

## 2019 ANALYSIS AND RECOMMENDATIONS

### NEBRASKA

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

##### *Legal Components:*

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

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

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

Nebraska's human trafficking law specifically addresses minors trafficked for commercial sexual exploitation and does not require force, fraud, or coercion. Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) states,

(1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IB felony.

....

(3) Any person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section, is guilty of a Class IIA felony.

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Neb. Rev. Stat. Ann. § 28-830(12) (Human trafficking; forced labor or services; terms, defined) defines sex trafficking of a minor as:

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

knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity,<sup>2</sup> sexually explicit performance,<sup>3</sup> or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography.

A Class IB felony is punishable by imprisonment for 20 years to life, while a Class IIA felony is punishable by imprisonment for up to 20 years. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation). Additional penalties related to property forfeiture are available for human trafficking offenses or crimes committed in the furtherance of human trafficking. Neb. Rev. Stat. Ann. § 25-21,302 (Property used in commission of certain crimes; forfeiture; proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds).

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.*

Nebraska has several statutes specifically criminalizing CSEC, including the following:

1. Neb. Rev. Stat. Ann. § 28-707<sup>4</sup> (Child abuse; privileges not available; penalties) states,

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

....

(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions . . . .

....

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109<sup>5</sup> or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently<sup>6</sup> and results in serious bodily injury as defined in section 28-109.

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

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<sup>2</sup> “Commercial sex act” is defined as “any sex act on account of which anything of value is given, promised to, or received by any person.” Neb. Rev. Stat. Ann. § 28-830(2).

<sup>3</sup> “Sexually explicit performance” is defined as “a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests.” Neb. Rev. Stat. Ann. § 28-830(13).

<sup>4</sup> The text of Neb. Rev. Stat. Ann. § 28-707 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 519 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>5</sup> Neb. Rev. Stat. Ann. § 28-109(21) (Terms, defined) defines “serious bodily injury” as “bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.”

<sup>6</sup> Neb. Rev. Stat. Ann. § 28-707(9) defines “negligently” as referring to “criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.”

- (7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.
- (8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.
- (9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

Pursuant to Neb. Rev. Stat. Ann. § 28-106(1), a Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. A Class IIIA felony is punishable by imprisonment up to 3 years and 18 months post-release supervision, a fine not to exceed \$10,000, or both; a Class II felony is punishable by imprisonment for 1–50 years; and a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation).

2. Neb. Rev. Stat. Ann. § 28-1463.03(3), (4) (Child Pornography Prevention Act) states,

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct<sup>7</sup> which has a child<sup>8</sup> as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

A conviction under this statute by a person 18 years of age or younger is punishable as a Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID felony<sup>9</sup> punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is punishable as a Class IC felony<sup>10</sup> by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.<sup>11</sup> Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

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<sup>7</sup> Neb. Rev. Stat. Ann. § 28-1463.02(5) (Terms, defined) defines “sexually explicit conduct” as

- (a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital;
- (b) real or simulated masturbation;
- (c) real or simulated sadomasochistic abuse;
- (d) erotic fondling;
- (e) erotic nudity; or
- (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved.

<sup>8</sup> Neb. Rev. Stat. Ann. § 28-1463.02(1) (Terms, defined) defines “child” as “in the case of a participant, . . . any person under the age of eighteen years and, in the case of a portrayed observer, . . . any person under the age of sixteen years.”

<sup>9</sup> According to Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation), Class IC and ID felonies are subject to mandatory minimum sentences of 5 and 3 years, respectively. Pursuant to Neb. Rev. Stat. Ann. § 28-105(4), “A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.”

<sup>10</sup> See *supra* note 9.

<sup>11</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-1463.04(3),

3. Neb. Rev. Stat. Ann. § 28-802 (Pandering) states,

- (1) A person commits pandering if such person:
  - (a) Entices another person to become a prostitute; or
  - (b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; or
  - (c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or
  - (d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.
- (2) Pandering is a Class II felony for a first offense . . . .

A Class II felony is punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-802(2), 28-105(1).

4. Neb. Rev. Stat. Ann. § 28-801.01 (Solicitation of prostitution) states,

- (1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.
- (2) Any person convicted of violating subsection (1) of this section shall be punished as follows:
  - (a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars, unless the person solicited is under the age of eighteen years, in which case such person violating this section shall be guilty of a Class IV felony. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community . . . .

A Class IV felony is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1).

5. Neb. Rev. Stat. Ann. § 28-804 (Keeping a place of prostitution) states,

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Any person who violates section 28-1463.03 and has previously been convicted of a violation of section 28-1463.03 or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] shall be guilty of a Class IC felony for each offense.

(1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class IV felony, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class III felony.

A Class IV felony is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. § 28-105(1).

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

1. Neb. Rev. Stat. Ann. § 28-805(1)(a) (Debauching a minor; penalty)<sup>12</sup> states, “(1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by: (a) Lewdly inducing such boy or girl carnally to know any other person.”<sup>13</sup> A conviction under Neb. Rev. Stat. Ann. § 28-805(1) is punishable as a Class I misdemeanor by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1).

2. Neb. Rev. Stat. Ann. § 28-833(1) (Enticement by electronic communication device; penalty) states,

A person commits the offense of enticement by electronic communication<sup>14</sup> device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:

- (a) Uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound;
- (b) Transmits or otherwise disseminates any visual depiction of sexually explicit conduct as defined in section 28-1463.02 [Terms, defined];<sup>15</sup> or
- (c) Offers or solicits any indecent, lewd, or lascivious act.

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-833(2), 28-105(1).

3. Neb. Rev. Stat. Ann. § 28-319.01(1) (Sexual assault of a child; first degree; penalty) states,

A person commits sexual assault of a child in the first degree:

- (a) When he or she subjects another person under twelve years of age to sexual penetration<sup>16</sup> and the actor is at least nineteen years of age or older; or

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<sup>12</sup> This statute clearly implicates adults who solicit minors under the age of 17 to visit a house of prostitution for the purpose of the minor engaging in sexual penetration with a prostitute, but it is not clear whether this statute also implicates adult buyers or traffickers who solicit a minor under the age of 17 to enter a house of prostitution for purposes of engaging in sexual penetration with a buyer. Therefore, because it is possible that a violation of this statute may involve a commercial transaction, it has been listed as a CSEC offense.

<sup>13</sup> See *State v. Parmer*, 313 N.W.2d 237, 240 (Neb. 1981) (“We therefore construe ‘any other person’ to mean any person other than the victim.”).

<sup>14</sup> For purposes of Neb. Rev. Stat. Ann. § 28-833, “electronic communication” is defined as “any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device.” Neb. Rev. Stat. Ann. § 28-833(4).

<sup>15</sup> See *supra* note 7.

<sup>16</sup> Neb. Rev. Stat. Ann. § 28-318(6) (Terms, defined) states,

(b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

A first conviction under this statute is punishable as a Class IB felony by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. §§ 28-319.01(2), 28-105(1). The penalty is enhanced to 25 years to life imprisonment, however, if an offender has a prior conviction under this statute or a number of other specific statutes.<sup>17</sup> Neb. Rev. Stat. Ann. §§ 28-319.01(3), 28-105(1).

4. Neb. Rev. Stat. Ann. § 28-320.01 (Sexual assault of a child; second or third degree; penalties) states,

(1) A person commits sexual assault of a child in the second or third degree if he or she subjects another person fourteen years of age or younger to sexual contact<sup>18</sup> and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in the second degree is a Class II felony for the first offense.

(3) Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim. Sexual assault of a child in the third degree is a Class IIIA felony for the first offense.

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Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, nonhealth, or nonlaw enforcement purposes. Sexual penetration shall not require emission of semen.

The text of Neb. Rev. Stat. Ann. § 28-318 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 519 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>17</sup> Neb. Rev. Stat. Ann. § 28-319.01(3) states,

Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

<sup>18</sup> Neb. Rev. Stat. Ann. § 28-318(5) defines "sexual contact" as

the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact also means the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact also includes the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 [Sexual assault of a child; first degree; penalty] and 28-320.01 [Sexual assault of a child; second or third degree; penalties];

....

A first conviction for second degree sexual assault of a child is punishable as a Class II felony by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-320.01(2), 28-105(1). A conviction is punishable as a class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.<sup>19</sup> Neb. Rev. Stat. Ann. §§ 28-320.01(4), 28-105(1). A first conviction for third degree sexual assault of a child is a Class IIIA felony is punishable by imprisonment up to 3 years and 18 months post-release supervision, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-320.01(3), 28-105(1). A conviction is punishable as a class IC felony punishable by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes.<sup>20</sup> Neb. Rev. Stat. Ann. §§ 28-320.01(5), 28-105(1).

5. Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) states,

No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty].<sup>21</sup>

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes.<sup>22</sup> Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

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<sup>19</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-320.01(4),

Any person who is found guilty of second degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-319.01 shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of twenty-five years in prison.

<sup>20</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-320.01(5),

Any person who is found guilty of third degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or 28-319.01 shall be guilty of a Class IC felony.

<sup>21</sup> Neb. Rev. Stat. Ann. § 28-320.02(1) also states, “A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.”

<sup>22</sup> Neb. Rev. Stat. Ann. § 28-320.02(2) states,

If a person who violates this section has previously been convicted of a violation of this section or section 28-308 [Assault in the first degree], 28-309 [Assault in the second degree], 28-310 [Strangulation], 28-311 [Criminal child enticement], 28-313 [Kidnapping], 28-314 [False imprisonment in the first degree], 28-315 [False imprisonment in the second degree], 28-319 [Sexual assault; first degree], 28-319.01 [Sexual assault on a child; first degree], 28-320.01 [Sexual assault on a child; second or third degree], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic

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

Nebraska’s prostitution statute, Neb. Rev. Stat. Ann. § 28-801(5) (Prostitution; penalty) addresses and identifies an exception to the criminalization of both minors and human trafficking victims, as defined by Nebraska’s core human trafficking law, Neb. Rev. Stat. Ann. § 28-830 (Human trafficking; forced labor or services; terms, defined). Pursuant to Neb. Rev. Stat. Ann. § 28-801(5), “[i]f the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) [Prostitution] of this section is,

- (a) a person engaging in those acts a direct result of being a trafficking victim as defined in section 28-830, such person shall be immune from prosecution for a prostitution offense; or
- (b) a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 [Temporary custody of juvenile without warrant; when] and further disposition under the Nebraska Juvenile Code.

Furthermore, under Neb. Rev. Stat. Ann. § 28-801(5)(b), “A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 [Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties] to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection and Family Safety Act.”

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.*

Nebraska’s Public Protection Act,<sup>23</sup> codified at Neb. Rev. Stat. Ann. § 28-1355 (Pattern of racketeering activity or collection of an unlawful debt; prohibited acts) provides,

- (1) It shall be unlawful for any person<sup>24</sup> who has received any proceeds that such person knew were derived, directly or indirectly, from a pattern of racketeering activity<sup>25</sup> or through 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 right, interest, or equity in real property or in the establishment or operation of any enterprise<sup>26</sup> . . . .

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communication device; penalty], or 28-1463.05 [Visual depiction of sexually explicit acts related to possession; violation; penalty] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty], the person is guilty of a Class IC felony.

<sup>23</sup> Neb. Rev. Stat. Ann. §§ 28-1352 to -1356.

<sup>24</sup> “Person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property.” Neb. Rev. Stat. Ann. § 28-1354(3).

<sup>25</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-1354(2),

Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.

<sup>26</sup> “Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities.” Neb. Rev. Stat. Ann. § 28-1354(1).

(2) It shall be unlawful for any person through a pattern of racketeering activity or through 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 shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(4) It shall be unlawful for any person to conspire or attempt to violate any of the provisions of subsection (1), (2), or (3) of this section.

Pursuant to Neb. Rev. Stat. Ann. § 28-1354(5)(j) (Terms, defined),

Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

....

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act;

Sex trafficking and commercial sexual exploitation of children constitute predicate crimes under the racketeering law, making this law an available tool for combatting criminal enterprises that engage in domestic minor sex trafficking. A conviction under Neb. Rev. Stat. Ann. § 28-1355 is punishable as Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-1356(1), 28-105(1). Although Neb. Rev. Stat. Ann. § 28-1356(1) additionally states that "if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony," a conviction is punishable as a Class IB felony, convictions for prostitution are not punishable as Class IA or IB felonies.

A conviction is also punishable by a fine not to exceed \$25,000. However, under Neb. Rev. Stat. Ann. § 28-1356(2),

In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred . . .

Gangs and criminal enterprises may face additional penalties under Neb. Rev. Stat. Ann. § 28-1351 (Unlawful membership recruitment into an organization or association; penalty). Neb. Rev. Stat. Ann. § 28-1351(1) makes it a crime if a person

knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members, individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

....

(m) Kidnapping under section 28-313;

....

(r) Pandering under section 28-802 [Pandering; penalty];

....

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-1351(2), 28-105(1).

**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.*

Neb. Rev. Stat. Ann. § 28-830(12) (Human trafficking; forced labor or services; terms, defined) applies to buyers of commercial sex acts with minors though the terms “solicit” and “cause” and, following federal precedent,<sup>27</sup> through the term “obtain.” Specifically, Neb. Rev. Stat. Ann. § 28-830(12) states,

Sex trafficking of a minor means knowingly . . . soliciting, or obtaining by any means or knowingly attempting to . . . solicit, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

<sup>27</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit held that the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain “a latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227), enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular the term “obtains”) to the extent such interpretation does not conflict with state case law.

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

Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution; penalty) provides, “Any person who solicits another person who is not his spouse to perform any act of sexual contact or sexual penetration . . . in exchange for money or other thing of value, commits solicitation of prostitution.” When the victim is a minor, this offense is punishable as a Class IV felony by imprisonment up to 2 years, 12 months post-release supervision, and a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1).

Neb. Rev. Stat. Ann. § 28-802(1)(d) (Pandering) also applies to buyers of sex with minors. It states, “A person commits pandering if such person . . . gives or agrees to . . . give any money or other thing of value for procuring or attempting to procure any person to . . . commit an act of prostitution or come into this state or leave this state for the purpose of prostitution . . . .” Pursuant to Neb. Rev. Stat. Ann. § 28-802(2), “[p]andering is a Class II felony for a first offense . . . .”

Further, several sexual offenses also could be used to prosecute certain buyers of commercial sex acts with a minor.<sup>28</sup> These statutes, however, do not specifically criminalize the commercial sexual exploitation of a child and do not refer to Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties).

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

Nebraska’s general solicitation law differentiates between soliciting sex with an adult and soliciting sex with a minor by enhancing the penalty when the person solicited is a minor. Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution; penalty) provides, “Any person who solicits another person who is not his spouse to perform any act of sexual contact or sexual penetration . . . in exchange for money or other thing of value, commits solicitation of prostitution.” A first conviction under this statute is punishable as a Class I misdemeanor. However, if the victim is a minor, then it is a Class IV felony.<sup>29</sup> A Class IV felony provides for imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1). A subsequent conviction is also a Class IV felony punishable by imprisonment up to 2 years and a fine of \$500–\$10,000.<sup>30</sup> Neb. Rev. Stat. Ann. §§ 28-801.01(2)(b), 28-105(1).

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<sup>28</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute some buyers.

<sup>29</sup> Neb. Rev. Stat. Ann. § 28-801.01(2)(a) also states,

If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars, and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and that such person shall satisfactorily attend and complete, at his or her own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community . . . .

<sup>30</sup> Neb. Rev. Stat. Ann. § 28-801.01(2)(b) similarly states,

If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than five hundred dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment, and that such person shall satisfactorily attend and complete, at his or her

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

Under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties), sex trafficking of a minor is punishable as a Class IB felony by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. §§ 28-831(1), 28-105(1).

If convicted under Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution; penalty), a buyer would be guilty of a Class IV felony, which is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1). If convicted under Neb. Rev. Stat. Ann. § 28-802 (Pandering), a buyer would be guilty of a Class II felony for a first offense, which is punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-802(2), 28-105(1).

Further, several sexual offenses could be used to prosecute certain buyers of commercial sex acts with a minor, but these offenses do not specifically criminalize the commercial sexual exploitation of a child.<sup>31</sup>

In comparison, if the victim is under the age of 14, a conviction under the Trafficking Victims Protection Act (TVPA)<sup>32</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>33</sup> against a minor. 18 U.S.C. § 3559(e)(1). To the extent buyers can be prosecuted under other federal CSEC laws,<sup>34</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>35</sup>

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own expense, an educational program designed to educate participants on the effect of prostitution on the participants' health, on the person solicited, and on the community . . . .

<sup>31</sup> See *supra* Component 1.2 for a full description of the sexual offense laws that may be used to prosecute certain buyers.

<sup>32</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>33</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>34</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>35</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).

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 neither is expressly commercial in nature, two of Nebraska’s laws criminalize the use of the Internet to lure, entice, or recruit a child to engage in sexual conduct.

Neb. Rev. Stat. Ann. § 28-833(1) (Enticement by electronic communication device; penalty) states,

A person commits the offense of enticement by electronic communication device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:

. . . .

(c) Offers or solicits any indecent, lewd, or lascivious act.

A conviction under this statute is punishable as a Class IV felony by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. §§ 28-833(2), 28-105(1).

Additionally, and while not commercial in nature but buyer-applicable, Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) states,

No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty].

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

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

Neb. Rev. Stat. Ann. § 28-831(4)(c) (Human trafficking; forced labor or services; prohibited acts; penalties) prohibits a buyer from asserting a mistake of age defense, stating, “[i]t is not a defense in a prosecution under this subsection . . . that the defendant believed that the minor victim was an adult.” However, neither Neb. Rev. Stat. Ann. § 28-802 (Pandering), § 28-801.01(1) (Solicitation of prostitution; penalty), nor § 28-1463.03 (Child Pornography Prevention Act) expressly prohibit this defense.<sup>36</sup>

2.6.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 28-802 (Pandering), § 28-801.01(1) (Solicitation of prostitution; penalty), and § 28-1463.03 (Child Pornography Prevention Act) to expressly prohibit a mistake of age defense.

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<sup>36</sup> Although not statutorily prohibited, case law seemingly eliminates a mistake of age defense for these types of cases. “Dispensing with the knowledge requirement is appropriate where the underlying conduct is illegal, irrespective of a defendant’s knowledge of the victim’s age . . . . In regard to the age of the victim, our case law provides that reasonable mistake as to the age of the victim is not a defense . . . . ‘It would be nonsensical to require proof of knowledge of the victim’s age when the statute exists to provide special protection for all minors, including, if not especially, those who could too easily be mistaken for adults.’” *State v. Swindle*, 915 N.W.2d 795, 806–7 (Neb. 2018).

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

Nebraska's trafficking law does not stagger penalties based on a minor's age, and penalties are sufficiently high. A conviction under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) is a Class IB felony punishable by imprisonment for 20 years to life regardless of the minor victim's age. Neb. Rev. Stat. Ann. §§ 28-831(1), 28-105(1).

Similarly, Nebraska's CSEC laws do not stagger penalties based on a minor's age, but penalties are not sufficiently high for all of these offenses. A conviction under Neb. Rev. Stat. Ann. § 28-802(1)(d) (Pandering) is a Class II felony punishable by imprisonment for 1–50 years, while a conviction under Neb. Rev. Stat. Ann. § 28-801.01(1) (Solicitation of prostitution; penalty) is a Class IV felony punishable by imprisonment for up to 2 years. Neb. Rev. Stat. Ann. §§ 28-802(2), 28-105(1), 28-801.01(2)(a), 28-106(1).

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

A buyer will not be required to pay a fine if convicted under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or pandering under Neb. Rev. Stat. Ann. § 28-802(2). A buyer's first conviction for soliciting prostitution with a minor under Nebraska's general solicitation law, Neb. Rev. Stat. Ann. § 28-801.01 (Solicitation of prostitution; penalty), carries a fine not to exceed \$10,000. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), 28-106(1). Subsequent convictions, however, are subject to a fine of \$500–\$10,000. Neb. Rev. Stat. Ann. §§ 28-801.01(2)(a), (2)(b), 28-105(1).

Buyers are also subject to a discretionary restitution order. Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) states,

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations . . . .

The court determines the amount of restitution "based on the actual damages sustained by the victim." Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, "If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury."

While a buyer will not be required to pay a fine if convicted under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), buyers may be subject to property forfeiture if convicted of a human trafficking offense. Neb. Rev. Stat. Ann. § 25-21,302(1) (Property used in commission of certain crimes; forfeiture; proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds), states:

(a) In addition to any other civil or criminal penalties provided by law, any property used the in commission of a violation of . . . § 28-831 (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties) may be forfeited through proceeding as provided in this section.

(b) The following property shall be subject to forfeiture if used or intended to use as an instrumentality in or used in furtherance of a violation of . . . § 28-831 (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties):

- (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 action 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 of as an inducement to violate;
- (vii) Any property traceable to proceeds from a violation; and
- (vii) 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 . . . § 28-831 (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties).

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

Nebraska law prohibits the possession and purchase of child sexual abuse material (CSAM). Neb. Rev. Stat. Ann. § 28-1463.03(2)<sup>37</sup> (Child Pornography Prevention Act) makes it illegal for “a person knowingly to purchase, rent, . . . trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.” A violation under this statute by a person 18 years of age or younger is a Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID felony punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is a Class IC felony punishable by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes. Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

Neb. Rev. Stat. Ann. § 28-813.01(1)<sup>38</sup> (Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense) makes it illegal “for a person nineteen years of age or older to knowingly possess any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.” A first conviction is punishable as a Class IIA felony by imprisonment for up to 20 years, a fine up to \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-813.01(1), 28-105(1). For offenders under 19 years of age, Neb. Rev. Stat. Ann. § 28-813.01(2) states, “It shall be unlawful for a person under nineteen years of age to knowingly and intentionally possess any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers . . . .” A first violation of this subsection is only a Class I misdemeanor. Neb. Rev. Stat. Ann. § 28-813.01(2). In instances where the offender has a prior conviction under this statute or other specific criminal statutes, a conviction is punishable as a Class IC felony by imprisonment for 5–50 years. Neb. Rev. Stat. Ann. § 28-813.01(4).

In addition to any statutorily-mandated penalties provided for in the Child Pornography Prevention Act and Neb. Rev. Stat. Ann. § 28-813.01, an offender may be subject to the forfeiture of “any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devises as defined in § 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devises to be forfeited as part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, conducted pursuant to section

<sup>37</sup> The text of Neb. Rev. Stat. Ann. § 28-1463.03 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 630 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>38</sup> The text of Neb. Rev. Stat. Ann. § 28-813.01 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 630 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

11<sup>39</sup> of this act, that any or all of such property was derived from, used, or intended to be used to facilitate a violation of this section.” Neb. Rev. Stat. Ann. §§ 28-813.01(5); 28-1463.01(10).

Furthermore, under Neb. Rev. Stat. Ann. § 25-21,302 (Property used in the commission of certain crimes; forfeiture; proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds), a sentencing court may order property or asset forfeiture if a buyer used or intended to use any of the following instruments in furtherance of a violation of Neb. Rev. Stat. Ann. §§ 28-1463.01(10) (Child Pornography Prevention Act), § 28.813 (Obscene literature or material; prepares; distributes; promotes; penalty) . . . ,

- (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 the Child Pornography Prevention Act, section 28-813, or 28-831.

In comparison, a federal conviction for possession of CSAM<sup>40</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>41</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>42</sup>

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<sup>39</sup> Section 28-1463.01(11) outlines the procedural requirements necessary for the forfeiture of property pursuant to Neb. Rev. Stat. Ann. § 28-813.01(5) and § 28-1463.01(10), stating,

- (a) The owner or possessor of the property has been convicted of a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01 or 28-1107;
- (b) The information charging such violation specifically requests the forfeiture of property upon conviction is and prepared pursuant to section 12 of this act; and
- (c) The property was found by clear and convincing evidence to have been derived from, used, or intended to be used to facilitate a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01 or 28-1107.

<sup>40</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>41</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>42</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

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

Neb. Rev. Stat. Ann. § 29-4004(1) (Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment) states, “Any person subject to the Sex Offender Registration Act<sup>43</sup> shall register within three working days after becoming subject to the act . . . .” Neb. Rev. Stat. Ann. § 29-4003(1)<sup>44</sup> (Applicability of act) states,

- (a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:
  - (i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:
    - . . . .
    - (D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;
    - (E) Sexual assault of a child in the first degree pursuant to section 28-319.01;
    - . . . .
    - (H) Pandering of a minor pursuant to section 28-802;
    - (I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or subdivision (2)(b) or (c) of section 28-1463.05;
    - (J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section subsection (1) or (4) of 28-813.01;
    - (K) Criminal child enticement pursuant to section 28-311.
    - (L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;
    - . . . .
    - (N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;
    - . . . .
  - (b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:
    - (i) (A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:
      - . . . .
      - (XVI) Enticement by electronic communication device pursuant to section 28-833; or
      - (XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.
      - . . . .
      - . . . .
      - . . . .

Buyers convicted under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or § 28-801.01(1) (Solicitation of prostitution), however, are not required to register as sex offenders under Nebraska law.

2.10.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 29-4003(1) (Applicability of act) to make the Sex Offender Registration Act applicable to buyers convicted under Neb. Rev. Stat. Ann. § 28-831

for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>43</sup> Neb. Rev. Stat. Ann. §§ 29-4001–4014.

<sup>44</sup> The text of Neb. Rev. Stat. Ann. § 29-4003 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bills 519 and 630 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

(Human trafficking; forced labor or services; prohibited acts; penalties) or § 28-801.01 (Solicitation of prostitution) in instances where the person trafficked, abused, or solicited is a minor under the age of 18.

**Legal Components:**

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

**Legal Analysis:**

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

A trafficker convicted under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) is guilty of a Class IB felony punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. §§ 28-831(1), 28-105(1).

Under Neb. Rev. Stat. Ann. § 28-802(1) (Pandering; penalty), traffickers face heightened penalties for pandering a minor. Pandering is a Class II felony, punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. §§ 28-802(2), 28-105(1), 28-802(2).

Traffickers also may be convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d)<sup>45</sup> (Child abuse; privileges not available; penalties), which may be used to prosecute a trafficker who commits child abuse by placing a child “in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 . . . .” A violation of this statute is a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-707(3)–(8). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 3 years and 18 months post-release supervision, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation). A Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

Lastly, a trafficker may be convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty),<sup>46</sup> which is punishable as a Class I misdemeanor by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1).

<sup>45</sup> See *supra* note 4.

<sup>46</sup> See *supra* note 12 discussing the applicability of this statute to traffickers.

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. §§ 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.*

Nebraska prohibits the creation and distribution of child sexual abuse material (CSAM). Neb. Rev. Stat. Ann. § 28-1463.03<sup>47</sup> (Child Pornography Prevention Act) states,

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to . . . sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

A violation of this statute by a person 18 years of age or younger is a Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID felony punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is punishable as a Class IC felony by imprisonment for 5–50 years; however, if a person has a prior conviction under this statute or a number of other specific statutes. Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

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 against a minor. 18 U.S.C. § 3559(e)(1). Additionally, a federal conviction for distribution of CSAM<sup>48</sup> is generally punishable by imprisonment for 5–20 years and a fine not to exceed \$250,000.<sup>49</sup> Subsequent convictions, however, are punishable by imprisonment up to 40 years and a fine not to exceed \$250,000.<sup>50</sup>

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<sup>47</sup> See *supra* note 37.

<sup>48</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>49</sup> 18 U.S.C. §§ 2252(b) (stating that a conviction under subsection (a)(1), (a)(2), or (a)(3) is punishable by imprisonment for 5–20 years and a fine), 2252A(b)(1) (a conviction is punishable by imprisonment for 5–20 years and a fine), 1466A(a), (b) (stating that a conviction under subsection (a) is “subject to the penalties provided in section 2252A(b)(1),” imprisonment for 5–20 years and a fine, while a conviction under subsection (b) is “subject to the penalties provided in section 2252A(b)(2),” imprisonment up to 10 years, a fine, or both); see also 18 U.S.C. §§

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

While not expressly commercial in nature, Neb. Rev. Stat. Ann. § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties) may be used to prosecute a trafficker who uses the Internet to lure, entice, or recruit a child for use in commercial sex acts. Neb. Rev. Stat. Ann. § 28-320.02(1) states,

No person shall knowingly solicit, coax, entice, or lure

(a) a child sixteen years of age or younger or

(b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833 [Enticement by electronic communication device; penalty], to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty].

A conviction under this statute is punishable as a Class ID felony by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1). A conviction is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this or other specific statutes. Neb. Rev. Stat. Ann. §§ 28-320.02(2), 28-105(1).

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

Financial penalties for traffickers include asset forfeiture, discretionary restitution, and fines of up to \$10,000. Traffickers do not face fines if convicted under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or § 28-802(1) (Pandering; penalty). However, traffickers convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty) are subject to a possible fine not to exceed \$1,000. Neb. Rev. Stat. Ann. §§ 28-805(2), 28-106(1). Additionally, a trafficker convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) is subject to a possible fine not to exceed \$1,000 if the offense was “committed negligently,” a possible fine not to exceed \$10,000 if the offense was “committed knowingly and intentionally and does not result in serious bodily injury,” or no fine if the offense was “committed knowingly and intentionally and results in serious bodily injury” or in the death of the child. Neb. Rev. Stat. Ann. §§ 28-707(3)–(8), 28-106(1), 28-105(1).

Additionally, traffickers who cause “actual physical injury or property damage or loss” to their victim may have to pay restitution pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when).<sup>51</sup> The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

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

<sup>50</sup> 18 U.S.C. §§ 2252(b) (stating if a person has a prior conviction under subsection (a)(1), (a)(2), or (a)(3) or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 2252A(b)(1) (stating if a person has a prior conviction under subsection (a)(2), (a)(3), or a list of other statutes, a conviction is punishable by a fine and imprisonment for 15–40 years), 1466A(a), (b) (stating that the penalty scheme for section 2252A(b) applies); *see also* 18 U.S.C. §§ 3559(a)(1) (classifying all of the above listed offenses as felonies), 3571(b)(3) (providing a fine up to \$250,000 for any felony conviction).

<sup>51</sup> *See supra* Component 2.8 for the provisions of Neb. Rev. Stat. Ann. § 29-2280.

Additionally, under Neb. Rev. Stat. Ann. § 25-21,302(1) (Property used in commission of certain crimes; forfeiture; proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds), traffickers convicted of trafficking or CSEC offenses may face property forfeiture, upon a finding that such property was used in the furtherance of the sex trafficking or exploitation of a minor. Neb. Rev. Stat. Ann. § 25-21,302(1) states:

- (a) In addition to any other civil or criminal penalties provided by law, any property used in the commission of a violation of the Child Pornography Prevention Act or section 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], or § 28-831 (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties) may be forfeited through proceeding as provided in this section.
- (b) The following property shall be subject to forfeiture if used or intended to use as an instrumentality in or used in furtherance of a violation of . . . § 28-831 (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties):
  - (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 action 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 of 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 . . . § 28-831 (Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties).

Traffickers may also be subject to property forfeiture for offenses committed under the Child Pornography Prevention Act, Neb. Rev. Stat. Ann. §§ 28-1463.01–28-1463.06. Specifically, Neb. Rev. Stat. Ann. § 28-1463.06 (Property subject to forfeiture; hearing) states,

a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices be forfeited as part of the sentence imposed if it finds by clear and convincing evidence . . . that any or all such property was derived from, used, or intended to be used to facilitate a violation of the Child Pornography Prevention Act.

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

Neb. Rev. Stat. Ann. § 29-4004(1) (Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment) (Operative Jan. 1, 2012) states, “Any person subject to the Sex Offender Registration Act<sup>52</sup> shall register within three working days after becoming subject to the act . . .” and Neb. Rev. Stat. Ann. § 29-4003(1) (Applicability of act) establishes when an offender becomes subject to the provisions of the Sex Offender Registration Act.<sup>53</sup>

Traffickers convicted under Neb. Rev. Stat. Ann. § 28-805(1)(b) (Debauching a minor; penalty), § 28-320.02 (Sexual assault; use of electronic communication device; prohibited acts; penalties), § 28-1463.03

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<sup>52</sup> See *supra* note 43.

<sup>53</sup> See *supra* Component 2.10 for the provisions of Neb. Rev. Stat. Ann. § 29-4003(1).

(Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense), § 28-1463.05(2)(b), (c) (Visual depiction of sexually explicit acts related to possession; violation; penalty), § 28-707(1)(d) (Child abuse; privileges not available; penalties), or § 28-802(1) (Pandering; penalty) (where the victim is a minor) are required to register as a sex offender. Neb. Rev. Stat. Ann. § 29-4003(1).<sup>54</sup> Traffickers convicted under Neb. Rev. Stat. Ann. § 28-831(1) (Human trafficking; forced labor or services; prohibited acts; penalties) or § 28-804(1) (Keeping a place of prostitution; penalty), however, are not required to register as a sex offender under Nebraska law.

3.5.1 Recommendation: Require sex offender registration for convictions under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), § 28-801.01 (Solicitation of prostitution), and § 28-804 (Keeping a place of prostitution; penalty) when a minor is involved.

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.*

Nebraska law does not include a violation of Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) or any of Nebraska's CSEC laws as grounds for terminating parental rights. However, Neb. Rev. Stat. Ann. § 43-292 (Termination of parental rights; grounds) states,

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

....

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

....

(6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

....

(9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 [Sexual assault of a child; first degree; penalty] or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or a comparable crime in another state.

3.6.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 43-292(10) (Termination of parental rights; grounds) to include Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties) and Nebraska's CSEC laws as grounds for the termination of parental rights.

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<sup>54</sup> See *supra* note 44.

***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.*

Benefitting from or participating in a sex trafficking venture is prohibited under Neb. Rev. Stat. Ann. § 28-831(3) (Human trafficking; forced labor or services; prohibited acts; penalties), which states, “[a]ny person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIA felony.” A Class IIA felony is punishable by imprisonment for up to 20 years. Neb. Rev. Stat. Ann. § 28-105(1) (Felonies; classification of penalties; sentences; where served; eligibility for probation).

Some facilitators may also be prosecuted under Neb. Rev. Stat. Ann. § 28-802(1)(b), (c) (Pandering; penalty) which states, “A person commits pandering if such person . . . procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed . . . or inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery.” Neb. Rev. Stat. Ann. § 28-802(2) makes pandering a Class II felony for a first offense, which is punishable by imprisonment for 1–50 years. Neb. Rev. Stat. Ann. § 28-105(1).

Facilitators also face prosecution under Neb. Rev. Stat. Ann. § 28-804 (Keeping a place of prostitution) which states,

- (1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.
- (2) Keeping a place of prostitution is a Class IV felony, unless any person using such place for the practice of prostitution is under the age of eighteen years, in which case any person convicted of keeping a place of prostitution shall be guilty of a Class III felony.

A Class IV felony is punishable by imprisonment up to 2 years, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). A Class III felony is punishable by imprisonment up to 4 years, a fine not to exceed \$25,000, or both.

A facilitator may also be convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties).<sup>55</sup> A violation of this statute is a Class I misdemeanor if “committed negligently,” a Class IIIA felony if “committed knowingly and intentionally and does not result in serious bodily injury,” a Class II felony if “committed knowingly and intentionally and results in serious bodily injury,” or a Class IB felony if “committed knowingly and intentionally and results in the death of such child.” Neb. Rev. Stat. Ann. § 28-

<sup>55</sup> See *supra* Component 1.2 for the provisions of Neb. Rev. Stat. Ann. § 28-707.

707(3)–(8). A Class I misdemeanor is punishable by imprisonment up to 1 year, a fine not to exceed \$1,000, or both. Neb. Rev. Stat. Ann. § 28-106(1). A Class IIIA felony is punishable by imprisonment up to 3 years and 18 months post-release supervision, a fine not to exceed \$10,000, or both. Neb. Rev. Stat. Ann. § 28-105(1). Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. § 28-707. A Class II felony is punishable by imprisonment for 1–50 years, while a Class IB felony is punishable by imprisonment for 20 years to life. Neb. Rev. Stat. Ann. § 28-105(1).

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 Neb. Rev. Stat. Ann. § 28-831(3) (Human trafficking; forced labor or services; prohibited acts; penalties) or § 28-802(1)(b)(c), (2) (Pandering) does not face a fine. A facilitator convicted under Neb. Rev. Stat. Ann. § 28-707(1)(d) (Child abuse; privileges not available; penalties) is subject to a possible fine not to exceed \$1,000 if the offense was “committed negligently,” a possible fine not to exceed \$10,000 if the offense was “committed knowingly and intentionally and does not result in serious bodily injury,” or no fine if the offense was “committed knowingly and intentionally and results in serious bodily injury” or in the death of the child. Neb. Rev. Stat. Ann. §§ 28-707(3)–(8), 28-106(1), 28-105(1). Facilitators convicted under Neb. Rev. Stat. 28-804 (Keeping a Place of Prostitution) face a fine not exceeding \$10,000.

Facilitators who cause “actual physical injury or property damage or loss” to their victim may have to pay restitution pursuant to Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when).<sup>56</sup> The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

Facilitators of minor sex trafficking face forfeiture of property that was used in the furtherance of human trafficking. Under Neb. Rev. Stat. Ann. § 25-21,302(1)(b) (Property used in commission of certain crimes; forfeiture; proceeding; confiscating authority; duties; seizure of property; proceedings; petition; Attorney General; duties; answer; hearing; disposition of proceeds), persons convicted of a trafficking offense under Neb. Rev. Stat. Ann. § 28-831, may be subject to the forfeiture of “property used or intended to use as an instrumentality in or used in the furtherance of [minor sex trafficking of a minor],” including:

- (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;
- (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 . . . § 28-831 (Human trafficking; labor or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties).

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<sup>56</sup> See *supra* Component 2.8 for the provisions of Neb. Rev. Stat. Ann. § 29-2280.

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

There is no Nebraska law that addresses sex tourism.

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

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

Nebraska prohibits the promotion and sale of child sexual abuse material (CSAM). Neb. Rev. Stat. Ann. § 28-1463.03(2)<sup>57</sup> (Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense) states that it is “unlawful for a person knowingly to . . . sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.” A violation of this statute by a person 18 years of age or younger is a Class III felony punishable by imprisonment for up to 4 years and 2 years post-release supervision, a fine not to exceed \$25,000, or both, while a violation by a person 19 years of age or older is a Class ID felony punishable by imprisonment for 3–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.04(1), (2), 28-105(1). A conviction under this statute is punishable as a Class IC felony by imprisonment for 5–50 years, however, if a person has a prior conviction under this statute or a number of other specific statutes. Neb. Rev. Stat. Ann. §§ 28-1463.04(3), 28-105(1).

Furthermore, Neb. Rev. Stat. Ann. § 28-1463.05(1)<sup>58</sup> (Child Pornography Prevention Act) makes it illegal “for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.” A first conviction under this statute by an offender under 19 years of age is punishable as a Class IIIA felony is punishable by imprisonment up to 3 years and 18 months post-release supervision, a fine not to exceed \$10,000, or both, while a first conviction by an offender 19 years of age or older is punishable as a Class IIA felony by imprisonment up to 20 years, a fine not to exceed \$25,000, or both. Neb. Rev. Stat. Ann. §§ 28-1463.05(2)(a), (b), 28-105(1). In instances when the offender has a prior conviction under this statute or other specific criminal statutes,<sup>59</sup> a conviction is punishable as a Class IC felony by imprisonment for 5–50 years. Neb. Rev. Stat. Ann. §§ 28-1463.05(2)(c), 28-105(1).

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<sup>57</sup> See *supra* note 37.

<sup>58</sup> The text of Neb. Rev. Stat. Ann. § 28-1463.05 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 630 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>59</sup> Pursuant to Neb. Rev. Stat. Ann. § 28-1463.05(2)(c),

Any person who violates this section and has previously been convicted of a violation of this section or section 28-308 [Assault in the first degree; penalty], 28-309 [Assault in the second degree; penalty], 28-310 [Assault in the third degree; penalty], 28-311 [Criminal child enticement; attempt; penalties], 28-313 [Kidnapping; penalties], 28-314 [False imprisonment in the first degree; penalty], 28-315 [False imprisonment in the second degree; penalty], 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], 28-320.01 [Sexual assault of a child; second or third degree; penalties], 28-813 [Obscene literature or material; prepares; distributes; promotes; penalty], 28-833 [Enticement by electronic communication device; penalty], or 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] shall be guilty of a Class IC felony for each offense.

Additionally, facilitators convicted of offenses under the Child Pornography Prevention Act may be subjected to the forfeiture of property used or intended to be used to carry out the offense. Neb. Rev. Stat. Ann. § 28-1463.06 (Property subject to forfeiture; hearing).

**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 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>60</sup>*

Nebraska’s core sex trafficking statute, Neb. Rev. Stat. Ann. § 28-830 (Human trafficking; forced labor or services; prohibited acts; penalties), includes all commercial sexual exploitation of minors. Under Neb. Rev. Stat. Ann. § 28-830(12), force, fraud, or coercion is not required when the victim is a minor.<sup>61</sup> Further, Neb. Rev. Stat. Ann. § 28-830(12) applies to buyers through the terms “solicit” and “cause” and, following federal precedent, through the term “obtain”; thus, buying commercial sex with a person who is under the age of eighteen constitutes human trafficking.<sup>62</sup> Additionally, the offense of human trafficking under Neb. Rev. Stat. Ann. § 28-830(12) does not require that a trafficker or controlling third party be identified. Consequently, Nebraska’s human trafficking offense includes any child who is bought for sex, regardless of whether force, fraud, or coercion is used, regardless of whether a buyer exploited the youth without a trafficker’s involvement, and regardless of whether a victim identifies a trafficker. Neb. Rev. Stat. Ann. § 28-830(12).

- 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.*

Neb. Rev. Stat. Ann. § 28-831(4) (Human trafficking; forced labor or services; prohibited acts; penalties) prohibits a defendant from asserting a defense based on the willingness of the minor to engage in the commercial sex act; specifically, Neb. Rev. Stat. Ann. § 28-831(4) states, “[i]t is not a defense in a prosecution

<sup>60</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>61</sup> See *supra* discussion in Component 1.1.

<sup>62</sup> See *supra* discussion in Component 2.1.

under this section (a) that consent was given by the minor victim, [or] (b) that the defendant believed that the minor victim gave consent . . . .”

5.3 *State law prohibits the criminalization of minors under 18 for prostitution offenses.*<sup>63</sup>

Neb. Rev. Stat. Ann. § 28-801(5) (Prostitution; penalty) prohibits the criminalization of minors under 18 years of age for prostitution offenses. Pursuant to Neb. Rev. Stat. Ann. § 28-801(5)(b),

If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) [Prostitution] of this section is . . . (b) a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 and further disposition under the Nebraska Juvenile Code.

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**

Under Neb. Rev. Stat. Ann. § 28-801(5) (Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties), a law enforcement officer may take a child who had engaged in prostitution into temporary protective custody and, upon doing so, must report an allegation of juvenile sex trafficking to the Department of Health and Human Services (DHHS). Specifically, Neb. Rev. Stat. Ann. § 28-801(5) states,

If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is a person under eighteen years of age, such a person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248<sup>64</sup> and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties] to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection Act.

If a child is taken into law enforcement custody as provided in § 43-248(7), the child shall be delivered to DHHS, which can authorize necessary emergency treatment and services. Neb. Rev. Stat. Ann. § 43-250(2) (Temporary custody; disposition; custody requirements) states,

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<sup>63</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

<sup>64</sup> Pursuant to Neb. Rev. Stat. Ann. § 43-248 (Temporary custody of juvenile without warrant; when),

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

. . . .

(7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of section 28-801; or

(8) A juvenile has committed an act or engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and such juvenile was under eleven years of age at the time of such act or behavior, and the officer has reasonable cause to believe such juvenile committed such act or engaged in such behavior and was under eleven years of age at such time.

When a juvenile is taken into temporary custody pursuant to subdivision . . . (7) . . . of section 43-248, . . . the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

Further, Neb. Rev. Stat. Ann. § 28-713(2)(a)<sup>65</sup> (Reports of child abuse or neglect; law enforcement agency; department duties) provides for a specialized response, stating,

[U]pon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor . . . as defined in section 28-830 [Human trafficking; forced labor or services; terms, defined] and without regard to the subject of the report, the department shall:

- (i) Assign the case to staff for an in-person investigation. The department shall assign a report for investigation regardless of whether or not the subject of the report is a member of the child's household or family or whether the subject is known or unknown, including cases of out-of-home child abuse and neglect;
- (ii) Conduct an in-person investigation and appropriately coordinate with law enforcement agencies, the local child advocacy center, and the child abuse and neglect investigation team under section 28-729 [Teams; members; training; child advocacy center; duties; meetings];
- (iii) Use specialized screening and assessment instruments to identify whether the child is a victim of sex trafficking of a minor . . . or at high risk of becoming such a victim and determine the needs of the child and family to prevent or respond to abuse, neglect, and exploitation . . . ; and
- (iv) Provide for or refer and connect the child and family to services deemed appropriate by the department in the least restrictive environment, or provide for safe and appropriate placement, medical services, mental health care, or other needs as determined by the department based upon the department's assessment of the safety, risk, and needs of the child and family to respond to or prevent abuse, neglect, and exploitation.

## Summary

Nebraska law provides for the non-criminalization of minors for prostitution offenses, mandates the referral of juvenile sex trafficking victims to DHHS, and provides for a response that is specialized to the needs of commercially sexually exploited youth.

### 5.5 *Child sex trafficking is identified as a type of abuse and neglect within child protection statutes.*<sup>66</sup>

Nebraska law expressly includes child sex trafficking as a type of child abuse. Specifically, Neb. Rev. Stat. Ann. § 28-707(1)(d)<sup>67</sup> (Child abuse; privileges not available; penalties) defines "child abuse" to include acts committed by a person,

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<sup>65</sup> The text of Neb. Rev. Stat. Ann. § 28-713 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 519 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>66</sup> For more information regarding recent federal legislation impacting this component see: <http://go.sharedhope.org/stateimpactmemo>.

[I]f he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

....

(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

....

Additionally, the Child Protection and Family Safety Act<sup>68</sup> includes child sex trafficking as a type of abuse or neglect. Neb. Rev. Stat. Ann. § 28-710(2)(b)(vi)<sup>69</sup> (Acts, how cited; terms, defined) states, “[c]hild abuse or neglect means knowingly, intentionally, or negligently causing or permitting a child to be:

Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depicts . . . .

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.*

Child sex trafficking victims may access the protection of child welfare in non-familial trafficking cases. Neb. Rev. Stat. Ann. § 28-713(2)(a)<sup>70</sup> (Reports of child abuse or neglect; law enforcement agency; department duties) specifically requires the Department of Health and Human Services (DHHS) to investigate, screen, and provide for services “upon the receipt of any report that a child is a reported or suspected victim of sex trafficking of a minor . . . without regard to the subject of the report . . . .”

Further, Nebraska’s Child Protection and Family Safety Act<sup>71</sup> refers to the “subject of the report of child abuse or neglect” as “the person or persons identified in the report as responsible for the child abuse or neglect.” Neb. Rev. Stat. Ann. § 28-710(2)(j) (Act, how cited; terms, defined). This definition does not specify a familial relationship between the child and the perpetrator of the abuse.

Finally, the definition of “out-of-home child abuse or neglect” specifically includes cases of child abuse or neglect “in which the subject of the report of child abuse or neglect is not a member of the child’s household, no longer has access to the child, is unknown, or cannot be identified.” Neb. Rev. Stat. Ann. § 28-710(2)(g).<sup>72</sup>

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

A commercially sexually exploited child may be eligible to receive compensation under Nebraska’s Crime Victim’s Reparation Act.<sup>73</sup> Specifically, Neb. Rev. Stat. Ann. § 81-1801(7) defines a “victim” as “a person who is injured or killed as a result of conduct specified in section 81-1818 [Personal injury or death; situations for which compensation is permitted].” Neb. Rev. Stat. Ann. § 81-1818 (Personal injury or death; situations for which compensation is permitted) states,

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<sup>67</sup> See *supra* note 4.

<sup>68</sup> Neb. Rev. Stat. Ann. §§ 28-710 to -727.

<sup>69</sup> The text of Neb. Rev. Stat. Ann. § 28-710 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 519 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>70</sup> See *supra* note 65.

<sup>71</sup> See *supra* note 68.

<sup>72</sup> See *supra* note 69.

<sup>73</sup> Neb. Rev. Stat. Ann. §§ 81-1801 to -1842.

The committee or hearing officer may order the payment of compensation from the Victim's Compensation Fund for personal injury or death which resulted from:

- . . . .
- (2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act committed or attempted in the State of Nebraska.

Neb. Rev. Stat. Ann. § 81-1807 (Victim; compensation; application) provides that “[a]ny person who may be eligible for compensation under the Nebraska Crime Victim’s Reparations Act may make application to the committee on forms provided by the committee.”

Neb. Rev. Stat. Ann. § 81-1819 (Payment of compensation; order; losses covered) provides that a victim may receive compensation for

- (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim, including expenses for mental health counseling and care;
- (2) Loss of wages and future earning capacity as a result of total or partial incapacity of the victim and reasonable expenses of job retraining or similar employment-oriented rehabilitative services for the victim;
- (3) Pecuniary loss to the dependents of the deceased victim;
- (4) Funeral and burial expenses actually and reasonably incurred as a result of the death of the victim; and
- (5) Any other loss resulting from the personal injury or death of the victim which the committee determines to be reasonable.

Even if a commercially sexually exploited child suffers compensable losses, certain other eligibility requirements may make it difficult for a domestic minor sex trafficking victim to receive compensation. For example, Neb. Rev. Stat. Ann. § 81-1821 (Application; statute of limitations) requires both that the crime be reported to law enforcement and a claim for compensation be filed within specified time limits. Specifically, Neb. Rev. Stat. Ann. § 81-1821 states,

No order for the payment of compensation shall be entered under the Nebraska Crime Victim’s Reparations Act unless the application has been submitted to the committee within two years after the date of the personal injury or death and the personal injury or death was the result of an incident or offense which had been reported to the police within three days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within three days of the time when a report could reasonably have been made.

Additionally, Neb. Rev. Stat. Ann. § 81-1822 (Compensation; situations when not awarded) states,

No compensation shall be awarded from the Victim’s Compensation Fund:

- (1) If the victim aided or abetted the offender in the commission of the unlawful act;
- . . . .
- (3) If the victim violated a criminal law of the state, which violation caused or contributed to his or her injuries or death . . . .

5.7.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 81-1821 (Application; statute of limitations) and § 81-1822 (Compensation; situations when not awarded) to create exceptions to the listed items for commercially exploited minors under the age of 18.

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

None of Nebraska’s victim-friendly trial protections apply specifically to child sex trafficking victims. Although not specific to the trial process, Neb. Rev. Stat. Ann. § 42-1204(1)(a) (Substitute address, application

to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty) does allow child sex trafficking victims to receive designated addresses, stating,

An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains:

- (a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, . . . is a trafficking victim and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made[.]

Further, some of Nebraska's general victim-friendly trial procedures and protections may apply. Children 11 years of age or younger, who are the victims of any crime under Nebraska's laws are afforded some protections under Nebraska law.<sup>74</sup> The testimony of a child who is 11 years of age or younger may be admitted through a videotaped deposition. Neb. Rev. Stat. Ann. § 29-1926(1)(a) (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) provides in part, "(1)(a) Upon request of the prosecuting or defense attorney and upon a showing of compelling need,<sup>75</sup> the court shall order the taking of a videotape deposition of a child victim of or child witness to any offense punishable as a felony. The deposition ordinarily shall be in lieu of courtroom or in camera testimony by the child." Under the procedures set out for this type of testimony, only specified persons, including the defendant and a person who is familiar to the child, are permitted to be present during the child's testimony.

Neb. Rev. Stat. Ann. § 81-1848 (Victims and witnesses of crimes; rights; enumerated) enumerates rights afforded to "[v]ictims as defined in section 29-119,"<sup>76</sup> which does not expressly include victims of human

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<sup>74</sup> Neb. Rev. Stat. Ann. § 29-1926(1)(g) (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) provides that "[f]or purposes of this section, child shall mean a person eleven years of age or younger at the time the motion to take the deposition is made or at the time of the taking of in camera testimony at trial."

<sup>75</sup> Pursuant to Neb. Rev. Stat. Ann. § 29-1926(1)(h),

Nothing in this section shall restrict the court from conducting the pretrial deposition or in camera proceedings in any manner deemed likely to facilitate and preserve a child's testimony to the fullest extent possible, consistent with the right to confrontation guaranteed in the Sixth Amendment of the Constitution of the United States and Article I, section 11, of the Nebraska Constitution. In deciding whether there is a compelling need that child testimony accommodation is required by pretrial videotape deposition, in camera live testimony, in camera videotape testimony, or any other accommodation, the court shall make particularized findings on the record of:

- (i) The nature of the offense;
- (ii) The significance of the child's testimony to the case;
- (iii) The likelihood of obtaining the child's testimony without modification of trial procedure or with a different modification involving less substantial digression from trial procedure than the modification under consideration;
- (iv) The child's age;
- (v) The child's psychological maturity and understanding; and
- (vi) The nature, degree, and duration of potential injury to the child from testifying.

<sup>76</sup> Pursuant to Neb. Rev. Stat. Ann. § 29-119(2) (Plea agreement; terms, defined),

(a) Victim means a person who has had a personal confrontation with an offender as a result of . . . a sexual assault of a child in the first degree under section 28-319.01, . . . a sexual assault of a child in the second or third degree under section 28.320.01 . . .

. . . .

trafficking. These rights include the right to receive information regarding the case, a schedule of hearings, protection from threats, and to be provided a secure waiting area. Neb. Rev. Stat. Ann. § 81-1848(1)(b), (2)(c), (2)(f).

While victims of sexual assault are eligible for additional protections, they do not apply specifically to domestic minor sex trafficking victims unless they are also victims of sexual assault.<sup>77</sup> Sexual assault victims may receive certain additional protections. For example, in a criminal case, evidence of a sexual assault victim's past sexual behavior or sexual predisposition is inadmissible in sexual assault cases unless the information proves another source of semen or injury or other physical evidence, the victim consented, or the exclusion of such evidence would violate the constitutional rights of the accused. Neb. Rev. Stat. Ann. § 27-412(1), (2)(a). Additionally, pursuant to Neb. Rev. Stat. Ann. § 29-2028 (Sexual assault; testimony; corroboration not required), the testimony of victims of offenses under Neb. Rev. Stat. Ann. § 28-319.01 (Sexual assault of a child; first degree; penalty) to § 28-320.01 (Sexual assault of a child; second or third degree; penalties) does not require corroborating evidence.

- 5.8.1 Recommendation: Expand Neb. Rev. Stat. Ann. § 29-1926 (Child victim or child witness; videotape deposition and in camera testimony; conditions; use; findings by court; release; violation; penalty) to allow children older than the age of 11 to testify via a videotaped deposition.
- 5.8.2 Recommendation: Specify application of the “rape shield” law in prosecutions of domestic minor sex trafficking or commercial sexual exploitation of children to reduce trauma in the cross-examination of testifying victims.

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.*

Nebraska law provides a mechanism for minors to vacate delinquency adjudications and expunge related records for offenses committed as a result of a minor's trafficking victimization.

Under Neb. Rev. Stat. Ann. § 29-3005 (Victim of sex trafficking; motion to set aside conviction or adjudication; procedure; court; findings; considerations; hearing; order; effect), a minor victim of sex

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(c) In the case of a violation of section 28-813.01 [Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense], 28-1463.03 [Child Pornography Prevention Act], 28-1463.04 [Child Pornography Prevention Act], or 28-1463.05 [Child Pornography Prevention Act], victim means a person who was a child as defined in section 28-1463.02 [Terms, defined] and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

....

The text of Neb. Rev. Stat. Ann. § 29-119 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 125 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>77</sup> Neb. Rev. Stat. Ann. § 27-413 (Offense of sexual assault, defined) provides that sexual assault includes “sexual assault of a child under section 28-319.01 [Sexual assault of a child; first degree; penalty] or 28-320.01 [Sexual assault of a child; second or third degree; penalties], sexual assault by use of an electronic communication device under section 28-320.02 [Sexual assault; use of electronic communication device; prohibited acts; penalties] . . . [and] an attempt or conspiracy to commit any of the crimes listed in this section, or the commission of or conviction for a crime in another jurisdiction that is substantially similar to any crime listed in this section.”

trafficking<sup>78</sup> may petition the juvenile court to vacate an adjudication obtained as a result of the minor's trafficking victimization. Neb. Rev. Stat. Ann. § 29-3005 provides,

....

(2) At any time following the completion of sentence or disposition, a victim of sex trafficking convicted in county or district court of, or adjudicated in a juvenile court for, (a) a prostitution-related offense<sup>79</sup> committed while the movant was a victim of sex trafficking or proximately caused by the movant's status as a victim of sex trafficking or (b) any other offense committed as a direct result of, or proximately caused by, the movant's status as a victim of sex trafficking, may file a motion to set aside such conviction or adjudication . . . .

(3) (a) If the court finds that the movant was a victim of sex trafficking at the time of the prostitution-related offense or finds that the movant's participation in the prostitution-related offense was proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such prostitution-related offense.

(b) If the court finds that the movant's participation in an offense other than a prostitution-related offense was a direct result of or proximately caused by the movant's status as a victim of sex trafficking, the court shall grant the motion to set aside a conviction or an adjudication for such offense.

....

In determining trafficking victimization for purposes of granting a motion to vacate an adjudication, Neb. Rev. Stat. Ann. § 29-3005(4) provides the forms of evidence that a court shall consider; it states,

Official documentation of a movant's status as a victim of sex trafficking at the time of the prostitution-related offense or other offense shall create a rebuttable presumption that the movant was a victim of sex trafficking at the time of the prostitution-related offense or other offense. Such official documentation shall not be required to obtain relief under this section. Such official documentation includes:

(a) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows the movant is a victim of sex trafficking; or

(b) An affidavit or sworn testimony from an attorney, a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the movant has sought legal counsel or other assistance in addressing the trauma associated with being a victim of sex trafficking.

Additionally, Neb. Rev. Stat. Ann. § 29-3005(5) states,

In considering whether the movant is a victim of sex trafficking, the court may consider any other evidence the court determines is of sufficient credibility and probative value, including an affidavit or sworn testimony. Examples of such evidence include, but are not limited to:

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<sup>78</sup> Neb. Rev. Stat. Ann. § 29-3005(1)(c) defines "victim of sex trafficking" as "a person subjected to sex trafficking or sex trafficking of a minor, as those terms are defined in section 28-830."

<sup>79</sup> Neb. Rev. Stat. Ann. § 29-3005(1)(a)(i) defines "prostitution-related offense" as "Prostitution under section 28-801, solicitation of prostitution under section 28-801.01, keeping a place of prostitution under section 28-804, public indecency under section 28-806, or loitering for the purpose of engaging in prostitution or related or similar offenses under local ordinances."

- (a) Branding or other tattoos on the movant that identified him or her as having a trafficker;<sup>80</sup>
- (b) Testimony or affidavits from those with firsthand knowledge of the movant’s involvement in the commercial sex trade such as solicitors of commercial sex, family members, hotel workers, and other individuals trafficked by the same individual or group of individuals who trafficked the movant;
- (c) Financial records showing profits from the commercial sex trade, such as records of hotel stays, employment at indoor venues such as massage parlors, bottle clubs, or strip clubs, or employment at an escort service;
- (d) Internet listings, print advertisements, or business cards used to promote the movant for commercial sex; or
- (e) Email, text, or voicemail records between the movant, the trafficker, or solicitors of sex that reveal aspects of the sex trade such as behavior patterns, meeting times, or payments or examples of the trafficker exerting force, fraud, or coercion over the movant.

For purposes of vacating an offense, Neb. Rev. Stat. Ann. § 29-3005(7) provides, “[a]n order setting aside a conviction or an adjudication under this section shall have the same effect as an order setting aside a conviction in subsections (4) and (5) of section 29-2264.”

In addition, child sex trafficking victims may have certain juvenile records sealed without a waiting period. Under Neb. Rev. Stat. Ann. § 29-3523 (Criminal history record information; dissemination; limitations; removal certain information not part of public record; court; duties; sealed record; effect; expungement), a minor victim whose adjudication or conviction was vacated pursuant to Neb. Rev. Stat. Ann. § 29-3005 may petition the court to have such records sealed. Neb. Rev. Stat. Ann. § 29-3523 states,

(1) After the expiration of periods described in subsection (3) of this section or after the granting of a motion under subsection (4), (5), or (6) of this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record information and criminal history record information shall not be disseminated to any person other than a criminal justice agency, except as provided in subsection (2) of this section or when the subject of the record:

- (a) Is currently the subject of a prosecution or correctional control as the result of a separate arrest;
- (b) Is currently an announced candidate for or holder of public office;
- (c) Has made a notarized request for the release of such record to a specific person; or

....  
....

(4) Upon the granting of a motion to set aside a conviction or an adjudication pursuant to subsection 2 of this act, a person who is a victim of sex trafficking, as defined in section 2 of this act, may file a motion with the sentencing court for an order to seal the criminal history record information related to such conviction or adjudication. Upon a finding that a court issued an order setting aside a conviction or adjudication pursuant to subsection 2 of this act, the sentencing court shall grant the motion and:

- (a) For a conviction, issue an order as provided in subsection (7) of this section; or
- (b) For an adjudication, issue an order as provided in section 43-2,108.05.

....

Neb. Rev. Stat. Ann. § 43-2,108.01(1)<sup>81</sup> (Sealing of records; juveniles eligible) allows records to be sealed for other delinquency adjudications; it states,

<sup>80</sup> Neb. Rev. Stat. Ann. § 29-3005(1)(b) defines “trafficker” as “a person who engages in sex trafficking or sex trafficking of a minor as defined in section 28-830.”

Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney:

- (a) Declined to file a juvenile petition or criminal complaint;
- (b) Offered juvenile pretrial diversion or mediation to the juvenile under the Nebraska Juvenile Code;
- (c) Filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 [Juvenile court; jurisdiction];
- (d) Filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia;
- (e) Filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense, when all offenses in the case are waiveable offenses; or
- (f) Filed a criminal complaint in county or district court for a felony offense under state law or a city or village ordinance that was subsequently transferred to juvenile court for ongoing jurisdiction.

Pursuant to Neb. Rev. Stat. Ann. § 43-2,108.03(4)<sup>82</sup> (Sealing of records; county attorney or city attorney; duties; motion to seal record authorized),

- (a) If a juvenile described in section 43-2,108.01 has satisfactorily completed the probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or if the juvenile has satisfactorily completed the probation or sentence ordered by a county court, the court shall seal the records as set forth in section 43-2,108.5.
- (b) If a juvenile described in subdivision (4)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

Further, Neb. Rev. Stat. Ann. § 43-2,108.03(6) provides,

When a juvenile described in section 43-2,108.01 whose records have not been automatically sealed as provided in subsection (1), (2), (3), or (4) of this section reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner, such juvenile or his or her parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in disposition, adjudication, or diversion in juvenile court or diversion or sentence of the county court . . .

If a proceeding to seal the record is initiated but a party objects to sealing the record, Neb. Rev. Stat. Ann. § 43-2,108.04(4)(5), (6)<sup>83</sup> (Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations) states that a court shall conduct a hearing and seal a juvenile's records

- (5) . . . if it finds by a preponderance of the evidence that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

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<sup>81</sup> The text of Neb. Rev. Stat. Ann. § 43-2,108.01 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 354 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>82</sup> The text of Neb. Rev. Stat. Ann. § 43-2,108.03 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 354 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>83</sup> The text of Neb. Rev. Stat. Ann. § 43-2,108.04 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 354 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

- (a) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, probation, supervision, other treatment or rehabilitation program, or sentence;
  - (b) The education and employment history of the juvenile; and
  - (c) Any other circumstances that may relate to the rehabilitation of the juvenile.
- (6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile's parent or guardian may not move the court to seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

However, sealed records may be inspected under Neb. Rev. Stat. Ann. § 43-2,108.05(3), (4)<sup>84</sup> (Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court) as follows:

- (3) A sealed record is accessible to the individual who is the subject of the sealed record and any persons authorized by such individual, law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, to a judge making a determination whether to transfer a case to or from juvenile court, to any attorney representing the subject of the sealed record, and to the Inspector General of Nebraska Child Welfare pursuant to an investigation conducted under the Office of Inspector General of Nebraska Child Welfare Act. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:
- (a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;
    - ....
    - (c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;
    - (d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes . . . .
    - ....
    - (f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action . . . .
    - ....
    - (h) By a law enforcement agency if the individual whose record has been sealed applies for employment with the law enforcement agency.
  - (4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

*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.*

The Human Trafficking Victims Civil Remedies Act allows both minor and adult victims of human trafficking, as defined by Neb. Rev. Stat. Ann § 28-830 (Human trafficking; forced labor or services; terms, defined), to

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<sup>84</sup> The text of Neb. Rev. Stat. Ann. § 43-2,108.05 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 354 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

bring civil claims against traffickers, buyers, or facilitators. Neb. Rev. Stat. Ann. § 25-21,299<sup>85</sup> (Civil action authorized; recovery; attorney’s fees and costs; injunctive relief) states,

(1) Any trafficking victim, his or her parent or legal guardian, or personal representative in the event of such victim’s death, who suffered or continues to suffer personal or mental injury, death, or any other damages proximately caused by such human trafficking may bring a civil action against any person who knowingly (a) engaged in human trafficking of such victim within this state or (b) aided or assisted in the human trafficking of such victim within this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Human Trafficking Civil Remedy Act may recover his or her damages<sup>86</sup> proximately caused by the actions of the defendant plus any and all attorney’s fees and costs reasonably associated with the civil action.

....

Additionally, under the Exploited Children’s Civil Remedy Act,<sup>87</sup> Nebraska provides a civil cause of action for sex trafficked minors who were depicted in child sexual abuse material (CSAM). Neb. Rev. Stat. Ann. § 25-21,292 (Civil action authorized; recovery; attorney’s fees and costs; injunctive relief) states,

(1) Any participant<sup>88</sup> or portrayed observer<sup>89</sup> in a visual depiction of sexually explicit conduct<sup>90</sup> or his or her parent or legal guardian who suffered or continues to suffer personal or psychological injury as a

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<sup>85</sup> The text of Neb. Rev. Stat. Ann. § 25-21,299 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 519 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

<sup>86</sup> Pursuant to Neb. Rev. Stat. Ann. § 25-21,299(3), damages include, but are not limited to, the following:

- (a) The physical pain and mental suffering the plaintiff has experienced and is reasonably certain to experience in the future;
- (b) The reasonable value of the medical, hospital, nursing, and care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;
- (c) The reasonable value of transportation, housing, and child care reasonably needed and actually incurred by the plaintiff;
- (d) The reasonable value of the plaintiff’s labor and services the plaintiff has lost because he or she was a trafficking victim;
- (e) The reasonable monetary value of the harm caused by the documentation and circulation of the human trafficking;
- (f) The reasonable costs incurred by the plaintiff to relocate away from the defendant or the defendant’s associates;
- (g) In the event of death, damages available as in other actions for wrongful death; and
- (h) The reasonable costs incurred by the plaintiff to participate in the criminal investigations or prosecution or attend criminal proceedings related to trafficking the plaintiff.

<sup>87</sup> Neb. Rev. Stat. Ann. §§ 25-21,290 to -21,296.

<sup>88</sup> Neb. Rev. Stat. Ann. § 25-21,291(8) (Terms, defined) defines “participant” as “a child who appears in any visual depiction of sexually explicit conduct and is portrayed or actively engaged in acts of sexually explicit conduct appearing therein.”

<sup>89</sup> Neb. Rev. Stat. Ann. § 25-21,291(9) (Terms, defined) defines “portrayed observer” as “a child who appears in any visual depiction where sexually explicit conduct is likewise portrayed or occurring within the child’s presence or in the child’s proximity.”

<sup>90</sup> Pursuant to Neb. Rev. Stat. Ann. § 25-21,291(10), “Sexually explicit conduct has the same meaning as in section 28-1463.02.” Neb. Rev. Stat. Ann. § 28-1463.02(5) defines “sexual explicit conduct” as

- (a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital;
- (b) real or simulated masturbation;
- (c) real or simulated sadomasochistic abuse;
- (d) erotic fondling;

result of such participation or portrayed observation may bring a civil action against any person who knowingly and willfully (a) created, distributed, or actively acquired such visual depiction while in this state or (b) aided or assisted with the creation, distribution, or active acquisition of such visual depiction while such person or the person aided or assisted was in this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Exploited Children’s Civil Remedy Act may recover his or her actual damages, which are deemed to be a minimum of one hundred fifty thousand dollars, plus any and all attorney’s fees and costs reasonably associated with the civil action. In addition to all other remedies available under the act, the court may also award temporary, preliminary, and permanent injunctive relief as the court deems necessary and appropriate.

(3) This section does not create a cause of action if the participant was sixteen years of age or older at the time the visual depiction was created and the participant willfully and voluntarily participated in the creation of the visual depiction.

. . . .

Restitution may also be available to a commercially sexually exploited child. Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) states,

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. With the consent of the parties, the court may order restitution for the actual physical injury or property damage or loss sustained by the victim of an uncharged offense or an offense dismissed pursuant to plea negotiations . . . .

The court determines the amount of restitution “based on the actual damages sustained by the victim.” Neb. Rev. Stat. Ann. § 29-2281. Additionally, Neb. Rev. Stat. Ann. § 29-2282 (Property damage; bodily injury; death; relief authorized) states, “If the offense results in bodily injury, the court may require payment of necessary medical care, including, but not limited to, physical or psychological treatment and therapy, and payment for income lost due to such bodily injury.”

5.10.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 29-2280 (Restitution; order; when) to make restitution mandatory in human trafficking and CSEC offenses.

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.*

State law eliminates the criminal statute of limitations and lengthens the civil statute of limitations for cases related to child sex trafficking. Regarding criminal cases, generally, felony prosecutions must commence within 3 years of the offense, and misdemeanor prosecutions must commence within 1 year and 6 months. Neb. Rev. Stat. Ann. § 29-110(1)–(2) (Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions). However, Neb. Rev. Stat. Ann. § 29-110(10)<sup>91</sup> states, “There shall not be any time limitations for prosecution or punishment for . . . sex trafficking of a minor under subsection (1) of section 28-831 [Human

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(e) erotic nudity; or

(f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved.

<sup>91</sup> The text of Neb. Rev. Stat. Ann. § 29-110 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 519 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

trafficking; forced labor or services; prohibited acts; penalties], or an offense under 28-1463.03 [Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense] . . . .”<sup>92</sup>

Although not eliminated, the criminal statute of limitations is lengthened for other offenses related to the commercial sexual exploitation of children. Neb. Rev. Stat. Ann. § 29-110(3)–(5) states,

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim’s sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim’s sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) Except as otherwise provided by law, no person shall be prosecuted for a violation of subsection (2) or (3) of section 28-831 [Human trafficking; forced labor or services; prohibited acts; penalties] (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim’s eighteenth birthday, which is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim’s eighteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(5) Except as otherwise provided by law, no person shall be prosecuted for an offense under section 28-813.01 [Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense] or 28-1463.05 [Child Pornography Prevention Act] (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim’s eighteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim’s eighteenth birthday, which is later, and a warrant for the arrest of the defendant has been issued.

To receive a civil remedy under the Exploited Children’s Civil Remedy Act, Neb. Rev. Stat. Ann. § 25-21,293 (Time for bringing action; limitation) states that an action “shall be filed within three years of the later of” the conclusion of criminal prosecution of the offender, the date the victim is able to identify the offender, or the victim’s 18<sup>th</sup> birthday. However, according to Neb. Rev. Stat. Ann. § 25-21,300 (Time for bringing action; limitation), the statute of limitations on civil claims under the Human Trafficking Victims Civil Remedies Act is 10 years from the later of:

- (1) The conclusion of any related criminal prosecution against the person or persons from whom recovery is sought;
- (2) The receipt of actual or constructive notice sent or given to the trafficking victim or his or her parent or legal guardian by a member of a law enforcement entity informing the victim or his or her parent or legal guardian that the entity has identified the person who knowingly (a) engaged in human trafficking of such victim or (b) aided or assisted with the human trafficking of such victim;

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<sup>92</sup> The criminal statutes of limitations are also eliminated for certain sexual offenses. Neb. Rev. Stat. Ann. § 29-110(10) provides, “There shall not be any time limitations for prosecution or punishment for . . . sexual assault of a child in the second or third degree under section 28-320.01 . . . or sexual assault of a child in the first degree under section 28-319.01 . . . ; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.”

- (3) The time at which the human trafficking of the trafficking victim ended if he or she was eighteen years of age or older; or
- (4) The victim reaching the age of majority if the victim was under eighteen years of age at the time he or she was a victim of human trafficking.

***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.*

Neb. Rev. Stat. Ann. § 81-1402 (Nebraska Law Enforcement Training Center; created; purposes) establishes the Nebraska Law Enforcement Training Center to oversee training of law enforcement, conduct certification of law enforcement, and test law enforcement candidates “to ensure they meet pre-certification and certification requirements.” Under 2012 Legislative Bill 1145 (Sec. 3),

(1) It is the intent of the Legislature that law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff, and others involved in the juvenile justice system and the criminal justice system and other relevant officials be provided mandatory training regarding issues in human trafficking. The task force established in section 2 of this act shall work with such agencies, persons, and staff to develop a proper curriculum for the training and to determine how the training should be provided. The determination and accompanying legislative recommendations shall be made by December 1, 2012. Such training shall focus on:

- (a) State and federal law regarding human trafficking;
- (b) Methods used in identifying victims of human trafficking who are United States citizens and foreign nationals, including preliminary interview techniques and appropriate questioning methods;
- (c) Methods for prosecuting human traffickers;
- (d) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
- (e) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and the special needs of women and minor victims;
- (f) The necessity of treating victims of human trafficking as crime victims rather than as criminals; and
- (g) Methods for promoting the safety and well-being of all victims of human trafficking.

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

Neb. Rev. Stat. Ann. § 86-290(2)(b), (c) (Unlawful acts; penalty) permits single-party consent to audiotaping by stating,

(b) It is not unlawful under sections 86-271 to 86-295 for a person acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(c) It is not unlawful under sections 86-271 to 86-295 for a person not acting under color of law to intercept a wire, electronic, or oral communication when such person is a party to the communication or when one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.

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

State law expressly allows law enforcement to receive an order authorizing wiretapping during an investigation under Neb. Rev. Stat. Ann. § 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties), but not during an investigation under Nebraska's CSEC laws. Neb. Rev. Stat. Ann. § 86-291<sup>93</sup> (Interception; court order) specifically states,

The Attorney General or any county attorney may make application to any district court of this state for an order authorizing or approving the interception of wire, electronic, or oral communications, and such court may grant, subject to sections 86-271 to 86-295, an order authorizing or approving the interception of wire, electronic, or oral communications by law enforcement officers having responsibility for the investigation of the offense as to which application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, robbery, bribery, extortion, dealing in narcotic or other dangerous drugs, labor trafficking or sex trafficking, labor trafficking of a minor or sex trafficking of a minor, sexual assault of a child or a vulnerable adult, visual depiction or possessing a visual depiction of sexually explicit conduct of a child, or child enticement by means of a computer, or any conspiracy to commit any such offense.

At the same time a county attorney first makes application to the district court for an initial order authorizing or approving the interception of wire, electronic, or oral communications, the county attorney shall submit the application to the Attorney General or his or her designated deputy or assistant. Within twenty-four hours of receipt by the office of the Attorney General of the application from the county attorney, the Attorney General or his or her designated deputy or assistant, as the case may be, shall state to the district court where the order is sought his or her recommendation as to whether the order should be granted. The court shall not issue the order until it has received the recommendation or until seventy-two hours after receipt of the application from the county attorney, whichever is sooner, unless the court finds exigent circumstances existing which necessitate the immediate issuance of the order. The court may issue the order and disregard the recommendation of the Attorney General or his or her designated deputy or assistant.

6.3.1 Recommendation: Amend Neb. Rev. Stat. Ann. § 86-291 (Interception; court order) to include Nebraska's CSEC laws.

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

Although Nebraska's core human trafficking law and CSEC laws do not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, such a defense would

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<sup>93</sup> The text of Neb. Rev. Stat. Ann. § 86-291 cited here and elsewhere in this report includes amendments made by the enactment of Legislative Bill 519 during the 106th Legislature of the State of Nebraska (effective September 6, 2019).

generally be prohibited under Nebraska’s criminal attempt statute, Neb. Rev. Stat. Ann. § 28-801 (Criminal attempt; conduct; penalties). Neb. Rev. Stat. Ann. § 28-801(1)(b) states,

A person shall be guilty of an attempt to commit a crime if he or she:

- (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or
- (b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

Accordingly, an offender could be found guilty of attempting to commit a trafficking or CSEC offense provided that he or she intentionally engaged in the prohibit conduct, believing the law enforcement decoy to be a minor.

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

While neither is expressly commercial in nature, two of Nebraska’s laws appear to authorize law enforcement to use the Internet in investigating buyers and traffickers. Neb. Rev. Stat. Ann. § 28-833(1) (Enticement by electronic communication device; penalty) makes it illegal for a person to knowingly and intentionally use “an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing . . . [o]ffers or solicits any indecent, lewd, or lascivious act.” Similarly, Neb. Rev. Stat. Ann. § 28-320.02(1) (Sexual assault; use of electronic communication device; prohibited acts; penalties) makes it illegal for a person to knowingly

solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device . . . to engage in an act which would be in violation of section 28-319 [Sexual assault; first degree; penalty], 28-319.01 [Sexual assault of a child; first degree; penalty], or 28-320.01 [Sexual assault of a child; second or third degree; penalties] or subsection (1) or (2) of section 28-320 [Sexual assault; second or third degree; penalty] . . . .

The inclusion of the language “or a peace officer who is believed by such person to be a child” under 16 suggests that law enforcement may pose as a child on the Internet while investigating violations of Neb. Rev. Stat. Ann. § 28-833(1) and § 28-320.02(1).

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

Neb. Rev. Stat. Ann. § 29-214.01(1), (4) (Missing Persons Information Clearinghouse; Nebraska State Patrol; powers and duties) establishes a Missing Persons Information Clearinghouse (Clearinghouse) to serve as a central repository for information and investigation of missing persons. Neb. Rev. Stat. Ann. § 29-214.01(2) states that the Nebraska State Patrol shall do the following:

- (a) Collect, process, maintain, and disseminate information about missing persons in Nebraska through hard copy or electronic means;  
.....
- (c) Cooperate with other states and the National Crime Information Center in the exchange of information on missing persons;
- (d) Maintain a statewide, toll-free telephone line, twenty-four hours a day, to receive and disseminate information related to missing persons;
- (e) Maintain an Internet web site accessible to law enforcement agencies and to the public with information on missing persons and with information about the resources available through the clearinghouse . . . .  
.....

(h) Distribute through hard copy or electronic means monthly missing persons bulletins to local law enforcement agencies and to other interested individuals, agencies, and media outlets which request such information. The bulletins shall contain information on missing persons in Nebraska, including names, photographs or other images, if available, descriptions of missing persons, the law enforcement agencies or persons to contact with information regarding missing persons, and the names of persons reported missing whose locations have been determined and confirmed;

....

Neb. Rev. Stat. Ann. § 29-213 (Missing persons information clearinghouse; missing person report; law enforcement agency; duties) states that a law enforcement agency that receive a missing person report shall notify other law enforcement agencies and the Clearinghouse, and if the report “involves an unemancipated minor,” Neb. Rev. Stat. Ann. § 29-214 (Missing persons information clearinghouse; missing person report; unemancipated minor; law enforcement agencies; duties), states that the law enforcement agency that receives the report shall “immediately transmit the proper information for inclusion in the National Crime Information Center computer and the Missing Persons Information Clearinghouse.” When a missing person has been found, Neb. Rev. Stat. Ann. § 29-214.01(5) provides that “[t]he Missing Persons Information Clearinghouse shall be notified after the location of a missing person has been determined and confirmed.”

Under the provisions of the Missing Children Identification Act,<sup>94</sup> additional requirements apply when the missing person is “sixteen years of age or younger reported to any law enforcement agency as abducted or lost.” Neb. Rev. Stat. Ann. § 43-2003(3). In such a case, law enforcement shall “immediately notify the patrol which shall notify the school in which such missing person is enrolled and the department. The department shall notify the county agency if such missing person was born in such county.” Neb. Rev. Stat. Ann. § 43-2004.

Neb. Rev. Stat. Ann. § 43-2005 (Flagging birth certificate) states that law enforcement shall flag the missing child’s birth certificate, “and if such person was born in a county where a county agency records and maintains birth certificates, such agency shall also flag the birth certificate in its custody.” Neb. Rev. Stat. Ann. § 43-2006 (Flagged birth certificate; inquiry and request; how handled) sets up a procedure for handling requests or inquiries about flagged birth certificates. Neb. Rev. Stat. Ann. § 43-2007(1) (Schools; exempt school; duties) similarly states that schools in which the missing child was enrolled shall flag the child’s records and report any inquiry regarding the records. When the missing child is located, the flag on the child’s birth certificate and school records must be removed pursuant to Neb. Rev. Stat. Ann. § 43-2009 (Removal of flag).

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<sup>94</sup> Neb. Rev. Stat. Ann. §§ 43-2001 to -2012.

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