

## 2019 ANALYSIS AND RECOMMENDATIONS

### MISSISSIPPI

#### 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 sex 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 sex 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.*

The Mississippi Human Trafficking Act, Miss. Code Ann. §§ 97-3-54 to 97-3-54.9, criminalizes sex trafficking of minors without regard to use of force, fraud, or coercion. Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty). Miss. Code Ann. § 97-3-54.1(1)(c) addresses the sex trafficking of minors specifically, stating,

A person who knowingly subjects, or attempts to subject, or who recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, a minor, knowing that the minor will engage in commercial sexual activity,<sup>2</sup> sexually explicit performance,<sup>3</sup> or the production of sexually oriented material,<sup>4</sup> or causes or attempts to cause a

<sup>1</sup> This report includes legislation enacted as of August 1, 2019.

<sup>2</sup> Pursuant to Miss. Code Ann. § 97-3-54.4(e) (Mississippi Human Trafficking Act; definitions), “commercial sexual activity” is defined as “any sex act on account of which anything of value is given to, promised to, or received by any person.”

<sup>3</sup> “Sexually-explicit performance” is defined in Miss. Code Ann. § 97-3-54.4(p) as “a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.”

<sup>4</sup> “Sexually oriented material” is defined in § 97-3-54.4(s) by referring to Miss. Code Ann. § 97-5-27, which defines the term as material that “contains representations or descriptions, actual or simulated, of masturbation, sodomy,

minor to engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, shall be guilty of procuring sexual servitude of a minor . . . .

Miss. Code Ann. § 97-3-54.4(k) (Human Trafficking Act; definitions) defines a “minor” as a person under 18. Under Miss. Code Ann. § 97-3-54.4(q), “trafficked person” is defined as “a person subjected to the practices prohibited by this act [Sections 97-3-54 through 97-3-54.9] regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted, and is a term used interchangeably with the terms ‘victim,’ ‘victim of trafficking’ and ‘trafficking victim.’”<sup>5</sup>

Pursuant to Miss. Code Ann. § 97-3-2, human trafficking as provided in § 97-3-54.1 is defined as a crime of violence.<sup>6</sup> Persons convicted of trafficking minors under Miss. Code Ann. § 97-3-54.1(1)(c) face higher penalties than those convicted of trafficking adults. A conviction under Miss. Code Ann. § 97-3-54.1(1)(c)<sup>7</sup> carries a minimum sentence of 20 years to a maximum sentence of life compared to a maximum of 20 years for trafficking adults under Miss. Code Ann. §§ 97-3-54.1(1)(a) and (b), 97-3-54.1(2). The Mississippi Human Trafficking Act also provides for fines as part of its penalty scheme. For violations of Miss. Code Ann. § 97-3-54.1(1)(c) fines from \$50,000.00–\$500,000.00 may be imposed. Additionally, a maximum fine of \$10,000 may be imposed as provided in Miss. Code Ann. § 99-19-32(1) (Fines and assessments upon persons convicted of offenses punishable by imprisonment for more than one year; deposit in Criminal Justice Fund).<sup>8</sup>

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. Miss. Code Ann. § 97-29-51(1)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states,

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excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.”

<sup>5</sup> A victim of human trafficking who is charged with a violation of Miss. Code Ann. § 97-3-54.1 (Human Trafficking Act; prohibited conduct; penalty) may assert an affirmative defense under Miss. Code Ann. § 97-3-54.1(5), which states:

It is an affirmative defense in a prosecution under this act that the defendant:

- (a) Is a victim; and
- (b) Committed the offense under a reasonable apprehension created by a person that, if the defendant did not commit the act, the person would inflict serious harm on the defendant, a member of the defendant's family, or a close associate.

Additionally, Miss. Code Ann. § 97-3-54.1(4) provides in part, “[a] minor who has been identified as a victim of trafficking shall not be liable for criminal activity in violation of this section.”

<sup>6</sup> Miss. Code Ann. § 97-3-2 further provides that no person convicted of a crime of violence listed in § 97-3-2(1) is eligible for parole or early release until 50% of the sentence has been served.

<sup>7</sup> The text of Miss. Code Ann. § 97-3-54.1 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 and Senate Bill 2305 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

<sup>8</sup> Miss. Code Ann. § 99-19-32(1) (Fines and assessments upon persons convicted of offenses punishable by imprisonment for more than one year; deposit in Criminal Justice Fund) states, “(1) Offenses punishable by imprisonment in the State Penitentiary for more than one (1) year and for which no fine is provided elsewhere by statute may be punishable by a fine not in excess of Ten Thousand Dollars (\$10,000.00). Such fine, if imposed, may be in addition to imprisonment or any other punishment or penalty authorized by law.”

A person commits the misdemeanor of procuring the services of a prostitute if the person knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or sexual conduct with the person or with any other person. "Sexual conduct" includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.

When the person whose services are procured is a minor under 18, "the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both." Miss. Code Ann. § 97-29-51(1)(c).

2. Miss. Code Ann. § 97-29-51(2)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states,

A person commits the felony of promoting prostitution if the person:

- (i) Knowingly or intentionally entices, compels, causes, induces, persuades, or encourages by promise, threat, violence, or by scheme or device, another person to become a prostitute;
- (ii) Knowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution;
- (iii) Knowingly induces, persuades, or encourages a person to come into or leave this state for the purpose of prostitution;
- (iv) Having control over the use of a place or vehicle, knowingly or intentionally permits another person to use the place or vehicle for prostitution;
- (v) Accepts, receives, levies or appropriates money or other property of value from a prostitute, without lawful consideration, with knowledge or reasonable cause to know it was earned, in whole or in part, from prostitution; or
- (vi) Conducts, directs, takes, or transports, or offers or agrees to take or transport, or aids or assists in transporting, any person to any vehicle, conveyance, place, structure, or building, or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution.

When the person whose services are promoted is a minor under 18, "the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both." Miss. Code Ann. § 97-29-51(2)(c).

3. Miss. Code Ann. § 97-5-5 (Enticing a child under 14; punishment) makes it a crime to "maliciously, willfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen (14) years, with intent to detain or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage." Upon conviction, a person will "be imprisoned in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years, or fined not more than Ten Thousand Dollars (\$10,000.00), or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Sections 97-3-54 et seq." Miss. Code Ann. § 97-5-5.
4. Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) states,

1. No person shall, by any means including computer, cause, solicit or knowingly permit any child<sup>9</sup> to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
2. No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.
3. No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
4. No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
5. No person shall, by any means including computer, knowingly possess or knowingly access with intent to view any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
6. No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.
7. No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.

Pursuant to Miss. Code Ann. § 97-3-2, exploitation of a child as provided in § 97-5-33 is defined as a crime of violence. Under Miss. Code Ann. § 97-5-35, a first conviction for violating any provision of Miss. Code Ann. § 97-5-33 is punishable by imprisonment for 5–40 years and a \$50,000–\$500,000 fine.<sup>10</sup> Repeat offenders face 20 years to life imprisonment and a \$100,000–\$1,000,000 fine. Miss. Code Ann. § 97-5-35.

Mississippi has several laws that, although not specifically directed towards commercial sexual exploitation, could potentially be used to convict persons engaged in the commercial sexual exploitation of children.

1. Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) states,

....

(3) (a) A person is guilty of computer luring when:

- (i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and
- (ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

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(4) Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97–3–54 et seq.

<sup>9</sup> Child is defined in Miss. Code Ann. § 97-5-31(a) (Exploitation of children; definitions) as “any individual who has not attained the age of eighteen (18) years.”

<sup>10</sup> Mississippi does not use a felony crime classification system.

A conviction is punishable as a felony by imprisonment up to 3 years and a fine up to \$10,000. Miss. Code Ann. § 97-5-27(3)(e).

2. Miss. Code Ann. § 97-5-39(1)(a) (Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child) penalizes a “parent, guardian or any other person who intentionally, knowingly or recklessly commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child . . . .”<sup>11</sup> A conviction is punishable as a misdemeanor by up to 1 year in jail, a fine of up to \$1,000, or both. Miss. Code Ann. § 97-5-39(1)(a). “A parent, legal guardian or other person who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child” is subject to sentenced to imprisonment in the custody of the Department of Corrections for up to 10 years, a fine of up to \$10,000, or both. Miss Code Ann. § 97-5-39(1)(e).
3. Miss. Code Ann. § 97-3-65(1) (Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances) states,

The crime of statutory rape is committed when:

- (a) Any person seventeen (17) years of age or older has sexual intercourse with a child who:
  - (i) Is at least fourteen (14) but under sixteen (16) years of age;
  - (ii) Is thirty-six (36) or more months younger than the person; and
  - (iii) Is not the person’s spouse; or
- (b) A person of any age has sexual intercourse<sup>12</sup> with a child who:
  - (i) Is under the age of fourteen (14) years;
  - (ii) Is twenty-four (24) or more months younger than the person; and
  - (iii) Is not the person’s spouse.

Pursuant to Miss. Code Ann. § 97-3-65(3), a person convicted of violating § 97-3-65(1) may be penalized as follows:

- (a) If eighteen (18) years of age or older, but under twenty-one (21) years of age, and convicted under subsection (1)(a) of this section, to imprisonment for not more than five (5) years in the State Penitentiary or a fine of not more than Five Thousand Dollars (\$ 5,000.00), or both;
- (b) If twenty-one (21) years of age or older and convicted under subsection (1)(a) of this section, to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$ 10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense;
- (c) If eighteen (18) years of age or older and convicted under subsection (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years;
- (d) If thirteen (13) years of age or older but under eighteen (18) years of age and convicted under subsection (1)(a) or (1)(b) of this section, such imprisonment, fine or other sentence as the court, in its discretion, may determine.

Pursuant to Miss. Code Ann. § 97-3-65(4)(a), if the defendant incapacitated the victim by drug or drink or used force, the sentence may be extended to life in prison at the jury’s or the judge’s discretion.

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<sup>11</sup> See *infra* Component 5.5 for discussion of the term “abused child.”

<sup>12</sup> Miss. Code Ann. § 97-3-65(7) defines “sexual intercourse” as “a joining of the sexual organs of a male and female human being in which the penis of the male is inserted into the vagina of the female or the penetration of the sexual organs of a male or female human being in which the penis or an object is inserted into the genitals, anus or perineum of a male or female.”

4. Miss. Code Ann. § 97-3-95(1) (Sexual battery)<sup>13</sup> states in part, “A person is guilty of sexual battery if he or she engages in sexual penetration<sup>14</sup> with: . . . (c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child; or (d) A child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child.” Pursuant to Miss. Code Ann. § 97-3-101 (Sexual battery; penalty), the penalties for Miss. Code Ann. § 97-3-95(1)(c), (d) for offenders over 18 are as follows:

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- (2) (a) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is at least eighteen (18) but under twenty-one (21) years of age shall be imprisoned for not more than five (5) years in the State Penitentiary or fined not more than Five Thousand Dollars (\$ 5,000.00), or both;
- (b) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is twenty-one (21) years of age or older shall be imprisoned not more than thirty (30) years in the State Penitentiary or fined not more than Ten Thousand Dollars (\$ 10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense.
- (3) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(d) who is eighteen (18) years of age or older shall be imprisoned for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years.<sup>15</sup>
5. Miss. Code Ann. § 97-5-23(1) (Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person) provides, “Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child under the age of sixteen (16) years, with or without the child’s consent,” is guilty of a felony punishable by imprisonment for 2–15 years, or a \$1,000–\$5,000 fine, or both. Pursuant to Miss. Code Ann. § 97-5-23(3), a defendant may be sentenced to imprisonment up to 20 years for a subsequent conviction; at least half of the sentence must be served.

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

Miss. Code Ann. § 97-29-49(4)<sup>16</sup> (Prostitution) refers to the human trafficking statute, stating, “[i]f it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as

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<sup>13</sup> Miss. Code Ann. § 97-3-99 (Sexual battery; defense) provides, “A person is not guilty of any offense under Sections 97-3-95 through 97-3-103 if the alleged victim is that person’s legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.”

<sup>14</sup> Pursuant to Miss. Code Ann. § 97-3-97(a) (Sexual battery; definitions), “‘Sexual penetration’ includes cunnilingus, fellatio, buggery or pederasty, any penetration of the genital or anal openings of another person’s body by any part of a person’s body, and insertion of any object into the genital or anal openings of another person’s body.”

<sup>15</sup> Miss. Code Ann. § 97-3-99 (Sexual battery; defense) provides a defense to this charge as follows:

A person is not guilty of any offense under Sections 97-3-95 through 97-3-103 if the alleged victim is that person’s legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.

<sup>16</sup> The text of Miss. Code Ann. § 97-29-49 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

a direct result of being a trafficked person, as defined by Section 97–3–54.4 [Definitions related to human trafficking], that person shall be immune from prosecution for prostitution as an adult. If the person suspected of engaging in acts that would constitute prostitution is under the age of eighteen (18) the provisions of Section 97-3-54.1(4) [Human Trafficking Act; prohibited conduct; penalty] shall be applicable.”

Additionally, Miss. Code Ann. § 97-29-51(3) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states,

If it is determined that a person suspected of or charged with promoting prostitution is a trafficked person, as defined by Section 97–3–54.4, that fact shall be considered a mitigating factor in any prosecution of that person for prostitution, and the person shall be referred to appropriate resources for assistance. If it is determined that a person suspected of or charged with promoting prostitution is a minor under eighteen (18) years of age who meets the definition of a trafficked person as defined in Section 97–3–54.4, the minor is immune from prosecution for promoting prostitution as a juvenile or adult and provisions of Section 97–3–54.1(4) [Human trafficking; offenses] shall be applicable.

*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.*

Mississippi’s Racketeer Influenced and Corrupt Organizations Act (RICO), codified at Miss. Code Ann. § 97-43-5 (Prohibited activities), provides,

1. It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
2. It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
3. It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
4. It is unlawful for any person to conspire to violate any of the provisions of subsections (1), (2) or (3) of this section.

“Racketeering activity” is defined in Miss. Code Ann. § 97-43-3(a) as “to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit any crime which is chargeable under” certain specified provisions, including § 97-29-49 (Prostitution), § 97-29-51 (Procuring prostitutes), § 97-5-5 (Enticing a child for concealment, prostitution or marriage), § 97-5-31 –37 (Exploitation of children), and § 97-3-54 et seq. (Mississippi Human Trafficking Act). Miss. Code Ann. § 97-43-3(a)(10), (11), and (16). A “pattern of racketeering activity” is defined in Miss. Code Ann. § 97-43-3(d) as “engaging in at least two (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one (1) of such incidents occurred after the effective date of this chapter and that the last of such incidents occurred within five (5) years after a prior incident of racketeering conduct.”

A conviction for violating the Racketeer Influenced and Corrupt Organizations Act (RICO), Miss. Code Ann. §§ 97-43-1 through -11, carries a 20-year maximum sentence, or a maximum fine of \$25,000, or both pursuant

to Miss. Code Ann. § 97-43-7 (Penalties). In the alternative, subsection (2) states, “In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of this chapter, through which he derived pecuniary value, or by which he caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three (3) times the gross value gained or three (3) times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.” Miss. Code Ann. § 97-43-7(2).

Discretionary, civil forfeiture is also available for a racketeering violation, pursuant to Miss. Code Ann. § 97-43-9(2) which states, “[a]ll property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct in violation of a provision of this chapter is subject to civil forfeiture to the state” pursuant to Miss. Code Ann. § 97-43-11 (Seizure and forfeiture of property; procedures). Seizure of the property is governed by Miss. Code Ann. § 97-43-11(3) which states “(3) Property subject to forfeiture may be seized by law enforcement officers upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if: (a) The seizure is incident to an arrest or a search under a search warrant or an inspection under a lawful administrative inspection; (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding . . . .”

Where the enterprise targeted through the racketeering statute is a criminal gang, the Mississippi Street Gang Act<sup>17</sup> may apply as well. Miss. Code Ann. § 97-44-19 (Penalties for criminal street gang activity), states in part,

1. Any person who intentionally directs, participates, conducts, furthers, or assists in the commission of illegal gang activity shall be punished by imprisonment for not less than one (1) year nor more than one-half (1/2) of the maximum term of imprisonment provided for an underlying offense and may be fined an amount not to exceed Ten Thousand Dollars (\$ 10,000.00). Any sentence of imprisonment imposed pursuant to this section shall be in addition and consecutive to any sentence imposed for the underlying offense.
2. Any person who is convicted of a felony or an attempted felony which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the intent to promote, further, or assist in the affairs of a criminal gang, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be imprisoned for not less than one (1) year nor more than one-half (1/2) of the maximum term of imprisonment provided for that offense.
3. Any person who is convicted of an offense other than a felony which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct or enterprise by gang members, shall, in addition and consecutive to the penalty provided for that offense, be imprisoned for an additional period of not more than one (1) year.

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<sup>17</sup> “Streetgang” is defined at Miss. Code Ann. § 97-44-3(a) (Definitions) as “any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three (3) or more persons with an established hierarchy that, through its membership or through the agency of any member, engages in felonious criminal activity.” The definition further states, “For purposes of this chapter, it shall not be necessary to show that a particular conspiracy, combination or conjoining of persons possesses, acknowledges or is known by any common name, insignia, flag, means of recognition, secret signal or code, creed, belief, structure, leadership or command structure, method of operation or criminal enterprise, concentration or specialty, membership, age or other qualifications, initiation rites, geographical or territorial situs or boundary or location, or other unifying mark, manner, protocol or method of expressing or indicating membership when the conspiracy’s existence, in law or in fact, can be demonstrated by a preponderance of the competent evidence. However, any evidence reasonably tending to show or demonstrate, in law or in fact, the existence of or membership in any conspiracy, confederation or other association described herein, or probative of the existence of or membership in any such association, shall be admissible in any action or proceeding brought under this chapter.”



For such a violation, Miss. Code Ann. § 97-44-5 provides that the Attorney General, district attorney, or county attorney, or their designees may seek a civil remedy on behalf of “any public authority expending money, allocating or reallocating police, firefighting, emergency or other personnel or resources, or otherwise incurring any loss, deprivation or injury, or sustaining any damage, impairment or harm whatsoever, proximately caused by any criminal activity.” Pursuant to Miss. Code Ann. § 97-44-13(2), “A final judgment in favor of a public authority under this chapter shall entitle it to recover compensatory damages for all damages, losses, impairments or other harm proximately caused, together with the costs of the suit and reasonable attorney’s fees. Punitive damages may be assessed against any streetgang, against any streetgang officer or member found guilty of actual participation in, or to be legally accountable for, a criminal activity under this chapter. One hundred percent (100%) of punitive damages awarded will be expended by the public authority to implement preventative programs for juveniles or to fund existing programs.”

**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.*

Miss. Code Ann. § 97-3-54.1(1)(c)<sup>18</sup> (Mississippi Human Trafficking Act; prohibited conduct; penalty) addresses the sex trafficking of minors specifically and holds buyers liable for “causing” a minor to engage in commercial sex acts, stating,

A person who . . . causes or attempts to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, shall be guilty of procuring sexual servitude of a minor and shall be punished by commitment to the custody of the Department of Corrections for not less than twenty (20) years nor more than life in prison, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.

However, buyers are liable for committing the offense of child sex trafficking under Miss. Code Ann. § 97-3-54.1(1)(c) in limited circumstances. While Miss. Code Ann. § 97-3-54.1(1)(c) criminalizes the act of “causing a minor to engage in commercial sexual activity . . .,” “commercial sexual activity” is a form of “services” pursuant to Miss. Code Ann. § 97-3-54.4(o) (Anti-Human Trafficking Act; definitions), which narrows the applicability to buyers. Under Miss. Code Ann. § 97-3-54.4(o), “services” is defined as,

[A]n ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor or a third party and includes, without limitation, commercial sexual activity, sexually-explicit performances, or the production of sexually explicit materials.

Therefore, finding that the definition of “services” under Miss. Code Ann. § 97-3-54.4(o) requires that “commercial sexual activity” occurs within an “ongoing relationship . . . [and] under the supervision of or for the benefit of the actor or third party . . .” Miss. Code Ann. § 97-3-54.1(1)(c) only applies to buyers when the victim is under the control of an identified third party or trafficker.

<sup>18</sup> See *supra* note 7.

2.1.1 Recommendation: Amend Miss. Code Ann. § 97-3-54.1(1)(c) (Mississippi Human Trafficking Act; prohibited conduct; penalty) to expressly include buyer conduct as a violation of Miss. Code Ann. § 97-3-54.1(1)(c).

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

Miss. Code Ann. § 97-29-51(1)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states:

A person commits the misdemeanor of procuring the services of a prostitute if the person knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or sexual conduct with the person or with any other person. “Sexual conduct” includes cunnilingus, fellatio, masturbation of another, anal intercourse or the causing of penetration to any extent and with any object or body part of the genital or anal opening of another.”

When the person whose services are procured is a minor under 18, “the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(1)(c).

Pursuant to Miss. Code Ann. § 97-29-51(2)(a), “A person commits the felony of promoting prostitution if the person . . . (ii) [k]nowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution.” When the person whose services are promoted is a minor under 18, “the person convicted shall be guilty of a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(2)(c).

Miss. Code Ann. § 97-5-5 (Enticing a child under 14; punishment) makes it a crime to “maliciously, willfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen (14) years, with intent to detain or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage.” Upon conviction, a person will “be imprisoned in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years, or fined not more than Ten Thousand Dollars (\$10,000.00), or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Sections 97–3–54 et seq.” Miss. Code Ann. § 97-5-5.

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

Mississippi’s solicitation statute, Miss. Code Ann. § 97-29-51 (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties), distinguishes between soliciting sex acts with a minor and soliciting sex acts with an adult. An offender convicted of soliciting a minor for commercial sex will be sentenced to a minimum of five years and a maximum of 30 years, and a fine of \$50,000–\$500,000, or both. Miss. Code Ann. § 97-29-51(c). By contrast, solicitation of an adult is a misdemeanor punishable by a maximum fine of \$200 and/or a maximum sentence of six months. Miss. Code Ann. § 97-29-51(b).

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

A conviction under Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty) is punishable by imprisonment for 20 years to life and a fine of \$50,000–\$500,000 or both. Miss. Code Ann. § 97-3-54.1(1)(c).<sup>19</sup> A conviction under Miss. Code Ann. § 97-29-51(1)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) when the person whose services are procured is a minor under 18, shall result in “a felony and shall, upon conviction, be punished by imprisonment for not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(1)(c), (2)(c).

Upon conviction of Miss. Code Ann. § 97-5-5 (Enticing a child under 14; punishment), a person will “be imprisoned in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years, or fined not more than Ten Thousand Dollars (\$10,000.00), or both.

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victim Protection Act (TVPA)<sup>20</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>21</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>22</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>23</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.

Although not expressly commercial, Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons

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<sup>19</sup> See *supra* note 7.

<sup>20</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>21</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>22</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>23</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).

under eighteen years of age to engage in sexual contact) penalizes a person who knowingly engages in sexually oriented communication with a minor by using a computer. Miss. Code Ann. § 97-5-27(3)(a) states,

A person is guilty of computer luring when:

- (i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and
- (ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

The penalty for a conviction under Miss. Code Ann. § 97-5-27(3)(a) is commitment up to 3 years to the Department of Corrections and a maximum fine of \$10,000. Miss. Code Ann. § 97-5-27(3)(e), and “does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97-3-54.” Miss. Code Ann. § 97-5-27(4).

Using the Internet to commit crimes involving commercial sexual exploitation of minors is also punishable under Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions). Although not specifically commercial in nature, Miss. Code Ann. § 97-5-33 criminalizes acts of sexual exploitation of minors that may be committed by buyers. Miss. Code Ann. § 97-5-33(6) states, “No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.”

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

The Human Trafficking Act (§§ 97-3-54 to 54.4) expressly prohibits a mistake of age defense. While Miss. Code Ann. § 97-29-51(2)(c) and (4) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) prohibit a mistake of age defense for promoting prostitution offenses, but the buyer-applicable offense of procuring the services of a prostitute under Miss. Code Ann. § 97-29-51(1)(c) does not prohibit this defense.

- 2.6.1 Recommendation: Amend Miss. Code Ann. § 97-29-51(1)(c) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) to include an express prohibition to the use of a mistake of age defense for all buyers who purchase sex with a minor.

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

Mississippi’s buyer-applicable trafficking and CSEC laws do not stagger penalties based on a minor’s age and provide sufficiently high penalties. A conviction under Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty) is punishable by imprisonment for 20 years to life, while a conviction under Miss. Code Ann. § 97-29-51 (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) is punishable by imprisonment for 5–30 years. Miss. Code Ann. §§ 97-3-54.1(1)(c),<sup>24</sup> 97-29-51(1)(c), (2)(c).

A conviction under Miss. Code Ann. § 97-5-5 (Enticing a child under 14; punishment) is punishable by imprisonment for 2–10 years. However, Miss. Code Ann. § 97-5-5 only protects minors under 14 years of age.

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<sup>24</sup> See *supra* note 7.

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.*

Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty) provides significant financial penalties for buyers, including a possible fine of \$50,000–\$500,000. Similarly, under Miss. Code Ann. § 97-29-51(1)(c) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties), a conviction for soliciting sex with a minor is punishable by “a fine of not less than Fifty Thousand nor more than Five Hundred Thousand Dollars (\$500,000.00).”

Buyers also face asset forfeiture under the Mississippi Human Trafficking Act. Miss. Code Ann. § 97-3-54.7(1)(a) (Forfeiture of assets and disposition of proceeds) states,

In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.

(a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:

- (i) Conveyances, including aircraft, vehicles or vessels;
- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money or weapons;
- (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
- (v) Negotiable instruments and securities;
- (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
- (vii) Any property traceable to proceeds from a violation; and
- (viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

Pursuant to Miss. Code Ann. § 97-3-54.6 (Human Trafficking Act; injunctive and other relief for victims of trafficking; confidentiality), buyers are subject to mandatory restitution and a possible civil judgment for threefold the actual damages sustained by the victim. Miss Code Ann. § 97-3-54.6(2)–(3) states,

(2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.

(3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

Pursuant to Miss. Code Ann. § 99-19-75 (Assessment on certain offenses against children to be deposited in Mississippi Children’s Trust Fund), the court shall impose a special assessment of \$1,000 against persons convicted of certain listed crimes, including statutory rape and convictions under § 97-5-1 et. seq. (Offenses

affecting children) in addition to any fines that the court levies as part of the judgment. The special assessment is paid into the Mississippi Children’s Trust fund. Miss. Code Ann. § 99-19-75.

Restitution to victims of any crime is authorized, at the court’s discretion, under Miss Code Ann. § 99-37-3 (Imposition and amount of restitution), which states, “(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$ 5,000.00).” The discretionary decision by the court must take into account, among other things, the defendant’s ability to pay. Miss Code Ann. § 99-37-3(2).

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

Miss. Code Ann. § 97-5-33(3) (Exploitation of children; prohibitions) states, “No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” Under subsection (5), a person may not “by any means including computer, knowingly possess or knowingly access with intent to view any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” A conviction under Miss. Code Ann. § 97-5-33 is punishable by imprisonment for 5–40 years and a \$50,000–\$500,000 fine for the first offense and 20 years to life and a \$100,000–\$1,000,000 fine for subsequent convictions. Miss. Code Ann. § 97-5-35.

In comparison, a federal conviction for possession of child sexual abuse material (CSAM)<sup>25</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>26</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>27</sup>

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

With respect to adult offenders, Miss. Code Ann. § 45-33-25(1)(a) (Registration with Mississippi Department of Public Safety of all convicted sex offenders residing in the state) states in part, “Any person having a permanent or temporary residence in this state or who is employed or attending school in this state who has been convicted of a registrable offense in this state or another jurisdiction or who has been acquitted by reason of insanity of a registrable offense in this state or another jurisdiction shall register with the responsible agency and the Mississippi Department of Public Safety.” Miss. Code Ann. § 45-33-23(h) (Definitions) defines “sex offense” or “registrable offense” as any of the following offenses:

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<sup>25</sup> 18 U.S.C. §§ 2252(a)(2), (a)(4) (Certain activities relating to material involving the sexual exploitation of minors), 2252A(a)(2)–(3) (Certain activities relating to material constituting or containing child pornography), 1466A(a), (b) (Obscene visual representations of the sexual abuse of children).

<sup>26</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>27</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).

- ....
- (ii) Section 97-3-65 relating to rape; however, conviction or adjudication under Section 97-3-65(1)(a) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;
  - (iii) Section 97-3-71 relating to rape and assault with intent to ravish;
  - (iv) Section 97-3-95 relating to sexual battery; however, conviction or adjudication under Section 97-3-95(1)(c) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;
  - (v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;
  - (vi) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;
  - (vii) Section 97-5-27 relating to the dissemination of sexually oriented material to children;
  - (viii) Section 97-5-33 relating to the exploitation of children;
- ....
- (xi) Section 97-29-59 relating to unnatural intercourse;
  - (xii) Section 43-47-18 relating to sexual abuse of a vulnerable person;
  - (xiii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor; and Section 97-3-54.3 relating to aiding, abetting or conspiring to violate Section 97-3-54.1(1)(c); . . .
  - (xviii) Section 97-5-39(1)(e) relating to contributing to the neglect or delinquency of a child, felonious abuse or battery of a child, if the victim was sexually abused;
  - (xix) Section 97-29-51 relating to procuring or promoting prostitution when the victim is a child under eighteen (18) years of age;
  - (xx) Section 97-1-7 relating to attempt to commit any of the offenses referenced in this paragraph (h);
  - (xxi) Any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;
  - (xxii) Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had;
  - (xxiii) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section;
  - (xxiv) Capital murder when one (1) of the above-described offenses is the underlying crime.

Accordingly, buyers convicted of sex trafficking, CSEC, and possession of child sexual abuse material (CSAM) under Miss. Code Ann. §§ 97-3-54.1, 97-29-51, and 97-5-33, respectively, will be required to register as sex offenders.

Miss. Code Ann. § 45-33-25(1)(b) also requires offenders adjudicated delinquent by the youth court for sex offenses to register as sex offenders if force was used against the victim in committing any of the following sex offenses:

- (i) Section 97-3-71 relating to rape and assault with intent to ravish;
- (ii) Section 97-3-95 relating to sexual battery;
- (iii) Section 97-3-65 relating to statutory rape; or
- (iv) Conspiracy to commit, accessory to the commission of, or attempt to commit any offense listed in this paragraph.



**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.

Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty) carries a sentence of 20 years to life and a possible fine of \$50,000–\$500,000. Miss. Code Ann. § 97-3-54.1(1)(c).<sup>28</sup> A trafficker may also be convicted under Miss. Code Ann. § 97-29-51(2)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) for promoting prostitution and a conviction when a minor is victimized is punishable by imprisonment for “not less than five (5) years, nor more than thirty (30) years, or by a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00), or both.” Miss. Code Ann. § 97-29-51(2)(c).

Traffickers may also be convicted under other criminal statutes for their crimes. Under Miss. Code Ann. § 97-5-5 (Enticing child for concealment, prostitution or marriage), convicted traffickers “shall, on conviction, be imprisoned in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years, or fined not more than Ten Thousand Dollars (\$10,000.00), or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Sections 97–3–54 et seq.” A conviction under Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) is punishable by imprisonment for 5–40 years and \$50,000–\$500,000 fine. Miss Code Ann. § 97-5-35. A subsequent conviction is punishable by imprisonment of 20 years to life and a \$100,000–\$1,000,000 fine. Miss Code Ann. § 97-5-35. A conviction under Miss. Code Ann. § 97-5-39(1)(a) (Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child) is punishable as a misdemeanor by up to 1 year in jail, a fine of up to \$1,000, or both. A conviction under Miss Code Ann. § 97-5-39(1)(e) is punishable by imprisonment of up to 10 years, a fine of up to \$10,000, or both. Miss. Code Ann. § 97-5-39(1)(e).

A trafficking enterprise<sup>29</sup> and its agents or employees are also subject to criminal liability under Mississippi law. Miss. Code Ann. § 97-3-54.1(3) states,

An enterprise may be prosecuted for an offense under this chapter if:

<sup>28</sup> See *supra* note 7.

<sup>29</sup> “Enterprise” is defined to mean “any individual, sole proprietorship, partnership, corporation, union or other legal entity, or any association or group of individuals associated in fact regardless of whether a legal entity has been formed pursuant to any state, federal or territorial law. It includes illicit as well as licit enterprises and governmental as well as other entities.” Miss. Code Ann. § 97-3-54.4(f).

- (a) An agent of the enterprise knowingly engages in conduct that constitutes an offense under this chapter while acting within the scope of employment and for the benefit of the entity.
- (b) An employee of the enterprise engages in conduct that constitutes an offense under this chapter and the commission of the offense was part of a pattern of illegal activity for the benefit of the enterprise, which an agent of the enterprise either knew was occurring or recklessly disregarded, and the agent failed to take effective action to stop the illegal activity.

....

Trafficking enterprises are subject to enhanced fines. Pursuant to Miss. Code Ann. § 97-3-54.1(3)(d), “[t]he court may consider the severity of the enterprise's offense and order penalties, including: (i) a fine of not more than One Million Dollars (\$1,000,000.00); (ii) disgorgement of profit; and (iii) debarment from government contracts. Additionally, the court may order any of the relief provided in Section 97–3–54.7 [Forfeiture of assets and disposition of proceeds].”

A conviction under Miss. Code Ann. § 97-5-27(3)(a) (Use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) is punishable as a felony by commitment up to 3 years to the Department of Corrections and a fine not exceeding \$10,000. Miss. Code Ann. § 97-5-27(3)(e).

Lastly, traffickers could be found guilty of money laundering under Miss. Code Ann. § 97-23-101, which prohibits the following conduct:

- (1) (a) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity,<sup>30</sup> conducts or attempts to conduct such a financial transaction<sup>31</sup> which in fact involves the proceeds of specified unlawful activity:
    - (i) With the intent to promote the carrying on of specified unlawful activity; or

....
  - (2) With intent to engage in conduct constituting a violation of Section 7201 or 7206 of the Internal Revenue Code of 1986; or
- ....
- (ii) Knowing that the transaction is designed in whole or in part:
    1. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
    2. To avoid a transaction reporting requirement under state or federal law,
 shall be sentenced to a fine of not more than Five Hundred Thousand Dollars (\$ 500,000.00) or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty (20) years, or both.

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

<sup>30</sup> Miss. Code Ann. § 97-23-101(3)(a) states, “The term ‘knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity’ means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law.”

<sup>31</sup> Miss. Code Ann. § 97-23-101(3)(c) states, “The term ‘transaction’ includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.”

§§ 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 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.*

Miss. Code Ann. § 97-5-33(1)–(2), (7) (Exploitation of children; prohibitions) prohibits the creation and distribution of child sexual abuse material (CSAM). A first-time offender faces imprisonment for 5–40 years and a \$50,000–\$500,000 fine. Miss. Code Ann. § 97-5-35. The penalty increases for subsequent offenses to 20 years to life and a \$100,000–\$1,000,000 fine. Miss. Code Ann. § 97-5-35.

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>32</sup> against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM<sup>33</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>34</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>35</sup>

### 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.*

Although not expressly commercial, Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) penalizes a person who knowingly engages in sexually-oriented communication with a minor by use of a computer. Miss. Code Ann. § 97-5-27(3)(a) states,

A person is guilty of computer luring when:

- (i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and
- (ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact

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<sup>32</sup> See *supra* note 21.

<sup>33</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>34</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 §§ 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>35</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).

with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

The penalty for conviction under Miss. Code Ann. § 97-5-27(3)(a) is commitment up to 3 years to the Department of Corrections and a maximum fine of \$10,000. Miss. Code Ann. § 97-5-27(3)(e). Pursuant to Miss. Code Ann. § 97-5-27(4), “[i]nvestigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Section 97–3–54 et seq.”

Neither Miss. Code Ann. §§ 97-3-54 to 97-3-54.9 (Mississippi Human Trafficking Act) nor Miss. Code Ann. § 97-5-35 (Exploitation of Children; penalties) specifically provide enhanced penalties when the offender uses the Internet to commit these crimes.

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

A conviction under Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty) carries a fine of \$50,000–\$500,000. A conviction for promoting the prostitution of a minor under Miss. Code Ann. § 97-29-51(2)(c) is punishable with a fine of \$50,000.00–\$500,000.00. If convicted under Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions), a trafficker faces a fine of \$50,000–\$500,000, or \$100,000–\$1,000,000 for a subsequent conviction, and traffickers convicted under Miss. Code Ann. § 97-5-5 (Enticing child for concealment, prostitution or marriage) face a fine up to \$10,000. Miss Code Ann. § 97-5-35, 97-5-5. Pursuant to Miss. Code Ann. § 99-19-75 (Assessment on certain offenses against children to be deposited in Mississippi Children’s Trust Fund), the court shall impose a special assessment of \$1,000 against persons convicted of certain listed crimes, including statutory rape and convictions under § 97-5-1 et. seq. (Offenses affecting children) in addition to any fines that the court levies as part of the judgment. The special assessment is paid into the Mississippi Children’s Trust fund. Miss. Code Ann. § 99-19-75.

In addition to fines, traffickers are also subject to forfeiture under Miss. Code Ann. § 97-3-54.7 (Forfeiture of assets and disposition of proceeds). Miss. Code Ann. § 97-3-54.7(1)(a) states,

In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.

(a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:

- (i) Conveyances, including aircraft, vehicles or vessels;
- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money or weapons;
- (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
- (v) Negotiable instruments and securities;
- (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
- (vii) Any property traceable to proceeds from a violation; and
- (viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

Traffickers are also subject to mandatory restitution and a possible civil judgment pursuant to Miss Code Ann. § 97-3-54.6(2)–(3), which states,

(2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism,

the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term "victim" means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.

(3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

Discretionary restitution to victims of any crime is authorized under Miss Code Ann. § 99-37-3 (Imposition and amount of restitution), which states in part, "(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$ 5,000.00)." The discretionary decision by the court must take into account, among other things, the defendant's ability to pay. Miss Code Ann. § 99-37-3(2).

A trafficker convicted under the money laundering statute may be fined up to \$500,000 or "twice the value of the property involved in the transaction, whichever is greater." Miss. Code Ann. § 97-23-101(1)(a).

Human trafficking enterprises may be subject to court ordered restraints on future enterprises. Miss Code Ann. § 97-3-54.6 (Human Trafficking Act; injunctive and other relief for victims of trafficking; confidentiality) states that any circuit court may, after making due provision for the rights of trafficked persons, enjoin violations of the provisions of this act by issuing appropriate orders and judgments, including, but not limited to:

- (a) Ordering any defendant to divest himself of any interest in any enterprise, including real property.
- (b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of this act.
- (c) Ordering the dissolution or reorganization of any enterprise.
- (d) Ordering the suspension or revocation of a license or permit granted to any enterprise by any agency of the state.
- (e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of this chapter and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

Trafficking enterprises are also subject to fines, asset forfeiture, and rescission of government contracts. Pursuant to Miss. Code Ann. § 97-3-54.1(3)(d), "[t]he court may consider the severity of the enterprise's offense and order penalties, including: (i) a fine of not more than One Million Dollars (\$1,000,000.00); (ii) disgorgement of profit; and (iii) debarment from government contracts. Additionally, the court may order any of the relief provided in Section 97-3-54.7 [Forfeiture of assets and disposition of proceeds]."<sup>36</sup>

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<sup>36</sup> Miss. Code Ann. § 97-3-54.1(3)(c) stipulates that "It is an affirmative defense to a prosecution of an enterprise that the enterprise had in place adequate procedures, including an effective complaint procedure, designed to prevent

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

Miss. Code Ann. § 45-33-23(h) (Definitions), includes Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty), § 97-3-54.3 (Human Trafficking Act; aiding, abetting, or conspiring to violate human trafficking provisions), § 97-5-5 (Enticing a child for concealment, prostitution or marriage), § 97-5-33 (Exploitation of children; prohibitions), and § 97-29-51 (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution) in its definition of “registrable offense.” Accordingly, traffickers will be required to register as sex offenders if convicted of human trafficking, CSEC, or creating child sexual abuse material (CSAM).

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

Miss. Code Ann. § 93-15-121 (Grounds for termination) sets forth the grounds for terminating parental rights, which include human trafficking and certain CSEC offenses. Miss. Code Ann. § 93-15-121 states,

Any of following, if established by clear and convincing evidence, may be grounds for termination of the parent's parental rights if reunification between the parent and child is not desirable toward obtaining a satisfactory permanency outcome:

....

(g) The parent has committed an abusive act for which reasonable efforts to maintain the children in the home would not be required under Section 43-21-603, or a series of physically, mentally, or emotionally abusive incidents, against the child or another child, whether related by consanguinity or affinity or not, making future contacts between the parent and child undesirable; or

(h) (i) The parent has been convicted of any of the following offenses against any child:

1. Rape of a child under Section 97-3-65;
2. Sexual battery of a child under Section 97-3-95(c);
3. Touching a child for lustful purposes under Section 97-5-23;
4. Exploitation of a child under Sections 97-5-31 through 97-5-37;
5. Felonious abuse or battery of a child under Section 97-5-39(2); or

....

7. Human trafficking of a child under Section 97-3-54.1; or

....

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persons associated with the enterprise from engaging in the unlawful conduct and to promptly correct any violations of this chapter.”

**Legal Components:**

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

**Legal Analysis:**

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

Miss. Code Ann. § 97-3-54.3 (Human Trafficking Act; aiding, abetting, or conspiring to violate human trafficking provisions) makes persons who aid or abet traffickers criminally liable as principals under the human trafficking law. Miss. Code Ann. § 97-3-54.3 states that “[a] person who knowingly aids, abets or conspires with one or more persons to violate the Mississippi Human Trafficking Act shall be considered a principal in the offense and shall be indicted and punished as such whether the principal has been previously convicted or not.” Thus, a person who aids or abets the commission of procuring sexual servitude of a minor pursuant to Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty) faces a sentence of 20 years to life and a possible fine of \$50,000–\$500,000. Miss. Code Ann. §§ 97-3-54.1(1)(c),<sup>37</sup> 99-19-32.

In addition, Miss. Code Ann. § 97-3-54.1(1)(a) applies to a facilitator who “benefits, whether financially or by receiving anything of value from participating in an enterprise that he knows or reasonably should have known has engaged in [human trafficking], shall be guilty of the crime of human-trafficking.” When the victim is a minor, a violation of Miss. Code Ann. § 97-3-54.1(1)(a) is punishable by a maximum sentence of life and a possible maximum fine of \$100,000. Miss. Code Ann. §§ 97-3-54.1(2), 99-19-32. In addition, Miss. Code Ann. § 97-3-54.1(1)(c) contains the words “harbors” and “transports,” which could reach the conduct of some facilitators.

An enterprise that facilitates human trafficking is also subject to criminal liability under Mississippi law. Miss. Code Ann. § 97-3-54.1(3) states that

An enterprise may be prosecuted for an offense under this chapter if:

- (a) An agent of the enterprise knowingly engages in conduct that constitutes an offense under this chapter while acting within the scope of employment and for the benefit of the entity.
- (b) An employee of the enterprise engages in conduct that constitutes an offense under this chapter and the commission of the offense was part of a pattern of illegal activity for the benefit of the enterprise, which an agent of the enterprise either knew was occurring or recklessly disregarded, and the agent failed to take effective action to stop the illegal activity.

In addition to the Mississippi Human Trafficking Act, there are other laws that may apply to a facilitator of domestic minor sex trafficking. Pursuant to Miss. Code Ann. § 97-5-27(3)(d)(i)–(ii) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact),<sup>38</sup>

<sup>37</sup> See *supra* note 7.

<sup>38</sup> Pursuant to Miss. Code Ann. § 99-19-75 (Assessment on certain offenses against children to be deposited in Mississippi Children’s Trust Fund), the court shall impose a special assessment of \$1,000 against persons convicted

(i) No person shall be held to have violated this subsection (3) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(ii) No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency or the employer, having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.

However, under subsection (3)(d)(iii), "The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications, [or] a person who provides access or connection to a facility, system or network engaged in the violation of such provisions that is owned or controlled by such person." Miss. Code Ann. § 97-5-27(3)(d)(iii).

Facilitators could also be convicted for promoting prostitution. Miss. Code Ann. § 97-29-51(2)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) states that a person commits the felony of promoting prostitution if the person:

A person commits the felony of promoting prostitution if the person:

....

(ii) Knowingly or intentionally solicits or offers or agrees to solicit, or receives or gives, or agrees to receive or give any money or thing of value for soliciting, or attempting to solicit, another person for the purpose of prostitution;

(iii) Knowingly induces, persuades, or encourages a person to come into or leave this state for the purpose of prostitution;

(iv) Having control over the use of a place or vehicle, knowingly or intentionally permits another person to use the place or vehicle for prostitution;

(v) Accepts, receives, levies or appropriates money or other property of value from a prostitute, without lawful consideration, with knowledge or reasonable cause to know it was earned, in whole or in part, from prostitution; or

(vi) Conducts, directs, takes, or transports, or offers or agrees to take or transport, or aids or assists in transporting, any person to any vehicle, conveyance, place, structure, or building, or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution.

Finally, facilitators could be found guilty of money laundering under Miss. Code Ann. § 97-23-101, which in subsection (1)(a) prohibits the following conduct:

(a) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity,<sup>39</sup> conducts or attempts to conduct such a financial transaction<sup>40</sup> which in fact involves the proceeds of specified unlawful activity:

- (i) 1. With the intent to promote the carrying on of specified unlawful activity; or
2. With intent to engage in conduct constituting a violation of Section 7201 or 7206 of the Internal Revenue Code of 1986; or

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of certain listed crimes, including statutory rape and convictions under § 97-5-1 et. seq. (Offenses affecting children) in addition to any fines that the court levies as part of the judgment. The special assessment is paid into the Mississippi Children's Trust fund. Miss. Code Ann. § 99-19-75.

<sup>39</sup> See *supra* note 30.

<sup>40</sup> See *supra* note 31.



- (ii) Knowing that the transaction is designed in whole or in part:
  - 1. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
  - 2. To avoid a transaction reporting requirement under state or federal law shall be sentenced to a fine of not more than Five Hundred Thousand Dollars (\$ 500,000.00) or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty (20) years, or both.

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.*

A facilitator convicted under Miss. Code Ann. § 97-3-54.3 (Aiding or abetting human trafficking) or § 97-29-51(2)(a) (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) faces a fine of \$50,000-\$500,000. Miss. Code Ann. §§ 97-3-54.1(1)(c), 97-29-51(2)(a)(vi), 97-29-51(2)(c). Facilitators convicted of conspiracy to commit computer luring pursuant to Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact) face up to a \$10,000 fine. Miss. Code Ann. §§ 99-19-32, 97-5-27(3)(d)(iii), (3)(e). If an enterprise is convicted under the Mississippi Human Trafficking Act, Miss. Code Ann. § 97-3-54.1(3)(d) provides,

- [T]he court may consider the severity of the enterprise's offense and order penalties, including:
- (i) a fine of not more than One Million Dollars (\$1,000,000.00);
  - (ii) disgorgement of profit; and
  - (iii) debarment from government contracts.

Similarly, pursuant to Miss. Code Ann. § 97-29-51(4), “Any partnership, association, corporation or other entity violating any provision of subsection (2) against the promotion of prostitution shall, upon conviction, be punished by a fine not exceeding Fifty Thousand Dollars (\$50,000.00). If the person whose services are promoted is under eighteen (18) years of age, the partnership, association, corporation or other legal entity convicted shall be punished by a fine not exceeding One Million Dollars (\$1,000,000.00).”

In addition, facilitators are also subject to forfeiture under Miss. Code Ann. § 97-3-54.7 (Forfeiture of assets and disposition of proceeds). Miss. Code Ann. § 97-3-54.7(1)(a) states,

- (1) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of this act shall be forfeited as provided herein.
  - (a) The following property shall be subject to forfeiture if used or intended for use as an instrumentality in or used in furtherance of a violation of this act:
    - (i) Conveyances, including aircraft, vehicles or vessels;
    - (ii) Books, records, telecommunication equipment, or computers;
    - (iii) Money or weapons;
    - (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
    - (v) Negotiable instruments and securities;
    - (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
    - (vii) Any property traceable to proceeds from a violation; and
    - (viii) Any real property, including any right, title and interest in the whole of or any part of any lot or tract of land used in furtherance of a violation of this act.

Facilitators convicted of engaging in a human trafficking enterprise may be subject to court ordered restraints on future enterprises. Miss Code Ann. § 97-3-54.6(1) (Human Trafficking Act; injunctive and

other relief for victims of trafficking; confidentiality) states that any circuit court may, after making due provision for the rights of trafficked persons, enjoin violations of the provisions of this act by issuing appropriate orders and judgments, including, but not limited to:

- (a) Ordering any defendant to divest himself of any interest in any enterprise, including real property.
- (b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he was engaged in violation of the provisions of this act.
- (c) Ordering the dissolution or reorganization of any enterprise.
- (d) Ordering the suspension or revocation of a license or permit granted to any enterprise by any agency of the state.
- (e) Ordering the forfeiture of the charter of a corporation organized under the laws of the state, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of this chapter and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate revoked.

Facilitators also face mandatory restitution and a possible civil judgment for threefold the actual damages sustained by the victim under Miss Code Ann. § 97-3-54.6(2)–(3) which states,

- (2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.
- (3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

Discretionary restitution to victims of any crime is authorized under Miss Code Ann. § 99-37-3 (Imposition and amount of restitution), which states in part, “(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim; provided, however, that the justice court shall not order restitution in an amount exceeding Five Thousand Dollars (\$ 5,000.00).” The discretionary decision by the court must take into account, among other things, the defendant’s ability to pay. Miss Code Ann. § 99-37-3(2).

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

Mississippi has no provision related to sex tourism.

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

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

Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions) prohibits the promotion or sale of child sexual abuse material (CSAM). Under subsection (4), “No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” Under subsection (3), “No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.” Pursuant to Miss. Code Ann. § 97-5-35, a first conviction under Miss. Code Ann. § 97-5-33 is punishable by imprisonment for 5–40 years and a \$50,000–\$500,000 fine. Repeat offenders face 20 years to life imprisonment and a \$100,000–\$1,000,000 fine. Miss. Code Ann. § 97-5-35.

Miss. Code Ann. § 97-29-101 (Distribution or wholesale distribution of obscene materials or performances; character and reputation as evidence; prosecutor’s bond) states in part,

A person commits the offense of distributing obscene materials or obscene performances when he sells, rents, leases, advertises, publishes or exhibits to any person any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. A person commits the offense of wholesale distributing obscene materials or obscene performances when he distributes for the purpose of resale any obscene material or obscene performance of any description knowing<sup>41</sup> the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so.

Under Miss. Code Ann. § 97-29-109 (Penalties), the penalty for conviction under Miss. Code Ann. § 97-29-101 depends on whether the defendant is convicted of distribution or wholesale distribution. Distribution, for the first offense, is a misdemeanor punishable by a maximum fine of \$5,000, or up to 6 months in jail, or both. If the defendant has previously been convicted for violating § 97-29-101, § 97-29-105 (Distribution or wholesale distribution of unlawful sexual devices), § 97-5-27 (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact), or § 97-5-29 (Public display of sexually oriented materials), the defendant may be fined between \$2,500–\$10,000, imprisoned for up to one year, or both. Wholesale distribution<sup>42</sup> of obscene materials is punishable by a maximum fine of \$10,000, up to a year in jail for the first offense, or both. If the defendant has previously been convicted for violating § 97-29-101, § 97-29-105, § 97-5-27, or § 97-5-29, the defendant may be fined between \$2,500–\$50,000, imprisoned for up to one year, or both. If the defendant is a corporation or partnership, the penalty is a fine of \$1,000–\$10,000. If the non-individual entity defendant is a subsequent offender, the penalty is a fine of \$5,000–\$50,000. Miss. Code Ann. § 97-29-109.

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<sup>41</sup> Pursuant to Miss. Code Ann. § 97-29-101, “The word ‘knowing’ as used in this section means either actual or constructive knowledge of the obscene contents of the subject matter, and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material.”

<sup>42</sup> Under Miss. Code Ann. § 97-29-103(5) (Definitions), “wholesale distributes” means “to distribute for the purpose of resale.”

**Legal Components:**

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

**Legal Analysis:**

- 5.1 *Victims under the core child sex trafficking offense include all commercially sexually exploited children.*<sup>43</sup>

Not all commercially sexually exploited minors are identifiable as victims of sex trafficking under the Mississippi Human Trafficking Act, Miss. Code Ann. §§ 97-3-54 to 97-3-54.9. Pursuant to Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty), when the victim is a minor, the means of force, fraud, or coercion are not required.<sup>44</sup> However, the human trafficking law only applies to buyers in a few, limited circumstances; thus, buying sex with a person who is under the age of eighteen will unlikely rise to the offense of human trafficking.<sup>45</sup> Miss. Code Ann. § 97-3-54.1(1)(c). Additionally, the offense of human trafficking, under Miss. Code Ann. § 97-3-54.1(1)(c), requires that a trafficker or controlling third party be identified, as the “service” of “commercial sexual activity” under Miss. Code Ann. § 97-3-54.4(o) requires “an ongoing relationship between a person and the actor in which the person performs [commercial sexual] activities under the supervision of or for the benefit of the actor or third party . . . .” Consequently, Mississippi’s human trafficking offense does not include all children who are bought for sex, as only children who have an ongoing relationship with a controlling third party or trafficker and identify that third party or trafficker will be defined as victims of child sex trafficking.

- 5.1.1 Recommendation: Amend Miss. Code Ann. § 97-3-54.1 (Human Trafficking Act; prohibited conduct; penalty) to ensure that all commercially sexually exploited children are identifiable as victims and eligible for protections pursuant to their victim status.

<sup>43</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>44</sup> See *supra* discussion in Component 1.1.

<sup>45</sup> See *supra* discussion of buyer applicability in Component 2.1.

5.2 *The state sex trafficking statute expressly prohibits a defendant from asserting a defense based on the willingness of a minor under 18 to engage in the commercial sex act.*<sup>46</sup>

Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty) prohibits a defense to prosecution based on the willingness of the minor to engage in the commercial sex act. It states, “It is not a defense in a prosecution under this section that a minor consented to engage in the commercial sexual activity, sexually explicit performance, or the production of sexually oriented material . . . .” Miss. Code Ann. § 97-3-54.1(1)(c).

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>47</sup>

Mississippi law prohibits the criminalization of all minors for prostitution offenses by making the prostitution law inapplicable to persons under 18 years of age.<sup>48</sup> Miss. Code Ann. § 97-29-49 (Prostitution) states,

(1) A person who is eighteen (18) years of age or older commits the misdemeanor of prostitution if the person knowingly or intentionally performs, or offers or agrees to perform, sexual intercourse or sexual conduct for money or other property . . . .

. . . .

(3) . . . [A]ny law enforcement officer who encounters a minor under eighteen (18) years of age and has reasonable cause to suspect that the minor has engaged in acts described in this section may take the minor into emergency custody in accordance with the requirements of the Youth Court Act for the purpose of obtaining an order of removal of the minor, and shall contact and make a report to the Department of Child Protection Services . . . , and the department shall commence an initial investigation into suspected child sexual abuse or neglect . . . .

(4) . . . If the person suspected of engaging in acts that would constitute prostitution is under the age of eighteen (18) the provisions of Section 97-3-54.1(4) [Human Trafficking Act; prohibited conduct]<sup>49</sup> shall be applicable.

Further, state law prohibits the criminalization of child sex trafficking victims for promoting prostitution and trafficking offenses. Miss. Code Ann. § 97-29-51(3) (Prostitution; misdemeanor procuring services of prostitution; felony promoting prostitution; penalties) states in part,

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<sup>46</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>47</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>48</sup> Additionally, the prostitution law prohibits the criminalization of adult trafficking victims for prostitution offenses. Miss. Code Ann. § 97-29-49(4) states, “[i]f it is determined that a person suspected of or charged with engaging in prostitution is engaging in those acts as a direct result of being a trafficked person, as defined by Section 97-3-54.4, that person shall be immune from prosecution for prostitution as an adult . . . .”

*See supra* note 16.

<sup>49</sup> Miss. Code. Ann. § 97-3-54.1(4) states,

In addition to the mandatory reporting provisions contained in Sections 43-21-353 and 97-5-51, any person who has reasonable cause to suspect that a minor under the age of eighteen (18) is a trafficked person shall immediately make a report of the suspected child abuse or neglect to the Department of Child Protection Services and to the Statewide Human Trafficking Coordinator. The Department of Child Protection Services or the Statewide Human Trafficking Coordinator, whichever is applicable, shall then immediately notify the law enforcement agency in the jurisdiction where the suspected child abuse neglect or trafficking occurred as required in Section 43-21-353, and the department that received the report shall also commence an initial investigation into the suspected abuse or neglect as required in Section 43-21-353 . . . .

*See supra* note 7.

If it is determined that a person suspected of or charged with promoting prostitution is a minor under eighteen (18) years of age who meets the definition of a trafficked person as defined in Section 97-3-54.4, the minor is immune from prosecution for promoting prostitution as a juvenile or adult and provisions of Section 97-3-54.1(4) shall be applicable.

Finally, if a minor is charged with a trafficking offense, Miss. Code Ann. § 97-3-54.1(4) (Human Trafficking Act; prohibited conduct) provides in part, “[a] minor who has been identified as a victim of trafficking shall not be liable for criminal activity in violation of this section.”

However, since the definition of a “trafficked person” requires third party control,<sup>50</sup> some commercially sexually exploited minors may not be identified as victims for purposes of benefiting from all of the protections outlined above.

#### 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**

Miss. Code Ann. § 97-3-54.1(4)<sup>51</sup> (Human Trafficking Act; prohibited conduct; penalty) contains special mandatory reporting requirements and procedures for assisting juvenile sex trafficking victims; it states in part,

any person who has reasonable cause to suspect that a minor under the age of eighteen (18) is a trafficked person shall immediately make a report of the suspected child abuse or neglect to the Department of Child Protection Services and to the Statewide Human Trafficking Coordinator. The Department of Child Protection Services or the Statewide Human Trafficking Coordinator, whichever is applicable, shall then immediately notify the law enforcement agency in the jurisdiction where the suspected child abuse neglect or trafficking occurred as required in Section 43-21-353 [Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations], and the department that received the report shall also commence an initial investigation into the suspected abuse or neglect as required in Section 43-21-353 . . . .<sup>52</sup>

The prostitution law expands the applicability of this provision to any case where a minor is engaged in commercial sex; Miss. Code Ann. § 97-29-49(4)<sup>53</sup> (Prostitution) states in part, “If the person suspected of engaging in the acts that would constitute prostitution is under the age of eighteen (18) the provisions of Section 97-3-54.1(4) shall be applicable.” Further, Miss. Code Ann. § 97-29-49(3) requires a law enforcement officer who takes a minor suspected of engaging in prostitution into emergency custody to file a report of suspected child sexual abuse or neglect. Miss. Code Ann. § 97-29-49(3) states,

any law enforcement officer who encounters a minor under eighteen (18) years of age and has reasonable cause to suspect that the minor has engaged in the acts described in this section may take the minor into emergency custody in accordance with the requirements of the Youth Court Act for the purposes of obtaining an order of removal of the minor, and shall contact and make a report to the Department of Child Protection Services as required in Section 43-21-353 for suspected child sexual

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<sup>50</sup> See *supra* Component 5.1.

<sup>51</sup> See *supra* note 7.

<sup>52</sup> Miss. Code Ann. § 43-21-353 contains additional mandatory reporting and investigation requirements for cases related to commercial sexual exploitation or human trafficking. Further, the Mississippi Child Protection Act of 2012 mandates that sex crimes, including trafficking and exploitation of children, be reported to law enforcement. Miss. Code Ann. § 97-5-51(2) (Mississippi Child Protection Act of 2012). However, the reporting system established under this provision focuses on notification to law enforcement without mandating referrals for treatment or specialized services.

<sup>53</sup> See *supra* note 16.

abuse or neglect, and the department shall commence an initial investigation into suspected child sexual abuse or neglect as required in Section 43-21-353.

Miss. Code Ann. § 43-15-51<sup>54</sup> (Formation of multidisciplinary child protection teams to evaluate and investigate reports of child abuse and neglect; membership; order of Youth Court prerequisite to formation of teams; participation by experts and child advocacy centers; disclosure of information obtained from task force meetings prohibited) provides for the creation of multidisciplinary teams to intervene in alleged instances of child sex trafficking and commercial sexual exploitation. Under Miss. Code Ann. § 43-15-51,

(1) The district attorneys, the Department of Human Services or the Department of Child Protection Services may initiate formal cooperative agreements with the appropriate agencies to create multidisciplinary child protection teams in order to implement a coordinated multidisciplinary team approach to intervention in reports involving alleged commercial sexual exploitation, human trafficking, or severe or potential felony child physical or sexual abuse, exploitation, or maltreatment . . . . The purpose of the team or task force shall be to assist in the evaluation and investigation of reports and to provide consultation and coordination for agencies involved in child protection cases. The agencies to be included as members of the multidisciplinary team are: the district attorney’s office, city and county law enforcement agencies, county attorneys, youth court prosecutors, the Human Trafficking Coordinator or his or her designee and other agencies as appropriate. The Department of Child Protection Services shall be included as a member of the multidisciplinary team if the department does not initiate creation of the team.

(3) (a) Teams created under this section may invite other persons to serve on the team, who have knowledge of and experience in child abuse and neglect and commercial sexual exploitation and human trafficking matters. These persons may include . . . experts in providing services to commercial sexual exploitation and human trafficking victims.

Commercially sexually exploited youth who are placed in foster care may receive services under Miss. Code Ann. § 43-15-13<sup>55</sup> (Foster care placement program; objectives; system of individualized plans and reviews; training program for persons who provide foster care and relative care; placement priorities and goals; changes in placement; rights and responsibilities of persons who provide foster care and relative care), which states,

(2) The Department of Child Protection Services shall establish a foster care placement program for children whose custody lies with the department, with the following objectives:

(c) Remedying or assisting in the solution of problems that may result in the neglect, abuse, exploitation, commercial sexual exploitation, human trafficking or delinquency of children;<sup>56</sup>

(3) The Department of Child Protection Services shall administer a system of individualized plans, reviews and reports once every six (6) months for each child under its custody within the State of Mississippi, which document each child who has been adjudged a neglected, abandoned or abused child, including a child alleged to have experienced commercial sexual exploitation and/or human

<sup>54</sup> The text of Miss. Code Ann. § 43-15-51 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

<sup>55</sup> The text of Miss. Code Ann. § 43-15-13 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

<sup>56</sup> Miss. Code Ann. § 43-15-13 defines “children” for purposes of this section as “persons found within the state who are under the age of twenty-one (21) years, and who were placed in the custody of the Department of Child Protection Services by the youth court of the appropriate county.”

trafficking and whose custody was changed by court order as a result of that adjudication, and each public or private facility licensed by the department . . . . [T]he department shall establish policy and procedures designed to appropriately place children in permanent homes, provide counseling services and other appropriate services to children who have been victims of commercial sexual exploitation or human trafficking. The policy shall include a system of reviews for all children in foster care, as follows: foster care counselors in the department shall . . . provide care for victims of commercial sexual exploitation or human trafficking . . . .

. . . .  
(6) (a) The Department of Child Protection Services, with the cooperation and assistance of the State Department of Health, shall develop and implement a training program for foster care parents to indoctrinate them as to their proper responsibilities upon a child's entry into their foster care. The program shall provide a minimum of twelve (12) clock hours of training, which shall include training foster care parents about providing mental and physical support to children who have experienced commercial sexual exploitation or human trafficking . . . .

. . . .  
(11) The Department of Child Protection Services shall extend the following rights to persons who provide foster care and relative care:

. . . .  
(d) Support from the family protection worker or the family protection specialist<sup>57</sup> in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:

. . . .  
(ii) Help in using appropriate resources to meet the child's needs, including counseling or other services for victims of commercial sexual exploitation or human trafficking;

. . . .  
(iv) Information regarding whether the child experienced commercial sexual exploitation or human trafficking;

. . . .  
Under Miss. Code Ann. § 43-21-353(9)<sup>58</sup> (Duty to inform state agencies and officials; duty to inform individual about whom report has been made of specific allegations),

If a child protective investigation does not result in an out-of-home placement, a child protective investigator must provide information to the parent or guardians about community service programs that provide respite care, counseling and support for children who have experienced commercial sexual exploitation or human trafficking, voluntary guardianship or other support services for families in crisis.

In addition to these service-oriented provisions, the state's non-criminalization laws allow commercially sexually exploited youth to avoid delinquency adjudications for prostitution and certain other offenses committed pursuant to trafficking victimization.<sup>59</sup>

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<sup>57</sup> Family protection workers and family protection specialists are required to undergo "at least two (2) hours of training regarding the subject of identifying, assessing and providing comprehensive services to a child who has experienced or is alleged to have experienced commercial sexual exploitation or human trafficking." Miss. Code Ann. § 43-1-55 (Standards for employment and service delivery; Training and Testing Advisory Council created; duties; membership; meetings; chairperson; quorum].

The text of Miss. Code Ann. § 43-1-55 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

<sup>58</sup> The text of Miss. Code Ann. § 43-21-353 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 571 and 2840 and Senate Bill 2576 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

<sup>59</sup> See *supra* Component 5.3 for a discussion of state non-criminalization laws.



## Summary

Mississippi law mandates the referral of juvenile sex trafficking victims to child welfare, provides for a specialized response, which includes a multidisciplinary team approach, and allows delinquency adjudications to be avoided based on non-criminalization for prostitution, promoting prostitution, and trafficking offenses.

### 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>60</sup>

Human trafficking and commercial sexual exploitation are identified as a type of child abuse.<sup>61</sup> Miss. Code Ann. § 43-21-105(m)<sup>62</sup> (Definitions) defines an “abused child” as “a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused, upon the child, sexual abuse, sexual exploitation, commercial sexual exploitation,<sup>63</sup> emotional abuse, mental injury, nonaccidental physical injury or other maltreatment.” Victims of human trafficking are expressly included within the definition of “abused child” under Miss. Code Ann. § 43-21-105(m), which includes “a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child.”

Additionally, Miss. Code Ann. § 43-21-105(n) defines “sexual abuse” as “obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child’s health or welfare is harmed or threatened.”

### 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.*<sup>64</sup>

Mississippi does not require that a parent or caregiver be the perpetrator of abuse in order to identify a juvenile sex trafficking victim as abused or neglected. Victims of human trafficking are expressly included within the definition of “abused child” under Miss. Code Ann. § 43-21-105(m) (Definitions), which states that “abused child also means a child who is or has been trafficked within the meaning of the Mississippi Human Trafficking Act by any person, without regard to the relationship of the person to the child.” The “without regard to the relationship of the person to the child” language removes the “parent, guardian, custodian, or responsible person” limitation in trafficking cases; thus Miss. Code Ann. § 43-21-105(m) is sufficiently broad to allow for child welfare intervention into non-familial trafficking cases.

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

A prostituted child could fall under one or more of the ineligibility factors for compensation under Miss. Code Ann. § 99-41-17 (Compensation awards; conditions; exceptions; reduction). Pursuant to Miss. Code Ann. § 99-41-17,

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<sup>60</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>61</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>62</sup> The text of Miss. Code Ann. § 43-21-105 cited here and elsewhere in this report includes amendments made by the enactment of House Bills 571 and 2840 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

<sup>63</sup> Miss. Code Ann. § 43-21-105(hh) defines “commercial sexual exploitation” as “any sexual act or crime of a sexual nature, which is committed against a child for financial or economic gain, to obtain a thing of value for quid pro quo exchange of property or for any other purpose.”

<sup>64</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

1. Compensation shall not be awarded under this chapter:
  - (a) Unless the criminally injurious conduct occurred after July 1, 1991;
  - (b) Unless the claim has been filed with the director within thirty-six (36) months after the crime occurred, or in cases of child sexual abuse, within thirty-six (36) months after the crime was reported to law enforcement or the Department of Human Services, but in no event later than the child's twenty-fifth birthday. For good cause, the director may extend the time period allowed for filing a claim for an additional period not to exceed twelve (12) months;
  - (c) To a claimant or victim who was the offender or an accomplice to the offender, or, except in cases of children under the age of consent as specified in Section 97-3-65 [Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances], 97-3-97 [Sexual battery; definitions] or 97-5-23 [Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person], Mississippi Code of 1972, who encouraged or in any way knowingly participated in criminally injurious conduct;
 

. . . .
  - (e) Unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or unless it is found that there was good cause for the failure to report within such time;
 

. . . .
  - (j) To any claimant or victim who has been under the actual or constructive supervision of a department of corrections for a felony conviction within five (5) years prior to the injury or death for which application has been made;
  - (k) To any claimant or victim who, at the time of the criminally injurious conduct upon which the claim for compensation is based, engaged in conduct unrelated to the crime upon which the claim for compensation is based that either was (i) a felony, or (ii) a delinquent act which, if committed by an adult, would constitute a felony.
  - (l) To any claimant or victim who knowingly furnishes any false and misleading information or knowingly fails or omits to disclose a material fact or circumstance.
2. Compensation otherwise payable to a claimant shall be diminished to the extent:
  - (a) That the economic loss is recouped from other sources, including collateral sources; and
  - (b) Of the degree of responsibility for the cause of injury or death attributable to the victim or claimant.
3. Upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies and prosecuting attorneys, an award of compensation may be denied, withdrawn or reduced.
4. Compensation otherwise payable to a claimant or victim may be denied or reduced to a claimant or victim who, at the time of the crime upon which the claim for compensation is based, was engaging in or attempting to engage in other unlawful activity unrelated to the crime upon which the claim for compensation is based.

5.7.1 Recommendation: Amend Miss. Code Ann. § 99-41-17 (Compensation awards; conditions; exceptions; reduction) to expressly provide compensation to minor victims of commercial sexual exploitation without regard to the listed ineligibility factors when the crimes are committed as part of the trafficking and create a good cause exception for the ineligibility factor in Miss. Code Ann. § 99-41-17(3).<sup>65</sup>

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

Miss. Code Ann. § 13-1-405 (Use of closed circuit television to show child's testimony) provides for the use of closed circuit television for certain child victims or witnesses. Subsection (1) states, "Upon motion and hearing in camera, the trial court may order that the testimony of a child under the age of sixteen (16) that an unlawful sexual act, contact, intrusion, penetration or other sexual offense was committed upon him or her, or that he or

<sup>65</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

she witnessed its perpetration upon another child, be taken outside of the courtroom and shown in the courtroom by means of closed circuit television, upon a finding based on specific behavioral indicators described in Section 13-1-411,<sup>66</sup> that there is a substantial likelihood that the child will suffer traumatic emotional or mental distress if compelled to testify in open court.” Pursuant to Miss. Code Ann. § 13-1-405(2), “The motion may be filed by the child, his attorney, parent, legal guardian or guardian ad litem, or any party to the case. The court may also raise the matter on its own motion.” The court may exclude the defendant from the room where questioning is conducted if his presence is likely to cause “traumatic emotional or mental distress to the child.” Miss. Code Ann. § 13-1-405(4). However, “In any case in which the defendant is so excluded, arrangements must be made for the defense attorney to be in continual contact with the defendant by any appropriate private electronic or telephonic method throughout the questioning. The defendant and the jury must be able to observe the demeanor of the child witness at all times during the questioning.” Miss. Code Ann. § 13-1-405(4).

Miss. Code Ann. § 99-1-27 (Victim of sex offenses not required to submit to truth telling devices as condition for proceeding with investigation of offense) provides that victims of sex offenses are not required to submit to “truth telling device[s],” such as polygraph tests, for investigation of the offense to proceed. Miss. Code Ann. § 99-1-27(1), (2). This provision provides in part, “[n]o law enforcement officer, prosecutor or other government official shall ask or require an adult, youth or child victim of a sex offense [as defined in Miss. Code Ann. § 45-33-23(h) (Definitions)] to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of the offense.” Miss. Code Ann. § 99-1-27(1). The definition of “sex offense” provided in Miss. Code Ann. 45-33-23(h) includes the exploitation crimes in Miss. Code Ann. § 97-5-33 (Exploitation of children; prohibitions), procuring sexual servitude of a minor in Miss. Code Ann. § 97-3-54.1(1)(c) (Human Trafficking Act; prohibited conduct; penalty), and “procuring or promoting prostitution when the victim is a child under eighteen (18) years of age” in Miss. Code Ann. § 97-29-51 (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution).

The rape statute at Miss. Code Ann. § 97-3-68 (Rape; procedure for introducing evidence of sexual conduct of complaining witness; “complaining witness” defined) provides some evidentiary protection for complaining witnesses. Under this statute, the defense may not attack the complaining witness’s credibility by raising evidence of sexual conduct unless the defense first files a written motion accompanied by an affidavit with an offer of the proof regarding the evidence’s relevance. Miss. Code Ann. § 97-3-68 (1)(a). This protection applies to prosecutions under Miss. Code Ann. § 97-3-65 (Statutory rape; enhanced penalty for forcible sexual intercourse or statutory rape by administering certain substances) and § 97-3-71 (Rape; assault with intent to ravish). Miss. Code Ann. § 97-3-68 (1). The court decides whether the offer of proof is sufficient to show that the evidence is relevant, and if the court finds it sufficiently relevant, the witness may be questioned in a closed hearing in chambers, outside the jury’s presence. Miss. Code Ann. § 97-3-68 (1)(c). After hearing the evidence, the court will then issue an order regarding what evidence the defense may offer. Miss. Code Ann. § 97-3-68(1)(d). This protection from inquiry relating to past sexual behavior is specifically extended to victims of human trafficking during a prosecution or civil action for damages under Miss. Code Ann. § 97-3-54.6(6) (Human Trafficking Act; injunctive and other relief for victims of trafficking; confidentiality) which states,

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<sup>66</sup> Miss. Code Ann. § 13-1-411 (Behavioral indicators used to determine applicability of evidentiary provisions), states,

The phrase “specific behavioral indicators” when used herein to refer to evidence (regardless of admissibility) that a child has suffered physical or sexual abuse or might suffer traumatic emotional or mental distress if required to testify in court, shall include, by way of illustration and not of limitation, indications of physical or psychological trauma which are (a) well defined, (b) positively correlated or causally linked with the likelihood of traumatic emotional or mental distress on testifying, and (c) rarely, if at all, present in children who have not suffered child abuse, considering the combination or intensity present in the child at issue.

The evidence described in this section shall be provided by competent witnesses, including but not limited to child psychologists, child psychiatrists and other qualified witnesses.

In a prosecution or civil action for damages for an offense under this act [Mississippi Human Trafficking Act] in which there is evidence that the alleged victim was subjected to sexual servitude, reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible, unless admitted in accordance with the Mississippi Rules of Evidence.

Further, law enforcement and prosecutors are responsible for taking “all reasonable efforts to keep the identity of the victim and the victim's family confidential by ensuring that the names and identifying information of those individuals are not disclosed to the public.” Miss. Code Ann. § 97-3-54.6(7).

The Mississippi Crime Victims’ Bill of Rights, Miss. Code Ann. § 99-43-1 to § 99-43-49, sets out procedures intended to protect crime victims during the criminal justice process. Several provisions have particular relevance for minor victims of commercial sexual exploitation. Miss Code Ann. § 99-43-5(3) provides that “[i]f the victim is a minor, the parent, guardian or other immediate family of the victim, or a designated representative as determined by the court, may exercise all of the rights of the victim on behalf of the victim.” If practical, the court must provide a waiting area for the victim separate from the defendant and the defendant’s relatives and witnesses. Miss Code Ann. § 99-43-23 (Separate waiting area; minimizing contact with defendant, defendant’s relatives and defense witnesses) states, “If a separate waiting area is not available, or its use impractical, the court shall minimize contact of the victim with the defendant, relatives of the defendant, and defense witnesses during court proceedings.” Under Miss. Code Ann. § 99-43-25(1) (Victim residence and identification information; petition, hearing and confidentiality), where the victim is reasonably apprehensive of “acts or threats of physical violence or intimidation by the defendant, the family of the defendant, or by anyone at the direction of the defendant, against the victim or the immediate family of the victim, the prosecutor may petition the court to direct that the victim or any other witness not be compelled to testify during pre-trial proceedings or in any trial, facts that could divulge the identity, residence, or place of employment of the victim, or other related information, without consent of the victim unless necessary to the prosecution of the criminal proceeding.” Under Miss. Code Ann. § 99-43-31 (Victim impact statements to probation officers; duty to consider victim impact), the victim may also “submit a written impact statement or make an oral impact statement to the probation officer for use in preparing a pre-sentence report. The probation officer shall consider the economic, physical, and psychological impact that the criminal offense has had on the victim and the immediate family of the victim.”

The Crime Victims’ Bill of Rights also requires prosecutors to confer with victims before the start of the trial and before disposition of the case pursuant to Miss. Code Ann. § 99-43-11 (Prosecutor’s duty to confer with victim prior to disposition) and § 99-43-13 (Prosecutor’s duty to confer with victim prior to trial; confidentiality). Under Miss. Code Ann. § 99-43-29 (Notice regarding disposition and sentencing), prosecutors shall keep victims informed, including whether there has been an acquittal, conviction or other disposition of the case.

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.*

Mississippi law does not provide a mechanism for minors to vacate delinquency adjudications related to trafficking victimization, and juvenile records may only be sealed after a waiting period or destroyed at the court’s discretion.

Regarding record sealing, Miss. Code Ann. § 43-21-263 (Sealing of records) states,

- (1) The youth court may order the sealing of records involving children:
  - (a) if the child who was the subject of the cause has attained twenty (20) years of age;
  - (b) if the youth court dismisses the cause; or
  - (c) if the youth court sets aside an adjudication in the cause.

(2) The youth court may, at any time, upon its own motion or upon application of a party to a youth court cause, order the sealing or unsealing of the records involving children.

As for record destruction, Miss. Code Ann. § 43-21-265 (Destruction of records) provides,

The youth court, in its discretion, may order the destruction of any records involving children except medical or mental health examinations as defined in Section 43-21-253. This order shall be directed to all persons maintaining the records, shall order their physical destruction by an appropriate means specified by the youth court and shall require the persons to file with the youth court a written report of compliance with the order. No records, however, may be destroyed without the approval of the director of the department of archives and history.

Because records may be unsealed at any time and because record destruction is left to the court's discretion, however, child sex trafficking victims may face collateral consequence associated with having accessible delinquency records.

Regarding vacatur, Miss. Code Ann. § 97-3-54.6(5) (Human trafficking Act; injunctive relief and other relief for victims of trafficking; confidentiality) states,

At any time after a conviction under this act, the court in which the conviction was entered may, upon appropriate motion, vacate the conviction if the court finds the defendant's participation in the offense was the result of being a victim. Official documentation from a federal, state or local government agency as to the defendant's status as a victim at the time of the offense creates a presumption that the defendant's participation in the offense was a result of being a victim, but official documentation is not required to grant a motion under this subsection.

However, Miss. Code Ann. § 97-3-54.6(5) applies specifically to "convictions," and Miss. Code Ann. § 43-21-561(5) (Adjudication of status, standard of proof, and findings) states, "no adjudication upon the status of any child . . . shall be deemed a conviction." Accordingly, a child sex trafficking victim would be unable to vacate a delinquency adjudication under Miss. Code Ann. § 97-3-54.6(5).

Further, Miss. Code Ann. § 97-3-54.6(5) applies only to convictions under the Human Trafficking Act, foreclosing the law's applicability to other offenses related to trafficking victimization. Finally, record expungement is not automatic upon granting vacatur, making separate proceedings necessary to obtain both forms of relief.

- 5.9.1 Recommendation: Amend Miss. Code Ann. § 97-3-54.6(5) (Human trafficking Act; injunctive relief and other relief for victims of trafficking; confidentiality) to allow child sex trafficking victims to vacate delinquency adjudications and expunge related records for prostitution and other offenses arising from trafficking victimization, without a waiting period.<sup>67</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.<sup>68</sup>*

Miss. Code Ann. § 97-3-54.6 (Human Trafficking Act; injunctive and other relief for victims of trafficking; confidentiality) provides mandatory restitution and civil remedies for victims of any offense under the Act. Miss. Code Ann. § 97-3-54.6 states,

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<sup>67</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

<sup>68</sup> The analysis in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

....

(2) Notwithstanding any provisions to the contrary in Section 99–37–1 et seq., the court shall order restitution to the victim for any offense under this chapter. The order of restitution under this section shall direct the defendant to pay the victim, through the appropriate court mechanism, the full amount of the victim's pecuniary damages. For the purposes of determining restitution, the term “victim” means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such a representative or guardian. The court may order restitution even if the victim is absent from the jurisdiction or unavailable.

(3) Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney's fees in the trial and appellate courts and reasonable costs of investigation and litigation.

(4) The application of one (1) civil remedy under any provision of this act shall not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental.

However, the exploitation laws, Miss. Code Ann. § 97-5-31 to § 97-5-37 (Exploitation of children), do not specifically provide restitution for victims or a statutory civil cause of action. Miss Code Ann. § 99-37-3 (Imposition and amount of restitution) permits a court, at its discretion, to order restitution for victims of any crime who have incurred pecuniary damages. “Pecuniary damages” is defined in Miss. Code Ann. § 99-37-1(b) as “all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant’s criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.” Restitution is capped at \$5,000.00, and the discretionary decision by the court must take into account, among other things, the defendant’s ability to pay. Miss Code Ann. § 99-37-3(1), (2).

Miss Code Ann. § 97-43-9(6) (Powers and duties of circuit court; civil forfeiture of property; civil proceedings; injunctions; damages; attorneys fees; jury trial; intervention by attorney general; limitation of actions), codified in the chapter entitled “Racketeer Influenced and Corrupt Organization Act,” provides a cause of action for persons injured as a result of violations of the chapter. Under this provision, “Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages.” Miss Code Ann. § 97-43-9(6). The person can also recover reasonable attorneys’ fees, investigation costs, and litigation costs. Miss Code Ann. § 97-43-9(6). Pursuant to Miss. Code Ann. § 97-43-9(6)(b), a civil plaintiff’s rights to the assets would be superior to the state’s forfeiture rights.

Miss. Code Ann. § 11-7-11 (Action for seduction of a child) states, “A parent may bring an action for the seduction of a child, although such child be not living with nor in the service of the plaintiff, and though there be no loss of service; but a recovery by the parent or child shall bar any other action for the same cause.”

#### *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.*

With regard to civil claims, Miss. Code Ann. § 15-1-59 (Saving in favor of persons under disabilities) provides that the statute of limitations is tolled until after a minor reaches the age of majority.

With regard to criminal sex trafficking offenses, Miss. Code Ann. § 99-1-5 (Limitations; exceptions) eliminates the statute of limitations for the following sex offenses: “rape, . . . felonious abuse or battery of a child as described in Section 97-5-39 [Contributing to the neglect or delinquency of a child; felonious abuse and/or battery of a child], touching or handling a child for lustful purposes as described in Section 97-5-23 [Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual conduct], sexual battery of a child as described in Section 97-3-95(1)(c), (d) or (2) [Sexual battery], or exploitation of children as described in Section 97-5-33 [Exploitation of children; prohibitions], promoting prostitution under Section 97–29–51(2) when the person involved is a minor, or for any human trafficking offense described in Section 97–3–54.1(1)(a), (1)(b) or (1)(c) [Human Trafficking Act; prohibited conduct; penalty], Section 97–3–54.2 [Human Trafficking Act; destruction, concealment, or confiscation of passport or other immigration document for purpose of preventing person's freedom of movement or ability to travel; penalties], or Section 97–3–54.3 [Human Trafficking Act; aiding, abetting, or conspiring to violate human trafficking provisions].” Trafficking-related offenses are therefore not subject to the general statute of limitations and prosecution can be brought at any time. Miss. Code Ann. § 99-1-5.

- 5.11.1 Recommendation: Amend Miss. Code Ann. § 15-1-59 (Saving in favor of persons under disabilities) to extend the time for child sex trafficking victims to commence civil actions against their exploiters.<sup>69</sup>

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<sup>69</sup> The recommendation in this component is predicated upon the recommendation in 5.1 being simultaneously or previously enacted.

**Legal Components:**

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

**Legal Analysis:**

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

Miss. Code Ann. § 45-6-7<sup>70</sup> (Powers of board) authorizes the Board on Law Enforcement Officer Standards and Training to:

....  
 (b) Establish minimum educational and training standards for admission to employment or appointment as a law enforcement officer or a part-time law enforcement officer: (i) in a permanent position; and (ii) in a probationary status. The minimum educational and training standards for any law enforcement officer assigned to field or investigative duties shall include at least two (2) hours of training related to handling complaints of human trafficking and commercial sexual exploitation of children as defined in Section 43-21-105 [Definitions], communicating with such victims, and requiring the officer to contact the Department of Child Protection Services when human trafficking or commercial sexual exploitation is suspected.  
 ....

(e) Establish minimum curriculum requirements for basic and advanced courses and programs for schools operated by or for the state or any political subdivision thereof for the specific purpose of training police and other law enforcement officers, both full- and part-time, which shall include a minimum of two (2) hours of training in a course or courses related to the identification of and support for victims of human trafficking and commercial sexual exploitation.  
 ....

Money received from the Relief for Victims of Human Trafficking Fund under Miss. Code Ann. § 97-3-54.8 (Human Trafficking Act; Relief for Victims of Human Trafficking Fund) is to be used in part for this training. Miss. Code Ann. § 97-3-54.8(2)<sup>71</sup> states,

The monies in the Relief for Victims of Human Trafficking Fund shall be used by the Mississippi Bureau of Investigation of the Department of Public Safety solely for the administration of programs designed to assist victims of human trafficking, to conduct training on human trafficking to law enforcement, court personnel, attorneys, and nongovernmental service providers, and to support the

<sup>70</sup> The text of Miss. Code Ann. § 45-6-7 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

<sup>71</sup> The text of Miss. Code Ann. § 97-3-54.8 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).



duties of the statewide human trafficking coordinator as set forth in this act and as otherwise provided by law.

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

Single party consent to audiotaping is permitted in Mississippi. Miss. Code Ann. § 41-29-531(d), (e) (Exceptions to civil liability for violation of this article) states that Mississippi's article on "Interception of Wire or Oral Communications" does not apply to, among others,

- (d) A person acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one (1) of the parties to the communication has given prior consent to the interception; or
- (e) A person not acting under color of law who intercepts a wire, oral or other communication if the person is a party to the communication, or if one (1) of the parties to the communication has given prior consent to the interception unless the 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 this state, or for the purpose of committing any other injurious act.

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

The wiretapping statutes, Miss. Code Ann. § 41-29-501 to § 41-29-536 (Interception of wire or oral communications), only permit wiretapping and use of the resulting evidence in cases involving a suspected violation of the Controlled Substances Law. Miss. Code Ann. § 41-29-515(1)(a) (Granting of order; grounds; form; compensation of those furnishing assistance; time limit; authorization for covert entry; reports to judge; recusal of judge).

- 6.3.1 Recommendation: Amend the wiretapping statutes, Miss. Code Ann. § 41-29-501 to § 41-29-536 (Interception of wire or oral communications) to permit wiretapping when there is probable cause to believe that the wiretapping will provide evidence of trafficking and CSEC offenses.

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

Use of a law enforcement decoy is not a defense to human trafficking. Miss. Code. Ann. § 97-3-54.5 (Use of undercover operative in detection of offense permitted) states, "[t]he fact that an undercover operative or law enforcement officer was involved in any manner in the detection and investigation of an offense under this act shall not constitute a defense to a prosecution under this act." Additionally, Miss. Code Ann. § 97-5-33 (Exploitation of children) specifically provides that using a decoy is not a defense. Subsection (8) states, "The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section."

However, a defendant may still be able to assert a defense based on a law enforcement decoy posing as a minor to investigate other buyer-applicable offenses through reverse sting operations, which are the most likely situations in which a defendant would try to use such a defense. Miss. Code Ann. § 97-29-51 (Prostitution; misdemeanor procuring services of prostitute; felony promoting prostitution; penalties) is a buyer-applicable CSEC offense<sup>72</sup> that does not prohibit this defense, meaning that buyers charged for attempting to solicit or purchase sex with a minor under Miss. Code Ann. § 97-29-51 would not be prohibited from raising a defense based on the fact that an actual minor was not involved.

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<sup>72</sup> See *supra* Component 2.2 for more information about Miss. Code Ann. § 97-29-51(1).

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

While Miss. Code. § Ann. 97-3-54.5 (Use of undercover operative in detection of offense permitted) and Miss. Code Ann. § 97-5-33(8) (Exploitation of children) specifically provide that it is not a defense that “an undercover operative or law enforcement officer [posed as a child or] was involved in [any] other manner in the detection and investigation of an offense under this section,” the offense that could apply to use of the Internet to commit human trafficking or CSEC offenses, Miss. Code Ann. § 97-5-27(3)(a) (Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact), does not prohibit this defense.

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

Under Miss. Code § 43-15-401 (Procedures used to investigate reports of missing children; written policies adopted by state law enforcement agencies), law enforcement officers are mandated to create and adhere to reporting procedures related to all missing children, including children who are missing as a result of running away. Miss. Code § 43-15-401 states,

- (1) Law enforcement agencies in this state shall adopt written policies that specific the procedures to be used to investigate reports of missing children. The policies must ensure that cases involving missing children are investigated promptly using appropriate resources and are in compliance with the requirements of this section and 42 USCS 5779<sup>73</sup> [Reporting requirement] and 5780<sup>74</sup> [State requirements]. The policies must include:
  - (a) Procedures for accepting and filing missing children reports;
  - (b) Procedures for initiating, maintaining, closing or referring a missing child investigation;
  - (c) Procedures for prompt and open transfer or information where multiple jurisdictions and agencies are involved in the investigation; and

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<sup>73</sup> 42 USCS § 5779 (Reporting requirement) states, “(a) Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 21 reported to such agency to the National Crime Information Center of the Department of Justice . . . .”

<sup>74</sup> 42 USCS § 5780 (State requirements) states, “Each State reporting under the provisions of this section and section 5779 of this title shall (1) ensure that no law enforcement agency within the State establishes or maintains a policy that requires observance of any waiting period before accepting a missing child or unidentified person report; (2) ensure that no law enforcement agency within the State establishes or maintains a policy that requires the removal of a missing person entry from its State law enforcement system or the National Crime Information Center computer database based solely on the age of the person; (3) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include (A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child; (B) a recent photograph of the child, if available; (C) the date and location of the last known contact with the child; and (D) the category under which the child is reported missing; is entered within 2 hours of receipt into the State law enforcement system and the National Crime Information Center computer networks and made available to the Missing Children Information Clearinghouse within the State and other agency designated within the State to receive such reports; and (4) provide that after receiving reports as provided in paragraph (3), the law enforcement agency that entered the report into the National Crime Information Center shall (A) no later than 30 days after the original entry of the record into the State law enforcement system and the National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records and a photograph taken during the previous 180 days; (b) institute or assist with appropriate search and investigative procedures; (c) notify the National Center for Missing and Exploited Children of each report received relating to a child reported missing from a foster care family home or childcare institution; (D) maintain close liaison with State and local child welfare systems and the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases; (E) grant permission to the National Crime Information Center Terminal Contractor for the State to update the missing person record in the National Crime Information Center computer networks with additional information learned during the investigation relating to the missing person.”

- (d) Standards for maintaining and clearing data concerning a missing child that is stored in the National Crime Information Center [NCIC]. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

Additionally, law enforcement officers are prohibited from excluding in their reports children who are missing as a result of running away. Miss. Code § 43-15-401(2). Under Miss. Code § 43-15-401(2), “[f]or purposes of this section and in compliance with federal law, a runaway child is a missing child and shall not be excluded as such based solely on the fact that the child has voluntarily absented himself from his normal place of residence.”

Furthermore, law enforcement must accept reports and commence investigations immediately upon receiving a report of a missing child and are prohibited from removing any reports made to NCIC based upon the age of the child. Miss. Code § 43-15-401(3), (4).

Pursuant to Miss. Code § 43-15-401(5), upon receiving a report of a missing child, a law enforcement officer must immediately:

- (a) File a report or cause a report to be filed in the county or municipality where the child resides or in which the child was last seen or both. Nothing in subsection (4) shall preclude a law enforcement agency from accepting a missing child report when jurisdiction cannot be determined;
- (b) Institute or assist with appropriate search and investigative procedures;
- (c) Inform all on-duty law enforcement officers within the agency of the missing child report; and
- (d) Transmit the report for inclusion within the National Crime Information database within the time frame required by federal law. Law enforcement agencies have the duty to enter the missing child report into the National Crime Information database shall provide any information required by the National Crime Information Center to effectuate the purpose of this section.

In addition, the law enforcement officer who enters the report into the NCIC database must update the report within the first thirty (30) days with any additional informational that would lead to the successful recovery of the child, including medical and dental records, photographs and other identifying information. Miss. Code Ann. § 43-15-401(6)(a). Furthermore, law enforcement officers are required under Miss. Code Ann. § 43-15-401(6)(b) to notify the National Center for Missing and Exploited Children “of each report received relating to a missing foster child.”

Lastly, Miss. Code Ann. § 43-15-401(7) requires that law enforcement, upon receiving a missing child report, “shall consider whether the circumstances under which the child went missing satisfy the criteria necessary for the issuance of an Amber Alert and, where applicable, shall immediately submit the Mississippi Bureau of Investigation all required paperwork and documents necessary to request the issuance of an Amber Alert.”

In addition to Mississippi’s mandate on the reporting of missing and located missing children specifically, law enforcement officers are required to report investigations of human trafficking to a statewide coordinator within Mississippi Bureau of Investigation of the Department of Public Safety. Miss. Code Ann. § 97-3-54.9<sup>75</sup> (Statewide human trafficking coordinator; duties) states,

- . . . .
- (4) Every investigation of an offense under this chapter shall be reported to the coordinator by the initiating law enforcement agency pursuant to guidelines established by the coordinator.
- (5) Notwithstanding the provisions of Section 43–21–261, disclosure by any state agency, nongovernmental agency, service provider or local or state law enforcement agency of

<sup>75</sup> The text of Miss. Code Ann. § 97-3-54.9 cited here and elsewhere in this report includes amendments made by the enactment of House Bill 571 during the 2019 Regular Session of the Mississippi Legislature (effective July 1, 2019).

nonidentifying information regarding a minor victim to the coordinator for the purposes of evaluating and collecting data regarding trafficking offenses in the state is specifically authorized.

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