard of “someone the person reasonably believes is a child” appears to open the possibility of law enforcement using the Internet to pose as a child in an investigation for this offense. Minn. Stat. Ann.

<sup>98</sup> See *supra* Component 1.2 for the text of Minn. Stat. Ann. § 609.352(2) (Prohibited act).



§ 609.352(1)(a) (Definitions) defines “child” as “a person 15 years of age or younger.” Moreover, Minn. Stat. Ann. § 609.352(3) (Defenses) expressly provides, “The fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense under this section does not constitute a defense to prosecution under this section.”

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

Minn. Stat. Ann. § 299C.52(2) (Minnesota missing children and endangered persons program) requires Minnesota to establish and to maintain a missing children and persons program “to enable documented information about missing Minnesota children and endangered persons to be entered into the NCIC [National Crime Information Center] computer.” Law enforcement agencies must “accept without delay any report of a missing person” and upon receipt of a report, must “conduct a preliminary investigation to determine whether the person is missing,<sup>99</sup> and if missing, whether the person is endangered.”<sup>100</sup> Minn. Stat. Ann. § 299C.53(1)(a), (b). Minn. Stat. Ann. § 299C.53(1)(b) further provides,

If the person is initially determined to be missing and endangered, the agency shall immediately consult the Bureau of Criminal Apprehension during the preliminary investigation, in recognition of the fact that the first two hours are critical. If the person is determined to be missing and endangered, the agency shall immediately enter identifying and descriptive information about the person into the NCIC computer. Law enforcement agencies having direct access to the NCIC computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies which do not have direct access to the systems.

Additionally, “The law enforcement agency shall promptly notify all appropriate law enforcement agencies in the state and, if deemed appropriate, law enforcement agencies in adjacent states or jurisdictions of any information that may aid in the prompt location and safe return of a missing and endangered person.” Minn. Stat. Ann. § 299C.53(3). Once a law enforcement agency locates or returns a missing person, “[a]s soon as is practically possible after a missing person is located, the law enforcement agency which located or returned the

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<sup>99</sup> Minn. Stat. Ann. § 299C.52(1)(d) defines “missing” as “the status of a person after a law enforcement agency that has received a report of a missing person has conducted a preliminary investigation and determined that the person cannot be located.”

<sup>100</sup> Under Minn. Stat. Ann. § 299C.52(1)(c), a person is “endangered” if

a law enforcement official has received sufficient evidence that the missing person is at risk of physical injury or death. The following circumstances indicate that a missing person is at risk of physical injury or death:

- (1) the person is missing as a result of a confirmed abduction or under circumstances that indicate that the person’s disappearance was not voluntary;
- (2) the person is missing under known dangerous circumstances;
- (3) the person is missing more than 30 days;
- (4) the person is under the age of 21 and at least one other factor in this paragraph is applicable;
- (5) there is evidence the person is in need of medical attention or prescription medication such that it will have a serious adverse effect on the person’s health if the person does not receive the needed care or medication;
- (6) the person does not have a pattern of running away or disappearing;
- ....
- (8) there is evidence that the person may have been abducted by a noncustodial parent;
- (9) the person has been the subject of past threats or acts of violence;
- ....
- (11) any other factor that the law enforcement agency deems to indicate that the person may be at risk of physical injury or death, including a determination by another law enforcement agency that the person is missing and endangered.

missing person shall notify the law enforcement agency having jurisdiction over the investigation, and that agency shall cancel the entry from the NCIC computer.” Minn. Stat. Ann. § 299C.53(2).

Additionally, Minn. Stat. Ann. § 299C.54(1) (Missing children bulletin) directs the Commissioner to circulate a missing persons bulletin to local law enforcement agencies, county attorneys, and, in the case of missing children, to public and nonpublic schools. The commissioner shall also make this information accessible to other parties involved in efforts to locate missing children and endangered persons and to other persons as the commissioner considers appropriate.

Minnesota also requires the local social services agency to report a missing child or a child believed to be at risk for sex trafficking to law enforcement within 24 hours under Minn. State. Ann. § 260C.212(13) (Protecting missing and runaway children and youth at risk of sex trafficking), which states:

- (a) The local social services agency shall expeditiously locate any child missing from foster care.
- (b) The local social services agency shall report immediately, but no later than 24 hours, after receiving information on a missing or abducted child to the local law enforcement agency for entry into the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation, and to the National Center for Missing and Exploited Children.
- (c) The local social services agency shall not discharge a child from foster care or close the social services case until diligent efforts have been exhausted to locate the child and the court terminates the agency's jurisdiction.
- (d) The local social services agency shall determine the primary factors that contributed to the child's running away or otherwise being absent from care and, to the extent possible and appropriate, respond to those factors in current and subsequent placements.
- (e) The local social services agency shall determine what the child experienced while absent from care, including screening the child to determine if the child is a possible sex trafficking victim as defined in section 609.321, subdivision 7b.
- (f) The local social services agency shall report immediately, but no later than 24 hours, to the local law enforcement agency any reasonable cause to believe a child is, or is at risk of being, a sex trafficking victim.
- (g) The local social services agency shall determine appropriate services as described in section 145.4717 with respect to any child for whom the local social services agency has responsibility for placement, care, or supervision when the local social services agency has reasonable cause to believe the child is, or is at risk of being, a sex trafficking victim.

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